Circular no. 08/2019

Sub: Refund of amount recovered from departmental labour towards excess incentive paid during period 01.12.2005 to 31.07.2016 in pursuance to Hqrs Circular no. 08/2016 dated 17.08.2016 and 01/2017 dated 17.01.2017

Attention is invited to the circulars cited above for making recoveries of the excess incentive paid to the departmental labour during 01.12.2005 to July 2016 as per datum applicable to 95 kg bags instead of newly introduced 50 Kg bags. The said circulars were issued in furtherance to the award dated 05.07.2016 passed by CGIT, Delhi in ID Case no. 195/2011 wherein it was held that the demand of the labour unions to withdraw FCI Hqrs circular dated 15.12.2005 was neither legal nor justified. The labour unions had challenged the said award and circulars dated 17.8.2016 and 17.1.2017 before the High Court of Delhi vide WP(C) 8495/2016, 9260/2016 and 9412/2016.

2. The said circulars were challenged by the individual workers and labour unions before various other High Courts also and obtained interim relief of stay against recovery. The Hon'ble Patna High Court had allowed writ petitions of the workers and quashed the aforesaid circulars vide its judgment dated 18.05.2018. FCI had filed LPA before the Division Bench which was dismissed by the Hon'ble High Court vide judgment dated 05.07.2018. The SLP filed by FCI has been dismissed by the Hon'ble Supreme Court vide orders dated 05.10.2018. The Review Petition has also been dismissed by the Hon'ble Court vide order dated 26.03.2019. FCI has filed Curative Petition which is yet to come up for hearing. Some High Courts have decided the WPs in the light of the above orders and some WPs are still pending in various High Courts.

3. The Hon'ble Delhi High Court has disposed of the WPs filed by labour Unions vide judgement dated 16.05.2019 thereby upholding the award dated 5.7.2016. However, considering the aforesaid orders passed in the Patna matter, Hon'ble Delhi High Court has disallowed the recoveries to be effected for the past period. The operating portion of the judgement is reproduced below:
"Taking the same into account and on a consideration of the entire record, it is held that there is no infirmity in the impugned award dated 05.07.2016 published on 11.07.2016 in ID No. 195/2011. However, the recoveries sought to be effected by the respondent No.1 from the petitioners/workmen as also the retired personnel of the Food Corporation of India whose cases are espoused by the Petitioners, cannot be allowed to be effected pursuant to the circulars Nos. 18/05 dated 15.12.2005, circular no. 08/16 dated 17.08.2016 and circular no.1/17 dated 17.1.2017, issued by the respondent no.1 in any manner nor can the respondent no.1 withhold the release of the retirement benefits to the retired personnel in relation thereto."

4. Matter has been examined in consultation with the Additional Solicitor General of India and it has been observed that in view of the aforesaid court orders, the circulars dated 17.8.2016 and 17.1.2017 as of now have become inoperative. Therefore, it has been decided to release the amount recovered/withheld from wages/terminal benefits in pursuance to the aforesaid circulars. In case there is any change in circumstances arising out of court directions in pending or subsequent litigation, further directions will be issued with regard to the recoveries including the amount released.

5. In view of the above, all the field offices are requested to ensure that recoveries already effected from the serving and retired departmental workers in pursuance to the FCI Hqrs circular no. 08/2016 dated 17.08.2016 and 01/2017 dated 17.01.2017 is refunded after verification of facts and figures and no recovery should be made from the serving and retired departmental workers till further orders. As regards pending court cases, the instant instructions may be implemented in consultation with Regional/Zonal legal Division. If the field offices have any issue, the same may be referred to Hqrs through Zonal Office alongwith comments and recommendations.

(Daya Sagar Marndi)
Asst. General Manager (IR-L)