

MIS APPROPRIATION OF GOVERNMENT MONEY

Sl.No	Date	Type	File No	Subject
1.	30.10.1958	Circular	GAD (S-1) 38 SSR 58	Misappropriation of Government money- Enquiry-Procedure for.
2.	23.3.1965	Official Memorandum	GAD 105 SRR 64,	Public services-Departmental proceedings against Government servants involved in cases of fraud, embezzlement, loss of Government money etc.,-instructions-
3.	28.7.1977	Circular	DPAR 28 SSR 77	Clarification regarding 'mis-appropriation' by a Government servant amounts to corruption.
4.		Appendix-II	Karnataka legislature committee on public accounts (1986-87)	The Mis appropriations and defalcations of government monies etc; included in audit report of c & AG for the year 1982-83 & 1983-84 relating to DPAR

Circular. No: GAD (S.1) 38 SSR 58, dated: 30th October 1958.

Sub:-Misappropriation of Government Money - Enquiry - procedure for.

In a case of misappropriation of government dues, a clarification has been sought, whether immediate steps are to be taken for recovery of the amount and a departmental enquiry started against the delinquent, simultaneously with the launching of a criminal prosecution.

2. Attention is invited, in this connection to the procedure laid down in para 20 of Official Memorandum No. GAD 3 CAR 57, dated 14th December 1957, wherein it has been prescribed the departmental enquiry should first be completed with the greatest despatch before initiating criminal proceedings. Therefore, in misappropriation cases, the proper procedure is first to start a departmental enquiry and to take steps for recovery of the amount from the delinquent, if he is found to have misappropriated the amount.

3. If, after completing Departmental proceedings, it is considered that the case is suitable for proceedings against the delinquent in a Criminal Court, such action should be taken. Once the criminal proceedings have been initiated no steps for recovery of the amount should be taken, until the criminal case is decided. Though there is no legal bar for recovery of the amount pending a criminal trial, it has been recognised as a rule of equity that nothing should be done during the pendency of a criminal trial that would prejudice the defence of the accused.

4. Further, in any case where criminal proceedings have already been initiated before the departmental enquiry has been completed, the departmental proceedings should also be stayed until the disposal of the criminal case, if the subject matter of such proceedings is also the subject matter of a charge against the delinquent in a criminal Court. Such cases should not normally occur hereafter.

GOVERNMENT OF MYSORE

No.GAD 105 SRR 64

Mysore Government Secretariat,
Vidhana Soudha,
Bangalore, dated the 23rd March 65.

OFFICIAL MEMORANDUM

Sub:- Public Services - Departmental Proceedings against Government Servants involved in cases of fraud, embezzlement, loss of Government money etc. instructions-

Ref: Circular No.GAD (S-1) 38 SSR dated, 30th October 1958.

Instances have come to the notice of Government where prompt action has not been taken against Government Servants involved in loss of Government money due to fraud, embezzlement, etc., It is very important to avoid delay in such cases in investigation since any delay in taking action either departmentally or by recourse to original proceedings results in loss to Government in as much as the amounts misappropriated become irrecoverable due to the fact the Government Servants concerned either retire or are dead.

2) It has also been noticed that in cases of fraud or embezzlement by Government Servants, there is a tendency on the part of the Head of the Office or a Department to consider that lodging a criminal complaint saves the trouble of initiating departmental proceedings and is therefore easier to have recourse to it. As soon as cases of loss of Government money come to notice, prompt action should be taken to investigate the same and fix the responsibility, both directed and indirect for the loss on the persons involved and to decide as to who among them should be prosecuted or in whose cases departmental proceedings would suffice or are possible irrespective of the decisions to prosecute all or some of the delinquents in a Court of Law, departmental proceedings may be commenced against all of them without undue delay and such proceedings should be carried as far as possible, short of the stage of recording of a finding and imposing a penalty, before the case against those whom it is decided to prosecute is put in Court. When a charge sheet is filed against any one of the delinquents in a Court of Law, the departmental proceedings against him should be stayed. It should be formally resumed or concluded or dropped according to the merits of the case after the decision of the court is available. If the subject matter of the charge-sheet in a criminal court is also a point of issue or relevant fact with respect to disciplinary proceedings against other delinquents, then the entire proceedings shall have to be stayed, and if the subject matter of the charge-sheet in a Court of Law and the charge framed in the disciplinary proceedings against the other delinquents are not the same but distinct, then the departmental

proceedings should be continued. The stage upto which departmental proceedings prior to prosecution, should be taken must however depend on the circumstances of each case and cannot be precisely defined. Where it appears that recourse to judicial proceedings is likely to be involved, competent legal advice should be taken by the departments concerned and where there is a reasonable suspicion of fraud or other criminal offence, a prosecution should be the rule unless the legal advisers consider that evidence available is not such as will secure a conviction. If the accused government servant is convicted by the court and awarded an adequate sentence the departmental proceedings against him should be formally completed and proceedings against other delinquents continued. If the accused is not convicted, or the accused is inadequately punished, the departmental proceedings against him will be resumed as also against the remaining delinquent government Servants.

3. As regards the question of taking action against government Servants who by their failure to prevent fraud or embezzlement have also become responsible for the loss of government money, in the case of such government Servants also departmental proceedings should be commenced along with the actual miscreants without any delay irrespective of the question of prosecuting them in a court of law. However, it may not be possible to take a final position on the charges against such government Servants until the Court's findings against such principle offenders are available. The administrative authority concerned should decide on the basis of the facts and records of each case how far and in what cases he can proceed departmentally at once against such government Servants. It is difficult to lay down any hard and fast rule when the departmenta proceedings against such a Government Servants. It is difficult to lay down any hard and fast rule when the departmental proceedings against such a government Servants without assuming or even referring to the guilt of the principle offenders and without pre-judging the issue before the court and thus avoid committing contempt of court. The authorities concerned will have to find out that the evidence already avoidable would be sufficient and in any case they may get written copies of such documents as may have to be put in a Court.

4. All Heads of Departments are requested to go through these instructions carefully and bring them to the notice of all concerned. The departmental proceedings of loss of government money should be dealt with as expeditiously as possible and where the loss of government money is due to failure on the part of the officers concerned for proper supervision of accounts, the matter will have to be viewed seriously in accordance with these instructions.

Sd/-
K.Balachandran,
Chief Secretary to Government.

GOVERNMENT OF KARNATAKA

No.DPAR 28 SSR 77.

Karnataka Government Secretariat,

Vidhana Soudha,
Bangalore, Dated 28th July 1977.

CIRCULAR

Sub: Clarification regarding Misappropriation by Government Servant amounts to
Corruption

The Proviso to rule 8 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, reads as follows:-

"Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the order of the disciplinary authority no penalty other than those specified in clauses (vi) to (viii) shall be imposed for an establishment charges of corruption".

For the purpose of the proviso the expression "corruption" is defined in Explanation-1. Clarifications have been sought whether "Mis-appropriation" by a Government servant amounts to corruption. It is hereby clarified that such misappropriation amounts to a criminal mis-conduct within the meaning of clauses (c) and (d) of the sub-section (1) of section 5 of the Prevention of Corruption Act, 1947 (Central Act 2 of 1947) and is therefore, covered by the definition of corruption in explanation 1 below rule 8 of the Classification, Control and Appeal Rules, An extract of sub-section (1) of section 5 of the Act is enclosed for reference.

The Secretaries to Government, Heads of Departments and other Appointing and Disciplinary Authorities are requested to take note of the above position while dealing with such cases.

sd/-
N.P.Joshi,
Deputy Secretary to
Government, Dept. of Cabinet
Affairs & Dept. of Personnel &
Administrative Reforms,
(Service Rules).

APPENDIX II
KARNATAKA LEGISLATURE
COMMITTEE ON PUBLIC ACCOUNTS
(1986-87)
(EIGHTH ASSEMBLY)
FOURTEENTH REPORT
ON

**THE MISAPPROPRIATIONS AND DEFALCATIONS OF GOVERNMENT
MONIES ETC; INCLUDED IN AUDIT REPORT OF C & AG FOR THE
YEARS 1982-83 AND 1983-84 RELATING TO
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS**

Summary of Conclusions/Recommendations

Sl. No	Para No.in the Report	Conclusions/Recommendations
1	2	3

MISAPPROPRIATION AND DEFALCATION OF GOVERNMENT MONIES

1. 1.10 Despite all the instructions issued by the Government, inordinate delay in disciplinary proceedings is more the rule, than the exception. The Committee do appreciate the need to give due regard to the principles of natural justice and the need for providing safeguards to protect the interests of the Officer concerned. But this should not become a cover for avoidable delays, making the entire rule ineffective. Officers who have misused Government money or caused loss to Government and who *prime facie* carry civil and criminal liabilities, (apart from disciplinary action) also go scot free. There is no deterrent effect which the Committee consider is the most important purpose of giving punishment in such cases involving misuse of public money. In some cases there is deliberate, conscious avoidance by causing delays and there is reason to believe that the officers who are incharge of the investigation or the enquiry intentionally delay the matters to help the guilty to escape the punishment. In any case, if there is delay, it may mitigate the seriousness of the crime, and give room for (misplaced) sympathy. Recovery of the pecuniary loss to Government may also become difficult to transfer of assets etc., by the accused Government servant.

- 111 On the other hand, such delays may result in harassment of the accused, who may not really be guilty, causing misery and tension. Officers are kept under suspension for months and years. They have to suffer the agony, sometimes till their retirement or death, since they cannot vindicate themselves until the final verdict is given.

ys cause harm both to Government and the Government servant. The Public Accounts Committee have expressed their anxiety over the occurrence of such delays, time and again. This situation requires to be remedied.

2. 1.11 Even if the prescribed rules/procedure cannot be modified or improved as opined by the Chief Secretary there is an urgent need to devise suitable methods to minimise avoidable delays which are sometimes deliberate. The Committee have given some suggestions to improve matters in para 6.1. and they desire that Government in the DPAR should apply itself to this subject and bring forth necessary modifications in the procedures so that disciplinary proceedings are completed atleast within one year from the date on which investigation is taken up.

CONCLUDING REMARKS AND RECOMMENDATIONS:

10. 6.1 The number of cases of misappropriation and defalcation of Government monies which are pending disposal has been increasing from year to year. As on 31st Oct. 1984, 304 cases were pending, of which 183 cases were pending for over 3 to 7 years. The delay is not so much due to the judicial nature of the work or the elaborate procedure prescribed in the Rules for the conduct of formal investigations and inquiry, for the built in safeguards to protect the interest of the Government servant, as is generally made out. It is due in a larger measure to routine, avoidable delays on the part of the Investigation/Inquiry Officers. Cases are also kept pending in the Secretariat Departments. The Committee have reason to believe that at least in some of these cases, delay is deliberate and intended to help the accused escape punishment.
11. 6.2 Due to such delays, there is no fear of punishment for the Officers who indulge in malpractice in handling public money. This is amply illustrated by the 2 cases involving senior officers detailed elsewhere in this report.
12. 6.3 There is an urgent need to correct this position the committee recommended that
 - (i) The Officers appointed to conduct investigations and inquiries under the CCA Rules should be selected with some care. Suitable guide lines should be issued for their use since unfamiliarity with the prescribed procedure also contributes to delay and reluctance to take up this work.
 - (ii) After the Investigating Officer/the Inquiry Officer is nominated, there should be no charge in the nomination for any reason. The Investigation/Inquiry should be completed within a period of 3 months. The entire disciplinary proceedings should in any case be completed

within one year.

(iii) The rules provide several safeguards to protect the interests of the accused Government servant. At the same time it also provides for expert enquiry if the Government servant does not give his written statement of defence or otherwise fails or refuses to comply with the provisions of the rule at any stage of the Inquiry. The Investigating/Inquiry Officers should take suitable action under these provisions, where the Government servant tries to stay the department proceedings or does not co-operate in the early completion of the Inquiry.

(iv) The progress of the Investigation/Inquiry proceedings should be properly monitored till final orders are passed. Final action should be completed within one year. Delays should be properly explained to the satisfaction of the Secretary of the concerned department.

Action taken by Government in this matter may be reported to the Committee within three months.