

**PUBLIC ACCOUNTS COMMITTEE
(1978-79)**

(SIXTH LOK SABHA)

NINETY-FIRST REPORT

**COLLABORATION AGREEMENT FOR MANU-
FACTURE OF DIESEL ENGINES FOR SHUNTERS**

**MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

**[Paragraph 9 of the Report of the Comptroller
and Auditor General of India for the year 1974-75,
Union Government (Railways)]**



*Presented in Lok Sabha on 31-8-1978
Laid in Rajya Sabha on 31-8-1978*

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8	1.14	2 2 from bottom	concerned difference	conceded defence
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PART II*

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21-8-1976

31-3-1978

24-8-1978

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2. Shri T. R. Ghai—Senior Financial Committee Officer.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Ninety-First Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraph 9 of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Railways) relating to Collaboration Agreement for manufacture of diesel engines for shunters.

2. The Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Railways) was laid on the Table of the House on 6 May, 1976. The Public Accounts Committee (1976-77) examined this paragraph at their sitting held on 27 August, 1976. The Committee (1976-77) could not finalise the Report on account of the dissolution of the Lok Sabha on 18 January, 1977. When the draft Report was placed before the Public Accounts Committee (1977-78) on 5 December, 1977, it was decided that as desired by the Railway Board, an opportunity may be given to them for furnishing some additional information. The Public Accounts Committee (1977-78) then took further evidence on the paragraph on 31 March, 1978 and also obtained additional written information from the Ministry of Railways (Railway Board). The Committee (1977-78), however, decided on 18 April, 1978 that the draft Report may be placed before the next Committee, when the new members from Rajya Sabha will also be associated.

The Committee (1978-79) considered and finalised this Report at their sitting held on 24 August, 1978. The Minutes of the sittings form Part II* of the Report.

3. A statement containing conclusions/recommendations of the Committee is appended to this Report (Appendix VI). For facility of reference these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the commendable work done by the Chairmen and Members of the Public Accounts Committee (1976-77) and (1977-78) in taking evidence and obtaining information for this Report.

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5. The Committee also place on record their appreciation of the assistance rendered to them in the examination of the paragraph by the Comptroller and Auditor General of India.

6. The Committee would also like to express their thanks to the Chairmen and Members of the Railway Board for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
August 26, 1978.

Bhadra 4, 1900 (S).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

REPORT

CHITTARANJAN LOCOMOTIVE WORKS—COLLABORATION AGREEMENT FOR MANUFACTURE OF DIESEL ENGINES FOR SHUNTERS

Audit Paragraph

1.1. In 1967, the Railway Board negotiated with a West German firm (Mak) for technical collaboration for indigenous manufacture of diesel engines for shunters in Chittaranjan Locomotive Works. The terms and conditions regulating payment of royalty and engineering fees agreed to by the firm and approved by the Foreign Agreements Committee, Ministry of Industrial Development and Company Affairs, in December 1967, provided that:

- (i) these would be operative for a period of 8 years plus 2 years;
- (ii) engineering fees at 3 per cent and royalty at 2 per cent on the value of Mak engine and component (to be determined as per the agreement) would be payable for the first 8 years for the first 400 engines built at Chittaranjan Locomotive Works; and
- (iii) during subsequent two years only engineering fees at 2 per cent would be payable for 60 engines per year.

1.2. As per the clause approved by the Foreign Agreements Committee, royalty is not payable during the 9th and 10th years of the agreement irrespective of the fact whether 400 engines are produced during the first 8 years or not.

1.3. However, on the basis of a revised proposal of the firm received in April 1968, it was provided in the agreement executed in June 1968, that both royalty and engineering fees at stipulated percentages would be payable for a period of 10 years, the payment of royalty being limited to 400 engines only.

1.4. Therefore, according to the agreement actually executed, if 400 engines were not produced during the first 8 years royalty would be payable during the 9th and 10th years also but limited to

royalty on 400 engines.

1.5. This material variation was agreed to by the Railway Board without obtaining the approval of the Foreign Agreements Committee. In 1969, an effort was made by the Chittaranjan Locomotive Works Administration to persuade the firm to accept the wording of the clause pertaining to royalties and engineering fees as approved by the Foreign Agreements Committee, but it did not succeed. Thereafter, the Railway Board approached (April 1974) the Ministry of Industrial Development to ratify the variations made in the final agreement. While according *ex post facto* approval (June 1974) to the deviation, the Ministry of Industrial Development observed that the matter should be brought to the notice of both the Chairman, Railway Board, and the Minister for Railways so that an enquiry could be made as to who was responsible for the unauthorised deviation at the time of signing the agreement.

1.6. The variation in the terms of the agreement would involve avoidable payment of royalty to the firm during the 9th and 10th years estimated as DM 1.29 lakhs (Rs. 4.55 lakhs) as according to the Administration, there is likelihood of completing production of 200 engines only in a period of eight years and 60 to 70 engines during the remaining two years of the currency of the agreement.

1.7. The Chittaranjan Locomotive Works Administration stated (December 1975) that the variation in the terms of the agreement was due to error on the part of the Administration in interpreting the decision of the Foreign Agreements Committee and the action for the deviation in the collaboration agreement had been initiated. In March 1976, the Railway Board stated that the circumstances leading to the deviation were also under examination.

[Paragraph 9 of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Railways)].

1.8. It would be seen from the Audit Paragraph that in 1967 negotiations were conducted by the Railway Board with a West German firm (Mak) for technical collaboration for indigenous manufacture of diesel engines for shunters in Chittaranjan Locomotive Works. As a result of these negotiations, the terms and condi-

tions regulating payment of royalty and engineering fees were mutually agreed upon and the same were subsequently got approved from the Foreign Agreements Committee of the Ministry of Industrial Development and Company Affairs in December, 1967. However, in April 1968, the firm sent a revised draft making some changes in the scale of engineering fees and royalty and consequently the terms and conditions regulating payment of royalty and engineering fees as incorporated in the agreement executed in June, 1968 were different from those approved by the Foreign Agreements Committee.

1.9. At the instance of the Committee, the Railway Board furnished a note indicating the terms and conditions in regard to the payment of royalty and engineering fees approved initially by the Foreign Agreements Committee in December, 1967, and as incorporated by Chittaranjan Locomotive Works in the agreement finally executed with M/s. Mak in June, 1968, bringing out, *inter alia*, the financial implications of the modified terms and conditions. In the note referred to above, the position has been explained thus:

"In the first draft agreement sent by M/s. Mak in June, 1966, the provisions in regard to payment of engineering fees and royalty were as under:—

(a) The Government shall pay to Mak by way of engineering fees and royalties the following remunerations for exploitation of the licence:

	Engineering Fee	Royalty
(i) for the first 400 engines built by the Government.	3%	2%
(ii) for following engines built by the Government upto 50 units per year	2%	1%
(iii) for following engines built by the Government beyond 50 units per year	3%	2%
(iv) for components produced or procured elsewhere than from Mak, not employed to assemble new engines	3%	2%
(v) for components produced or procured elsewhere than from Mak, not employed to assemble new engines, after 400 engines have actually been built	2%	1%

(b) These rates apply for the first 8 years after the licence agreement is effective. Afterwards, in the following

3 years, only the engineering fee of 3 per cent or 2 per cent respectively is to be paid.

2. After discussions with the firm, these terms were revised as under:—

	Engineering Fee	Royalty
(i) For the first 400 engines built by the Government	3%	2%
(ii) for following engines built by the Government upto 60 units per year	2%	..
(iii) For components produced or procured elsewhere than from M/s. Mak not employed to assemble new engines	3%	2%
(iv) For components produced or procured elsewhere than from M/s. Mak, not employed to assemble new engines, after 400 engines have actually been built.	2%	..

The validity of the Agreement is for a period of 8 years plus 2 years, both Engineering fee and Royalty being paid for the first 8 years according to the percentages stipulated but limiting the payment to engineering fee of 3 per cent (up to 400 engines) or 2 per cent (for the first 60 engines in each year beyond 400 engines) only for the subsequent two years. After 10 years, no engineering fee or Royalty will be paid.

3. These revised terms were confirmed by M/s. Mak under their letter dated July 20, 1967, to Additional Member (Mechanical) (Appendix-I).

4. The terms for payment of engineering fees and royalty as approved by the Foreign Agreements Committee in December, 1967 were in accordance with the revised terms agreed to between Railways and M/s. Mak, as indicated in para 2.

5. After the Foreign Agreements Committee in their meeting held on 13-11-67, recommended acceptance of the proposal forwarded by the Railways, the General Manager, Chittaranjan Locomotive Works, Chittaranjan, was advised on 21-11-67, to negotiate with M/s. Mak and go ahead with the revision of the draft agreement on the basis of the proposal received from M/s. Mak with various modifications agreed to during discussions and set down in the memorandum approved by the Foreign Agreements Committee. M/s. Mak under their letter No. VO/ROK/Sch. dated 26-4-68, to General Manager, Chittaranjan Locomotive Works, Chittaranjan,

endorsing copies to the Ministry of Railways, forwarded their comments on the licence agreement in regard to the engineering fee and royalty. They stated as under:—

“Especially, however, we faced difficulties with our authorities due to the restrictions in payment of engineering fees and royalties which had been introduced as compared to our original proposition of June, 1966. A special procedure was required to receive approval for the present solution, which basically is in line with your intentions.

We trust you will find our new draft acceptable since it still follows closely the lines discussed between you and our Mr. Kunath in New Delhi on Jan. 15.”

6. The details of the engineering fees and royalties as given in the Annexure to this letter are extracted at *Appendix II*.

7. The General Manager, Chittaranjan Locomotive Works, Chittaranjan, forwarded his comments in this regard to the Railway Board under his letters No. DL/3306 dated 7-6-68 and 11-6-68. In the letter dated 11-6-68, the General Manager, Chittaranjan Locomotive Works, has given his comments against clause 16 as under:—

“Clause 16: At the end of the table, a paragraph has been added amending the relevant para in the draft as submitted by Mak. This is in accordance with the details as furnished in the memorandum submitted by the Board to the Committee of Secretaries. At the discussion held in the Board's office on 5th, 6th and 7th June, Mak had certain reservations in amending the clause as indicated by us but from our side we indicated to them that these were the exact terms which had been approved by the Committee of Secretaries and are clear and explicit. Board may kindly have this matter clearly established with Mak.”

8. Para 16 of the draft agreement as suggested by Chittaranjan Locomotive Works is extracted and placed at *Appendix III*.

9. These letters dated 7-6-68 and 11-6-68 were put up by the Joint Director Mech. Engg. (W) to Additional Member Mechanical through Director Mechanical Engg. (P) on 18-6-68. His notings were as at *Appendix IV*.

10. Joint Director Mech. Engg. (W) has concluded his notings as under:

"Board may kindly approve and indicate if General Manager/ Chittaranjan Locomotive Works may be advised on the lines of the draft reply placed below....."

This note of Joint Director Mech. Engg. (W) was seen by the Director Mech. Engg. (P) and the Additional Member Mechanical, on the same date. The letter to Chittaranjan was also issued on the same date.

11. A copy of the Board's letter No. 67/M(L)/466/7 dated 18-6-68 addressed to the General Manager, Chittaranjan Locomotive Works, is given at Appendix-V.

Board's letter No. 67-M(L)/466/7 dated 18-6-68 does not specifically refer to clause 16 of the draft agreement, while all other relevant clauses have been specified.

12. It will thus be seen that in terms of the conditions set out in the memorandum, as initially approved by the Foreign Agreements Committee, no royalty is payable for engines manufactured under the licence for the last two years of the Licence Agreement period, irrespective of whether 400 engines have been built or not, during the first 8 years of the agreement.

12.1. In terms of the conditions regarding payment of royalty and Engineering Fee, as incorporated in the Agreement with M/s. Mak in June, 68, here also no royalty is payable for engines made in the last 2 years (9th and 10th years) of the licence agreement period, if 400 engines could have been made in the first 8 years of the Agreement.

12.2. Thus there would have been no financial implications, in regard to the payment of Engineering fees and royalty, under either sets of terms and conditions, if 400 engines were made within the first 8 years of the Agreement.

12.3. Financial implications have now only arisen as 400 engines have not been produced in the first 8 years and royalty for the 9th and 10th years has now become payable.

13. As a result of the modified terms and conditions it is estimated that the Indian Railways will have to pay a sum of DM 2.51 lakhs as royalty in the 9th and 10th years of the Agreement."

1.10. It would be seen from the Audit Paragraph as well as from as from Railway Board's aforesaid communication that the terms

and conditions regulating payment of royalty and engineering fees agreed to by the firm and approved by the Foreign Agreements Committee, Ministry of Industrial Development and Company Affairs, in December, 1967, provided as follows:

- (i) these would be operative for a period of 8 years plus 2 years;
- (ii) engineering fees at 3 per cent and royalty at 2 per cent on the value of Mak engine and component (to be determined as per the agreement) would be payable for the first 8 years for the first 400 engines built at Chittaranjan Locomotive Works; and
- (iii) during subsequent two years only engineering fees at 2 per cent would be payable for 60 engines per year.

As per the clause approved by the Foreign Agreements Committee, royalty is not payable during the 9th and 10th years of the agreement irrespective of the fact whether 400 engines are produced during the first 8 years or not.

1.11. As indicated in the Audit Paragraph and further elaborated by Audit, in April, 1968, the firm sent a revised draft making some changes in the scale of engineering fees and royalty. The revised scales of engineering fees and royalties proposed for Mak engines were as follows:

	Engineering Fee	Royalty
(i) On each of the first 400 Mak engines .	3%	2%
(ii) On following Mak engines . . .	2%	..
* * *	* *	* *

The above rates shall apply for a period of 10 years, the payment of royalties of 2 per cent being limited to 400 Mak engines only. After 400 Mak engines have been built, only engineering fees shall be payable."

1.12. It would thus be seen that as per the clause approved by the Foreign Agreements Committee, royalty is payable in respect of engines produced during the period of 8 years or till the production of 400 engines is achieved, whichever is earlier, whereas according to the clause as actually incorporated in the Agreement the royalties are payable up to a period of 10 years limiting it to 400 Mak engines. In other words, as per the clause approved by the Foreign

Agreements Committee, no royalty is payable during the 9th and 10th years of the Agreement, irrespective of the fact whether 400 engines are produced during the first 8 years, or not, whereas according to the clause incorporated in the agreement, if 400 engines are not produced during the first 8 years, royalties will still be payable during the 9th and 10th years also till 400 engines are produced.

1.13. The Audit Paragraph further indicates that the aforesaid variation was agreed to without obtaining the approval of the Foreign Agreements Committee.

1.14 During the course of evidence (August, 1976) the Chairman, Railway Board concerned that there was material modification in the final agreement. He said:

“Negotiations were conducted with a West German for the manufacture of diesel engines in India at the Chittaranjan Locomotive Works and the final agreement was entered into some time in June, 1968. The question here is that when the agreement was earlier proposed, some of the terms as agreed to by the Foreign Agreements Committee provided for engineering fees and royalty only for eight years for 400 engines—eight years being the limit—and engineering fees for two years more; but when the agreement was concluded, there was a change and that change has resulted finally in some extra payment to the West German firm. It is true that the agreement as concluded with the West German firm provided for terms slightly different from what were agreed to by the Foreign Agreements Committee and this extra payment has certainly come to be paid, and we have no difference on that particular point.”

1.15. The Committee desired to know whether there was any correspondence in which the firm might have given some reasons for modifications in the terms and conditions with regard to the payment of royalty. The representative of the Ministry of Railways has stated (August, 1976):

“There is no correspondence available on the file to show why the change was made...”

1.16. Expressing their surprise on the fact that there was nothing on record to show as to what happened between April, 1967 (when the negotiations took place between the firm and the Railways) and December, 1967 (when the terms and conditions were approved by the Foreign Agreements Committee), the Committee sought to know

as to who was in touch with the German firm when the agreement was finalised in December 1967 and thereafter in April 1968 when the firm made another set of proposals. The representative of the Ministry informed (August, 1976) that Shri Chatterjee was the Additional Member (Mechanical) at that time, and that he had retired in 1973.

1.17. Explaining as to what happened in the period between the finalisation of the terms and execution of the agreement, the Chairman, Railway Board, has stated (August, 1976):

"...long negotiations had been held with this particular firm right from 1966 to end of 1967, when finally the terms had been agreed to by them and a draft agreement was sent to them for acceptance. Then up to that point of time there is correspondence in the file. Then what we see is that the firm's representative had come to Delhi, certain discussions were held by him both at Chittaranjan with the General Manager and with the Additional Member (Mechanical) here and they wrote to us saying that certain changes were required in the Engineering fee and royalty terms."

1.18. When enquired as to whether the aforesaid discussions had taken place after December, 1967, the Chairman, Railway Board, has stated (August, 1976):

"The record shows that the firm's representative had discussions at Chittaranjan."

1.19. On enquiry, the Committee have been informed that at that time, one Shri Chalapati Rao was the General Manager of Chittaranjan Unit. Shri Chatterjee also remained on this post later on.

1.20. About the aforesaid discussions, the Chairman, Railway Board, has further stated (August, 1976):

"The discussions was held at Chittaranjan, as far as I can see, on 6-1-1968; then he came to Delhi and held discussions on 15-1-68 at Delhi. Then they wrote a letter on 26-4-68 and forwarded a revised draft of the agreement."

The witness has added:—

"There are no minutes of the discussion. It is only a mention in a noting that these discussions were held."

1.21. Explaining the possible reasons for effecting modifications in the negotiated terms of the agreement, the representative of the Ministry of Railways has stated (August, 1976).

"The only fact which I can quote is that when the discussion took place, the record shows that there was not going to be any change in the production of 400 locomotives. Therefore, it would not make any difference."

He has further added—

"It was the thinking then. After the agreement was signed in 1968, the initial work had to be done to commence the production. It took some time. There was every chance that in the first two years, there would be no production, because immediately after the agreement, we cannot start producing straightaway; it takes considerable time to set up the manufacturing processes and reorganise a workshop. At Chittaranjan, at that time, there was a change in production from steam locomotives to diesel locomotives. So, there was every possibility about it, and in fact, it happened like that that in the first two years, there was no production of these locomotives under the collaboration agreement."

1.22. When the Committee enquired as to whether the discussion was held with the authority of the Railway Board. The Chairman, Railway Board, has stated (August, 1976).

"There is no record to show that there was any authority from the Board. But the fact that discussions were held in the Board shows that it had the approval of the Additional Member (Mechanical)."

1.23. The witness has, however, confirmed in reply to a query that "modification of the agreement was agreed to, and acted upon later without the prior knowledge of the Railway Board as such."

1.24. When the Committee enquired whether the Additional Member (Mechanical) was empowered to commit on his own, the Chairman, Railway Board, has stated (August, 1976)

"No, Sir, absolutely not."

1.25. The Committee desired to know whether the financial implications of the revised terms were examined on consultation with the Finance before the proposal was accepted. The Ministry of Railways have intimated as follows:

"The Associate Finance in Board's Office were not consulted before the revised terms were accepted."

1.26. The Committee further enquired whether the original terms and conditions of the agreement, as approved by the Foreign Agreements Board in December, 1967, were finalised in consultation with the Finance Directorate. In their note, the Ministry of Railways have stated:

"The original terms and conditions of the agreement as recommended by the Foreign Agreements Committee in November, 1967 were finalised in consultation with the Finance Directorate of the Ministry of Railways."

1.27. Asked if any reference was made to the Foreign Agreements Committee about the change, the Chairman, Railway Board has stated (August, 1976):

"There was a reference saying that they proposed to make this change. That reference was made some time in June 1968 (i.e. after the change had been made)."

1.28. The Committee asked whether modifications proposed in such agreements normally require financial concurrence and if so, what are the reasons for the Mechanical Directorate not consulting the Finance Directorate before instructing the Chittaranjan Locomotive Works to accept the revised terms and conditions. In a note, the Ministry of Railways have intimated:

"Modifications proposed in such agreements require financial concurrence.... The reason for the Mechanical Directorate not consulting the Finance Directorate before instructing the Chittaranjan Locomotive Works to accept the revised terms and conditions has not been explicitly recorded in the files available with the Ministry of Railways."

1.29. The Committee enquired as to how many engines have actually been produced so far and what is the latest estimate of production in the final two years of the currency of the agreement. The Committee also desired to know the actual amount of avoidable payment of royalty based on the original *vis-a-vis* revised terms regulating payment of royalty and engineering fees. In a note, the Ministry of Railways have stated:

"209 engines have been produced in the first 8 years of the collaboration agreement. It is estimated that 70 engines will be manufactured in the final two years of the currency of the agreement."

The avoidable payment of royalty based on the original *vis-a-vis* revised terms regulating payment of royalty and engineering fee is estimated at DM 2.50 lakhs."

1.30. In a supplementary memorandum furnished to the Committee in February 1978, the Ministry of Railways have informed:

"Amount of avoidable payment of Royalty:

Revised figures in the light of actual outturn of MAK engines from CLW is as under:

252 engines have been produced till September 1977. It is estimated that a total of 37 engines will be produced from October 1977 to June, 1978, the remaining period of the currency of the agreement.

The estimated amount of avoidable payment of Royalty during the 9th and 10th years of the agreement is DM 2.31 lakhs."

1.31. According to the Audit Paragraph, the Railway Board approached the Ministry of Industrial Development only in April, 1974, for ratification of the variations made in the final agreement in June, 1968. The Committee, therefore, desired to know as to why the Railway Board took about 6 years to approach the Ministry of Industrial Development for ratifying the variations. In a note explaining in a chronological order the development of the case the Railway Board have stated:—

"On 21-6-68 the Joint Director (Development), Railway Board addressed the Deputy Secretary, Ministry of Industrial Development and Company Affairs (Deptt. of Industrial Development) asking for confirmation for going ahead on the basis of the substituted para in lieu of that in the original, as according to him the sum total of both the paras was the same and only the language used in the revised para conveyed the meaning quite clearly.

On 29-7-1968 the Under Secretary from that Ministry replied stating that the proposed rewording would substantially alter the financial implications and as such the Foreign Agreements Committee would have to be approached afresh. A self contained note in 50 copies was asked for.

Thereafter in August 1968, Joint Director (Dev.) discussed the matter with the Joint Secretary in the Ministry of Indus-

trial Development and Company Affairs. During discussions it emerged that modifications involved financial implications.

In August 1968 the then Joint Director (Dev.) also discussed the matter with the General Manager, C.L.W. and the latter desired that Shri K. S. Ramaswamy, the Chief Design and Production Engineer, C.L.W. who was in West Germany at that time be contacted to get Mak to agree to the original clause. The letter to Shri Ramaswamy was issued on 12.8.1968. On 26.8.1968 the Director Mechanical Engineering (P&D), Railway Board addressed General Manager, C.L.W. that in view of the importance of the matter the subject should be followed up with Shri Ramaswamy. General Manager, C.L.W. also addressed Shri Ramaswamy on the subject on 23.8.1968 on 8.9.68 Shri Ramaswamy replied to state that Sh. Kunath of Mak was not agreeable to any change. On 17-9-1968 the General Manager, C.L.W. wrote to Joint Director (Development) that in one of his conversations with the then Director Mechanical Engg. (P&D) it had been indicated that 60 engines would be manufactured in one year and as such there should be no difficulty in getting the collaboration contract approved by the Ministry of Industrial Development.

On 17.10.68 the Joint Director (Dev.) forwarded a draft memorandum to the General Manager, C.L.W. for the Foreign Agreements Committee's approval with the request that this should be checked and amended by G.M., C.L.W. The latter returned the memorandum on 30.11.68 stating that as it will not be feasible to complete 400 engines within 8 years from the date of signing the agreement, the draft memorandum should be revised accordingly. On 18.12.68. Director Mech. Engineering (P&D) requested G.M., C.L.W. to take up the issue with M/s. Mak and advise them that the clause relating to engineering fee and royalty in the Collaboration Agreement as signed was at variance with that as approved by the Foreign Agreements Committee. He should therefore advise M/s. Mak that the changed position was not acceptable, and a certain degree of tact and persuasion will have to be exercised on M/s. Mak to make them agree to the original wording. On 27.12.68 General Manager, C.L.W. wrote to the Director Mechanical

Engineering, Railway Board stating that the Director Mechanical Engineering and the Joint Director (Development) were understood to have held discussions with Shri Kunath of M/s. Mak and that the Director Mechanical Engineering, Railway Board should handle the matter. Besides, the agreement had already been effected and M/s. Mak had supplied Chittaranjan manufacturing drawings and other technical documentations.

The Director Mechanical Engg. then addressed G.M., C.L.W. on 28.6.1969 and 30.6.69 drawing his attention to the discussions between them at Chittaranjan during the former's visit to Chittaranjan and to the effect that as per the agreement as signed royalty payment becomes payable in the 9th and 10th Year of the Agreement. Since every effort is to be made to get M/s. Mak to agree to the clause as approved by the Foreign Agreements Committee he (G.M., CLW) should discuss this matter with Shri Kunath who was expected to be at Chittaranjan in July, 1969.

Shri Kunath did not visit India in July but was expected in October 1969. On 5.9.1969 Director Mechanical Engg. addressed the General Manager, CLW who was abroad at that time that on his return journey he should discuss with M/s. Mak with a view to getting their approval. On 25-10-1969 the Dir. Mech. Engg. reminded G.M., C.L.W. that he should discuss with Shri Kunath and make him agree to the terms that were approved by the Foreign Agreements Committee.

On 1-11-1969 G.M., C.L.W. advised Director Mech. Engg. (P&D) that he had discussed this with Shri Kunath but it had not been possible to persuade him in regard to the revision of the relevant clause. He further stated that in case the proposal to manufacture more locos was accepted by Railway Board, C.L.W. would produce more than 400 engines within 8 years of the agreement resulting in there being on financial implications. In February 1970, Joint Director (Dev.) put up the file to the Member Mech. The file was seen by the Additional Member, Mechanical who discussed this with G.M., C.L.W. A note was prepared and put up by the Joint Director (Dev.) to the Member Mechanical on 4.5.1970. This note was seen by the Member Mechanical on 19.6.1970. He desir-

ed that this should be processed for clearance by the Foreign Agreements Committee. On 26-6-1970 the draft memorandum was sent to Finance Directorate for vetting. Thereafter the file moved between Joint Director Finance (Stores), Joint Director Finance (Loan and Foreign Exch.) and the Director Finance. On 31-10-1970 Director Finance put up the file for discussions with Director Mechanical Engg.(P&D). Discussions were held on 8-12-1970 between M/s. Mak's representative and the Addl. Member Mechanical but this did not prove fruitful. Director Mechanical Engineering (P&D) and Director Finance discussed this on 16-12-1970 and it was decided to revise the memorandum in the light of the Joint Director Finance (L&F)'s advise but before this was done, CLW was asked to explain the position including the financial implications duly verified by their F.A.&C.A.O.

Thereafter General Manager, C.L.W. was advised on 24-12-1970 that during the 4th Plan the production of Shunters had been revised from 274 to 193 and the full financial implications of the change in the clause regarding payment of engineering fee and royalty should be examined in consultation with the F.A.&C.A.O. Reminders were sent on 19-1-1971 and 8-3-1971. Director Mechanical Engineering (P&D) sent D.O. reminder to G.M., C.L.W. on 20-5-1971. This was followed by reminders to the F.A. & C.A.O. on 18-6-1971, 9-7-1971 and 29-7-1971 and to the Chief Mechanical Engineer on 19-8-1971, 7-9-1971, 21-9-1971, 4-11-1971 and 18-11-1971.

Finally the General Manager, CLW replied on 2-12-1971. The Joint Director (Dev.) asked for the files from the Joint Director Mechanical Engineering (W). The file was received back in the Branch only on 18-1-1973.

In the meantime the Financial Commissioner called for the file on 21-1-1971 and desired that the Addl. Member Mechanical put up a detailed note to the Board. This note of the Financial Commissioner was seen by the Chairman, Railway Board on 21-1-1971. This was the first time that the variation in the clause was specifically brought to the notice of the Chairman, Railway Board and the Financial Commissioner.

After the file was received in the Section (after a lapse of 13 months) a note was put up on 5.3.1973 to the OSD (P&PU)

by Joint Director (Dev.). On 9-3-1973 the O.S.D. (P&PU) discussed this with Member Mechanical who desired a draft letter to the Ministry of Industrial Development be put up explaining the position. On 21-4-1973 the draft was approved by O.S.D. (P&PU) and on 23-4-1973 by Member Mechanical. Member Mechanical however, suggested certain changes and desired that the note be put up through Finance. On 22-5-1973, the note was submitted to the Joint Director Finance (Stores) and he wanted that the basis and sources of figures adopted should be confirmed by Chittaranjan. This was done on 22-6-1973 and the reply was received from Chittaranjan on 16-11-1973. The revised estimate of the royalty payment was forwarded by on 20-3-1974 and on 30-3-1974 the draft memorandum was put up to the Board which was approved by the Member Mechanical on 19-4-1974 and the Financial Commissioner on 22-4-1974.

It will thus be seen that as soon as it was brought to the notice of the Railway Board that the changes in the revised terms had financial implications, efforts were made to get M/s Mak to agree to the old terms. When it was finally observed that M/s Mak would not agree to go back to their original terms, a Memorandum for submission to the Foreign Agreements Committee was prepared and submitted to the Member Mechanical in May 1970. Thereafter attempts were made to get the factual information verified from C.L.W. and in between the file unfortunately remained undisposed for 13 months. As such it was possible only in 1974 to approach the Foreign Agreements Committee after getting the position verified by the Chittaranjan Locomotive Works."

1.32. In a supplementary Memorandum furnished to the Committee in February 1978 by the Ministry of Railways, the position regarding the delay in approaching the Ministry of Industrial Development for ratification of the variations made in the final agreement has been summarised as under:

"Immediately after authorising CLW to finalise the agreement with Mak, Ministry of Industrial Development and Company Affairs were approached for confirming the Railways may go a head on the basis of the proposed para. Ministry of Industrial Development and Company Affairs however pointed out that since the proposed rewording would sub-

stantially alter the financial implications, the change cannot be agreed to without placing the matter again before the Foreign Agreements Committee. Following this, attempts were made at different stages to try to persuade MAK to accept the original terms and conditions, to which they did not agree. It had become clear that no financial implications would be involved if 400 engines could be produced in the first 8 years of the Agreement. The plan for production of diesel shunters at CLW therefore was examined in detail time and again from various angles and it was held that production of 400 engines by CLW during the first 8 years might be feasible. Keeping this aspect in view, draft memoranda for submission to Foreign Agreements Committee through Railway Board were prepared at various stages and were processed but could not be finalised. It was only in December 1971 that estimated figures of financial implications were worked out by CLW in the light of the approved production plan for the 4th Five Year Plan. At this stage, the file was mislaid and remained untraced till January 1973. Subsequently, on availability of the file, another draft memorandum after approval of the Railway Board was submitted to the Ministry of Industrial Development and Company Affairs in April 1974. *Ex-post-facto* approval of the proposal by the Foreign Investment Board was received in June 1974."

1.33. In the same memorandum the Railway Board have further stated:

"Despite repeated attempts to take up the question with Foreign Agreements Committee and preparation of 3 separate memoranda from time to time, FAC/FIB were not approached for a period of over five years. This was therefore a clear case of procedural lapse despite clear instructions to the effect that approval of the FAC should be obtained."

1.34. Subsequently giving evidence before the Committee on 31st March, 1978, the Member Mechanical has stated:

"The main point is the failure of the Railway Ministry to have obtained the Foreign Agreements Committee's approval to the modifications in the agreement. To that, we have no reservation and we entirely accept that that was a complete error."

1.35. It is seen from the Audit Paragraph that while according *ex post facto* approval, in June, 1974, to the deviation in the agreement, the Ministry of Industrial Development had observed that the matter should be brought to the notice of both the Chairman, Railway Board and the Minister of Railways so that an enquiry could be made as to who was responsible for the unauthorised deviation at the time of signing the agreement. The Committee, therefore, desired to know the date on which unauthorised deviation in the final agreement was brought to the notice of Chairman, Railway Board/Minister of Railways; the date on which the Railway Board became aware of the deviation in the terms of the agreement; and the level at which the revised proposal of the firm for modification was disposed of in April, 1968.

In a note, the Railway Board have stated:—

- “(a) The unauthorised deviation in the agreement as signed was brought to the notice of the Chairman, Railway Board on 21-1-1971. After the *ex post facto* approval had been given by the Foreign Investment Board, this was brought to the Chairman's notice on 19-6-1974. The deviation in the agreement was brought to the notice of the Minister of Railways on 11-8-1976.
- (b) The Railway Board (Member Mechanical) became aware of the unauthorised deviation in the terms of the agreement entered into by the Chittaranjan Locomotive Works Administration on 19-6-1970.
- (c) The approval to the revised proposal made by the firm in April 1968 and forwarded to the Railway Board by Chittaranjan in June 1968 was given at the level of the Additional Member Mechanical. The modified agreement as signed on 29-6-1968 was put up to the Board for information on 19-7-1968 by the Deputy Director Mech. Engg. and no specific attention was drawn to the modified terms in the note put up.”

Control over Chittaranjan Locomotive Works

1.36. The Committee desired to know the type of control exercised by the Railway Board on the working of the Railway Workshops like Chittaranjan Locomotive Works. The Chairman, Railway Board, has stated (August, 1976).

"In regard to foreign collaboration, although the agreement has finally to be concluded at the Chittaranjan level, it has to get the full approval of the Railway Board. The Railway Board's approval means that it has to be cleared by the Associate Finance. It will have to be approved by the Financial Commissioner and the terms will have to be got approved by the Foreign Investment Board. Without that, no foreign agreement can be approved. These instructions are strictly laid down and the powers of the respective officers are well defined. What had happened in this case was that these changes were approved by the Additional Member Mechanical. It is unfortunate that these changes were not shown by him either to the Associate Finance or to the Chairman. The approval was given by the end of June, 1968. After that had been agreed to, the firm did not agree to further change."

Functioning of the Railway Board

1.37. In order to understand the functioning of the Railway Board, the Committee enquired whether the Members of the Board have independent responsibility. The Chairman, Railway Board, has informed (August, 1976) that in the matter of contracts, no member could enter into any contract. The Chairman, Railway Board, has further stated that in this particular case, the Additional Member approved all these modifications. The witness has further added:—

"And it had to go to the Foreign Investment Board but that did not happen because instructions were issued to CLW. So, it was a lapse."

1.38. The Committee sought clarification to the effect whether in this case, both the General Manager of the CLW and the Additional Member were in league with each other. The Chairman, Railway Board, has informed (August, 1976):

"The General Manager of the CLW will not know. Once he receives the letter from the Railway Board, he thinks that all the formalities have been complied with in the Railway Board."

1.39. Regarding the position of the Chairman of the Railway Board, the Committee have been informed during evidence (August, 1976) that—

"Normally, the change in the agreement does not come to the Chairman. That should go to the Associate Finance and

the Member (Mechanical). On behalf of the Board, they function. Any modification does not go to the Chairman."

1.40. Looking at the fact that an important contract with a foreign collaborator could be modified to the disadvantage of the country and to the advantage of the foreign collaborator without the knowledge of the Railway Board, the Committee enquired how this could happen. The representative of the Railway Board has stated (August, 1976):

"Between November, 1967 when the Foreign Agreements Committee approved it and June, 1968 when it was signed, the file remained in the Mechanical Directorate here and they went on negotiating with the GM, CLW. When a reference was made by the AMM to the GM, CLW, the FA & CAO there also saw the file and wrote that by making these changes, there would be financial implications and that they were not prepared to sign it and that they would like to have a definite directive from the Board whether they should sign the revised thing. In spite of that objection, sent by the GM, CLW in consultation with his FA & CAO, the AMM said that there was not much difference between the two, and no financial implications would be there and we may go ahead with this. On 18th June, 1968 he wrote a definite order to the CLW to go ahead with signing of the revised agreement and on 21-6-1968 a letter was written to the Ministry of Industrial Development that as the wording of the clause as accepted by the Foreign Agreements Committee seems to be confusing, this should be changed as such and if they agreed, they would make this change. But without waiting for the reply, because on the 18th June, AMM had already written to GM, CLW, the revised agreement was signed on the 29th June. It was after three weeks, i.e. on 26th July, 1968 that the Ministry of Industrial Development said that this would have financial implications and unless the Foreign Agreements Committee's revised approval was taken, it could not be accepted, and that fifty copies of the revised memorandum might be sent to them. In fact, the GM, CLW office and the Financial Adviser of the GM had indicated earlier that there would be financial implications. This was even before the agreement was signed and they had asked for definite instructions from the Railway Board. The AMM however said that there was no difference and said that they might go ahead."

1.41. It is seen that Government realised that it was wrong to have accepted the amended form of the contract and efforts were made to persuade the German firm to accept the negotiated agreement, but the Railway Board came to know of it three years later. The Committees sought specific explanation for this. The Chairman, Railway Board, has stated (August, 1976):

“The Additional Member, Mechanical, should have put up the case to the Railway Board at that time.”

1.42. The Committee enquired as to how long the Additional Member had continued in this position. The Chairman, Railway Board, has stated (August, 1976):

“He went as General Manager, N.F. Railway and CLW and then came back to the Railway Board as Member, Mechanical in 1971. It was only at that time that one Joint Director, Finance put up the papers to the Financial Commissioner. Till then it was being dealt with in the Mechanical Directorate and they were trying to get this firm to agree in which they failed.”

The witness has further added:—

“He became Member in 1971 and he retired from the Railway Board in 1973. In 1971, when the Financial Commissioner and the Chairman came to know about it, they asked the Member Mechanical to look into the matter and put up a report.”

1.43. Explaining the reasons as to why the Additional Member who was once associated with the case regarding the modification was asked to look into it, the Chairman, Railway Board, has stated (August, 1976):

“As far as I can see, by the time he had become a Member in the Railway Board, the fact that this was a definite error or lapse and that he was personally responsible for it, had not come to the notice of either the Chairman, the Financial Commissioner, or the Minister for Railways.”

1.44. The Chairman, Railway Board, has further (August, 1976) elucidated the position as follows:—

“The entire file relating to this was not available to the Chairman or the Financial Commissioner. It was brought to their notice by one of the Financial Officers

when certain variations in this agreement had been done. So, the concerned person was the Member (Mechanical). They did not know that the same person had done the variations. They also did not know to what extent the variations were. So, they asked the Member (Mechanical) to look into this. He was responsible for the whole thing. They naturally asked him to look into it. It so happened that the file did not come to surface till he retired."

1.45. The Committee enquired how the file came to the notice of the Financial Commissioner. The Chairman, Railway Board, has stated (August, 1976):

"The revised Memonandum was being prepared by the Mechanical Directorate. Then it was routed through the Joint Director. (Finance). That was the time when that gentleman said that this case has financial implication, and there was going to be a loss. That is why they brought it to his notice."

1.46. The Committee enquired what happened between 1968-70. The Chairman, Railway Board, has stated (August, 1976):

"Between 1968 and almost upto the end of 1970, efforts were made by the General Manager, Chittaranjan and by Mr. Chatterjee*, when he was abroad, to persuade these people to agree to the old clauses; and persuasion did not prove to be of any avail; and finally CLW was asked to assess what are the financial implications and at that point of time, Mr. Chatterjee was the General Manager of CLW. When this reference was made to CLW, it also happened that the reply to that reference did take about a year to come. By the time, reply came here, he had also come here as Member Mechanical and this subject was handled by him."

*Between 1968 and 1971, Mr. Chatterjee held the following posts:-

Period	Post held.
From 24-8-1967 to 1-7-1968	Additional Member Mechanical.
From 2-7-1968 to 21-5-1969 (AN)	General Manager, N. F. Railway
From 21-5-1969 to 9-7-1969 (AN)	General Manager, Chittaranjan Locomotive Works.
From 9-7-1969 (AN) to 9-10-69 (FN)	Deputation to U.S.A.
From 9-10-1968 (AN) to 15-6-1971 (AN)	General Manager, Chittaranjan Locomotive Works.

1.47. The Committee desired to know the complete details of the posts held by Shri Chatterjee the then Additional Member (Mechanical), between 1967 and the date of his retirement. The Committee also asked for details of the manner in which the official was employed after his retirement from Government service and whether the prior approval of the competent authority had been obtained before accepting re-employment on superannuation and whether the firm(s) in which the official had been employed was/were in any way connected with or relating to the foreign firms with which the official might have had dealings while holding senior positions in the Railway Board, or the Zonal Railways. In a note, the Railway Board have stated:—

“(a) The details of the post held by the then Additional Member Mechanical, Shri H. M. Chatterjee between 1967 and the date of his retirement are as under:—

Designation	Period
(i) Dir. Mech. Engrg. Railway Board	From 16-9-1966 to 30-3-1967
(ii) Addl. Member Mech.	From 31-3-1967 to 15-6-67 (AN)
(iii) General Manager, N. F. Railway	From 15-6-1967 to 23-8-67 (AN)
(iv) Addl. Member Mechanical	From 24-8-1967 to 1-7-1968
(v) General Manager, N.F. Railway	From 2-7-1968 to 21-5-1969 (A.N.)
(vi) General Manager, Chittaranjan Works.	From 21-5-1969 to 9-7-69 (AN)
(vii) Deputation to U.S.A.	From 9-7-1969 (AN) to 9-10-69 (FN)
(viii) General Manager Chittaranjan Locomotive works	From 9-10-1969 (A.N.) to 15-6-1971 (A.N.)
(ix) Member Mechanical	From 17-6-1971 to 19-5-73 (Retired)

(b) It is understood that Shri Chatterjee has been working, after his retirement, for the YMCA Institute of Engineering, Faridabad and the Technological Consultants Centre at Faridabad which are sponsored by Haryana State and the YMCA of India. Enquiries are being made of the Haryana State Government as to the nature of the employment of Shri H. M. Chatterjee and as to whether any West German firms are involved in any of these two undertakings.”

1.48. The Committee have been subsequently informed by the Ministry of Railways that the Haryana State Government had intimated as under:—

“Shri H. M. Chatterjee was first appointed as Vice Chairman of the YMCA Institute of Engineering, Faridabad with effect from 17-8-1973 for a period of one year. This institute had been jointly sponsored in 1966 by the Government and the National Council of YMCA of India.

Concurrently with effect from 1-3-1974 Shri Chatterjee was appointed Managing Director of the Technological Consultants Centre, a training oriented production unit, which post he continues to occupy. This Centre is an adjunct to the Institute and also set up as a result of an agreement between the Government and the National Council of YMCA of India. Both the Projects are under the Technical Education Department of the Government which has no agreement with any foreign Government for them.

As stipulated in the agreement, the National Council have obtained funds for the projects in 1966 and 1976 from the Central Agency for development Aid, Bonn, West Germany. We understand that these are Government funds channelled through the Church Organisation of West Germany for projects abroad. Neither the YMCA Institute of Engineering nor the T.C.C. are sponsored by the Government of West Germany. In fact both these projects are approved plan projects of the Government of Haryana.”

Apprising of the Railway Minister

1.49. The Committee asked whether after the matter came to the notice of the Chairman, Railway Board in January, 1971, it was brought to the notice of the Railway Minister since a particular Member of the Board had violated the norms of the Board. The Chairman, Railway Board, has stated (August, 1976):

“It was not brought to the notice of Minister at that stage. The Financial Commissioner had written that he wanted to know the complete history of the case and how the revision was done and he marked it to the Chairman. The Chairman also wrote that we must get a detailed report. That paper, unfortunately, was delayed again.”

1.50. Referring to file No. 67M(L) 466-7 which indicated that after the agreement had been signed between CLW and MAK on 29 June, 1968, a copy of the agreement as concluded had been submitted to the Member (Mechanical) on 20 July, 1968 and to the Financial Commissioner on 23 July, 1968, the Committee enquired the action taken by the Financial Commissioner on this. The representative of the Railway Board has stated (August, 1976):

"After it was signed, the final copy was received in the Railway Board office and it was put up to the Member, Mechanical and he said that FC might also like to see that this had been signed which the FC saw . . . But he did not go into the details."

The witness has added:—

"The papers simply said that the agreement had been signed. And it was taken to mean that the way it had been approved by the Board and the Foreign Agreements Committee, it had now been signed accordingly and it was final. At that stage, it was not noticed that a deviation had been made by the Mechanical Directorate."

1.51. Elucidating the position, the Chairman, Railway Board, has stated (August, 1976):

"According to the rules, no change in the agreement could be done without the approval of the Financial Commissioner and the Chairman. This was put up for information and they must have taken that no change would have been made without their specific concurrence. There was no indication that the contract was being amended."

Fixing of Responsibility

1.52. The Committee enquired whether any enquiry was undertaken in the whole matter with a view to fixing responsibility. The Chairman, Railway Board, has stated (August, 1976):

"Yes, we did look into this whole question to find out who was responsible for taking such a decision which had led us into some difficulty . . . We have fixed the responsibility on the Additional Member, Mechanical."

1.53. The Committee further desired to know whether any action had been initiated against the person held responsible. The Chairman, Railway Board stated August, 1976):

"This was a person who retired in May 1973. All his accounts had been settled."

1.54. To a question as to when was the question of fixing of responsibility considered, the Chairman, Railway Board, has stated (August, 1976):

"It is only after June, 1974 that the entire ramifications came to the notice of the full Board and by that time he had retired. When we had looked into the whole matter, we found that he was responsible."

1.55. In reply to a question whether the Home Ministry was consulted for taking their advice in the matter, the Chairman, Railway Board, has stated (August, 1976):

"We had brought it to the notice of our Minister and the Minister also wanted to know what further action could be taken since he had retired. We are in touch with our legal adviser as to what can be done and then we will be taking further steps."

1.56. The Committee desired to know whether the matter has since been referred to the Legal Adviser and if so, what are the specific points on which his advice has been sought. The Chairman, Railway Board, has stated (August, 1976):

"We went through the whole file and wrote to the retired Member because first we had to write to him in order to find out what explanation he had to offer. When his reply came, we went into the whole background, studied the files and then we came to the conclusion that Mr. Chatterjee, as Addl. Member (Mechanical) was responsible for this variation. Then, we have put it up to our Minister and also enquired from the Establishment whether any action can be taken. That has taken some time. Then, we have asked our Legal Adviser as to what steps could be taken in respect of a person who has finally retired."

1.57. The Committee were informed by the Railway Board in January, 1977 that the explanation of the Addl. Member (Mechanical)

was sought in July, 1976, i.e., just before the matter came up before the PAC for oral evidence. Alongwith his letter dated 3 July, 1976, addressed to Shri H. M. Chatterjee, the then Chairman, Railway Board, had forwarded the following note showing the points on which clarification was required:

"It is seen from the records that before the agreement was finalised, CLW had made a pointed reference to the Railway Board indicating the variations in the clause as approved by the Foreign Agreements Committee and the one which was being insisted upon for incorporation by MAK. CLW had also asked for a clear directive from the Board on this issue.

From the notings on Board's file extracted below, AMM (Mr. H. M. Chatterjee) had asked the then JDRS(D) to take up the question of correcting the copy of memorandum received from the Ministry of Industrial Development and Company Affairs:

'A re-examination of Board's Memo. indicates that the wording of this portion is rather confusing and in actual fact does not reduce the contract period below 10 years. AMM has, therefore, asked JDRS(D) to take up the question of correcting the copy of the memorandum received from Ministry of Industrial Development and Company Affairs. Meanwhile, the para in the proposed agreement may be allowed to stand.

Sd/- K.P.J.

JDME(W)

Sd/- J.M.

DME(P&D)

Sd - H.M.C.

AMM'

On AMM's instructions, the then JDRS(D) addressed the Dy. Secretary, Ministry of Industrial Development and Co. Affairs to substitute the relevant clause. A month later the Under Secretary of that Ministry replied to JDRS(D) informing that substitution of the existing paragraph will substantially alter the financial implications of this collaboration and the same cannot be agreed to without placing the matter again before the Foreign Agreements Committee. Without waiting for a reply from that Ministry,

AMM (Mr. Chatterjee) permitted the altered clause in the proposed agreement to be incorporated.

Further, it appears from the notings that it was under Mr. Chatterjee's direction and approval as AMM, that GM/CLW was advised to conclude the agreement with M/s MAK incorporating the clauses insisted upon by them. It is also noticed that this was done without consulting the associate finance and that Board was not kept advised of the changes, on which in the normal course their prior approval should have been obtained.

In December, 1971, the then F.C. had marked the file to Mr. Chatterjee when he was M.M. requesting MM for an early settlement of the case. The papers thereafter remained undisposed and untraced for over a year."

1.58. In his reply, Shri H. M. Chatterjee stated that:

- "1. As far as he can recollect the change 8 plus 2 years was suggested by the Ministry of Industrial Development.
2. No financial difference could be provided in 1967 or 1968 as it was envisaged that 400 engines would be manufactured in 8 years.
3. The MAK agreement is the cheapest collaboration by way of royalty and engineering fees.
4. The delay in disposal could be traced by the file markings with the P.As."

1.59. The Committee called for information on the following points:

- "(a) What is the advice, if any, given by the Legal Adviser in this regard?
- (b) What is the present position of the case?
- (c) Is it not possible to initiate civil/criminal proceedings against the official in a court of law? Was this possibility ever explored and what is the legal position in this regard particularly when irregularities/malafide actions are found to have been committed by an official, only after his retirement from Government service?"

1.60. The Committee were informed that a self-contained note had been sent to the Secretary, Ministry of Law seeking his opinion and no reply had yet been received.

1.61. However, in the Supplementary Memorandum furnished to the Committee in February 1978, the Ministry of Railways have stated in this connection as under:

"Ministry of Railways (Railway Board) had solicited opinion of the Ministry of Law, Justice and CA as to action that could be taken against Sh. H. M. Chatterjee, ex-Member Mechanical, Railway Board, who retired from service in May 1973. The specific points on which the Legal Opinion was sought are given below:—

- (a) What action can, in the facts and circumstances of the case, be taken now against Sh. H. M. Chatterjee who had retired from service in May 1973 to recover the loss sustained.
- (b) Whether this would be a fit and proper case to file a suit against Sh. Chatterjee for the loss sustained.
- (c) If so, whether there are fair chances of success in obtaining a decree from the court keeping in mind the huge expenditure which may be involved in filing the suit."

The Secretary, Ministry of Law, Justice and Company Affairs in para 4 of his opinion dated the 7th May, 1977 has considered the question on the footing that Sh. Chatterjee failed to obtain the concurrence of the Foreign Agreements Committee to the modified terms and has observed as follows:

"Even assuming that there was admittedly negligence on the part of Sh. Chatterjee to ensure that no modification was effected without the prior approval of the Foreign Agreements Committee, the question is what is the loss sustained by the Government on that account. Admittedly the Government had to pay, as indicated above, the amount of royalty due under the Agreement as modified for 9th and 10th year. The question, therefore, that has to be considered is whether if this modified agreement was taken up for approval with the Foreign Agreements Committee, that Committee at that stage would not have concurred. I do not know

what is the evidence in this regard; whether the members of the Committee are available who can depose to say that the Foreign Agreements Committee would not have approved the modified terms. If there is evidence, then as stated earlier, the only remedy available to the Government is to file a suit. Now the question whether even if the suit is filed and a decree obtained, the Government would be able to realise the amount of the decree is a matter for administrative consideration. One has to consider what is the financial position of Shri Chatterjee. Whether he is a man of worth and it would be possible having regard to his financial position that the Government may be able to recover the amount of the decree that may be obtained.

According to the Law Secretary, the only remedy available to the Government is to file a suit if there is evidence and this evidence should be the evidence of the members of the Committee during the period 67 and 68 if they would depose that the Foreign Agreements Committee would not have approved of the modified terms.

Accordingly, Ministry of Industrial Development were requested by the Ministry of Railways (Railway Board) to supply a list of Members of the Foreign Agreements Committee during 67 and 68 along with their addresses. The Ministry of Industry (Department of Industrial Development) vide their O.M. No. FC. II(1) (77) dated 19th October, 1977 have stated that inspite of their best efforts, they are not able to locate the orders constituting the Foreign Agreements Committee. The Department of Economic Affairs, according to them, were also not able to locate their old records containing the orders constituting the Committee.

From the reply received from the Ministry of Industry (Department of Industrial Development) it is gathered that the evidence on which the suit can be sustained against Shri Chatterjee is not available and in the absence of this evidence, it would be risky to venture upon any litigation against Shri Chatterjee."

162. The Ministry of Railways have further stated:

"Law Secretary was requested to give his further advice in the light of the development explained above. Minis-

try of Law (Department of Legal Affairs) vide their U.O. No. 26619/77 Advice (B) dated 16-12-77, reproduced below have advised that they agree with the opinion of the Ministry of Railways that it would not be desirable to venture upon any litigation against Shri Chatterjee in these circumstances. The point raised in our note dated the 7th May, 1977 was whether there was any evidence to show that if the modified Agreement was taken up for approval to the Foreign Agreements Committee, that Committee, at that stage, would not have concurred in the suggested modifications. In this connection, it was necessary to find out whether the members of the Committee were available who would depose to say that that the Foreign Agreements Committee would not have approved the modified terms. The Ministry of Industry has now stated that they have not been able to locate the orders constituting the Foreign Agreements Committee. They have however, obtained a copy of a note of the Department of Economic Affairs outlining the procedure that was followed prior to 69 but that note does not bear any date and although it mentions the designations of the seven members of the Foreign Agreements Committee, it is not clear whether they formed the Committee at the time relevant for the purpose of this case, that is, 1967-68. The Ministry of Industry have further stated that while they may be able to give the names of the officers who attended certain meetings, they would not be able to indicate the names of the members who constituted the Committee.

The note of Department of Economic Affairs does not clearly indicate the procedure of the Committee in dealing with the proposals contained in foreign agreements and also does not lay down the detailed criteria for the purpose of reaching decisions in each case. Therefore, even assuming we could get the names of the members of the Committee, it would be impossible for them to say with certainty, at this distance of time, whether they would or would not have agreed to the modifications in the terms of the agreement. Further, their individual views at this stage would also be of little significance, because normally decisions of a Committee are taken collectively after a discussion. Hence, assuming the names of the members of the Committee

are available and they are in a position to make a statement on the merits of the case, one way or the other, their individual statements, at this stage, will hardly have any evidentiary value.

In view of these uncertainties, we agree with the opinion of the Consultant that it would not be desirable to venture upon any litigation against Shri Chatterjee in these circumstances."

1.63. The self-contained note sent by the Ministry of Railways to the Law Secretary for seeking his opinion is reproduced below:

"The Railway Board have solicited opinion on the question as to what action can be taken against Shri H. M. Chatterjee, who retired from service as Member (Mechanical) in May, 1973.

The reference has arisen under the following circumstances:—

In the year 1966, the Railway Board took a decision to go in for collaboration with M/s MaK of West Germany for the manufacture of engines for Diesel Shunters in India at Chittaranjan. Negotiations are held with the firm and a draft Memorandum embodying all the relevant terms, particularly with reference to the period as well as the Royalty and Engineering fees, payable was drawn and submitted to the Railway Board which approved of the same on 15.9.1967. A self-contained Memorandum thereafter was submitted to the Ministry of Industrial Development & Company Affairs for clearance.

The Foreign Agreements Committee also approved the Memorandum on 13.11.1967.

The material terms and conditions as approved by the said Committee were these:—

The engineering fee and royalty payable to M/s. MaK for the exploitation of the licence would be on the following scale:—

	Engineering Fee	Royalty
1) For the first 400 engines built by Govt.	3%	2%
2) For following engines built by the Govt. upto 60 units per year	2%	..

The validity of the Agreement is for a period of 8 years plus 2 years. Both Engineering fee and Royalty being paid for the first 8 years according to the percentages stipulated but limiting the payment to Engineering fee of 3 per cent (upto 400 Engines) or 2 per cent (for the first 60 engines in each year beyond 400 engines) only for the subsequent two years. It is obvious that this system of payment of Royalties is much more advantageous than that done on the lump sum basis. After 10 years, no engineering fees or royalty will be paid.

In this connection, it may be useful to mention that the firm earlier by their letter of 20th July, 1967 had agreed to the above terms as would be evident from para 4 of the said letter which reads as follows:—

“...Validity of Agreement Clause 11(b): Considering that the normal validity of such agreements is minimum 13 years, we had already proposed as a special case 8×3 years as per this clause. However, the best we can now do is to further reduce it to 8×2 years.

As regards Engineering & Royalty fees, we have carefully examined this. We agree to waive Royalty against 11(a) (ii). However, the engineering fee stipulated in this clause must hold good. This is as per official German Guide on licence agreements with India.”

On 21-11-67, the Railway Board advised the General Manager, C.L.W. that the proposal for MAK Collaboration with C.L.W. for the manufacture of diesel engines had been approved by the Board as well as by the Foreign Agreements Committee and that he should go ahead with the drawing up of the agreement. Though the firm had agreed to the terms by their letter dated 20th July, 1967 and it was on that account that the Railway Board advised the General Manager, C.L.W. to go ahead with the drawing up of the agreement. MAK would appear to have approached C.L.W. for the modifications of the terms, particularly with reference to Royalty and Engineering fees. C.L.W. under cover of its letter dated 11-6-68 forwarded the modifications proposed by the firm to the Railway Board. On 18-6-68, a note as per instructions of Shri Chatterjee, the then Additional Member re: the modification of the terms suggested by the firm, was put up. In the said note, it was, *inter alia*, recorded thus:

"MAK proposed draft agreement.

The above rates shall apply for a period of 10 years, the payment of Royalties of 2 per cent being limited to 400 MAK engines only. After 400 MAK engines have been built, only engineering fees shall be payable."

* * * *

"Working in Board's Memorandum to the Foreign Agreements Committee.

* * * A re-examination of Board's Memo. indicates that the wordings of this portion is rather confusing and in actual fact does not reduce the contract period below 10 years. A.M.M. has, therefore, asked JDRS(D) to take up the question of correcting the copy of the Memorandum received from Ministry of Industrial Development and Company Affairs. *Meanwhile, the para in the proposed agreement may be allowed to stand."*

Thus it would be seen that the modifications aforesaid were approved by Shri H. M. Chatterjee on 18-6-1968 without the same being seen and approved by either the Financial Commissioner or the Chairman, Railway Board. Further, he also approved of the instructions being issued to the General Manager, C.L.W., based on his approval of the changes in Royalty and Engineering fees. Accordingly, a letter was issued from the Board to General Manager, C.L.W. to go ahead with the signing of the Agreement based on the revised terms for Royalty and Engineering fees. The General Manager, C.L.W. signed the agreement on 29-6-1968.

Under para 206 of the *Manual of Office Procedure* (1956 edition), the powers of the Financial Commissioner are as under:—

"The Financial Commissioner for Railways is vested with full powers of the Government of India to sanction Railway Expenditure. * * * * No proposals involving expenditure affecting Railway Revenues can be sanctioned without his prior concurrence."

It would, therefore, be observed that all proposals involving expenditure should have prior concurrence of the Financial Commissioner.

Besides, the procedure and instructions laid down in Office Order No. IP-24(2)/60 dated 9th January, 1960 of the Ministry of Commerce and Industry will have to be followed. Moreover, the instructions laid down in para 2 of Circular No. IP&FC-6(8)/65, dated 15-11-1965 laid down by the Ministry of Industry and Supply (Department of Industry) whereunder the approval of the Foreign Agreements Committee is a *sine quo non* to modify the terms once approved by the said Committee.

Thus Shri Chatterjee failed to ensure that before the modified terms were agreed to and the agreement executed, the matter was brought up before the Foreign Agreements Committee and their approval obtained as prescribed in the Office Order dated 9th January, 1960 of the Ministry of Commerce and Industry and also relevant instructions issued in the Circular dated 15th November, 1965 by the Ministry of Industry and Supply (Department of Industry).

It is stated that the modified terms in the Agreement concluded under the instructions issued to the General Manager, C.L.W., by Shri Chatterjee, has fastened on the Government an additional financial liability. This is because under the original terms as consented to by the firm, the period of Agreement was 3+2 years. Both Engineering Fee and Royalty was payable only for the first 8 years. In the modified terms, fees were made applicable for a period of 10 years and payment of royalty was linked to or limited to 400 MAK engines. As it has not been possible for C.L.W. to produce 400 engines within the first 8 years period, an amount of DM 2.50 lakhs has become payable by way of royalty to the firm during the 9th and 10th years of the Agreement on the 70 machines which are to be built during these two years.

The Railway Board have, therefore, come to the conclusion that the responsibility for carrying out the change without consulting the Financial Commissioner and the Chairman, Railway Board, and further not obtaining the prior concurrence from the Foreign Agreements Committee should rest wholly on Shri Chatterjee. If the appropriate autho-

rities had been consulted by Shri Chatterjee, the additional financial liability fastened on the Government would not have arisen.

As against these allegations, Shri H. M. Chatterjee in his letter of 19th July, 1976, addressed to the Chairman, Railway Board, has sought to offer his explanation in the following manner. Briefly stated, he has urged that at the material time, namely, in the year 1968, admittedly there was a great demand for shunters and the manufacturing capacity of C.L.W. was 60 locomotives per month and that in the ordinary course, C.L.W. but for the unexpected developments in the subsequent years, would have produced 400 diesel shunters within a period of 8 years. In such a case, no royalty would have become payable during 9th and 10th years of the Agreement. It was also not possible to reasonably anticipate that there would be a large scale pruning down of 5 years plan for various obvious reasons which brought down the generating capacity considerably. Thus, while in retrospect there may seem to be a financial difference in payment of Royalties, no such difference could be predicted in 1967 or 1968.

Mr. J. Matthan, ex-General Manager, Integral Coach Factory and Mr. K. P. Jayaram, the then Chief Mechanical Engineer who were also associated with the negotiations, held with the firm, have furnished their remarks more or less on similar lines. It, however, appears that at the material time, namely in the year 1968, General Manager, C.L.W. (Shri C. Chalapathi Rao) had expressed the view that it was rather not possible for C.L.W. to manufacture 400 engines within a period of 8 years (*vide* his letter dated 30th November, 1968). This only shows that on the capacity of C.L.W. to manufacture 400 engines within a period of 8 years, there was a difference of opinion between Shri C. Chalapathi Rao and Shri Chatterjee, who himself had functioned as General Manager, C.L.W. which concluded the Agreement under the instructions of Shri Chatterjee.

Regarding failure on the part of Shri Chatterjee to obtain the approval either of the Financial Commissioner or the Chairman, Railway Board, my attention has not been drawn to any provision under which he should have obtained the approval of the Chairman, Railway Board.

As regards, however, his failure to keep the Financial Commissioner in the picture, attention has already been invited to para 206 of the Manual of Office Procedure, 1956 edition, under which all proposals involving expenditure should have prior concurrence of the Financial Commissioner. Even when Shri Chatterjee *bona fide* thought that no financial difference in payment of royalty could be predicted in 1967 or 1968, he should have, as a senior top level executive in the Railway Board, obtained prior concurrence of the Financial Commissioner. However, while it is true that he did not specifically obtain the prior concurrence of the Financial Commissioner to the changes proposed by him, there is of course this fact that as soon as a copy of the Agreement was received from the General Manager, C.L.W., Shri M. K. Khosla, the then Dy. Director concerned duly submitted the same to Shri Sahai, the then Member, Mechanical, and also to Shri B. Mukherji, the then Financial Commissioner, both of whom signed on 23-7-1968 on the file in token of having seen it. He could, therefore, possibly rely on this to show that the Financial Commissioner did see the copy of the Agreement received from the General Manager, C.L.W. It would, however, be noticed that no explanation has been furnished or is forthcoming from Shri Chatterjee as regards his omission to submit the modified terms to the Foreign Agreements Committee and obtain their prior concurrence as required under the relevant procedure and instructions laid down by the Ministry of Industry and Supply (Department of Industry) vide their Circular No. IP&FC-6(8)/65, dated 15-11-1965.

Shri H. M. Chatterjee retired from service as Member Mechanical on 19-5-1973. He is an officer who had opted for Provident Fund and as such Pension Rules are not applicable to him. Besides, he has already drawn amounts due to him from the Provident Fund. Thus even if it should be held that Shri Chatterjee was guilty of negligence, there can be no question of recovering the loss sustained by the Government from his Provident Fund.

The only question that would, therefore, remain to be considered is whether filing of a suit to recover the loss would be a

suitable remedy. The efficiency of this remedy is not free from doubt for the reason that besides being too expensive and time consuming, the outcome of any litigation cannot be predicted with certainty in view of the peculiar facts and circumstances of the case.

The opinion of the Law Ministry is solicited on the following questions:—

- (i) What action can, in the facts and circumstances of the case, be taken now against Shri H. M. Chatterjee who retired from service in May, 1973 to recover the loss sustained?
- (ii) Whether this would be a fit and proper case to file a suit against Shri Chatterjee for the loss sustained?
- (iii) If so, whether there are fair chances of success in obtaining a decree from the court keeping in mind the huge expenditure which may be involved in filing the suit?

Since the matter relates to an action taken by an official highly placed, namely a Member of the Railway Board, the valued opinion of the Law Secretary is solicited."

1.64. The Law Ministry's advice regarding the disciplinary action against the retired Additional Member (Mechanical), as conveyed to the Committee by the Ministry of Railways on 2nd August, 1977, is contained in the following notings of the Law Secretary recorded in the relevant file of the Ministry of Railways:

"I have perused the referring note of the Legal Adviser, Railway Board. At the outset it may be stated that the reference does not raise any specific legal issues. The first general question posed for consideration is what action against Shri H. M. Chatterjee, who retired from service as Member (Mechanical) in May, 1973, could be taken to recover the loss sustained by the Government on account of negligence on his part, and secondly whether a suit could be filed for the purpose and, if so, with what success.

Shri Chatterjee, it is stated, retired from service in May, 1973. Obviously, therefore, no departmental action can be taken against him and if the Government has suffered any loss on account of negligence of Shri Chatterjee while in service, in performing his duties, then of course, the only

remedy available to the Government is to file a suit against Shri Chatterjee for recovery of damages sustained by the Government, damages being the extra expenditure incurred by the Government on account of the modification of the Agreement. I have also considered the authorities referred to above, but in my opinion they are not relevant here. The test laid down in determining liability for the consequence of a tortious act of negligence is whether the damage is of such a kind as the reasonable man should have foreseen. The negligence in the instant case is the failure to consult and get the approval of the Foreign Agreements Committee to the modification of the Agreement. It could be clear that if the modified Agreement had not the approval of the Committee, the extra expenditure by way of royalty during the 9th and 10th year of the Agreement would not have been required to be incurred.

It is alleged that the modified terms of the Agreement has fastened on the Government an additional financial liability because whereas under the original Agreement both engineering fee and the royalty was payable only for the first 8 years; in modified terms, fees were made applicable for a period of 10 years and payment of the royalty was linked to or limited to 400 MAK engines. It is alleged that the Government has to pay by way of royalty to the firm an amount of DM 2.50 lakhs during the 9th and 10th year of the Agreement. The negligence alleged on the part of Shri Chatterjee is that he carried out the change without consulting the Financial Commissioner and the Chairman, Railway Board, and further in not obtaining the prior concurrence from the Foreign Agreements Committee. It appears to be an admitted position that before the Agreement was modified, the Foreign Agreements Committee was not consulted at all. As regards consulting the Chairman is concerned, it appears from the referring note that there was no provision under which Shri Chatterjee should have obtained the approval of the Chairman, Railway Board. As regards consultation with the Financial Commissioner, it appears that although no previous concurrence on the Financial Commissioner was obtained, eventually he approved the modification. It is not clear whether he had applied his mind and/or considered the specific changes made in the original Agreement. Assuming, however, that he noted the changes and then approved, the fact remains that no approval of the Foreign Agreements Committee was obtained for modification and on this aspect there appears to be no explanation. We, therefore, consider the

question on the footing that Shri Chatterjee failed to obtain the concurrence of the Foreign Agreements Committee to be modified terms. Even assuming that there was admittedly negligence on the part of Shri Chatterjee to ensure that no modification was effected without the prior approval of the Foreign Agreements Committee, the question is what is the loss sustained by the Government on that account. Admittedly the Government had to pay, as indicated above the amount of royalty due under the agreement as modified for the 9th and 10th year. The question, therefore, that has to be considered is whether if this modified Agreement was taken up for approval with the Foreign Agreements Committee, that Committee at that stage would not have concurred. I do not know what is the evidence in this regard; whether the members of the Committee are available who can depose to say that the Foreign Agreements Committee would not have approved the modified terms. If there is evidence, then as stated earlier the only remedy available to the Government is to file a suit. Now the question whether even if the suit is filed and a decree obtained, the Government would be able to realise the amount of the decree is a matter for administrative consideration. One has to consider what is the financial position of Shri Chatterjee. Whether he is a man of worth and it would be possible having regard to his financial position that the Government may be able to recover the amount of the decree that may be obtained. If there be any specific point for consideration the same may be referred to us."

1.65. The Committee also sought information on the following point:

"should not suitable penal provisions be included in the relevant Conduct Rules applicable to Government servants under which suitable action could be taken against officials, even after their retirement for their defaults while in service."

In this connection the Ministry of Railways have stated:

"According to the Railway Service Conduct Rules every servant shall at all times:

1. Maintain absolute integrity;
2. Devotion to Duty; and
3. Do nothing which is unbecoming of a Railway or Government servant.

Railway servants who violate these provisions may be taken up therefor and proceeded against departmentally. As regards the provisions of Rules applicable to Government servants under which suitable action can be taken against them even after their retirement for their default while in service, there exists already a provision in the Indian Railway Establishment Code Volume II. It has been laid down in Rule 2308 (CSR 351-A) that if a pensioner is found guilty of grave misconduct or negligence during the period of his service including the service rendered upon re-employment after retirement the Government have the right of withholding or withdrawing a pension or any part of it, permanently or for specified period and right of ordering the recovery from a pension of the whole or part for any pecuniary loss caused to the Government. However, this would require President's sanction. Departmental proceedings against a person who has retired from service, for his misconduct or negligence, omission and commission during his service period amounting to violation of Rule 3(1) of R.S. (Conduct) Rules, can only be initiated with President's sanction; such departmental proceedings shall not include any event which took place more than 4 years before the date of initiating such departmental proceedings. In all such cases UPSC has to be consulted before final orders are passed.

As regards the railway servants governed by SRPF Rules, there seems to be no provision in the Rules to take action against them later than the time of their final retirement and settlement of dues. The Provident Fund subscription of the employee has to be paid to him at the time of his retirement. However, Government contribution/special contribution to Provident Fund can be withheld/reduced as provided in the Provident Fund Rules, *vide* Rule 1314 of Indian Railways Establishment Code Vol. I, before the account of the railway servant is finally settled.

It would be seen from the above that in cases of pensioners, provisions already exist in the Indian Railway Establishment Code Volume II. There seems no necessity to make any more provision in the Railway Service (Conduct) Rules, 1966."

1.66. The Committee enquired whether the explanation of the other officials in the Mechanical Directorate and C.L.W. who had handled the case at the relevant time was obtained with a view to ensuring that no *mala fides* were involved on their part. The Ministry of Railways in a note, stated:

"Explanations have been obtained from the officers concerned, who had handled the case at the relevant time and the Ministry of Railways are of the opinion that there was no *mala fide* on the part of any official in the Mechanical Directorate of the Railway Board or at C.L.W."

1.67. In the Supplementary Memorandum furnished to the Committee in February, 1978, the Ministry of Railways have stated:

"Further in order to verify, whether Shri H. M. Chatterjee had gained any pecuniary advantage in post-retirement employment, the facts were ascertained from the Haryana Government. The reply from the Haryana Government shows that Shri Chatterjee's employment is not related in any way to any foreign firm and he is managing a project under the Technical Education Department of the Government (Ref. Board's memo No. 75/BC-RE/8, dated 13-5-1977). In compliance of PAC's questionnaire, Point 25 that the Law Ministry be consulted as to the action that can be taken against Shri Chatterjee, reference is invited to para 4.1 above of this note. From this, it will be seen that a *prima facie* case against Shri Chatterjee has not been established. Shri Chatterjee the then A.M.M. who had, as brought out earlier, approved the change to execute the agreement expeditiously and directed the same to be referred to FAC for correction, was transferred away from the Railway Board within 2 days of the signing of the Agreement by C.L.W. and was not available for the next 3 years to pursue the matter further. Subsequently, Shri Chatterjee on being posted back to the Railway Board as Member Mechanical after a lapse of 3 years could not be considered responsible for routine processing of the case, which is not the function of a Member of the Railway Board. It is, therefore, not possible to attribute any *mala fide* intentions against Shri H. M. Chatterjee."

1.68. In the Supplementary Memorandum furnished to the Com-

mittee, the Ministry of Railways have submitted the following points for the consideration of the Committee:

- “(i) It was not possible to forecast any financial implications on account of the modified terms of payment at the initial stages. Even when the modified terms of payment were put up by C.L.W. to Railway Board, the matter was thoroughly discussed and authorisation to go ahead with finalising of the agreement was given by Shri H. M. Chatterjee on the basis of the facts available on the file. In this connection attention is invited to Paras 4, 4.1, 6.3 and 7.2 of the Memorandum put up to the Railway Board for approval (Reference Annexure 2/A of replies to Point No. 2 of PAC's questionnaire, and Paras 1, 3.1, 4, 8.4 and 11 of the Memorandum submitted to the Foreign Agreements Committee in November, 1967 (Reference Annexure 2/B of the replies to Point No. 2 of PAC's questionnaire). In both these Memoranda which obviously formed the basis of all future discussions and considerations, it has been clearly brought out that the production of Diesel Shunters at C.L.W. will be established at the rate of 5 locos per month or 60 locos per year by 1970-71, from where it followed that 400 shunters could have been manufactured in the first 8 years of collaboration. He had also clearly indicated directions for getting the FAC's approval to the change. Having signed the note Shri Chatterjee was transferred away from the Railway Board and was not available for the next 3 years.
- (ii) Routine processing of a case is the responsibility of the Directorate of personnel. But in such cases it is difficult to fix responsibility on any one person at this late date. Moreover it is not the function of the member concerned, who is responsible for decision taking and not for routine procedure.
- (iii) The fact that this agreement as modified is a good one is not in question. Even in today's light it remains the best, cheapest and most successful. Therefore, the decision to accept the new terms was not incorrect.

From the foregoing it will be seen that while on merits the agreement and extension of the period from 8 to 10 years have not been disadvantageous there have been procedural

lapses, recurrence of which in future could be guarded against by strengthening administrative procedures."

1.69. Subsequently during the course of further evidence tendered before the Committee on 31st March, 1978, the Chairman, Railway Board has stated:

"There have been some lapses in following the procedure."
He added:

"It has resulted in the things which we could have avoided. The thinking in the Mechanical Directorate was that we would definitely finish 400 engines in eight years. But, strictly speaking we should have gone to the Foreign Agreements Committee immediately and within 10 days would have got it done. There was no doubt that the Foreign Agreements Committee would have again approved it with slightly revised terms, with very marginal revised terms. But, somehow the Secretariat had failed in that. I would only submit this much to this august body.

1.70. The Committee note that for implementing the proposal for technical collaboration between the Railways and a West German firm (Mak) for indigenous manufacture of diesel engines for shunters in Chittaranjan Locomotive Works, the firm had in June 1966 sent a draft agreement incorporating inter alia the provision in regard to payment of engineering fees and Royalty to them. The terms and conditions regulating payment of royalty and engineering fees were further negotiated by the Railways with the firm and the confirmation to thus mutually agreed terms was formally conveyed by the firm under their letter dated 20th July, 1967 to Additional Member (Mechanical), Railway Board. The terms and conditions were subsequently got approved from the Foreign Agreements Committee of the Ministry of Industrial Development and Company Affairs, in December 1967. According to the terms and conditions as approved, the agreement was to be operative for a period of 10 years and engineering fees at 3 per cent and royalty at 2 per cent on the value of Mak engine and components would be payable for the first 8 years for the first 400 engines built at Chittaranjan Locomotive Works and during subsequent two years only engineering fees at 2 per cent would be payable for 60 engines per year. As per the clause approved by the Foreign Agreements Committee, royalty was not payable during 9th and 10th years of the agreement irrespective of the fact whether 400 engines were produced during the first 8 years or not.

1.71. Surprisingly enough, on the basis of a revised proposal of the firm received in April 1968, a modification was incorporated in the

agreement executed by the Chittaranjan Locomotive Works in June 1968. In terms of this modification, the royalty at stipulated percentage would be payable for a period of 10 years, the payment of royalty being limited to 400 engines only, whereas according to the clause earlier approved by the Foreign Agreements Committee, no royalty was payable during the 9th and 10th years of the agreement. The Committee have been given to understand that 209 Mak engines have been produced in the first 8 years of the collaboration agreement and according to Railways' own estimates, 80 Mak engines would be manufactured in the final two years (i.e. by June 1978) of the currency of the agreement. The Committee learn that this modification in the agreement will cost the national exchequer DM 2.31 lakhs (about Rs. 9 lakhs) being an avoidable payment of royalty based on the original vis-a-vis revised terms regulating payment of royalty during the 9th and 10th years under the agreement.

1.72. The manner in which the collaboration agreement was executed, the unauthorised deviations that were made therein and the various omissions and commissions, deliberate or otherwise, are discussed in the succeeding paragraphs. The facts which have emerged are sufficient to convince the Committee about the need for conducting a deeper enquiry to establish the bona fides of high ranking officials in the Railway Board.

1.73. The Committee find that after the firm had conveyed their formal concurrence to the negotiated terms of the agreement, vide their letter of 20 July, 1967 addressed to the Additional Member (Mechanical), Railway Board in regard to the engineering fees and royalty, the firm's representative had conducted certain discussions in the matter in January 1968 both at Chittaranjan and at Delhi with the General Manager, Chittaranjan Locomotive Works and the Additional Member (Mechanical). Subsequently, in April, 1968, the firm sent a revised draft making a change in the period over which royalty would be payable as mentioned above. The Committee regret that no formal record of the aforesaid discussions having an important bearing on the matter was kept. The Committee are led to believe that the unauthorised variations incorporated later on in the agreement at the time of its formal execution must have been informally finalised at these discussions. The Committee do not agree with the reasons advanced by the Chittaranjan Locomotive Works Administration that the variation in the terms of the agreement was due to error on the part of the administration in interpreting the decision of the Foreign Agreements Committee as there was no ambiguity in the decision of that Committee and there was no scope for any misinterpretation.

1.74. The Committee note that on receipt of the communication from the firm in April 1968 the Additional Member (Mechanical) Railway Board had written to the General Manager, Chittaranjan Locomotive Works for signing of the agreement with the changes suggested by the firm. However, the FA&CAO, Chittaranjan Locomotive Works specifically pointed out that by incorporating the changes, suggested by the firm, there would be financial implications and as such they were not prepared to sign the agreement. Under the circumstances, the Chittaranjan Locomotive Works wrote to the Railway Board seeking definite directions. The Committee are surprised to note that in spite of this objection having been sent by the General Manager, Chittaranjan Locomotive Works in consultation with his FA&CAO, the then Additional Member (Mechanical) observed that there was not much difference between the two and that there were no financial implications and the Chittaranjan Locomotive Works should go ahead with the signing of the agreement. It may be noted that in coming to this decision, he did not consult the Finance Branch of the Railway Board.

1.75. On 18th June 1968, the Additional Member (Mechanical), Railway Board gave final orders to the Chittaranjan Locomotive Works for signing of the revised agreement. Subsequently, on 21 June 1968, a communication was addressed to the Ministry of Industrial Development (Foreign Agreements Committee) seeking their approval to the modifications in the terms of the agreement earlier concurred in by the Committee on the plea that "the sum total of both the paras (of the original and revised agreement) was the same and only the language used in the revised para conveyed the meaning clearly" and "that as the wording of the clause as accepted by the Foreign Agreements Committee seems to be confusing, this should be changed as such and if they agreed, they would make this change." Further the revised agreement was executed on 29th June 1968 without waiting for the concurrence or comments of the Ministry of Industrial Development (Foreign Agreements Committee), since the Additional Member (Mechanical) had already directed the Chittaranjan Locomotive Works for signing of the agreement.

1.76. The Committee further note that in their communication of 26 July, 1968 to the Railway Board, the Ministry of Industrial Development had stated that the proposed revised terms would have financial implications and categorically stated that the revised terms could not be accepted, unless the Foreign Agreements Committee's revised approval was taken. The Ministry of Industrial Development, therefore, asked for 50 copies of the revised memorandum for consideration by the Foreign Agreements Committee. The Com-

mittee regret that no action was taken to send the revised memorandum to the Foreign Agreements Committee but instead efforts were made, obviously to cover up the lapses, to persuade the West German firm to agree to the original clause as approved by the Foreign Agreements Committee. But the firm did not oblige.

1.77. According to the rules no change in the agreement could be effected without the approval of the Chairman, Railway Board and the Financial Commissioner and also in this case the Foreign Agreements Committee. The Committee was greatly surprised by the revelations made by the Railway Board in the material furnished to them that an important contract with a foreign firm had been unauthorisedly modified by the Additional Member (Mechanical) to the disadvantage of the country and in favour of the foreign collaborator even without the knowledge of the Chairman, Railway Board and the Financial Commissioner and of the Foreign Agreements Committee (the Ministry of Industrial Development) and disregarding the objection raised by the FA&CAO, CLW. It is a matter of concern that in January 1971 the Chairman, Railway Board and the Financial Commissioner knowing fully that the matter was earlier dealt with by the Additional Member, asked the same officer in his capacity as Member (Mechanical) (as he had been promoted by then) to look into the matter and put up a report. Surprisingly the relevant file did not come to surface till the Member (Mechanical) concerned retired in 1973. The Chairman, Railway Board and the Financial Commissioner do not appear to have pursued the matter after January 1971. The reason for this lapse has not been adequately explained.

1.78. The Committee regret to note yet another important deviation from the prescribed procedure to the effect that the revision in the terms of the agreement having financial implications was accepted by the Additional Member (Mechanical) even without consulting the Associate Finance in the Board's office although the original terms and conditions of the agreement, as approved by the Foreign Agreements Committee in December 1967, were finalised in consultation with the Finance Directorate.

1.79. Another disturbing feature of the case is that though the modified agreement as executed was put up to the Financial Commissioner on 23 July 1968, unauthorised deviation went undetected as he did not go into the details. The Committee do not agree with the argument that the agreement was put up to him just for his information. Had the Financial Commissioner gone into the details of the agree-

ments, he might have noticed the deviations made therein and could also take remedial measures in time. To the extent that this was not done is in the opinion of the Committee a positive lapse.

1.80. The Committee note that on 26 July 1968, the Ministry of Industrial Development had requested the Railway Board for 50 copies of the revised memorandum for reconsideration of the matter by the Foreign Agreements Committee. It is a matter of great concern that the revised memorandum was held up in the Mechanical Directorate for a long period of about six years. It has come to the Committee's notice that the draft memorandum was approved by the Member Mechanical only on 19 April 1974. The Ministry of Industrial Development (Foreign Agreements Committee) accorded their ex-post-facto approval to the revised agreement in June 1974. While according their approval, the Ministry had, inter alia, observed that the matter should be brought to the notice of both the Chairman, Railway Board and the Minister of Railways so that an enquiry could be made as to who was responsible for the unauthorised deviation at the time of signing of the agreement. The Committee are deeply concerned to note that such an important development was brought to the notice of the Minister of Railways only on 11 August 1976, i.e., a fortnight before the matter was scheduled to be discussed by this Committee, despite the fact that the Foreign Agreements Committee had very specifically asked for it as far back as June 1974. The officials of the Railway Board must be called to account for the wilful delay in putting up the case before the Minister almost after a period of two years.

1.81. The Committee note that as a result of the enquiry conducted by the Railway Board, the responsibility for the unauthorised modifications in the agreement with the West German firm resulting in an avoidable loss of about Rs. 9 lakhs to the exchequer has been fixed on the then Additional Member (Mechanical). But virtually, this fixation of responsibility has not served any purpose, since the Additional Member (Mechanical) had retired in 1973. All his accounts having been already settled, the Railway Board, according to the existing establishment rules, is helpless to take any action against him. The Committee note that the Ministry of Railways had sought the advice of the Ministry of Law as to what further action could be taken against the Additional Member (Mechanical) who was held responsible for the loss suffered by Government and who has since retired from service. According to the Law Secretary, the only remedy available to the Government was to file a suit against the then Additional Member Mechanical if there was evidence. According to him this evidence should be the evidence of the Members

of the Foreign Agreements Committee of the period 1967 and 1968 who could depose to say that the Foreign Agreements Committee would not have approved the modified terms. After having had some correspondence with the Ministry of Industrial Development and Department of Economic Affairs in regard to the non-availability of the members of the Foreign Agreements Committee of 1967 and 1968, the Railway Board concluded that the evidence on which the suit could be sustained against the then Additional Member Mechanical was not available and in the absence of this evidence it would be risky to venture upon any litigation against the then Additional Member Mechanical. The Ministry of Law to whom the matter was again referred expressed their agreement with the opinion of the Ministry of Railways that it would not be desirable to venture upon any litigation against the then Additional Member Mechanical in these circumstances.

1.82. The Committee feel that the advice given by the Ministry of Law, if accepted, would give rise to serious administrative difficulties for Government. It would not be possible in future to hold any official responsible for any unauthorised departure from the orders or decision of a Committee appointed by the Government if, after lapse of time, it could be pleaded that the unauthorised departure would have been ratified at a later point of time or the Members of that very Committee could have maintained that they would not have disapproved of the departure from the decision had the case been referred back to them. It would appear from the opinion of the Law Ministry that in such circumstances the onus for proving loss to Government arising from an unauthorised departure from the decision of the competent authority would lie on Government and not on the officer responsible for that departure. This will only encourage the corrupt officials to indulge in wilful departures from decisions in the hope that by the time their sins are discovered they would be retired and Government would be helpless in initiating any action against them. Such a situation may raise a basic problem in the smooth and day-to-day functioning of the administration.

1.83. The Committee also find it interesting to note that at one stage the Railway Board had come to the conclusion that the responsibility for carrying out a change in the terms of the Collaboration Agreement without consulting the Financial Commissioner and the Chairman, Railway Board and for not obtaining the prior concurrence from the Foreign Agreements Committee should rest wholly on. They had also felt that if the appropriate authorities had been consulted by the then Additional Member Mechanical, the additional liability fastened on the Government would not have arisen. How-

ever, after the legal opinion had been obtained, which suggested that it was risky to venture upon any litigation against the then Additional Member Mechanical, the Railway Board have shifted from their earlier stand and have come forward with the plea that "Routine processing of a case is the responsibility of the Directorate Personnel. But in such cases it is difficult to fix responsibility on any one person at this late date. Moreover it is not the function of the Member concerned, who is responsible for decision taking and not for routine procedure." The Committee cannot but take a serious note of this somersault and ambivalent attitude of the Railway Board in a matter which has involved an avoidable burden of about Rs. 9 lakhs on the national exchequer.

1.84. The Committee need hardly point out that three top officials of the Railway Board who tendered evidence before the Committee have admitted that there has been a serious lapse in the handling of the case for which there was no defence. The then Chairman, Railway Board, had in his evidence tendered before the Committee on 27 August 1976, *inter alia*, stated:

"It is true that the agreement as concluded with the West German firm provided for terms slightly different from what were agreed to by the Foreign Agreements Committee and this extra payment has certainly come to be paid, and we have no defence on that particular point."

Again the Member Mechanical, Railway Board, while giving evidence before the Committee on 31 March 1978 deposed:

"The main point is the failure of the Railway Ministry to have obtained the Foreign Agreements Committee's approval to the modifications in the agreements. To that, we have no reservation and we entirely accept that that was a complete error."

The present Chairman, Railway Board, in his evidence before the Committee tendered on 31 March 1978, *inter alia*, stated:

"There have been some lapses in following the procedure. It has resulted in the things which we could have avoided."

1.85. According to the rules, no change in the collaboration agreement could be made without the approval of the Financial Commissioner and the Chairman, Railway Board. In this case, the Additional Member Mechanical, Railway Board had, however, gone out of the way, disregarding flagrantly the prescribed procedure, in giving an

uncalled for benefit to a foreign firm. The perfunctory manner in which the whole case has been dealt with at all levels creates doubts about the bona fides of the other persons as well.

1.86. Having regard to the facts narrated in the foregoing paragraphs which strongly raise suspicion about bona fides and having regard to the avoidable payment of Rs. 9 lakhs to the foreign firm and an almost total indifference displayed by various authorities concerned despite their awareness of the unauthorised deviation right from the beginning, the Committee recommend that a thorough probe should be conducted by a Body independent of the Railway Board so that the part played by various officials at different points of time in this sordid episode could be clearly and fully brought out and those responsible for the lapses and for loss to the Government could be suitably brought to book.

1.87. The Committee note that the opinion given by the Law Secretary as reproduced at pages 46-47 of the Report is qualified by many laboured assumptions. It has been stated by the Law Secretary that the Financial Commissioner had eventually approved of the modifications of the agreement. In this connection attention is invited to the evidence of the Railway Board's representative as reproduced at page 30 wherein it has been pointed out that the paper put up to the Financial Commissioner merely stated that the agreement has been signed and it was taken to mean that it had been signed in accordance with the clearance given by the Railway Board and the Foreign Agreements Committee. The deviation made in the agreement was not brought to the notice of the Financial Commissioner. It is, therefore, not understood as to how the Law Secretary can maintain or assume that the Financial Commissioner had approved the modifications. In fact it would be far fetched even to assume, as done by the Law Secretary, that the Financial Commissioner had noted the changes and then approved the agreement.

1.88. Considering therefore that the opinion of the Law Secretary is neither sound nor conclusive and in fact raises questions of fundamental importance for the proper functioning of the administrative machinery and ensuring that officials of doubtful integrity do not defeat Government's orders and cause avoidable loss to the Government and unlawful gain to private parties by successfully evading their responsibility for faithfully implementing Government's instructions and orders, it is desirable that the independent inquiry is made

by the Central Vigilance Commission or the Central Bureau of Investigation so that no ambiguity is left in regard to the legal liability of officials who violate or depart from Government instructions and orders, as in this case.

NEW DELHI;
August 26, 1978

Bhadra 4, 1900 (S)

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

APPENDIX I

(See Paragraph 1.9)

Copy of the letter dated 20 July, 1967 from M/s. MaK to Additional Member (Mechanical), Railway Board.

Dear Sir,

We refer to the meeting held in your office on the 19th instant when we were asked to consider the following points and give our comments.

We have now pleasure in appending below our comments:—

1. *Clause 11 (c) & (d)—Fees.*—We agree that the Royalty as well as Engineering Fees will be calculated as per the specified percentage laid down in clause 11 (d) of our proposal. Both of these will be paid only on components manufactured in India.
2. As a supplementary to the agreement we are prepared to licence our 8 cylinder engine type 8M282AK. with 1500 H.P. U.I.C. Rating. The documentation fee will be DM 50,000, for this 8 cylinder engine.
3. We confirm that the total price of components for one complete engine unpacked ex MaK factory will not exceed 99 per cent of the F.O.B. price of one complete engine.
4. *Validity of agreement Clause 11 (b).*—Considering that the normal validity of such agreement is minimum 13 years, we had already proposed as a special case 8+3 years as per this clause. However, the best we can now do is to further reduce it to 8+2 years.
5. As regards Engineering & Royalty fees, we have carefully examined this. We agree to waive the Royalty against clause 11 (a) (ii). However, the engineering fee stipulated in this clause must hold good. This is as per official German Guide in licence agreements with India.

6. As regards the ceiling on the price adjustment clause, we wish to point out that our Escalation Clause is complete and takes into account officially documented indices for labour and material. This is more precise and scientific method of calculation than a negotiated price at stages.

Thanking you,

Yours faithfully,

Atlas. MaK Maschinenbau Gmbh,

Sd/-

(R. O. Kunath)

- (x) The basic price for one complete engine lot is that one quoted for at present against your tender for WDS4 proposals.

Sd/-

(R. O. Kunath)

APPENDIX II

(See paragraph 1.9)

Extracts from Draft Agreement as proposed by M/S MaK
"16. *Engineering fees and royalties*

(a) As remuneration for the assistance rendered to the Government under this agreement, the Government shall pay to MaK by way of engineering fees and royalties the following remuneration for exploitation of the licence:

	Engineering Fee	Royalty
(i) On each of the first 400 MaK engines	3%	2%
(ii) On following MaK Engines	2%	..
(iii) On MaK components and MaK special components produced indigenously not employed to assemble new MaK engines till 400 units of the MaK engine have been built.	3%	2%
(iv) On MaK components and MaK special components produced indigenously not employed to assemble new MaK engines, after 400 units of the MaK engine have actually been built.	2%	..

The above rates shall apply for a period of 10 years, the payment of royalties of 2 per cent being limited to 400 MaK engines only. After 400 MaK engines have been built, only engineering fees shall be payable."

APPENDIX III

(See paragraph 1.9)

Extracts from Draft Agreement as suggested by Chittaranjan
Locomotive Works

"16. Engineering fees and royalties

(a) As remuneration for the manufacturing licence, supply of designs etc., to the Government under this Agreement, the Government shall pay to MaK by way of engineering fees and royalties the following remuneration for exploitation of the licence:—

	Engineering Fee	Royalty
(i) On each of the first 400 MaK engines	3%	2%
(ii) On following MaK engines	2%	..
(iii) On MaK components and MaK special components produced indigenously not employed to assemble new MaK engines, till 400 units of the MaK engine have been built.	3%	2%
(iv) On MaK components and MaK special components produced indigenously not employed to assemble new MaK engines, after 400 Units of the MaK engine have actually been built.	2%	..

The above rates shall apply for a period of 8 years plus 2 years as described below:—

(a) Both engineering fee and royalty shall be payable for the first 8 years according to the percentages stipulated. For the subsequent 2 years, only the engineering fees shall be payable to the extent of, 3 per cent (upto 400 engines) of 2 per cent (for 60 engines in each year beyond the 400 engines). No royalty shall be payable beyond 8 years.

(b) After 10 years, no engineering fee or royalty shall be paid."

APPENDIX IV

(See paragraph 1.9)

Extracts from notings of pages 55-56/n of file No. 67/M(L)466/7 of Railway Board

"(ix) *Engineering fees and royalty*—Clause 16 specifies the scales of engineering and royalty fees due to Mak as reimbursement for licensing the manufacture of their engine. It also specifies that the rates shall apply for a period of 10 years. CLW drew attention to the wording on this aspect in the Board's Memorandum for discussions at the Foreign Agreements Committee and pointed out some variations. Relevant portions of the Mak proposed draft agreement and Board's Memorandum to the Foreign Agreement Committee are reproduced below:

Mak proposed draft agreement

"The above rates shall apply for a period of 10 years, the payment of royalties of 2 per cent being limited to 400 Mak engines only. After 400 Mak engines have been built, only engineering fees shall be payable."

Wording in Board's memorandum to the Foreign Agreements Committee

"The validity of the agreement is for a period 8 years plus 2 years. Both engineering fee and royalty being paid for the first 8 years according to the percentage stipulated but limiting the payment to Engineering fee of 3 per cent (upto 400 engines) or 2 per cent (for the first 60 engines in each year beyond 400 engines) only for the subsequent two years. It is obvious that the system of payment of royalties is much more advantageous than that done on the lump sum basis. After 10 years no engineering fee or royalty will be paid."

A re-examination of Board's memo, indicates that the wording of this portion is rather confusing and in actual fact does not reduce the contract period below 10 years. AMM has, therefore, asked JDRS(D) to take up the question of correcting the copy of the memorandum received from Ministry of Industrial Development and Company Affairs. Meanwhile, the para in the proposed agreement may be allowed to stand."

Sd/-

J.D.M.E. (W)

18-6-68

APPENDIX V

(See paragraph 1.9)

Copy of the Railway Board's letter No. 67/M(L)466/7 dated 18-6-68 addressed to the General Manager, Chittaranjan Locomotive Works.

SUBJECT.—*Collaboration with M/s Mak for the manufacture of diesel shunters.*

REFERENCE.—Your letter No. DL/3006 dated 7-6-68 and 11-6-1968.

Board have noted from your letter above that a certain measure of agreement was reached on a number of clauses in the proposed draft agreement received from Mak. Factors taken into Account in modifying some of the clauses after mutual discussions are also noted.

2. In regard to the few points listed in the note enclosed with your letter dated 7th July, 1968, above for re-consideration by M/s Mak, the firm's representative, Mr. Kunath, held subsequent discussions in the Board's office and the position emerging therefrom is as follows:—

Clause 2(i).—The firm have pointed out that the unsuitability of the 6M 282 A(K) Mak engine for stationary power plants and marine vessels without modifications; they have also pointed out that clause 24 provides for extension of the agreement for other applications after mutual agreement in each case. They have indicated in writing *vide* their letter No. VO/ROK/LL, dated 17th June, 1968 addressed to you that the terms would be substantially similar to the agreement presently under negotiation. It has been agreed in discussions that the idea is to provide for only additional "out-of-pocket" expenses for drawings, technical data etc. In the light of these clarifications, the clause may now be allowed to stand.

Clause 4.—An agreed dedraft of this clause spelling out the nature of technical assistance is enclosed. The firm have

also indicated separately in writing that they will offer the services of two technicians, one for the foundry trade and the other for machining, for on-the-spot technical guidance to CLW on lines similar to the contract for supply of power packs. The clause should now be acceptable.

Clause 9 (ii).—The firm have since decided to delete the second sub-para.

Clause 9 (iii).—The firm have since indicated in discussions that the paragraph may be amended as follows:—

“...the gross rated horse power of such engine beyond 1100 H.P., or which would enable the engine to run on lower grade liquid fuel or any gaseous fuel, shall be deemed to be a new engine....”

Clause 12.—The firm have reiterated their earlier position and have clarified in a subsequent communication *vide* their letter No. VO/ROK/LL, dated 15th June '68 addressed to you, that the Mak engine and components (other than proprietary articles supplied by other firms) are not covered with patents. It is, therefore, considered that the eventuality of any patent rights and infringements in India would hardly arise, and the clause may be allowed to stand.

Annexure I of the Draft Agreement.—In the course of subsequent discussions, Mak have explained that a relatively short term duration contract for supply of power packs could not be viewed on par with a long term agreement of 10 years like the present one for manufacture of Mak engines; some variations in escalation formulae are, therefore, necessitated. However, the firm are agreeable to delete the inclusion of “other materials.” Considering that the escalation formula for supply of power packs refer only to prices of steel bar plates, it is a matter for consideration whether a more broad based provision including steel and grey-iron castings may in the ultimate analysis not prove more realistic. This aspect may be re-examined. The firm are not agreeable to excluding supplementary social benefits in wage escalation, which has to be allowed to stand.

Clause 23.—On informal consultations with the Law Ministry, it is understood that in the event of the contract going

into liquidation, the royalty and engineering fees would still be payable either to the liquidator or their successors. At best, therefore, it is considered that government might seek to provide for the termination of the contract in the event of liquidation. This is however, a different aspect which may not exactly be in our interest for continued manufacture of the engines.

Clause 24.—In the subsequent discussions, MaK representatives requested the inclusion of an additional para reading as follows:—

“If the agreement is not extended, MaK may request the government to discontinue marking identification of all Mak engines and Mak components as provided for in clause 18”.

As this does not materially alter the interests of the government and may merely result in the discontinuance of making the engines with the MaK trade mark, the additional proposed may be agreed to.

Clause 28.—The firm have agreed to its retention.

The position has been re-examined by the Board and it has been decided to advice the Technical Agreements Committee suitably revising the original wording of the memorandum. As the contemplated overall period is ten years, the para at the end of the table may be allowed to stand.

3. On the question of signing this agreement, it is pointed out that the Alco agreement has been signed by GM/DLW on behalf of the government. Board desire that this agreement should be signed by you on behalf of the government. Board also desire that the finalisation of the agreement should now be expedited and it is suggested that you may come over to Board's office next week for this purpose.

Sd/-
(K. B. Jayaram)

Jt. Director Mech. Engg. (W)
Railway Board.

APPENDIX VI

Conclusions/Recommendations

Sl No.	Para No.	Ministry concerned	Recommendation
1	2	3	4

1 170 Railways

The Committee note that for implementing the proposal for technical collaboration between the Railways and a West German firm (Mak) for indigenous manufacture of diesel engines for shunters in Chittaranjan Locomotive Works, the firm had in June 1966 sent a draft agreement incorporating *inter alia* the provision in regard to payment of engineering fees and Royalty to them. The terms and conditions regulating payment of royalty and engineering fees were further negotiated by the Railways with the firm and the confirmation to thus mutually agreed terms was formally conveyed by the firm under their letter dated 20th July, 1967 to Additional Member (Mechanical), Railway Board. The terms and conditions were subsequently got approved from the Foreign Agreements Committee of the Ministry of Industrial Development and Company Affairs, in December 1967. According to the terms and conditions as approved, the agreement was to be operative for a period of 10 years and engineering fees at 3 per cent and royalty at 2 per cent on the value of Mak engine and components would be payable for the first 8 years

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for the first 400 engines built at Chittaranjan Locomotive Works and during subsequent two years only engineering fees at 2 per cent would be payable for 60 engines per year. As per the clause approved by the Foreign Agreement Committee, royalty was not payable during 9th and 10th years of the agreement irrespective of the fact whether 400 engines were produced during the first 8 years or not.

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Surprisingly enough, on the basis of a revised proposal of the firm received in April 1968, a modification was incorporated in the agreement executed by the Chittaranjan Locomotive Works in June 1968. In terms of this modification, the royalty at stipulated percentage would be payable for a period of 10 years, the payment of royalty being limited to 400 engines only, whereas according to the clause earlier approved by the Foreign Agreements Committee, no royalty was payable during the 9th and 10th years of the agreement. The Committee have been given to understand that 209 Mak engines have been produced in the first 8 years of the collaboration agreement and according to Railways' own estimates, 80 Mak engines would be manufactured in the final two years (i.e. by June 1978) of the currency of the agreement. The Committee learn that this modification in the agreement will cost the national exchequer DM 2.31 lakhs (about Rs. 9 lakhs) being an avoidable payment of royalty based on the original *vis-a-vis* revised terms regulating payment of royalty during the 9th and 10th years under the agreement.

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The manner in which the collaboration agreement was executed, the unauthorised deviations that were made therein and the various omissions and commissions, deliberate or otherwise, are discussed in the succeeding paragraphs. The facts which have emerged are sufficient to convince the Committee about the need for conducting a deeper enquiry to establish the *bona fides* of high ranking officials in the Railway Board.

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1.73

Railways

The Committee find that after the firm had conveyed their formal concurrence to the negotiated terms of the agreement, vide their letter of 20 Ju'y, 1967 addressed to the Additional Member (Mechanical), Railway Board in regard to the engineering fees and royalty, the firm's representative had conducted certain discussions in the matter in January 1968 both at Chittaranjan and at Delhi with the General Manager, Chittaranjan Locomotive Works and the Additional Member (Mechanical). Subsequently, in April, 1968, the firm sent a revised draft making a change in the period over which royalty would be payable as mentioned above. The Committee regret that no formal record of the aforesaid discussions having an important bearing on the matter was kept. The Committee are led to believe that the unauthorised variations incorporated later on in the agreement at the time of its formal execution must have been informally finalised at these discussions. The Committee do not agree with the reasons advanced by the Chittaranjan Locomotive Works Administration that the variation in the terms of the agreement was due to

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error on the part of the administration in interpreting the decision of the Foreign Agreements Committee as there was no ambiguity in the decision of that Committee and there was no scope for any mis-interpretation.

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The Committee note that on receipt of the communication from the firm in April 1968 the Additional Member (Mechanical), Railway Board had written to the General Manager, Chittaranjan Locomotive Works for signing of the agreement with the changes suggested by the firm. However, the FA&CAO, Chittaranjan Locomotive Works specifically pointed out that by incorporating the changes, suggested by the firm, there would be financial implications and as such they were not prepared to sign the agreement. Under the circumstances, the Chittaranjan Locomotive Works wrote to the Railway Board seeking definite directions. The Committee are surprised to note that in spite of this objection having been sent by the General Manager, Chittaranjan Locomotive Works in consultation with his FA&CAO, the then Additional Member (Mechanical) observed that there was not much difference between the two and that there were no financial implications and the Chittaranjan Locomotive Works should go ahead with the signing of the agreement. It may be noted that in coming to this decision, he did not consult the Finance Branch of the Railway Board.

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On 18th June 1968, the Additional Member (Mechanical), Railway Board gave final orders to the Chittaranjan Locomotive Works for signing of the revised agreement. Subsequently, on 21 June, 1968, a communication was addressed to the Ministry of Industrial Development (Foreign Agreements Committee) seeking their approval to the modifications in the terms of the agreement earlier concurred in by the Committee on the plea that "the sum total of both the paras (of the original and revised agreement) was the same and only the language used in the revised para conveyed the meaning clearly" and "that as the wording of the clause as accepted by the Foreign Agreements Committee seems to be confusing, this should be changed as such and if they agreed, they would make this change." Further the revised agreement was executed on 29th June 1968 without waiting for the concurrence or comments of the Ministry of Industrial Development (Foreign Agreements Committee), since the Additional Member (Mechanical) had already directed the Chittaranjan Locomotive Works for signing of the agreement.

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The Committee further note that in their communication of 26 July 1968 to the Railway Board, the Ministry of Industrial Development had stated that the proposed revised terms would have financial implications and categorically stated that the revised terms could not be accepted, unless the Foreign Agreements Committee's revised approval was taken. The Ministry of Industrial Development, therefore, asked for 50 copies of the revised memorandum for consideration by the Foreign Agreements Committee. The Committee regret that no action was taken to send the revised memoran-

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dum to the Foreign Agreements Committee but instead efforts were made, obviously to cover up the lapses, to persuade the West German firm to agree to the original clause as approved by the Foreign Agreements Committee. But the firm did not oblige.

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According to the rules no change in the agreement could be effected without the approval of the Chairman, Railway Board and the Financial Commissioner and also in this case the Foreign Agreements Committee. The Committee was greatly surprised by the revelations made by the Railway Board in the material furnished to them that an important contract with a foreign firm had been unauthorisedly modified by the Additional Member (Mechanical) to the disadvantage of the country and in favour of the foreign collaborator even without the knowledge of the Chairman, Railway Board and the Financial Commissioner and of the Foreign Agreements Committee (the Ministry of Industrial Development) and disregarding the objection raised by the FA&CAO, CLW. It is a matter of concern that in January 1971 the Chairman, Railway Board and the Financial Commissioner knowing fully that the matter was earlier dealt with by the Additional Member, asked the same officer in his capacity as Member (Mechanical) (as he had been promoted by then) to look into the matter and put up a report. Surprisingly the relevant file did not come to surface till the Member (Mechanical) concerned retired in 1973. The Chairman, Railway Board and the Financial

Commissioner do not appear to have pursued the matter after January 1971. The reason for their lapse has not been adequately explained.

9 1.78 Railways

The Committee regret to note yet another important deviation from the prescribed procedure to the effect that the revision in the terms of the agreement having financial implications was accepted by the Additional Member (Mechanical) even without consulting the Associate Finance in the Board's office although the original terms and conditions of the agreement, as approved by the Foreign Agreements Committee in December 1967, were finalised in consultation with the Finance Directorate.

10 1.79 -do-

Another disturbing feature of the case is that though the modified agreement as executed was put up to the Financial Commissioner on 23 July, 1968, unauthorised deviation went undetected as he did not go into the details. The Committee do not agree with the argument that the agreement was put up to him just for his information. Had the Financial Commissioner gone into the details of the agreements, he might have noticed the deviations made therein and could also take remedial measures in time. To the extent that this was not done is in the opinion of the Committee a positive lapse.

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11 1.80 -do-

The Committee note that on 23 July, 1968, the Ministry of Industrial Development had requested the Railway Board for 50 copies of the revised memorandum for reconsideration of the matter by the Foreign Agreements Committee. It is a matter of great concern that the revised memorandum was held up in the Mechanical

Directorate for a long period of about six years. It has come to the Committee's notice that the draft memorandum was approved by the Member Mechanical only on 19 April, 1974. The Ministry of Industrial Development (Foreign Agreements Committee) accorded their *ex-post-facto* approval to the revised agreement in June 1974. While according their approval, the Ministry had *inter alia*, observed that the matter should be brought to the notice of both the Chairman, Railway Board and the Minister of Railways so that an enquiry could be made as to who was responsible for the unauthorised deviation at the time of signing of the agreement. The Committee are deeply concerned to note that such an important development was brought to the notice of the Minister of Railways only on 11 August, 1976, i.e., a fortnight before the matter was scheduled to be discussed by this Committee, despite the fact that the Foreign Agreements Committee had very specifically asked for it as far back as June 1974. The officials of the Railway Board must be called to account for the wilful delay in putting up the case before the Minister almost after a period of two years.

89

The Committee note that as a result of the enquiry conducted by the Railway Board, the responsibility for the unauthorised modifications in the agreement with the West German firm resulting in an avoidable loss of about Rs. 9 lakhs to the exchequer has been fixed on the then Additional Member (Mechanical). But virtually,

this fixation of responsibility has not served any purpose, since the Additional Member (Mechanical) had retired in 1973. All his accounts having been already settled, the Railway Board, according to the existing establishment rules, is helpless to take any action against him. The Committee note that the Ministry of Railways had sought the advice of the Ministry of Law as to what further action could be taken against the Additional Member (Mechanical) who was held responsible for the loss suffered by Government and who has since retired from service. According to the Law Secretary, the only remedy available to the Government was to file a suit against the then Additional Member (Mechanical) if there was evidence. According to him this evidence should be the evidence of the Members of the Foreign Agreements Committee of the period 1967 and 1968 who could depose to say that the Foreign Agreements Committee would not have approved the modified terms. After having had some correspondence with the Ministry of Industrial Development and Department of Economic Affairs in regard to the non-availability of the members of the Foreign Agreements Committee of 1967 and 1968, the Railway Board concluded that the evidence on which the suit could be sustained against the then Additional Member (Mechanical) was not available and in the absence of this evidence it would be risky to venture upon any litigation against the then additional Member (Mechanical). The Ministry of Law to whom the matter was again referred expressed their agreement with the opinion of the Ministry of Railways that it would not be desirable to venture upon any litigation against the then Additional Member (Mechanical) in these circumstances.

1	2	3	4
13	1.82	Railways	<p>The Committee feel that the advice given by the Ministry of Law, if accepted, would give rise to serious administrative difficulties for Government. It would not be possible in future to hold any official responsible for any unauthorised departure from the orders or decision of a Committee appointed by the Government if, after lapse of time, it could be pleaded that the unauthorised departure would have been ratified at a later point of time or the Members of that very Committee could have maintained that they would not have disapproved of the departure from the decision had the case been referred back to them. It would appear from the opinion of the Law Ministry that in such circumstances the onus for proving loss to Government arising from an unauthorised departure from the decision of the competent authority would lie on Government and not on the officer responsible for that departure. This will only encourage the corrupt officials to indulge in wilful departures from decisions in the hope that by the time their sins are discovered they would be retired and Government would be helpless in initiating any action against them. Such a situation may raise a basic problem in the smooth and day-to-day functioning of the administration.</p>
14	1.83	do	<p>The Committee also find it interesting to note that at one stage the Railway Board had come to the conclusion that the responsibility for carrying out a change in the terms of the Collaboration agreement without consulting the Financial Commissioner and the</p>

Chairman, Railway Board and for not obtaining the prior concurrence from the Foreign Agreements Committee should rest wholly on the then Additional Member (Mechanical). They had also felt that if the appropriate authorities had been consulted by the then Additional Member (Mechanical), the additional liability fastened on the Government would not have arisen. However, after the legal opinion had been obtained, which suggested that it was risky to venture upon any litigation against the then Additional Member (Mechanical), the Railway Board have shifted from their earlier stand and have come forward with the plea that "Routine processing of a case is the responsibility of the Directorate Personnel. But in such cases it is difficult to fix responsibility on any one person at this late date. Moreover it is not the function of the Member concerned, who is responsible for decision taking and not for routine procedure." The Committee cannot but take a serious note of this somersault and ambivalent attitude of the Railway Board in a matter which has involved an avoidable burden of about Rs. 9 lakhs on the national exchequer.

71

15 1-84

Railways

The Committee need hardly point out that three top officials of the Railway Board who tendered evidence before the Committee have admitted that there has been a serious lapse in the handling of the case for which there was no defence. The then Chairman, Railway Board, had in his evidence tendered before the Committee on 27 August, 1976 *inter alia* stated:

"It is true that the agreement as concluded with the West German firm provided for terms slightly different from

what were agreed to by the Foreign Agreements Committee and this extra payment has certainly come to be paid, and we have no defence on that particular point."

Again the Member (Mechanical), Railway Board, while giving evidence before the Committee on 31 March, 1978 deposed:

"The main point is the failure of the Railway Ministry to have obtained the Foreign Agreements Committee's approval to the modifications in the agreement. To that, we have no reservation and we entirely accept that that was a complete error."

The present Chairman, Railway Board, in his evidence before the Committee tendered on 31 March, *inter alia*, stated:

"There have been some lapses in following the procedure. It has resulted in the things which we could have avoided."

According to the rules, no change in the collaboration agreement could be made without the approval of the Financial Commissioner and Chairman, Railway Board. In this case the Additional Member (Mechanical), Railway Board had, however, gone out of the way, disregarding flagrantly the prescribed procedure, in giving an uncalled for benefit to a foreign firm. The perfunctory manner in

which the whole case has been dealt with at all levels creates doubts about the *bona fides* of the other persons as well.

17 1.86

Railway

Having regard to the facts narrated in the foregoing paragraphs which strongly raise suspicion about *bona fides* and having regard to the avoidable payment of Rs. 9 lakhs to the foreign firm and an almost total indifference displayed by various authorities concerned despite their awareness of the unauthorised deviation right from the beginning, the Committee recommend that a thorough probe should be conducted by a Body independent of the Railway Board so that the part played by various officials at different points of time in this sordid episode could be clearly and fully brought out and those responsible for the lapses and for loss to the Government could be suitably brought to book.

23

18 1.87

do.

The Committee note that the opinion given by the Law Secretary as reproduced at pages 46-47 of the Report is qualified by many laboured assumptions. It has been stated by the Law Secretary that the Financial Commissioner had eventually approved of the modifications of the agreement. In this connection attention is invited to the evidence of the Railway Board's representative as reproduced at page 30 wherein it has been pointed out that the paper put up to the Financial Commissioner merely stated that the agreement has been signed and it was taken to mean that it had been signed in accordance with the clearance given by the Railway Board and the Foreign Agreements Committee. The deviation made in

the agreement was not brought to the notice of the Financial Commissioner. It is, therefore, not understood as to how the Law Secretary can maintain or assume that the Financial Commissioner had approved the modifications. In fact it would be far fetched even to assume, as done by the Law Secretary, that the Financial Commissioner had noted the changes and then approved the agreement.

19

1.88

Railway

Considering therefore that the opinion of the Law Secretary is neither sound nor conclusive and in fact raises questions of fundamental importance for the proper functioning of the administrative machinery and ensuring that officials of doubtful integrity do not defeat Government's orders and cause avoidable loss to the Government and unlawful gain to private parties by successfully evading their responsibility for faithfully implementing Government's instructions and orders, it is desirable that the independent inquiry is made by the Central Vigilance Commission or the Central Bureau of Investigation so that no ambiguity is left in regard to the legal liability of officials who violate or depart from Government instructions and orders, as in this case.

