

PUBLIC ACCOUNTS COMMITTEE
1957-58

(SECOND LOK SABHA)

FOURTH REPORT

[**Appropriation Accounts (Railways) 1954-55 and
Audit Report 1956**]

VOL. II—APPENDICES



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C O R R I G E N D A

Fourth Report of the Public Accounts Committee (1957-59) on
the Appropriation Accounts (Railways) 1954-55 and Audit
Report 1956 - Volume II - Appendices

Page 2, line 36 for 'prefactory' read 'prefatory'.

Page 4, lines 17 and 24 for 'Prefactory' read 'prefatory'.

Page 5 line 17 for 'prefactory' read 'prefatory'.

Page 23 line 23, for '75.8.4' read '75. 8.4'.

Page 25, line 37 for '-26.95' read '-26.95'.

Page 29, line 9, for 'chemist' read 'Chemist'.

Page 30, lines 6 and 7 for 'Inspection or Defective'
read 'inspection or defective'.

line 15 for 'stored' read 'stores'.

Page 52, line 14 for 'tryes' read 'tyres'.

Page 55, line 2, for 'local' read 'total'.

Page 61, line 31, for 'enforcible' read 'enforceable'.

P.T.O.

Page 64, line 9, *delete* 'Con-'.
.

Page 64, substitute line 10 as follows.

* considerably from the two separate forms
meant for 'local' and 'foreign'. "

Page 64, line 15, *for* 'if' *read* 'of'.

Page 65, para 4(ii), line 3, *for* 'C.S.S.' *read* 'C.C.S.'.

Page 68, para 2, *for* 'B B and CI' *read* 'B.B. and C.I.'

Page 74, against II 5, in column 2, *for* 'bolier's' *read* 'boilers'.

in col. 3, against 'YD' *for* '1,98,269' *read* '1,86,269'

against II, in Col. 2, *for* 'boiliers' *read* 'boilers'.

Page 75, in the table, *delete* 'For the above units there was no price'.

Page 84, line 4, *for* '1 to 9' *read* '1 to 7'.

Page 101, line 13, *for* 're-sleeping' *read* 're-sleeping'.

Page 132, line 18, *for* 'therefor' *read* 'therefore'.

Page 168. below Appendix XIX insert (See para 84 of Report). line 2. for 'INISTRY' read 'MINISTRY'.

Page 171. line 3. delete '(' before the word 'MINISTRY'.

Page 174. last line. insert ' ' after the word 'Washington'.

Page 177. line 50. insert 'than' between the words 'more' and 'an'.

Page 194. line 10 delete 'of'

lines 18, 19 and 20 read '(a) 'Eastern Railway'
(b) 'Northern Railway' and (c) 'Western Railway'
respectively

line 22 insert ' ' after the word 'North-
Eastern'.

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APPENDIX III*

(Reference Para 5 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

Explanatory notes for Excess over the voted Grants and charged Appropriation during 1954-55

Prefatory Remarks

Apart from the detailed explanations, which follow, for the excess under each of the demands, it is necessary to mention certain features of accounting peculiar to the railways which affect the demands in question generally.

2. Firstly, railways, as a commercial department, attempt to bring to account as much of the revenue expenditure pertaining to a year as possible before the accounts of the year are closed, and by the operation of a Suspense head called "demands payable", cash expenditure incurred even after the 31st March (the last day of the financial year) is brought back into the accounts of the financial year, unlike other Government departments whose cash transactions close for the financial year on 31st March and whose accounts are open only for book adjustments. The result is that railways have to estimate and provide funds in the grant and in the final modifications of the grant not only for book adjustments but also for cash expenditure incurred over a period beyond 31st March. This special feature of railway accounting increases to some extent the element of estimation and anticipation of the requirements of funds under the grants even towards the end of the year.

Secondly, during 1954-55, railway servants were offered the option between continuing to enjoy the benefits of concessional prices in the subsidised grain shops and giving up these concessions in favour of a higher cash dearness allowance plus a cash bonus on opting out, in order to encourage staff to assist the Railway in closing down the grainshop organisation to the maximum extent possible. This option was kept "on tap" for many months, and over this period a number of staff opted out of grainshops for higher cash dearness allowance. Since these options depended upon each individual's preference, it was not possible to anticipate in advance with

*Appendices I and II have been appended to Vol. I—Report.

any reasonable degree of precision the number of staff who would opt during the years for the higher dearness allowance and the bonus. The increase in dearness allowance due to these options was thus a somewhat unpredictable factor which raised the expenditure under demands 4, 5, 6 and 9A, while the saving due to corresponding curtailment of the grainshop subsidy accrued entirely under a different demand namely demand 9.

Thirdly, under demand 7 "Fuel" some variations are inevitable. As will be appreciated, fluctuations in the level of traffic can never be foreseen accurately especially in the "busy-season" months of January to March, and any spurt in traffic directly affects the quantity of coal consumed, the expenditure on which is shown under the head 'cost of coal'. Further, there are unavoidable departures from anticipations, of the quantity of coal to be received in the year and the source from which the coal is to come, which affect the freight payable on it. Sometimes the route along which the coal comes also varies i.e. it comes by the rail- cum-sea route or by the all-rail-route to some railways. A supplementary grant was in fact taken under the demand in 1954-55 and the further increase over and above this supplementary demand, in the cost of fuel consumed and freight on fuel became perceptible only at the final modification stage at the end of March 1955 when there was insufficient time left to obtain a further supplementary grant.

Excess of Rs. 9,79,263 over grant No. 4—Revenue—Working Expenses—Administration.

The excess was about 10 lakhs i.e., 0.3 per cent only of the final grant of **29,48 lakhs.**

This was the combined result of (i) heavier contingent expenditure consequent upon adjustment of certain arrear contingent bills and outstanding debit schedules for supplies of stationery etc., as a sequel to the drive for the clearance of balances under suspense initiated towards the close of the year, the effect of which could not be fully anticipated (5½ lakhs), (ii) more dearness allowance paid to staff opting for cash dearness allowances in preference to grainshop concessions, the extent of which could not be precisely anticipated for reasons explained in the prefatory note (1½ lakhs), (iii) heavier debits received from State Governments for 'Order Police' towards the close of the year than were provided for in the final estimates, even though they were made after consultation with the State Governments (1½ lakhs) and (iv) other minor variations (2 lakhs).

Excess of Rs. 1,67,38,177 over grant No. 5—Revenue—Working Expenses—Repairs and Maintenance.

The excess was about 1,67 lakhs, or 2·3 per cent over the final grant of 72·11 lakhs. Only a very small portion of this excess was due to absence of adequate provision. A supplementary grant of over 4 crores was taken under this demand but proved insufficient. Apart from an omission to provide for certain debits (21½ lakhs) the excess was generally due to heavier expenditure on repairs and maintenance of Rolling Stock, Track, Buildings and other assets towards the close of the year, arising out of factors which could not be precisely estimated when the revised estimates were framed, such as increase in traffic, flood damage and other urgent requirements.

There was an excess of 68½ lakhs on running repairs and workshop repairs of rolling stock. These repairs could not possibly be postponed as the closing month of the year synchronise with the busy season for traffic during which every possible unit of rolling stock had to be kept in service in order to meet demands of traffic. There was an excess of 42½ lakhs on repairs and maintenance of track, bridges, service and residential buildings including repairs necessitated by floods, storms, etc. which in the case of track and bridges cannot be postponed lest there should be an interruption of communication. In the case of repairs to buildings, repairs may be postponed to a limited extent, but the extent of repairs necessary and the cost of these repairs can often be assessed only after they have been taken in hand; also some of the expenditure disbursed after the 31st March is brought back into the accounts of the year through the operation of "demand payable" referred to in the prefatory notes, so that a more accurate forecast of the requirements was not possible at the time of the revised estimates. The balance of the excess occurred due to heavy repairs found necessary to machinery tools and plant, furniture and office equipment (22 lakhs), heavier expenditure on maintenance of electrical equipment (6½ lakhs), freight on the carriage of revenue stores including adjustment of arrear debits (15 lakhs), inadvertent omission to provide funds for certain stores and for the cost of repairs to certain residential buildings (17 lakhs) and for debits relating to carriage of revenue stores (4½ lakhs) and higher dearness allowance to staff opting out of grainshop concessions (3½ lakhs). These excesses were offset to some extent by lower debits for undercharges and overcharges 'on-cost' and 'manufacture and repairs' (6½ lakhs) and certain debits for stores not received to the extent expected (6½ lakhs).

Excess of Rs. 53,01,078 over grant No. 6—Revenue—Working Expenses—Operating Staff.

The excess of 53 lakhs was only about 1 per cent over the grant of 45,20 lakhs. Only about 13½ lakhs of this excess is ascribable to inadequate provision.

This was due to (a) heavier expenditure on wages, over time, mileage etc., allowances to staff, owing to marginal additions to staff found necessary towards the close of the year to cope with increase in traffic, the level of traffic not being susceptible of precise anticipation at the time the revised estimate was framed (14½ lakhs); (b) payment of arrears wages, over time etc. under Hours of Employment Regulations which could not be accurately worked out and anticipated at the time of framing the final demand (5½ lakhs), (c) adequate provision of funds not having been made by certain railways (10 lakhs); (d) heavier expenditure on dearness allowance to staff progressively opting out of grainshop concessions which could not be precisely forecast as explained in the prefatory note (19½ lakhs) which included a small amount representing omission to make adequate provision on one railway (3½ lakhs); and (e) minor variations (3½ lakhs).

Excess of Rs. 71,73,430 over grant No. 7—Revenue—Working Expenses—Operation (Fuel).

The excess of about 72 lakhs was about 2 per cent of the final grant of 37.10 crores. (Reference is invited to the prefatory remarks regarding demand No. 7.)

This excess was made up of 67 lakhs under 'freight' and 13 lakhs under 'cost of coal'; partly offset by a saving of 8 lakhs under other heads.

The excess under freight occurred owing to (a) the adjustment of arrear debits for freight on coal which were not provided for by certain railways in the final grant due to inadvertence (19 lakhs), (b) the erroneous adjustment by a certain railway under 'credits' or 'recoveries' outside the demand, of the writeback of freight charges excess debited in the first instance, which should have been taken within the grant (13 lakhs), (c) more freight than anticipated, having to be paid for bigger quantities of coal received to cover the increased consumption of coal, which, being dependent on fluctuations in traffic, could not be estimated precisely at the time the revised estimates were framed (23 lakhs), (d) adjustment of certain freight bills by a railway, provision for which could not be allowed in the final modification due to paucity of funds but expenditure on which could also not be curtailed (8 lakhs) and (e) less freight

charges transferred against a State Government to whom coal was supplied from Railway stocks and whose demands decreased towards the close of the year without prior notice (4 lakhs).

The excess of 13 lakhs under 'cost of coal' was the result of more coal being consumed in order to handle the traffic which rose after the submission of revised estimates (including an element of under estimation by one railway due to arrears in accounting (6½ lakhs).

These excesses were partly offset by a saving of 3 lakhs for miscellaneous petty reasons and 5 lakhs due to delay in writing off certain losses of fuel contrary to anticipations as the scrutiny of the causes of loss had not been completed in time.

Excess of Rs. 2,11,315 over grant No. 9-A—Revenue—Working Expenses—Labour Welfare.

The excess was about 2 lakhs or less than 0.5 per cent of the final grant of 4.50 crores.

This was due to unexpected heavier expenditure on dearness allowance for causes explained in the prefatory note (3½ lakhs) and the appointment of additional staff found necessary to improve conservancy arrangements at different stations which exceeded the anticipated requirements (2½ lakhs), partly offset by savings on account of certain debits for sanitary stores not having been received to the extent anticipated (2½ lakhs) and other petty savings (1½ lakhs).

Excess of Rs. 2,53,03,759 over grant No. 13—Appropriation to Development Fund.

Although technically this is an excess over the grant, allowance has to be made for the fact that the quantum of the net Railway surplus represents the net effect of various factors involved in budgeting precise control over which is not feasible.

The surplus for 1954-55 was estimated in the original Budget as 5,14 lakhs and the whole of it was to be credited to Development Fund. In the Revised Estimates, gross traffic receipts were estimated at 9,55 lakhs more, of which 8,42 lakhs were expected to be absorbed by an increase in working expenses and 24 lakhs by decrease in Miscellaneous receipts. With a saving of 54 lakhs under Dividend payable to General Revenues, the surplus was placed in the Revised Estimate as 6,57 lakhs, and a supplementary grant of 1,43 lakhs was taken for the purpose. When the actuals for the year became available, it transpired that gross traffic receipts exceeded

even the Revised Estimate by 3.98 lakhs and this was accompanied by an increase of 3.14 lakhs under working expenses. As a result of all these variations, along with a saving of 1.70 lakhs under Open Line Works (Revenue) caused by slow progress of works and a small excess due to minor variations (1 lakh), the surplus finally turned out to be 9.10 lakhs; this led to the increased appropriation to the Development Fund.

Excess of Rs. 2,71,02,416 over grant No. 17—Open Line Works—Replacements.

The excess of Rs. 2.71 crores over the final grant of 46.3 crores works out to 5.9 per cent.

The excess was partly on 'Rolling Stock' (42 lakhs) and partly on Works mainly 'track renewals' (2.29 lakhs).

The excess of 42 lakhs under 'Rolling Stock' was only 1.4 per cent of the final grant, and was due to debits brought to account in respect of cost of stock—both imported and indigenous—erection and freight charges, customs duty etc. having proved to be higher than the provision in the final estimates prepared on the forecasts received towards the close of the year, which proved to be an underestimate, because of better progress of supplies of rolling stock on order, heavier 'on account' payment made to contractors and adjustment of more debits for customs duty, sales tax, departmental charges etc.

The excess of 2.29 lakhs under 'Works' occurred due to supply of materials towards the close of the year particularly for track renewals being better than was anticipated (1.19½ lakhs) and the debits for materials received and adjusted in the accounts of the year were heavier than anticipated (89 lakhs) and the adjustment of certain arrear freight charges (3 lakhs). The supplies of track materials have been precarious, particularly steel which has been in short supply and a portion of which was imported. It was impossible to forecast with accuracy the extent to which materials would become available to Railways and the debits would be booked to track and other works and the revised estimates for the year were fixed in the light of the previous experience of heavy shortfalls due to failure of supplies to materialise and it was considered that the expenditure would remain within the original grant voted by Parliament and that no supplementary grant was necessary. But the improvement in the supply of materials during the year was beyond expectation and its effect on the requirement of funds could not be evaluated and appreciated in time to place a supplementary

demand for grant. An omission to provide for the cost of materials (19½ lakhs) and adjustment of freight charges (5 lakhs) also contributed to the excess. The excess was reduced to the extent of 7½ lakhs by the erroneous adjustment of certain credits inside the grant, which should have been taken under 'Credits and recoveries' outside the grant.

Excess of Rs. 63,20,007 over grant No. 18—Open Line Works—Development Fund.

Out of the excess of 63 lakhs under this grant an amount of 23 lakhs was due to inadvertent under-estimation of the funds required in the final grant by certain railways for the cost of materials obtained and certain adjustments to be made towards the close of the year; 22½ lakhs was due to speeding up certain works (Utratia-Sultanpur-Zafarabad Restoration and Madhopur Pathankot construction) towards the close of the year when it was too late to go up for a supplementary demand for grant and the balance of 17½ lakhs was due to receipt and adjustment in the year's accounts of debits for stores supplies being heavier than anticipated in the revised estimates, including an erroneous adjustment of 6½ lakhs made against a work in advance of receipt of materials.

This has been seen by Audit.

Dated 22nd June 1957.

Joint Director, Finance (Budget),
Railway Board.

APPENDIX IV

(Reference Para 9 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

MEMORANDUM

Para 7 of the Audit Report 1956 (Railways)—Compensation paid to the Howrah Sheakhala Light Railway Co.

(i) A copy of the order of the Railway Board issued in 1941 sanctioning the payment of compensation upto the end of War may please be forwarded.

A copy of Board's letter No. 7057-F dated 5th March, 1941 is enclosed.

(ii) Why did not the Railway Board call for any explanation from the Eastern Railway Administration for the Administration's failure to bring to their notice the fact of provisional payments of compensation and of objections of Audit thereto when it referred the matter to the Railway Board for sanction?

The Board did call for the explanation of the Eastern Railway for making provisional payments without their prior approval and a copy of letter No. FX-52/CP-5/1, dated 17th November, 1954, issued in this connection is enclosed. A specific enquiry was not made about the non-mention of the Audit objection, but since the Audit objection was also to the provisional payments having been made without competent sanction, a separate query in regard to this was perhaps not called for.

(iii) The precise reasons for making provisional payments for six years may be ascertained and intimated.

The payment of compensation to the Howrah Sheakhala Railway for loss of revenue due to the opening of the Howrah Burdwan Chord commenced from 1919 and continued upto 31st March 1946 under sanction given by the Railway Board from time to time, the last sanction being issued in 1941. At no stage during this period of 28 years was there any doubt that the payment in question was *ex gratia* and not on account of any legal liability. It was thus only the quantum of compensation that was being reviewed periodically on the basis of the latest level of traffic and earnings, and not the question of legal liability. In fact, in 1936 when the legality of the pay-

ment of compensation was questioned by the Railway Vakil, the Chief Auditor, after a review of the legal position, observed as follows:—

“Thus the principle of compensation as agreed to between the East Indian Railway and Messrs. Martin & Coy., has been approved by the Railway Board. The liability having been admitted and acted upon, it is too late in the day to raise the question of legality of the liability of the East Indian Rly. under common law or law of Torts.”

(Copies of the Vakil's note and the Chief Auditor's note are enclosed as Annexures I and II.)

As the nature of the payment was not in doubt, the General Manager, after the end of the War, proceeded with the review and entered into negotiations with the Light Railway regarding the quantum of the compensation. The negotiations involved a good deal of information being obtained from the Light Railway with a view to examining various proposals and counter-proposals made in regard to the quantum, and could be finalised only in 1952. The General Manager was ultimately successful in securing the agreement of the Company to the quantum being reduced to 31 per cent of the average gross earnings of the diverted traffic from 60 per cent of the gross earnings which was paid upto 31st March, 1946. As the Light Railway were meanwhile pressing for payment of the compensation on an *ad hoc* basis provisionally, the *ex-East Indian Railway* made certain payments to the Light Railway provisionally pending the sanction of the Board being obtained, under the impression that only the quantum of compensation which was being negotiated was in question. Such provisional payments had been made on previous occasions also, pending fixation of the revised amount and its sanction by the Board, and the Railway Board were aware that they had been made. In the present instance also payments were made after obtaining an undertaking from the Light Railway Company that these amounts were subject to adjustment on the basis of the amount finally sanctioned by the Board. However, when the case came up for consideration of the Board, it was examined from an entirely new angle, namely, whether the *ex-gratia* payment should continue to be made to the Light Railway Company for an indefinite period. It was eventually decided, in consultation with the Legal Adviser, that the *ex-gratia* payment should be discontinued. The decision not to insist on the refund of the provisional payments was taken by the Board on the ground that since

the payment was made not because of legal liability but on other considerations, and the Company had been relying on these payments, these could not, in fairness, be discontinued without appropriate notice. The Board, therefore, regularised the provisional payments made by the Eastern Railway and also paid the compensation upto 31st March, 1954 on the consideration that notice was served on the Company to stop payment of compensation only in April, 1954.

Audit has seen this Memorandum but has reserved comment.

*Dated 13th November, 1957. Director, Finance (Expenditure),
Railway Board.*

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS (RAILWAY BOARD)

No. 7057-F

New Delhi, dated the 5th March, 1941.

To

The General Manager,
East Indian Railway.

Dear Sir,

Compensation payable to Howrah-Sheakhala Light Railway.

With reference to your letter No. CR/1-C/BG, dated the 27th January, 1941, I am directed to communicate the sanction of the Governor General in Council to the existing basis on which compensation is paid to the Howrah-Sheakhala Light Railway Company being continued for the duration of the War with effect from first April 1940. It is noted that at the end of the War the position will be further reviewed.

Yours faithfully,

Sd/-

DA: NIL,

Deputy Director, Railway Board.

No. 7057-F dated the 5th March, 1941.

Copy, together with a copy of the letter replied to, forwarded for information to the Chief Auditor, East Indian Railway.

Sd/-

for Financial Commissioner, Railways.

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS (RAILWAY BOARD)

No. F(X)II-52/CP-5/1.

New Delhi, dated 17th November, 1954.

To

The General Manager,
Eastern Railway,
Calcutta.

SUBJECT: *Compensation to Howrah Sheakhala Ltd. Railway for
Diversion of its traffic to the Howrah-Burdwan Chord of
Eastern Railway.*

REFERENCE: *Correspondence resting with your letter No. CR/IC/
RH/Pt. II, dated the 27th October 1954.*

The Board would like to know the circumstances under which the provisional 'on account' payments reported in your letter No. CR/IC/RH/PT. 2 dated 4/12/February, 1954 were made by the Railway Administration without their prior approval, especially when the question of the determination of the compensation payable was under consideration and under correspondence with the Railway Board. It is requested that the position in this respect may be clarified at a very early date to enable the Board to consider further the question of enforcing the recovery of overpayments made.

Sd/-

DA:NIL.

Dy. Director Finance (Exp).
Railway Board.

ANNEXURE I

OPINION OF THE RAILWAY VAKIL

Re: Claim for compensation by Howrah Sheakhala Light Railway.

From the correspondence that passed between the Agent, East Indian Railway and the Board of Directors, London, prior to the opening for public traffic of the stations at Dhankuni, Begumpur and Monirampur, it is abundantly clear that merely on equitable grounds an arrangement was arrived at to pay some compensation to the Howrah Sheakhala Light Railway and it was decided that this arrangement would remain open to reconsideration three years after the date of opening the new stations. The Board of Directors in sanctioning the payment of compensation subject to the concurrence of the Government of India very clearly pointed out to the Agent that the important consideration was not whether the opening of the stations in question would adversely affect the earnings of the Howrah Sheakhala Light Railway, the equitable treatment of which was a matter to be separately dealt with, but whether the public interest would be served thereby. Although the question whether the East Indian Railway would come under any legal liability to pay any compensation to the Howrah Sheakhala Light Railway on their opening for public traffic the above three stations was not raised or discussed, the Board of Directors, it would appear, must have been advised that they would be under no such legal liability and they sanctioned payment of compensation as suggested by the Agent only on equitable grounds.

From the legal point of view the Howrah Sheakhala Light Railway was or is not entitled as of right to any compensation or legal damage. It is well settled in principle that the exercise of ordinary rights for a lawful purpose and in a lawful manner is no wrong even if it causes damage. Sir Frederick Pollock in his treatise "Law of Torts" has observed as follows:—

"It is impossible to carry on the common affairs of life without doing various things which are more or less likely to cause loss or inconvenience to others, or even which obviously tend that way; and this in such a manner that their tendency cannot be remedied by any means short

of not acting at all. Competition in business is the most obvious example. If John and Peter are booksellers in the same street, each of them must to some extent diminish the custom and profits of the other. So if they are shipowners employing ships in the same trade or brokers in the same market. So if, instead of John and Peter, we take the Railway Companies whose lines offer a choice of routes from London to the north."

It appears to me that any question of discontinuing payment of the compensation at this stage is a very delicate one. I do not think what we considered to be our moral liability about 20 years ago has now ripened into legal liability by reason of the fact that we have all along been paying the compensation. If it is intended that we should take our stand on our legal right, our Solicitors may, if you so desire, be consulted in the matter.

ANNEXURE II

CHIEF AUDITOR'S COMMENTS ON THE RAILWAY VAKIL'S OPINION

This case was handed over to me by Mr. Gilbert for my remarks.

2. A doubt has been raised as to the legal liability of the East Indian Railway to pay compensation to M/s. Martin & Company. The "Law of Torts" has been quoted by the Railway Vakil in support of his opinion that it is not a legal liability.

3. Under the Common Law or the Law of Torts every person (or corporate body) has a right to carry on his pursuits freely, safely and without undue interference. This however does not apply to the case of construction of new Railways as explained below.

4. In England, an Act which is done by the State itself or in other words is an act of the sovereign power gives no right of action and an act which is ordered by the State itself gives no right of action unless the State directs that there shall be such a right.

5. A Railway Company in England is usually formed by an Act of Parliament incorporating the powers, rights, responsibilities etc. of the Company as a public undertaking after due enquiry has been made by the Board of Trade into the whole scheme and the representations and objections and a certificate has been given inserting such provisions as it deems necessary *vide* para 1238 of Halsbury *Laws of England*.

6. Similarly under Tramways and Light Railways Act, *vide* paras 1446 and 1449 of Halsbury 'Laws of England', an application for a light railway is considered by the Commissioners with reference to all material circumstances *viz.* (1) the utility of the proposed railway and the advantage offered thereby to the public; (2) the desire of the persons living or interested in the district for the proposed railway, and the extent and nature of the opposition to the application; (3) the safety of the public; (4) the probable effect of the competition upon existing railways; and (5) the financial prospects of the proposed undertaking and where competition is likely to affect an opposing railway company, the Commissioners must determine whether it is of a character contemplated as being admissible under the Statute.

7. In India, the Government of India Act, Section 29(5) provides that a contract may be entered into by the Secretary of State for or relating to affreightment or the carriage of goods. The construction of a railway is sanctioned by the Secretary of State or the Governor General in Council and a Light Railway or Tramway is sanctioned by the Provisional Government under the powers delegated to the latter by the Secretary of State *vide* Schedule I Part II 6(c) and (d) of the Devolution Rules delegating powers regarding tramways, light and feeder railways to the Provincial Government subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

8. Thus the decision regarding damages or compensation hinges on the question whether the State itself has directed that there shall be such a right for the same.

9. Coming to the particular Railways under discussion, the construction of the Howrah Sheakahala Light Railway has been authorised by the Local Government in accordance with the above delegation under the District Board's Act and the construction of the East Indian Railway has been authorised by the Secretary of State.

10. In India, the powers of the State are exercised by the Secretary of State in regard to companies with English Domicile and by the Government of India in respect of companies of Indian Domicile and it is under the powers vested as above in the Government of India that they decide the disputes regarding the rights or compensation for vested interests of existing line when new lines are proposed to be built. In the case of Howrah Sheakahala Light Railway, the Railway Board held the view "that the important consideration is not whether the opening of such (East Indian Railway) stations will adversely affect the earnings of the Howrah Sheakahala Light Railway, but whether the public interest will be served thereby" and also expressed the opinion in regard to M/s. Martin & Company's Railways that any compensation paid to the Light Railways Companies should be assessed on a comparison of the gross earnings of the Companies during the period of three years following the opening of the chord with those during a period of five years previous to its opening. Thus the principle of compensation as agreed to between the East Indian Railway and M/s. Martin & Co. has been approved by the Railway Board. The liability having been admitted and acted upon, it is too late in the day to raise the question of legality of the liability of the East Indian Railway under Common Law or Law of Torts.

11. As regards the compensation itself, the East Indian Railway case had been verifiably put forward at the time of the second arbitration of 1935. The East Indian Railway had proved on the basis of each of the three methods of tests explained in paras 89, 99, 113 of the East Indian Railway's statement that the compensation payable should not be more than 45 per cent of the gross earnings of the East Indian Railway. These three tests were based on the difference between the probable normal and the actual gross earnings of the Howrah Sheakahala Light Railway reduced by the amount that could have been spent by the Howrah Sheakahala Light Railway in working the extra traffic. Another method a fourth method has been ably worked out by Mr. Crawford in his notes on pages 34 wherein he divided Howrah Sheakahala Light Railway stations into two groups (1) affected stations and (2) unaffected stations, and assessed the difference between the probable and the actual gross earnings of the affected stations on the basis of the variations in the non-affected stations during the same periods and arrived at higher figures of loss in gross earnings of Howrah Sheakahala Light Railway but in view of some omissions and assumptions e.g., omission to take into account diversion of traffic to road between Chanditola and Uttarpara, I am inclined to the view that the figure given in East Indian Railway statement for 1935 arbitration is more accurate.

12. The particular line of argument which has been all along advanced by the Howrah Sheakahala Light Railway and which has been accepted by the arbitrator in coming to his decision is however, on the basis of the working results of the Howrah Amta Light Railway. That basis is however open to objection on account of the differences between the two lines as explained in paras 75 to 81 of the East Indian Railway Statement for 1935 arbitration. While it may be admitted that subject to certain allowances the estimates of normal gross earnings may be based on a comparison of the Howrah Amta Light Railway, the extension of that principle to the working expenses is obviously untenable as the proportion of the working expenses of the Howrah Sheakahala Light Railway has been very different as compared with that of Howrah Amta Light Railway and therefore, East Indian Railway can never agree to the assumption that the net earnings of the Howrah Sheakahala Light Railway for post chord years would have borne the same proportion to those of pre chord years as the net earnings of Howrah Amta Light Railway for post chord years bore to those of pre chord years. In fact, if the argument of the arbitrator is carried to its logical conclusion, as soon as the Howrah Amta Light Railway is able to reduce the working expenses still further, a position will be reached whereby

according to the formula adopted by the arbitrator, the compensation may amount to cent per cent of the gross earnings of the East Indian Railway, thus showing the absurdity of the position. The real basis for assessing the compensation should be that indicated in the Railway Board's letter No. 269 P. 16 dated the 25th May 1917, namely that it should be assessed "on a comparison of the gross earnings of the companies during the period of three years following the opening of the chord with those during a period of five years previous to the opening" and the difference of gross earnings less the working expenses for such extra traffic is the true basis for compensation.

13. The East Indian Railway had gone even further and had practically accepted the principle of compensating not only for the traffic immediately affected but also for the share of the increased traffic which was certain to result from the improved transportation conditions.

14. When the East Indian Railway Home Board agreed to 45 per cent to be paid to the Howrah Sheakahala Light Railway, the working expenses of the East Indian Railway main line were about 35 per cent of the earnings and out of 65 per cent of the net earnings only 45 per cent were given as compensation, the East Indian Railway retaining 20 per cent as its own profit. Therefore, when the East Indian Railway working expenses had increased to as high as 65 per cent, the East Indian Railway had a good case for really reducing the percentage payable to the Howrah Sheakahala Light Railway. In our case for arbitration of 1935, we had however practically weakened our case by agreeing to accept the basis of dependent costs for Howrah Sheakahala Light Railway and we cannot now go back to the basis of the whole working expenses.

15. If we go to arbitration again, we can challenge the decision of the arbitrator that his finding on the basis of a comparison between the working results of Howrah Amta Light Railway and Howrah Sheakahala Light Railway is not correct and argue that the compensation should be based on a comparison of the gross earnings and not on the working results and that the net amount to be paid out of those gross earnings should be decided by the amount of working expenses incurred by the East Indian Railway in carrying such traffic or the amount that would have been incurred as working expenses by the Howrah Sheakahala Light Railway in carrying such traffic and not by the amount the Howrah Amta Light Railway would have incurred for working expenses. It is possible that on this basis we may be able to press for our compensation to be reduced to 45 per cent from a fresh arbitrator, but we have to consider that

the arbitrator would be influenced by the facts that (1) East Indian Railway is a very prosperous State Line and Howrah Sheakahala Light Railway has not got any prospects of expansion (2) the sympathy of the arbitrator would always be on the weaker side (3) that 60 per cent has already been decided during the last two arbitrations and (4) that the 60 per cent basis has not involved the East Indian Railway in actual loss taking into consideration only the dependent costs as distinguished from the whole working expenses and (5) that East Indian Railway has derived other benefits by opening those stations, viz., its own local and foreign traffic to all Stations other than the traffic between the concerned stations and Howrah and I think the chances are ten to one that a new arbitrator would also decide in favour of 60%. As the amount involved is after all very small, so far as East Indian Railway is concerned, I would suggest that we agree to the 60 per cent basis for next 5 years. Though such an acceptance is within the powers of the Agent, perhaps the Agent might like to take this opportunity to advise the Railway Board of his decision and get their approval before communicating it to M/s. Martin & Co. in view of the fact that the matter is already under correspondence with the Railway Board in connection with a question raised in the Assembly.

16. The Railway Board have made two suggestions in their letter of 12th May 1936 (1) whether it is possible or not to reduce the commitments in respect of compensation payable by taking over the working of the line or (2) alternatively to make a lumpsum payment which will clear the liability for all time.

17. As regards (1) taking over the line is not a practicable proposition for the following reasons:—

- (i) Howrah Sheakahala Light Railway is intimately connected with the Howrah Amta Light Railway owing to running powers exercised by the Howrah Sheakahala Light Railway over Howrah Amta Light Railway portion from Howrah Telkalghat to Kadamtola, a distance of 20.06 miles.
- (ii) The line is 2 ft. gauge and East Indian Railway would have to make special provision for working the same and for workshop repairs, stores and consequently East Indian Railway cannot work it more cheaply than M/s. Martin & Co. The probability is that East Indian Railway would lose more in working it than the compensation it now pays.
- (iii) Ordinarily it would be an advantage for the main line to take over the working of the branch line if the gauge of

the railway is the same or if the branch can be converted into line of through communication or even if it is a feeder to the main line, but not one of these conditions is satisfied.

- (iv) The prospects of the line are not at all very bright and it is possible that with the extension of road facilities for buses, the Light Railway Administration may be a losing proposition and would have to wind up but for the guarantee of 4 per cent by the District Boards. The 4 per cent guarantee also is limited to Rs. 950/- per mile. For these reasons the Government of India will not be well advised to venture on the purchase and working of the Light Railway.

18. Proposition (2) is not also feasible as it will not be to the interest of Government to compound for a single lumpsum payment just at the present moment. As I have already explained, with the increasing road competition, the East Indian Railway traffic from the concerned stations may become less and less, thus resulting in our payments also becoming less. Therefore, our compounding at the present time is likely to involve a serious loss to the East Indian Railway. The District Boards who have to pay the guaranteed interest may also have to be consulted as to whether they would care to agree to this compounded payment to the Light Railway Agents.

APPENDIX V

(Reference Para 16 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

MEMORANDUM

Para 10 of the Audit Report:—Overpayment to handling contractor.

- (i) *How did the irregularity come to notice of the Accounts Department in April 1953 when it is stated to be going on since 1943?*

According to clause 2(f) of the handling agreement entered into in 1946, the payment in the case of inward goods was to cover the services of unloading from Railway wagons, stacking on the platform or in the yard or in the goods shed, as may be directed, and also handling for any necessary reweighment. The handling agreements prior to 1st June, 1946 are not available and it is therefore, not possible to state whether this or an equivalent clause existed in the agreements in force prior to that date and whether the irregularity goes back to 1943. The sanction for the employment of 8 *hamals* for the purpose of reweighment of inward consignments was, however, issued in February 1943 and as the relevant records pertaining to the issue of this letter are not available, the circumstances under which these 8 *hamals* were appointed are not known.

Sometime before 22nd September, 1952 the Senior Travelling Inspector of Accounts at Carnac Bridge in his report to the Dy. Chief Accounts Officer (Traffic Accounts) seems to have raised the question regarding the actual practice *vis-a-vis* the provisions in the contract in regard to the reweighment of inward consignments. (This report, however, is not available). The Dy. Chief Accounts Officer (Traffic Accounts) on receipt of this report, called for the remarks of the Goods Superintendent Carnac Bridge who replied in March 1953 that the departmental labour was being utilised for the reweighment of inward consignments.

The Dy. Chief Accounts Officer (Traffic Accounts) then enquired from the Chief Operating Superintendent as to the circumstances under which departmental labour was being utilised for the purpose when the contractors are required to provide labour for necessary reweighment; and also whether the cost of departmental labour so engaged was to be recovered from the contractors. It was also suggested that the handling contractor should be warned that the cost of

departmental labour so engaged in the past, would be recoverable from his dues. After protracted correspondence the Regional Traffic Superintendent, Bombay Central informed the Dy. Chief Accounts Officer (Traffic Accounts), Ajmer on 14th August, 1953 that 8 *Hamals* engaged so far on reweighment work were being withdrawn and necessary action for their employment elsewhere was under consideration. On 1st November, 1953 the *Hamals* were transferred from the inward goods section to the Dangerous goods section outward platform and the work of weighing of inward consignments was entrusted to the contractors from that date. The posts of 8 *hamals* were finally surrendered on 24th March 1953 when opportunity arose for their absorption elsewhere.

- (ii) *Has responsibility in this regard been fixed and if so has any disciplinary action been taken against the persons concerned?*

The question of fixing responsibility and taking appropriate action against the individuals concerned is under consideration.

This has been seen by Audit.

Dated: 31st October, 1957.

*Director, Finance (Expenditure)
Railway Board.*

APPENDIX VI

(Reference Para 22 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

MEMORANDUM

Para 12 of the Audit Report—Supply of defective springs in all-metal M. G. coach body shells.

- (i) *The tare weight of the imported furnished Coach was 27·15 tons. This was taken as the prototype by the Central Standards Office. A margin of 3/4 tons was allowed for the higher weight of furnishing materials available in India. Was this margin adequate? What was the basis for this estimation?*

The weight of the M. G. coaching shells and the under-frame without “furnishings and fittings” is 19·5 tons. Therefore, on the M.A.N. coach, which weighs 27·15 tons fully furnished, the weight of furnishing and fittings works out to $27·15 - 19·5 = 7·65$. C.S.O. allowed a 10% increase in weight due to Indian furnishing and so allowed a margin of 3/4 ton.

The total weight of Indian furnishings and fittings on the Broad gauge Hindustan III Class Coach is 10 tons approximately. As a metre gauge coach has only 62% of the surface area for furnishing of the broad gauge coach to be furnished in India, the total weight of furnishing which was reckoned is 7·65 plus 75·8·4 tons for a metre gauge coach appears more than a liberal estimate for assessment purposes.

There are not many comparable cases of Broad gauge showing the difference between the rate of Indian furnishing and imported furnishing except the case of the broad gauge standard light weight coaches as now produced by I.C.F. Some of these had a tare weight of 35 tons when imported completely furnished in the initial stages. A similar coach while furnished in India at Matunga weighed 36 tons. This increase of 1 ton in respect of Indian furnishing on the broad gauge would again suggest that an allowance of 3/4 ton increase in weight for Indian furnishing in the case of metre gauge coaches was reasonable.

An annexure to this memo. explaining the difficulties in the correct assessment of a single weight to which ‘springs’ could be designed, is also enclosed.

(ii) *What is the margin allowed in the case of B.G. Coaches manufactured by Hindustan Aircraft Ltd., Bangalore?*

No imported shells have so far been furnished by the Hindustan Aircraft Ltd.

The Audit has seen the Memorandum and has observed as under:—

“As the actual tare weight of the coaches proved greater than the figure estimated by the CSO, the basis adopted for the estimation of the tare weight including weight of furnishings was obviously faulty. Since 900 coaches were ordered for the years 1952-53 to 1954-55 which were to be furnished, greater care was necessary for the assessment of the tare weight including the weight of furnishings, etc., after making due allowances for factors which contributed to the increase in the tare weight.

The springs as designed by the RPT were provided for a working coach load ranging from 24 tons tare to 32·2 tons under crushed load conditions (i.e., under 200% of normal passenger load) with a margin of 4·2 tons left to take the gross load of 36·4 tons which was the maximum capacity of springs. In the case of new all metal M.G. Coaches ordered against 1952-53 programme and onwards, the CSO fixed the tare weight as 27·9 tons after allowing for an increase of 3/4 ton for Indian furnishings. As this tare weight was to go up to 36·1 tons under crush load conditions (i.e., after adding 8·2 tons) there was a margin of 0·3 ton only left in relation to the maximum capacity of the springs, viz., 36·4 tons. This margin was quite inadequate compared to the margin of 4·2 tons in case of older coaches and did not even cover the safety margin which according to the Rly. Board should have been 1·25 tons. This position should also have given an indication to the CSO that these new coaches would require springs of higher capacity.

The following facts mentioned in the Memorandum are being got confirmed by the Chief Auditors and further remarks, if any, will follow:—

- (a) The total weight of Indian furnishing and fittings on the BG Hindustan III Class coach is 10 tons approximately.
- (b) The weight of some of the light weight BG coaches imported from abroad completely furnished was 35 tons.
- (c) The BG Standard light weight coaches produced by the Integral Coach Factory weighed 36 tons after complete furnishing in the Matunga Workshop.

(d) No imported shells have so far been furnished by the Hindustan Aircraft Ltd."

*Director, Finance (Expenditure)
Railway Board.*

Dated: 28th November, 1957.

ANNEXURE

In the course of the oral examination of the Members of the Railway Board, the Chairman, Public Accounts Committee raised a question as to the single weight for which the original springs (on coaches to RPT drawings) were designed. The springs for rolling stock are designed to satisfy a range of weight and it is, therefore, not possible to give a direct answer to this question. For instance a BG wagon spring must operate satisfactorily for a wagon weight of 10 tons (tare) and 32 tons (gross). Such a spring would be designed for this whole range and it would be necessary to check deflections over the range and to ensure that adequate clearances existed under all conditions and also to be certain that the springs could take the maximum loadings at a stress within the margin of safety. In coaching stock springs the variation in weight between tare and gross is less than in wagons, but again the whole tonnage has to be checked for clearances and the maximum stresses must be limited with a safety margin. There is also in this case the factor of riding quality and frequencies for passenger comfort, so that the spring should have softer characteristics than wagon springs.

Against these design requirements, RPT in their original coaches for the MG put forward springs capable of taking a maximum coach load of 36·4 tons, with deflections and characteristics that were adequate for a range of weight 24 tons tare, 28½ tons normal passenger seated load, and 32·2 tons crush loaded. Perhaps it would be fair to say that the springs were provided for a working coach load ranging from 24 to 32·2 tons but were designed with a sufficient margin to take gross loads of 36·4 tons.

On strength and clearance considerations of the spring the gross load should never exceed 36·4 tons. A small safety margin of approx. 1½ ton is kept in hand and the maximum passenger load (200% occupation) of 8·2 tons is deducted giving a maximum derived tare weight of 36·4-1.25-8·2-26·95 tons which led the CSO to say that the springs were designed to take a tare load up to 27 tons. This was unfortunate wording, because springs are never designed directly in relation to a specific tare load but rather for a range of load extending from minimum tare to maximum gross.

APPENDIX VII

(Reference Para 27 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

MEMORANDUM

Para 13 of the Railway Audit Report, 1956—Central Railway—Construction of colliery siding without settlement of terms.

- (i) *What was the actual decision taken in 1945 when it was decided between the Railway Board and the Supply Department that the G. I. P. Railway should go ahead with the construction of the siding? Full details in this regard may please be furnished.*

The details of the decision taken in 1945 were as under:—

- (1) G. I. P. Railway should be asked to go ahead immediately with the construction of the Siding.
- (2) That portion of the cost of the Assisted Siding, which would normally be borne by the party asking for such an Assisted Siding, should be met from the Coal Production Fund, since M/s. Shaw Wallace & Co., were not prepared to meet this portion of the expense. The amount involved, as estimated at that time, was Rs. 2,15,000.
- (3) When the Coal Production Fund comes to an end, M/s. Shaw Wallace & Co., should be asked to take over the Siding and re-imburse the Government the amount expended, i.e., Rs. 2,15,000 and should M/s. Shaw Wallace & Co., refuse to take over the Siding, the Railway Board would take over the full financial responsibility and reimburse this amount to the Supply Department.
- (4) Normal commercial siding charges for maintenance etc., should be levied by the Railway for the Siding, and M/s. Shaw Wallace & Co. should be asked to defray these charges.

- (11) *A detailed note giving clearly the future policy to be followed in regard to fixing uniform rates for siding charges indicating whether any special concessions are proposed to be allowed in certain cases and if so, the reasons therefor, may please be forwarded.*

The basis for levy of Siding Charges on Railways has varied from Railway to Railway and even as between one Siding and another on the same Railway, mainly for historical reasons.

2. The question of adopting a uniform basis of calculating Siding Charges was considered in the year 1953. After careful examination, the Commercial Committee of the Indian Railway Conference Association, which represents all Railways in India, adopted the following resolution in regard to the question of levying Siding Charges on a uniform basis:

“Resolution 3075-(1)—The Commercial Committee have studied the details collected by the Railways and, after carefully considering the matter, are of the opinion that, as a general practice, it would be advisable to levy siding charges on the following basis:—

- (i) Interest, maintenance and depreciation charges to be recovered separately as annual lumpsum payment;
 - (ii) Siding Charges to be based at Re. 1/- per wagon subject to a minimum charge per shunt arrived at by multiplying the average time taken per shunt by the cost of shunting engine hour.
- (2) There are, however, certain instances where there will be practical difficulties in adopting the above basis, e.g., when sidings take off from other sidings and only one shunting engine is used for shunting at all sidings.
- (3) Reviewing the existing arrangements for the collection of siding charges, it is found that in some cases the arrangement proposed will be difficult of application for the reasons mentioned in paragraph (2) above, while in certain other cases there will be considerable enhancement or reduction in the charges now being collected. For example, the drop in revenue on the Eastern Railway will be approximately Rs. 40 lakhs per year, while on the North Eastern Railway there will be increase by about 500%.

- (4) In these circumstances, the question of change-over of the basis in the case of existing sidings should, it is considered, be approached with caution and on a gradual long term basis."

3. The above Resolution has been accepted by the Railway Board and forms the basis of the policy now adopted by the Board in regard to the question of levy of Siding Charges throughout the Indian Government Railways.

4. For reasons which are explained in the Resolution given above, it was not considered feasible to change over to the above basis of charge at one stroke so far as existing Sidings are concerned. For one thing, on some of the Railways, such as the Eastern Railway the adoption of the basis would result in a substantial loss to the Railway Administration in the amount of Siding Charges collected. It was, therefore, decided that the change-over to the charging of Siding Charges on a uniform basis as laid down above should be implemented according to a phased programme which was to be drawn up by each Railway Administration in consultation with its Financial Adviser and Chief Accounts Officer.

5. The Railway Administrations are acting up to these instructions. Some of the Railway Administrations have already implemented the instructions in regard to their Sidings, where there were no difficulties such as enumerated above. Other Railways have got the matter under consideration, of drawing up a phased programme as mentioned above.

6. It is not intended to give any special concessions in particular cases in the implementation of the above policy.

This has been seen by Audit.

*Director, Finance (Expenditure),
Railway Board.*

Dated the 14th November, 1957.

APPENDIX VIII

(Reference Para 42 of the Report)
MINISTRY OF RAILWAYS (RAILWAY BOARD)

MEMORANDUM

Para 18—Eastern Railway:—Purchase of defective axle boxes from Italy

(i) *What are the specific reasons for not preferring the claim against the Italian Firm in proper time, indicating the exact dates of detection of defects in the axle boxes, those of reports of chemist and Metallurgist and of communications to the Railway Board from the Railway administration to that effect etc?*

(i) The axle boxes were received during 1951.

After issuing to Running Sheds, etc., 237 out of the total of 312 axle boxes, casting defects were found in some boxes in June, 1953 while they were being machined in the workshops for being fitted on engines. Some of these were sent to the Chemist and Metallurgist Eastern Railway in August 1953 and he submitted his report in November, 1953. The matter was reported to the Board in January 1956. As the defects were noticed only during the middle of 1953 and as the guarantee period expired by about the end of 1952, there was no question of preferring the claim against the manufacturer in terms of the contract.

(ii) *Has the responsibility been fixed in this case? If so, the results thereof may please be intimated.*

(ii) The firm have accepted the liability to compensate the Railway to the extent of the loss involved, viz., Rs. 33,600, which fully covers the cost of melting and recasting the defective boxes.

The fixation of responsibility for the delay in the office of the Controller of Stores in reporting the matter to the Rly. Board is being pursued by the Eastern Railway although this delay did not effect the fact that the guarantee period had already been expired when the defects were discovered and although no loss has been occasioned by this delay.

This has been seen by Audit.

Director, Finance (Expenditure),
Railway Board.

Dated the 6th November, 1957.

APPENDIX IX

(Reference Para 43 of the Report)

GOVERNMENT OF INDIA

MINISTRY OF WORKS, HOUSING & SUPPLY

SUBJECT:—*Note on the system of purchases from abroad, indicating measures taken to guard against losses due to defective Inspection or Defective terms of contract.*

It is presumed that the Public Accounts Committee are referring to purchase of stores from abroad through the India Store Department, London and India Supply Mission, Washington.

The India Store Department are responsible for purchase of specialized stores from the United Kingdom and the Continent not available in India either from indigenous sources or through Indian Agents of foreign manufacturers, while the India Supply Mission are responsible for purchase of specialized stores available, only, from North America and Canada and all purchases against the various Foreign Aid Programmes.

2. According to the existing purchase policy all Central Government Departments are required to place their demands for stores exceeding Rs. 2,000 in value on the Directorate General, Supplies and Disposals. The Directorate General (Supplies and Disposals) scrutinize the demands and arrange for procurement of stores, as far as possible, from indigenous sources consistent with economy and efficiency. In case stores are not available from indigenous sources purchase is effected through the Indian Agents of foreign manufacturers, subject to the period of delivery, quality and prices of goods being suitable, and subject to the existence of adequate after-sale service in India. There are, however, a few exceptions to this procedure, namely, Government to Government purchases, purchase of food grains and of complete locomotives and rolling stock in which cases purchases are made through the India Store Department/India Supply Mission as the case may be. Exception has also been made in the case of certain highly specialized stores such as arms and ammunition, wireless equipment etc., a list of which has been drawn up and in such cases the Central Government indentors have been authorised to place indents, direct, on India Store Department/India Supply Mission.

3. Steps necessary to effect the purchase of stores are taken only on receipt of indent duly authenticated by forwarding letters, or telegrams from India. Each indent is, according to the orders of the Government of India, accompanied by (i) a certificate of provision of funds to meet the proposed expenditure, (ii) a certificate of the financial sanction to the purchase, (iii) a certificate of necessary foreign exchange sanction, and (iv) a proprietary certificate, whenever necessary.

4. Purchases are effected after completion of necessary formalities and calling for tenders either:—

- (i) By advertisement ("open tender").
- (ii) By invitation to a limited number of firms ("limited tender").
- (iii) By invitation to one firm only ("single tender" or "private purchase").

5. Detailed rules of procedure have been laid down for deciding which of these ways shall be adopted. The High Commissioner for India, London/Director General, India Store Department, London, and the Director, India Supply Mission have been authorised to conclude contracts up to certain financial limits in consultation with their Financial Advisers, whenever necessary. In cases where the value of the contract exceeds the ceiling powers delegated to these authorities, a reference is required to be made to this Ministry for formal Government sanction, which is communicated in consultation with our associated Finance and also concerned Ministry, if necessary.

6. The India Store Department, London, have a fully trained inspection staff who arrange inspection of stores at various stages of manufacture. In respect of Defence stores, however, they do not have technical personnel with requisite qualifications, and inspection of such stores is generally entrusted to the Inspecting Agency of the Government of the country from whom the stores are purchased, while in some cases Services personnel are also deputed for the purpose. As there is an acute shortage of Inspecting staff, the India Store Department, have also to off-load inspection of other type of stores to Commercial Agencies, in which case the work is entrusted to firms of known reliability and integrity.

The India Supply Mission, Washington, have, however, no inspection agency of their own and stores have to be accepted against

specific Warranty in the contracts. In special cases inspection is however entrusted to Inspection Staff deputed from India or to Commercial Inspection Agencies of repute.

7. The shipping policy of the Government of India is that shipment of all stores purchased by the India Store Department/India Supply Mission is to be done by Indian ships wherever possible. These stores are not insured during the voyage, except otherwise required by the Indentor. In the case of India Store Department there is a Marine Insurance Fund, which covers losses during the sea voyage. These losses are met by the Fund, only, in cases where the Shipping Company or the suppliers refuse to bear the loss.

In case of India Supply Mission, however, there is no such Fund and Commercial insurance is resorted to only in case the indentor so desires.

8. All contracts are to be placed by the India Store Department, London/India Supply Mission, Washington, subject to the Standard Conditions of Contract (Annexures I and II attached) and deviations are made, only, in exceptional cases and in accordance with the procedure, laid down on the subject. (The India Supply Mission's conditions of contracts are, however, under revision.).

9. The Public Accounts Committee are apparently of the view that there have been heavy losses in purchases from abroad, either due to the defective inspection or defective terms of contract. This is, however, not quite true as compared to the large volume of stores purchased/inspected by the India Store Department, London/India Supply Mission, Washington. To illustrate the position, it may be mentioned that stores worth Rs. 303 crores were inspected by the India Store Department, London during the last seven years (i.e. 1948-49 to 1954-55) and complaints in respect of faulty inspection were made only in respect of three contracts (namely, blankets asbestos & swedish boards) involving a sum of Rs. 46 lakhs only (the details will be found in Annexure III). These three cases were thoroughly looked into with a view to finding out whether the defective supplies were entirely due to faulty inspection. On the basis of the factual information available, viz., the nature of the stores demanded and contracted for, the urgency of the demands, the conditions regarding supplies obtaining at the time when these stores were demanded, the difficulties of ensuring cent per cent inspection, and other extenuating circumstances of the purchases, it could not be established that the Inspectors who inspected these

stores failed in their duties and that defective supplies were entirely due to their neglect etc. As a result of the experience gained in these three cases, steps have since been taken to tighten up the procedure for inspection. Some of the important requirements since introduced are:—

- (i) Scrutiny of contracts by the Inspecting Officers before proceeding with inspection.
- (ii) Maintenance of full details of the tests applied both in the Inspector's note-book and office files.
- (iii) Consultation with superior officers in cases of doubt as to the nature of tests to be applied.
- (iv) Stamping of inspected stores as far as it is practicable to do so, and
- (v) Scrutiny and random checks by the countersigning officers of the tests carried out by the Inspectors before countersigning the certificate.

Instructions have also been issued to the Purchasing Organisations that they should not proceed to arrange purchase of stores of a fragile nature, e.g., Asbestos Cement Sheets etc., from abroad, and where such imports are inescapable, they should have the prior concurrence of this Ministry. As a further safeguard in the case of purchase of specialised stores, a guarantee clause is included in the contracts as far as possible, providing for free replacement of stores found unserviceable or sub-standard on arrival in India. In the case of Defence stores such as arms and ammunition, as far as possible, a clause is inserted to the effect that all ammunition purchased will be subject to examination and proof on receipt in India and in the event of any quantity of such stores being found defective or unserviceable, free replacement will be made by the supplying firm.

In the case of the Directorate General (Supplies and Disposals) though there is no warranty clause in the General Conditions of Contract, such a clause is inserted as a special condition in contracts governing supply of special types of stores. In the case of Plant and machinery, a guarantee clause regarding satisfactory performance of the equipment and repair/replacement in case of defects, is invariably included in the Conditions of Contract.

10. It will be seen from above that the quantum of loss due to defective inspection is not considerable. There have also been nominal losses due to defects in the Conditions of Contract. As a matter of fact, losses occur mainly due to the peculiar nature of the individual cases e.g., due to the supplying firm going into liquidation or other unforeseen causes.

Secretary to the Government of India.

NEW DELHI;

Dated the 16th October, 1957.

ANNEXURE I

C.N.T. 3(Revised)

THE HIGH COMMISSION OF INDIA

**India Store Department
Government Building
Bromyard A.V.E.,
Action, W.3.**

Telegraphic Address:
Indiamen, London W.3.

Telephone:
Acorn 5353

IMPORTANT

In view of the need for economy in the use of paper, form No. 3, (now Standard) Conditions of Contract will no longer be issued with each form of Tender. This copy should, therefore, be carefully preserved by you for future reference.

STANDARD CONDITIONS OF CONTRACT

1. **Definition.** In these Conditions of Contract and in the form of Tender the expression "purchasers" shall mean the purchasers mentioned in the Schedule to the form of Tender. "High Commissioner" shall mean The High Commissioner for India for the time being acting as agent on behalf of the purchasers.

2. (a) **Execution and Inspection.** The whole Contract is to be executed in the most approved, substantial, and workmanlike manner, to the entire satisfaction of the Director of Inspection, India Store Department, 32/44, Edgware Road, London, W.2, who, both personally and by his deputies, shall have full power, at every stage of progress, to inspect the stores, at such times as he may deem fit, and to reject any of the stores of which he may disapprove; and his decision thereon, and on any question of the true intent and meaning of the Specification shall be final and conclusive.

(b) **Marking.** The marking of all goods supplied for such of the purchasers as are in India shall comply with the requirements of the Indian Acts relating to merchandise marks and of the rules

made under such Acts, and the Contractor shall be responsible for the proper and sufficient marking of the goods so as to be in compliance with the requirements of the said Acts.

(c) **Facilities for Tests and Examination.** The Contractor shall provide, without extra charge, all materials, tools, labour and assistance of every kind which the Director of Inspection, India Store Department, may consider necessary for any tests and examinations which he shall require to be made on the Contractor's premises, and shall pay all costs attendant thereon.

The Contractor shall also provide and deliver, free of charge, at such place as the Director of Inspection, India Store Department, may direct, such materials as he may require for tests by chemical analysis or independent testing machine. The cost of any such tests will be defrayed by the purchasers, unless it be stated in the Specification that it is to be paid by the Contractor.

(d) **Packing.** The Contractor will be held responsible for the Stores being sufficiently and properly packed so as to ensure their being free from loss or injury on arrival at their destination.

(e) **Certification of Inspection and Apporval.** No stores will be considered ready for delivery in accordance with the terms of the letter of Tender until the Director of Inspection, India Store Department, shall have certified in writing that they have been inspected and approved by him.

(f) **Progress Reports.** The Contractor shall render such reports as to the progress of the Contract and in such form as may be called for by the Director General, India Store Department.

The submission and acceptance of these reports shall not prejudice the rights of the Purchaser under Conditions Nos. 7,8,9, and 11 thereof.

3. Customs Drawback. When any Stores included in the Schedule are on exportation subject to a Custom Drawback in respect of duty paid on the Stores or on materials used in the manufacture of the Stores, the price stated in the Tender is to be the net price after the amount of any such drawback has been deducted, and the Contractor shall recover and retain the drawback. If by reason of a Customs notification published after the placing of the Contract any of the Stores included in the Schedule shall become on exportation subject to a Customs drawback in respect of duty paid on the Stores or on materials used in the manufacture of the Stores,

the Contractor is to recover the amount of the drawback and the Contract price of the Stores is to be reduced by the amount so recovered.

4. Prices and Indemnity. The Contractor is to state in the Form of Tender his prices for the Stores delivered free on board vessels* in the port of London, or Liverpool, or in any other port which he may desire to propose, and such prices are to include all cost of stamping, painting, marking, protection, or preservation, and any claim whatsoever that may arise from the manufacture, or packing, or delivery of the Stores, in accordance with these Conditions and the Specification. The prices stated in the Tender are also to include all rights (if any) of patent registered design or Trade Mark, and the Contractor shall indemnify the purchasers and the High Commissioner against all claims in respect of the same.

5. Payment on net Quantities. The Contractor shall, if required by the Director of Inspection, India Store Department, weigh the whole, or any part, of the Stores in his presence; and the Contractor shall only be paid for the net quantities or weights of the articles delivered, no allowance being made for wrappers, bags, binders, etc., required for safe packing, notwithstanding any custom of trade, if such there be.

6. Delivery F.O.B. Invoices and Freight. The Stores shall be delivered by the Contractor free on board such vessels in such port or ports named in the Tender as the Director General, India Store Department, may require.

Such number of inspection certificates, advice notes, packing accounts, and invoices, as may be required by the Director General, India Store Department, shall be furnished by and at the cost of the Contractor.

Freight for the conveyance of the Stores, or any part thereof will be engaged by the Director General, India Store Department, who will give due notice to the Contractor when and on board what vessels they or such part thereof are to be delivered. Should

*The prices quoted must provide for and include payment by the Contractor of Dock and Harbour Dues and Port Rates, as follows:—

- (a) On stores and materials for railways, for irrigation works, for harbour works, for commercial undertaking and oil for heating and power, 100 per cent of ordinary tariff.
- (b) On other stores, 75 per cent of ordinary tariff. In the port of Manchester, the allowance of 25 per cent will apply only to the tolls and wharfage portion of the consolidated rates. In the Port of London, the allowance will be one-twelfth of wharfage and portage rates and 25 per cent of Port Rates.

the Stores or any part thereof not be delivered within six days of the sending of such notice, the Contractor will be liable for all payments and expenses that the purchasers and the High Commissioner may incur, or be put to, by reason of such non-delivery, including dead and extra freight, demurrage of vessels, etc.

7. Liquidated Damages. In the event of the Contractor's failure to have Stores ready for delivery by the time or times respectively specified in the letter of Tender, the purchasers may withhold any payments until the whole of the stores have been supplied, and they may deduct or recover from the Contractor, as liquidated damages, and not by way of penalty, the sum of two per cent on the Contract price for each and every month, or part of a month, during which the Stores may not be ready for delivery.

But if the delay shall have arisen from any cause which the purchasers may admit as reasonable ground for further time, the purchasers will allow such additional time as they may consider to have been required by the circumstances of the case.

8. Default. (1) Should the Articles or any portion thereof not be delivered within the time or times specified in any of the contract documents, the Purchaser shall be at liberty, without prejudice to the right to recover liquidated damages as provided in condition No. 7 above or to any other remedy for breach of contract, to determine the Contract either wholly or to the extent of such default.

(2) The Purchaser shall be at liberty to purchase, manufacture, or supply from stock as he thinks fit other Articles of the same or similar description to make good

(a) such default;

(b) in the event of the contract being wholly determined, the balance of the Articles remaining to be delivered thereunder.

Any excess of the purchase price, cost of manufacture, or value of any Articles supplied from stock, as the case may be, over the Contract Price appropriate to such default or balance shall be recoverable from the Contractor.

9. Bankruptcy. The Purchaser may at any time by notice in writing summarily determine the Contract without compensation to the Contractor in any of the following events, that is to say:—

(a) if the Contractor, being an individual, or where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order o.

administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland, he shall become insolvent or notour bankrupt, or any application shall be made under any Bankruptcy Act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for behoof of his creditors; or

- (b) if the Contractor, being a company, shall pass a resolution, or the Court shall make an order, that the company shall be wound up, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitled the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order :

Provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Purchaser.

10. **Payment.** Payment for the Stores, or for each delivery of the value of not less than £20, will be made to the Contractor, on the Certificate of the Director of Inspection, India Store Department within thirty days after delivery, and the receipt of the claim for payment, and production by the Contractor of the mate's receipt, and of the other documents provided in Clause 6, but such payment shall be subject to the deduction of any amount for which the Contractor is liable under this Contract or any contract in respect of which the High Commissioner for India acts as agent. Claims are to be prepared by the Contractor, in duplicate, on Forms to be obtained from the Director General, India Store Department, to whom they are to be forwarded. The Stores are to be designated in the claims in the precise words set forth in the Schedule.

11. **Corrupt Gifts and Payments of Commission.** (1) The Contractor shall not:—

- (a) offer or agree to give to any person in the service of the Purchasers or of the High Commission or any person on his or their behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for the service of the Purchasers

or for showing or forbearing to show favour or disfavour to any persons in relation to this or any contract for the service of the Purchasers;

- (b) enter into this or any other contract with the Purchasers in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the representative of the Purchasers.

(2) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or anyone employed by him or acting on his behalf under the Prevention of Corruption Acts, 1889 to 1916, in relation to this or any other Contract for the Service of the Purchasers shall entitle the Purchaser to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination and/or to recover from the Contractor the amount or value of any such gift, consideration or commission.

(3) Where the Contract has been determined under the last foregoing paragraph the powers given by Conditions No. 7 and 8 hereof shall apply as if there had been a failure in delivery.

(4) Any dispute, difference or question arising in respect of the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under sub-clause (2) hereof in respect of any loss resulting from such determination of the Contract) the right of the Purchasers to determine the Contract, or the amount or value of any such gift, consideration or commission shall be decided by the Purchasers whose decision shall be final and conclusive.

(5) Any question or dispute as to the commission of any offence under the present clause shall be settled by the Purchasers, in such manner and on such evidence or information as may be thought fit and sufficient and the decision shall be final and conclusive on the matter.

12. (a) Place of Manufacture. The Stores shall be made at the place named in the Tender, or in such other place as may be approved by the Director General, India Store Department.

(b) **Transfer and Sub-letting.** The Contractor shall not give, bargain, sell, assign, sub-let (except as is customary in the trade), or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous consent in writing of the Director General, India Store Department.

13. **Rejection of Acceptance of Tender.** The Purchaser may reject any Tender without assigning a reason and may or may not accept the lowest or any Tender.

14. **Exercising Authority.** All acts authorised or required to be done under or in consequence of these conditions by the Purchasers may be exercised by the High Commissioner.

15. **Marking of Packages.** The Tender and acceptance shall be deemed to be a separate contract in respect of each of the purchasers, and any amount specified in the Tender or the Schedule as being an aggregate amount shall be apportioned in respect of each of the Purchasers in proportion to the amount of the Stores to be purchased by each of them. If the High Commissioner so requires the Stores or packages in which they are contained shall be marked so as to distinguish the Stores supplied in respect of each purchaser.

16. **Warranty.** The Contractor shall warrant that everything to be furnished hereunder shall be free from all defects and faults in material, workmanship, and manufacture, and shall be of the highest grade and consistent with the established and generally accepted standards for material of the type ordered, and in full conformity with the specifications, drawing, or samples, if any, and shall if operable, operate properly. This warranty shall survive inspection of, payment for, and acceptance of the goods, but shall expire (except in respect of complaints notified to the Contractor prior to such date) fifteen months after their delivery or twelve months after their arrival at ultimate destination in India, whichever shall be sooner.

17. **Break.** (1) The Purchaser shall, in addition to his power under any other of these conditions, have power to determine the Contract at any time by giving three months' (or such shorter period as may be mutually agreed) notice in writing to the Contractor of the Purchaser's desire to do so and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination but subject to the operation of the following provisions of this Condition.

(2) In the event of such notice being given the Purchaser shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within the period exercise such of the following powers as he considers expedient:—

- (a) To direct the Contractor, where production has not been commenced, to refrain from commencing production.**
- (b) To direct the Contractor to complete in accordance with the Contract all or any of the Articles, parts of such Articles or components in course of manufacture at the expiration of the notice and to deliver the same at such time or times as may be mutually agreed on, or, in default of agreement, at the time or times provided by the Contract. All Articles delivered by the Contractor in accordance with such directions and accepted shall be paid at a fair and reasonable price.**
- (c) To direct that the Contractor shall as soon as may be reasonably practicable after receipt of such notice**
 - (i) take such steps as will ensure that the production rate of the articles and parts thereof is reduced as rapidly as possible.**
 - (ii) as far as possible consistent with sub-paragraph (1) of this paragraph concentrate work on the completion of parts already in a partly manufactured state.**
 - (iii) determine on the best possible terms such sub-contracts and orders for materials and parts bought out in a partly manufactured or wholly manufactured state as have not been completed, observing in this connection any directions given under paragraph (b) and sub-paragraphs (i) and (ii) of this paragraph as far as may be possible.**

(3) In the event of such notice being given provided the Contractor has reasonably performed all the provisions of the Contract binding upon him to the date of the notice.

- (a) the Purchaser shall take over from the Contractor at a fair and reasonable price all unused and undamaged materials, bought-out components and articles in course of manufacture in the possession of the contractor at the expiration of the notice and properly provided by or supplied to the Contractor for the performance of the Contract except such materials, bought-out compo-**

nents and articles in course of manufacture, as the Contractor shall, with the concurrence of the Purchaser, elect to retain.

(b) the Contractor shall prepare and deliver to the Director General, India Store Department within an agreed period or in default of agreement within such period as the Director General, India Store Department, may specify, a list of all such unused and undamaged materials, bought-out components and articles in course of manufacture liable to be taken over by or previously belonging to the Purchaser and shall deliver such materials and things in accordance with the Direction of the Director General, India Store Department, who shall pay to the Contractor fair and reasonable handling and delivery charges incurred in complying with such directions.

(c) the Purchaser shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract:

Provided that in the event of the Contractor not having observed any direction given to him under sub-clause (2) of this Condition the Purchaser shall not under this sub-clause pay any sums in excess of those which the Purchaser would have paid had the Contractor observed that direction.

(4) If in any particular case hardship to the Contractor should arise from the operation of this Condition it shall be open to the Contractor to refer the circumstances to the Director General, India Store Department who, on being satisfied that such hardship exists shall make allowance, if any, as in his opinion is reasonable, and the decision of the Director General, India Store Department, on any matter or thing arising out of this sub-clause shall be final and conclusive.

(5) The Purchaser shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total price of the Articles payable under the Contract.

(6) The Contractor shall in any sub-contract or order the value of which is £2,500 or over made or placed by him with any one sub-contractor or supplier in connection with or for the purpose of the Contract take power to determine such sub-contract or order in the event of the determination of the Contract by the Purchaser under this Condition upon the terms of sub-clauses (1) to (5) of this Condition save only that:—

- (a) the name of the Contractor shall be substituted for the Purchaser throughout except in sub-clause (3) paragraph (a) where it last occurs and in sub-clause (4) and
- (b) the period of the notice of determination shall be three months (or such shorter period as may be mutually agreed upon).

18. **Trainees.** The Contractor shall, in special cases, if required by the Director General, India Store Department, provide facilities for the practical training of Trainees from India and for their active employment on the manufacturing processes throughout the manufacturing period of the contract.

K. B. RAO,
Director General,
India Store Department.

ANNEXURE II

THE GOVERNMENT OF INDIA

CONDITIONS OF CONTRACT OF INDIA SUPPLY MISSION

1. **Packing.** Unless otherwise specified in the contract, all items ordered are to be processed and packed suitably for export to India.

2. **Packing Lists.** You shall insert in each case a packing list, fully itemized, to show case number, contents, gross and net weight, and cubic measurement. 9 copies of each packing list shall be supplied to us, as provided in paragraph 5 hereof.

3. **Marking.** Each case shall have shipping marks as specified by us stencilled on two opposite sides and top thereof. In addition, you shall include in the markings gross and net weight and cubic measurements.

The marks shall also be shown on invoices, packing lists, and on Railroad Bill of Lading, Express Receipt or Mailing Certificate exactly as they appear on the cases.

4. **Invoices.** Invoices shall be prepared on the 12 copies of Form A115 Rev. which we provide. Copies 1 to 11 inclusive, shall be forwarded to us as provided in paragraph 5. The 12th copy is for your use.

5. **Advice of readiness for shipment.** When material is ready for shipment, invoice 1 to 11, inclusive, together with nine copies of each packing list, should be sent to our office at 2536 Massachusetts Avenue, N.W., Washington, D.C. The invoices should be clearly endorsed "MATERIAL HELD BY US AWAITING SHIPPING INSTRUCTIONS".

6. **Advice of shipment.** When shipment has left your factory following receipt of our shipping instructions, you shall submit promptly to us as EVIDENCE OF SHIPMENT truck or rail bill of lading on freight shipment, express receipt on express shipment, or certificate of mailing on parcel post shipments.

7. **Payment.** Unless otherwise specified in the contract payment shall be made within 30 days after receipt of Certificate of Inspection or evidence of compliance with our inspection requirements and the documents in paragraphs 5 and 6 hereof.

8. **Prices.** You warrant that the prices being charged us are no higher, nor the terms, taken as a whole, less favourable, than in respect of your current sales for export.

In the event that prior to its delivery, the contract price of any of the material is in excess of that permitted by U.S. Law or Governmental Regulation, you shall read just the price to conform thereto.

9. **Delayed Deliveries.** Subject to the operation of "Force Majeure" time is of the essence of the contract. For the purpose of this contract, the term "Force Majeure" is defined as: Acts of God, War hostilities, acts of the public enemy, civil commotions, sabotage, acts of Government (including, but not restricted to, any preference, priority, allocation or limitation order and any export or import control), fires, floods, explosions, or other catastrophes, accidents, epidemics, quarantine restrictions, strikes or other labour troubles, embargoes or other transportation delays and delays incurred by your subcontractors or suppliers due to such causes. Claims for extensions of time on account of "Force Majeure" shall be granted subject only to the prompt notification to us of the particulars thereof and the supply to us, if required, of reasonable supporting evidence. Any waiver of time in respect of partial instalments shall not be deemed to be a waiver of time in respect of remaining deliveries.

10. **Progress Reports.** You agree to supply us on request with reports as to the progress of production. Any delay or anticipated delay shall be reported at once, together with the full reasons therefor.

11. **Patents.** You warrant that all material furnished hereunder is and shall be free and clear of infringement of any United States patent, copyright or trademark.

12. **Warranty as to Quality.** You warrant that everything to be furnished hereunder shall be free from all defects and faults in material, workmanship, and manufacture, and shall be of the highest grade and consistent with the established and generally accepted standards for material of the type ordered, and in full conformity with the specifications, drawings, or samples, if any, and shall if operable operate properly. This warranty shall survive inspection of, payment for, and acceptance of the goods, but shall expire (except in respect of complaints notified to you prior to such date) fifteen months after their delivery or twelve months after their arrival at ultimate destination in India, whichever shall be sooner.

13. **Gifts and Rewards.** Any Commission, gift, reward or advantage, given, promised or offered by or on behalf of the seller in relation to the obtaining of this contract or its administration by purchaser, shall, in addition to the criminal liability which may arise, subject the seller to cancellation of this and all other contracts with the seller (at the option of the purchaser) and further subject the seller to payment of: (1) Any loss or damage suffered by the purchaser in connection with the repurchase elsewhere of the cancelled material and (2) all other loss and damage suffered by the seller generally and arising out of the cancellation of this and other contracts.

14. **Inspection.** At all reasonable times during production and prior to shipment of the material you shall afford and secure for our representatives every reasonable access and facility at your plant and at your sub-contractors plant for its inspection and the making of usual tests. You shall advise us in writing at least ten days prior to the time when any material is ready for final inspection. Our representatives shall then make the inspection, and subject to the material being in all respects as specified, and being of sound quality and workmanship, our representatives shall sign or countersign a Certificate of Inspection.

15. **Trainees.** Should we so require it, you will provide facilities for trainees from India to have access to your plant to observe the manufacturing processes throughout the manufacturing period of the contract.

16. **Changes in Specifications.** Should we require any changes in specifications, you shall use your best endeavours to comply with our wishes, subject to fair adjustment of prices and delivery schedule, where appropriate.

17. **Risk of Loss and Damage.** All risks of loss or damage to or arising from the material (including material supplied by us) shall be upon you until the material is delivered in accordance with the provisions of the contract.

18. **Assignment.** You agree not to assign, sublet or delegate this contract or any part thereof without our written consent, which consent shall not be unreasonably withheld, but you may, without our consent, purchase such parts, accessories, or associated equipment as you do not normally manufacture.

19. **Termination of Contract.** If at any time during the term of this contract, the plans of the Government of India change for any reason, we shall have the right to terminate this contract by notice to you by registered letter. In respect of such of the material that is complete and ready for shipment within thirty days after such notice, we agree to accept delivery thereof at the contract price and terms.

In the case of remainder of the undelivered material, we may elect (a) to have any part thereof completed and take the delivery thereof at the contract price and (b) to cancel the residue (if any) and pay you a pro-rated amount of the contract price based upon the state of completion to be certified by you. You shall deliver all such material in process of manufacture to us and shall return to us any funds remaining to our credit. No payment shall be made by us for any material not yet in process of manufacture on the date notice of cancellation is received.

20. **Confidential.** If so requested by us in writing, you agree to keep confidential all matters concerning this contract, and to comply with any reasonable security requirements. All drawings and specifications supplied by us and all copies thereof shall be returned to us when their use is terminated, if we shall so request. In no event you shall permit publicity concerning this contract without our prior consent.

21. **Waiver.** No waiver of any breach of any condition herein contained shall operate as a waiver of the condition itself or of any subsequent breach thereof.

22. **Variations.** This contract shall not be capable of being varied except by writing, signed by both parties, and we shall not, in the absence of our specific written acceptance, be bound by any provision in your quotations, offers, form of acknowledgment of contract, invoices, packing lists, etc., which purport to impose conditions at variance with or supplemental to this contract.

23. **Fair Labour Standards Act.** You certify that you comply with the "Fair Labour Standards Act of 1938", and that you will comply with the provisions thereof with respect to the material to be supplied under this contract.

24. **Construction and Performance.** The construction and performance of the contract shall be governed by the laws of the State of New York.

ANNEXURE III

Statement showing the number of contracts placed by the India Store Department, London and the other authorities against which inspection was carried out by the Mission during the last seven years and cases where faulty inspection was brought to their notice

Year	ISD's con- tracts	Remitted contracts	Total value in Rs. (in crores)
1948-49	(not available)	734	31.30
1949-50	6,559	426	27.68
1950-51	6,395	438	48.32
1951-52	7,303	565	28.44
1952-53	7,300	874	47.47
1953-54	6,551	1,130	42.17
1954-55	5,609	1,969	77.95
	39,717	6,136	303.33

Store	Contract Value	Approximate loss
	Rs.	Rs.
Blankets	2,99,531	1,34,599
Asbestos Sheets	32,00,000	8,32,490
Swedish Boards	11,84,000	2,01,374
	46,83,531	11,68,463

APPENDIX X N.R. (i)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

Para 20—Other cases of losses—Northern Railway (1)—Overpayments made to casual labour engaged on the C. P. C. scales.

- (i) *Short notes on the various cases of losses and the action taken in the matter indicating the latest position may be forwarded. Remedial measures taken to avoid irregularities of such nature may also be mentioned.*

According to the orders of the Railway Board issued in January 1949, casual labour chargeable to contingencies or engaged for specific works the duration of which was not likely to exceed 6 months was required to be engaged at current market rates. On two Divisions on the Northern Railway, however, punkha coolies and other casual labour engaged for short periods during 1949 were allowed the minimum of the prescribed scales of pay plus the usual allowances instead of current market rates.

On receipt of an advice from the Chief Administrative Officer, Ex-E.P. Railway, necessary instructions laying down that in future casual labour should be engaged on the market rates only were issued in Delhi as well as Ferozpur Divisions in November 1949.

The total amount overpaid to casual labour in the three cases amounted to Rs. 1,47,141, of which a sum of Rs. 35,816 (Ferozpur Divn.) plus Rs. 50,325 (Delhi Division) i.e. Rs. 86,141 has already been written off by the G.M. under his own powers. In order to fix individual responsibility for the loss, the Board asked the General Manager, Northern Railway in July 1956 to appoint a Committee of two administrative officers, one of whom should be an accounts officer, to investigate this case fully and fix responsibility. The report of this Committee is still awaited. Sanction to write off Rs. 61,000, the loss involved in case of Ambala Sub-Division will be considered after responsibility is fixed. Further developments regarding the write off of the balance of Rs. 61,000 and the disciplinary aspect of the case will, if required by the P.A.C., be intimated later.

This has been seen by Audit.

New Delhi, dated 18th October, 1957.

Director, Finance (Expenditure),
Railway Board.

APPENDIX X N.R. (ii)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

SHORT NOTE

Para 20 (ii)—Northern Railway—Payment of local allowance to Class IV staff and certain categories of Class III staff on Lhaksar-Dehra Dun Section.

Since 1930, an allowance of Rs. 2 per month was paid to Class IV staff employed at stations Lhaksar (exclusive) and Dehra Dun (inclusive) on account of expensiveness of living and unhealthy climate under certain old orders of the E.I. Railway. On similar grounds, the old O. & R. Railway had sanctioned since 1919 a local allowance to certain lower-paid Class III staff serving on the Hardwar-Dehra Dun Section (excluding Dehra Dun). In the Audit para it is stated that in November 1947, while introducing the Central Pay Commission's scale of pay, the Railway Board ordered "that these allowances should be discontinued". The position is that in November 1947, while introducing the Central Pay Commission's scales of pay, the Railway Board ordered *vide* para 18 of their letter No. E 47 CPC-85 dated 31-10-47/1-11-47 that allowances mentioned in Annexure VI should continue and those in Annexure VII should be discontinued, adding "Railway Administrations are requested to bring to the Board's notice any particular allowance now existing which has not been included in either Annexure VI or VII, so that instructions may be issued regarding its continuance or otherwise. In the meantime, such allowances should be discontinued from the date of issue of this letter." This particular allowance fell under the last category, the position regarding which was required to be reported to the Board, to enable them to issue instructions as to their continuance or otherwise.

In consideration of the audit criticism, the Board looked into the question of overpayment in this case, with due regard to the orders contained in para 18 of their letter of 1/11/47, as referred to above, and came to the conclusion that the payment of the allowance was irregular. Taking into account the circumstances of the case, they sanctioned the write-off of the amount involved, but ordered an inquiry to be made so as to fix the responsibility for the overpayment.

As a result of the inquiry held by the General Manager, Northern Railway, the Board have come to the conclusion that the Divisional Personnel Officer and the Divisional Accounts Officer, Moradabad, were responsible for this overpayment. The Divisional Personnel Officer has since retired from permanent Railway service and is now on temporary re-employment. In his case, it is proposed in consultation with U.P.S.C. and provided it agrees, to withhold a portion of the special contribution to provident fund otherwise payable to him and action in regard to this is in progress. As for the Divisional Accounts Officer, the Board have decided that their displeasure should be communicated to him and this is being done. In regard to non-gazetted staff, the General Manager is being advised to finalise disciplinary action.

The case does not present any special features calling for any fresh remedial action beyond emphasizing that allowances etc. should only be paid as sanctioned by the competent authority.

This has been seen by Audit.

Dated the 4th November, 1957.

*Director, Finance (Expenditure),
Railway Board.*

APPENDIX X N.R. (iv)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

SHORT NOTE

Para 20 (iv)—Northern Railway—Defective specifications for wheel-sets for Locomotives for the Kalka-Simla Section

Short notes on the various cases of losses and the action taken in the matter indicating the latest position may be forwarded. Remedial measures taken to avoid irregularities of such nature may also be mentioned.

The locomotives in question are being utilised on shunting on the 2'-6" gauge of the Northern Railway and there will, therefore, be no financial loss sustained by the Railway on account of the present unsuitability of the tyres for the Kalka-Simla section. New tyres to suit this section have been ordered for these locos so that the locos may be made fit for the Kalka-Simla section. The tyres have been shipped from Germany and are expected to be received in India any day now. The 40 released tyres will be in stock for a period but there will be no significant loss due to excess of spares, as these tyres will replace those on identical locos utilised on the Matheran Light Railway where the wear on tyres is rapid due to the sharp curves. Even if the tyres were excess to store requirements for a couple* of years, the loss will only be the interest on their capital cost of Rs. 10,000 - which comes to hardly Rs. 400/- per year.

As regards responsibility for wrong specification, it is stated that the Kalka-Simla Section of the Narrow Gauge (2'-6") has been following a set of standard dimensions which are different from those published in the "Schedule of Maximum and Minimum and Recommended Dimensions 1922" as applicable to 2'-6" gauge. This book neither in the 1922 edition nor in the re-print of 1950 indicates that the dimensions given in the book are not applicable to Kalka-

*Note: For a 'Couple of years' substitute 'about 20 years at the present rate of consumption' as per Railway Board's subsequent official memorandum No. 56-B/C, 2006 dated the 2nd May 1958.

Simla Section. On the other hand, the 1922 original as well as the 1950 edition contain the following special note:—

“The maximum and minimum dimensions given in this schedule are to be observed on all 2 ft. 6 in. gauge railways in India. If, for any reason, it is proposed to execute any work or to procure Bridge Girders, Station Machinery, Rolling Stock or other railway material which will infringe the dimensions or loads given or which will interfere with the elimination of infringements already in existence the sanction of the Railway Board must be obtained through the Government Inspector of the Railway concerned before such work is commenced or order issued.”

In these circumstances, the Central Standards Office which drew up the specification based on the book cannot be held responsible for drawing up “wrong specifications”. In view of the lapse of time it seems hardly worthwhile to locate responsibility for the omission in the Book of Standard Dimensions as the staff concerned, who should have incorporated the exception to standard dimensions in the book, when the special dimensions for the Kalka-Simla section were sanctioned, must long ago have retired.

In order to obviate the recurrence of a similar situation in future, the Board have decided in March 1956 that specifications for all non-standard locomotives and boilers should be prepared by the Railways concerned and sent to the Central Standards Office at Chittaranjan for vetting.

This has been seen by Audit.

*Dated the 6th December, 1957. Director, Finance (Expenditure),
Railway Board.*

APPENDIX X W.R.(ii)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

Para 20—Western Railway (ii)—Incorrect levy of wharfage charges at Carnac Bridge.

Short notes on the various cases of losses and the action taken in the matter indicating the latest position may be forwarded. Remedial measures taken to avoid irregularities of such nature may also be mentioned.

In order to reduce the large accumulations of goods and parcel consignments on railway premises at the large stations, the Railway Board, in 1948 suggested to the Railways the enhancement of the scale of wharfage charges, on the reversed telescope basis i.e., the rate of wharfage increasing as the time increases. They desired that the position at all big stations should be reviewed from time to time and the rate of wharfage enhanced where the state of the traffic called for this.

2. The ex-B.B. & C.I. Railway accordingly reviewed the position at all important goods booking stations and enhanced the rate of wharfage w.e.f. 1st March, 1950, vide their Local Rate Advice No. 2 (Goods) of 1950 (relevant extract pertaining to rates attached at Annexure 'A').

3. The manner in which this notification has been set in print caused the confusion.

4. The rates shown in the last column are to be applicable for both inward as well as outward consignments at the respective stations shown against the two brackets. The rates chargeable at the remaining unimportant stations or goods depots are those given at the end of that column. The fact that the second bracket in the last column stands just opposite the entry "II Inward consignments" etc. in the first column proved to be misleading. Had only the matter in the first column "II Inward consignments" etc. been set just after item I in that column, without the intervening space that now appears, the intention would have been clearer.

5. This position was specially explained to the Chairman and Members of the P.A.C. during local examination of the Members of the Railway Board on 30th August 1957 when the original Rate circular was also shown.

6. The figure of Rs. 2,19,110 shown against this item represents the difference between the rates charged and the rates that should have been charged with effect from 1/3/50 but for the mistake. But the assumption is not quite tenable that this amount represents a loss and that the consignees would have allowed their goods to remain in the railway premises for the same period despite the levy of the higher rates of wharfage. To so assume would be to ignore the basic fact that the rates of wharfage charges were raised with the sole object of discouraging the business community from using the railway premises as temporary warehouses. The higher the rate of wharfage charges, the more expensive it would be for the traders to leave their consignments at the railway premises beyond the free time allowed, and had the wharfage charges been levied at the increased rate from 1/3/50, it is very likely that consignments would have been removed from the station premises earlier thereby reducing the amount of wharfage charges that could be recovered at the higher rate.

7. Responsibility was not fixed on the staff immediately after the detection of the omission in 1950, because the administration considered that the mistake on the part of the Goods Superintendent, Carnac Bridge was due to a genuine misunderstanding of Local Rate Advice No. 2 (Goods) 1950. The then Superintendent Rates, therefore, ordered that the inward revised rates should be held to have been introduced at a later date and no disciplinary action against the staff was considered necessary.

The question of individual responsibility has, however, been reopened and the explanations of the Railway servants concerned are now under Board's consideration

This note has been shown to Audit who have observed as under:—

'A' | "The Local Rate Advice No. 2 of 1950 was issued in February 1950 to have effect from 1/3/50. The actual error, however, occurred when the Goods Superintendent, Carnac Bridge issued a Depot Order on 6/3/50 indicating the revised basis for free time for inward goods at Carnac Bridge and in the same Depot Order rates for wharfage charges, which were lower than those mentioned in the Local Rate Advice referred to above were also mention-

ed to be levied in respect of inward goods. A copy of this Depot Order was sent to the Traffic Superintendent for obtaining concurrence to the revised basis of free time. The incorrect lower rates for the wharfage charges mentioned in the Depot Order were not detected by the Traffic Superintendent at the time of giving concurrence to the revised free time. The lower rates of wharfage charges mentioned in the Depot Order were consequently adopted by the staff for recovery of wharfage charges for inward goods received in the Depot. Even if the confusion was caused by the manner of printing the Local Rate Advice, the anomaly arising from the application of lower rates of wharfage charges for the most important station (C.C.B.) should have been clear to the Goods Superintendent while the incorrect rates were notified in the Depot Order.

While it is not disputed that if the increased rates had been applied, the consignments might have been removed earlier, and wharfage charges would have been reduced, the fact is that the revised rates were not applied and the goods remained warehoused for some time. The wharfage charges have, therefore, necessarily to be calculated for the entire period, the goods remained with the railway as it is impracticable to compute the amount of wharfage charges for the period for which the goods would have remained in the shed if the increased rates had been enforced from the inception. For the same reasons it appears the Ministry have also adopted the figure of Rs. 2,19,110 for exhibition in Annexure C—Cases of remission and abandonment of claims to revenue in the detailed Appropriation Accounts, Part II for 1955-56."

As regards Audit observations at 'A' above it is stated that the reference made by the Goods Superintendent to the Traffic Superintendent being in connection with the length of the free time to be allowed, the incorrect rate of wharfage charges mentioned in the Depot Order escaped notice in the office of the Chief Traffic Manager. However, the staff liability that is being renewed includes this aspect as well.

Further comments are not made on para 2 of the observations since Audit have themselves conceded that if the increased rates had

been applied the consignments might have been removed earlier, and the wharfage charges to be collected would have been reduced.

Director, Finance (Expenditure),
Railway Board.

Dated 19th October, 1957.

ANNEXURE 'A'

Extract from Local Rate Advice No. 2 (Goods) of 1950

VI. Revision of Wharfage charges—(R 1945/01/III)—With effect from 1st March, 1950, the existing rules and conditions for the levy of wharfage on goods of all descriptions (except Boats, Carriages, Motor cars, Motor boats, Howdahs or Palanquins and Horned cattle) will be revised as under :—

Circumstances	Time allowed free	Stations	Rate per maund or part of a maund in excess of free time
I. Outward consignment.—			
On goods for despatch waiting to be consigned, i. e., consignments brought to stations but Consignment Notes not received.	Closing time of the day on which goods are brought to the stations.	Bombay (Carnac Bridge)	Two annas for the first day or part of a day.
		Bombay (Central)	
		Bombay (Dadar)	
		Bombay (Mahim)	
		Bandra M. Yard	
	Borivli		
	Ahmedabad		
		Asarva	Four annas per day or part of a day for the subsequent period.
		Kankaria	
		Delhi Serai	
		Rohilla	
		Delhi Queens Road.	Four annas per day or part of a day for the subsequent period.
		Delhi Lahori Gate.	

Circumstances	Time allowed free	Stations	Rate per maund or part of a maund in excess of free time
II. Inward consignments.—			
A. On goods available for delivery before 12 noon.	One day including the day of arrival.	Bulsar. Surat. Broach. Baroda M. Yard.	One anna per day or part of a day for the first two days.
B. On goods available for delivery after 12 noon.	Two days including the day of arrival.	Pratapnagar. Anand. Nadiad. Godhra. Ratlam. Ujjain. Subarmati. Surendranagar. Mehsana. Ajmer. Indore. Mhow. Jaipur. Hatrass City. Farukhabad. Alwar. Rewari. Hissar.	
		All other stations or Goods Depots.	One anna per day or part of a day for the first three days. Two annas per day or part of a day for the subsequent period.

APPENDIX X W.R.(iii)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

**Para 20—Western RLY.(iii)—Loss due to letting out of a cycle stand
at a station**

Short notes on the various cases of losses and the action taken in the matter indicating the latest position may be forwarded. Remedial measures taken to avoid irregularities of such nature may also be mentioned.

The explanations of the officers concerned in the acceptance of the rate of Rs. 144/- per annum with effect from 1/8/52 have been received and are under consideration with a view to deciding on the disciplinary action to be taken in this case. Further developments in the matter regarding disciplinary action will be intimated to the Lok Sabha Sectt.

This has been seen by Audit.

*Director, Finance (Expenditure),
Railway Board.*

Dated the 17th October, 1957.

APPENDIX X W.B.(iv)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

Short Note—Para 20 Western Railway (IV) Fixation of minimum rates of wages payable to workers under the Minimum Wages Act 1948—Western Railway.

The Minimum Wages Act 1948 applies to staff employed on Railways in the following forms of employment:—

- (a) Employment on road construction or in building operations.
- (b) Employment in stone breaking or stone crushing.

The appropriate Government for fixing minimum wages in respect of the central sphere is the Central Government in the Ministry of Labour. There was no time for the appointment of a Committee for fixation of minimum wages as envisaged in the Act and, therefore, on 31st January 1951, the Ministry of Labour addressed the Ministries of the Government of India to the effect that proposals for the fixation of minimum wages may be sent by 15th February, 1951 since the fixation was to be done by 15th March, 1951. The Railway Ministry's proposals could not be communicated by the 15th of February 1951; also there was a doubt as to whether it was not adequate if the Railways observed the minimum wages notified by the respective States in the two scheduled employments. On 22nd March, 1951, the Ministry of Labour clarified that the provisions of the Act would be fulfilled only after the proposals were notified to the interested public before final fixation. They added that while there would be no objection to adopting State rates, these would have to be first notified by the Central Government as proposals and after examining the objections from the public they would have to be finalised. The Ministry of Labour also extended the date for furnishing proposals up to 30th June 1951. The Railways were accordingly asked to furnish the rates fixed by the State Governments. On receipt of information, the Ministry of Labour was informed on 9th November 1951 of the rates fixed by the States of Madhya Pradesh, Bihar, East Punjab and Delhi and was told that other States had not yet fixed minimum wages. On 14th November 1951, the Ministry of Labour stated that informa-

tion must be given in respect of each Railway Administration and not Statewise and that proposals about Railways not covered by the Railway Ministry's previous reply must also be given, adding that the proposals could be revised at the time of finalization in the light of the rates which the State Governments may fix. A further communication was addressed to the Ministry of Labour on 22nd November 1951, stating that where State Governments had not already fixed the minimum wages the only course open for this Ministry was to obtain proposals from the affected Railways based on the living and labour conditions of the localities served by the Railways. The Ministry of Labour in their reply dated 29th November, 1951, stated that irrespective of whether State Governments had fixed minimum wages or not it was obligatory for the Central Government to fulfil the provisions of the Act within the prescribed date, and the Ministry of Railways were requested to furnish proposals by 10th December, 1951, so that wages could be finally notified before 31st March 1952. On 8th December, 1951, Railway Administrations were addressed to furnish their proposals immediately giving due consideration to the labour and living conditions of the locality served by the Railway and the rates fixed by the adjoining State Governments for the concerned categories.

In the very short time available certain rates were furnished by the Western Railway on 25th January, 1952 in respect of skilled, semi-skilled and unskilled labour in the scheduled employments referred to in the opening paragraph. The rates as furnished were forwarded to the Ministry of Labour on 29th January, 1952. The Ministry of Labour, in turn, published these rates on 30th January, 1952 in a Gazette Notification inviting comments from all concerned. Finally, the rates were notified in the Ministry of Labour Notification No. S.R.O. 593 dated 31st March, 1952 and these notified rates became statutorily enforceable.

The States through which the Western Railway passes except Bombay had not notified minimum wages and the rates proposed by that Railway were based on the minimum of the CPC scales of pay and dearness allowance, without taking into account the local conditions and market rates and were consequently on the high side. It is, however, considered that the officer who dealt with the case in the Railway Board's office is primarily responsible in this matter. First of all, since it had been agreed that minimum wages notified by the State Governments could be re-notified by the Central Government after following the due procedure, the State Governments should have been addressed directly by the Ministry of Railways for obtaining their rates. In that case the rates notified for areas of Western Railway in the Bombay State would have been

the same as on Central Railway. Also, no action was taken in the Board's office when the preliminary Gazette Notification of 30th January, 1952 was received in the Board's office. The Ministry of Labour having issued this Notification inviting the comments of the interested parties, the Ministry of Railways should have scrutinised the provisional Notification. The responsibility for both these omissions is that of the Deputy Director, Establishment and his Assistants. The former has been informed of the displeasure of the Railway Board in his handling of this case. The latter two have been warned and informed that the Board consider that they should have been more careful in dealing with this matter.

On the Western Railway, the proposals were dealt with by a Headquarter's Personnel Officer, who put up the Board's directive for fixing the rates to the Chief Engineer and the Additional Chief Engineer. These two worked out the rates that should be fixed and advised the Dy. General Manager (P), who in turn, communicated the same to the Railway Board. The Headquarter's Personnel Officer committed an error in furnishing wrong information that the Bombay Government had not fixed minimum wages and the Chief Engineer and the Additional Chief Engineer in working out the minimum wages took into consideration only the minimum of the CPC scales of pay plus dearness allowance. The Deputy General Manager (P) also failed to examine the proposals to see whether the two Chief Engineers had taken into account the labour and living conditions of the locality. The Headquarter's Personnel Officer has been warned for his error. As for the other three officers the Chief Engineer had retired and been finally settled up much before the Audit para was received in 1956 and the two other officers, viz., the Additional Chief Engineer and the Deputy General Manager (P) died in harness in 1954 and 1957. It was, consequently not possible for the Board to call for explanations, and pursue this matter any further.

Remedial measures were initiated in 1952, as soon as the mistake was detected by the Western Railway. The Ministry of Labour were approached to have the rates revised to the level obtaining in the respective States as notified by the State Governments. But the procedure for the revision of minimum wages as laid down in the Minimum Wages Act requires that the Minimum Wages Advisory Committee should be consulted. From 1954, onwards, six meetings of the Minimum Wages Advisory Committee have been held and the Committee have been supplied with a mass of information as desired by them. At one stage, they pended the consideration of the question until the principles for fixation of minimum wages had

been settled by the Committee for all Central Government undertakings. In the 5th meeting held in June, 1957 the representatives of the Railway Ministry pressed for a decision on the Western Railway case in view of the fact that the fixation of general principles was getting delayed on account of the various enquiries including the family budget enquiries that were being conducted at the instance of the Committee. The Committee, however, called for some further information on the Western Railway case to be made available at the 6th meeting. The 6th meeting was held at the end of October, 1957, when it was also possible for the Committee to finalise the general principles and to take a decision on the revised minimum wages that should be fixed for all Central Government Departments in the two scheduled employments. It has been accepted by the Committee that their decision regarding minimum wages would apply to the Western Railway. This will have the effect of reducing the rates now in force. The matter has, however, yet to be placed before the Minimum Wages Advisory Board and thereafter considered by the Government before notifying the revised minimum wages. This will be pursued.

This has been seen by Audit.

*Director, Finance (Expenditure),
Railway Board.*

Dated the 21st November, 1957.

APPENDIX X W.R.(v)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

Para 20—Other cases of losses—(v) fraudulent encashment of refund orders (overcharge sheets) on the Western Railway.

The procedure for refund of over-charges on the Western Railway was that the overcharged sheet both in case of local and foreign traffic was prepared on a combined form. This form differed consigned by a gazetted officer. Below the endorsement was a column traffic provided in the State Railway Code for Traffic Department in that this form served as overcharge sheet as well as the pay order. When this form was received from the Accounts office duly certified for the amount refundable, it was endorsed for payment on the reverse as provided on the form instead of issuing a separate pay order. This endorsement was an order to the Station Master to pay the amount specified therein to the party concerned and was signed by a gazetted officer. Below the endorsement was a column provided to be signed by the payee and the payment was required to be attested by a witness.

2. In the case of claimants not residing at the stations where the freight was initially paid, or at any station situated on the Western Railway, the refund order was endorsed to Goods Supdt., Carnac Bridge, in favour of Chief Commercial Supdt., as payee and the officer who signed the refund order (for CCS) also signed as payee in the receipt column. The refund order was then passed on to a Claims Inspector posted at Carnac Bridge who signed as witness to payee's signatures and also in the payment book and received payment which was handed over to the refund section for remitting it by money order. A system of clerks being sent personally with the refund order, to obtain the cash from Carnac Bridge station also crept in. The facts of the present case of fraud are given in detail in the Audit Para itself and have been accepted by the Railway Administration.

3. The departmental enquiry Committee which investigated this case (apart from its other findings regarding responsibility etc.) had recommended that as the procedure which existed at that time was

liable to lead to fraud it should be replaced by the Code procedure. According to this procedure the over-sheet duly certified by Accounts Branch (who would maintain a separate register containing necessary particulars and the amount of the over-charge sheet passed for keeping a watch over outstanding claims) should be returned to the Traffic Department for arranging for the issue of necessary pay order on a separate form in favour of the person entitled to the refund. The payment is arranged by the Chief Commercial Supdt. either through the Accounts office in which case the Pay Order is sent to the Financial Adviser and Chief Accounts Officer for check and payment or by means of a Station Pay Order on the station (which collected the freight) for payment from Station Earnings. When the payment is made by a Pay Order on a Station, the Station Pay Order along with the certified over-charge sheet is sent direct to the station who makes the payment after obtaining payee's acknowledgement thereon. The Pay Order is then sent by the station to the cash office with other remittances of the day. The Chief Commercial Supdt. is required to send a list of pay orders issued to the Accounts Office. These lists are used to verify the genuineness of the Pay Orders cashed from stations' earnings. This recommendation of the Committee has been implemented by the Railway and the procedure of withdrawing money from Carnac Bridge station for payment by Money order has been discontinued from November, 1954.

4. As regards the disciplinary action taken against the staff, the position is as follows:—

- (i) Mr. Felix Soares, the record sorter of the Commercial branch who was caught red-handed encashing fraudulently some refund order, was prosecuted by the police under sections 420, 468 and 471 I. P. C. and was convicted on two counts and sentenced to three years R.I. on each count. He was also dismissed from Railway Service.
- (ii) The head cashier and the assistant cashier were suspected to be in collusion with the culprit. Despite instructions issued by the C. S. S. on 3.7.54 that the cashiers should not be settled up till the case was finally decided, the cashiers were allowed to retire on 13-7-54 and 1-4-55 and have been finally settled up in July, 1955. A joint enquiry into this lapse is being held and suitable action will be taken against those found responsible.
- (iii) Shri R. M. Desai, the Travelling Claims Inspector was found guilty of cashing over-charge sheets not complete or not correctly made out. Subsequently a committee

of 3 Junior Administrative Officers, after considering the facts of the case and hearing his defence, have exonerated him of the two principal charges of temporary mis-appropriation and fraud. In fact in none of these cases has non-remittance of the amounts to the claimants been established. Shri Desai was, however, held responsible for not ensuring that the proper procedure was followed in encashment of certain refund orders at Carnac Bridge and here again his lapse had no direct bearing on the fraud committed by Shri Soares. For this Shri Desai has been penalised by withholding 3 sets of passes upto 31-12-1957. with a warning.

- (iv) Responsibility is also being fixed and action taken against the Accounts staff who were responsible for not exercising the normal check in the course of which they should have detected that credit was being taken by the station against incorrect vouchers.

This has been seen by Audit.

New Delhi, dated the 21st October, 1957.

*Director, Finance (Expenditure),
Railway Board.*

APPENDIX X W.R.(vi)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

Para 20—Western Railway (vi)—Levy of intra-port charges on the ex-Saurashtra Railway

(i) Short notes on the various cases of losses and the action taken in the matter indicating the latest position may be forwarded. Remedial measures taken to avoid irregularities of such nature may also be mentioned.

For the haulage of goods from one godown to another in the port area done on the ex-Saurashtra Railway, intra-port charges at fixed rates used to be recovered. On the integration of the ex-Saurashtra Railway into one unit under the control of the Government of India, it was decided, in March, 1951 that the railway in the port area should be managed as a part of the Indian Government Railways. At that time, the Saurashtra Railway was levying charges for the intra-port movements which contained no element towards terminals. The standard terminal charge ordinarily applicable to intra-station movements is eight annas per ton of wagon capacity for each end. The Saurashtra Government, while it did not object in principle to an increase in intra-port charges to include terminals, pointed out that these ports having been developed by cheap local charges any significant and sudden increase would have disastrous consequences. In March 1951, representatives of the Ministry of Railways and of the Saurashtra Government, present at a meeting, agreed that the charges levied for movement of merchandise etc. within the ports should be enhanced not immediately, but progressively. Accordingly it was decided by the Rly. Board that the intra-port charges should be finally raised to a level where they will give a return equal to the standard terminal charges of 8 annas per ton of wagon capacity for each end plus a siding charge of Re. 1⁻ per wagon in both the loaded and empty directions and that the difference between the then existing intra-port charges and the proposed charge should be eliminated in five instalments, the first increase equivalent to 20% of the difference being applied immediately i.e. from 1|5'51, the second increase from 1|4'53, and further

increase thereafter at two yearly intervals. And the Railway Administration was advised accordingly.

2. After the integration of the Ex-Saurashtra Railway with the ex-BB & CI Rly. to form the Western Rly. with effect from 5|11|51, the commercial work of the Ex-Saurashtra Railway portion was being administered by the Chief Commercial Superintendent from the Headquarters office at Bombay and the Regional Traffic Superintendent, Gondal. An office note was recorded on 19|5|52 in the file of the Ex-Saurashtra Rly. explaining the setting up of a departmental committee to go into the question of the working of the ports in Saurashtra and in this note, it was mentioned that the question of increasing the intra-port charges had to be taken up as per Board's directive. This file, however, was transferred to the Regional Traffic Superintendent's Office Gondal as it contained matters other than rating, which were appropriately to be dealt with by the Regional Office and the matter was not pursued further. The fact that increase in the intra-port charges leviable from 1|5|51 according to Railway Board's orders had not been levied came to light only towards the end of April 1954 accidentally during some other investigation. At this stage the Western Railway promptly gave effect to the orders on 1|7|54 by combining the increase which should have been effected on 1|5|51 and 1|4|53, into one increase. The Traffic Manager of the ex-Saurashtra State Rly. who, had handled this file both in that capacity and as the first Regional Traffic Supdt. Gondal, Western Railway, had retired in February, 1953 i.e. long before the matter came to light in April 1954. His account was however, finally settled up in 1955. The circumstances under which no action could be taken against him before he was finally settled up are being investigated. Shri Trivedi had put up in September 1951 a note as Traffic Manager to the General Manager, ex-Saurashtra State Railway who apparently also took no action. The latter has been dismissed from service on another charge. The failure thus was of these two officers. The Regional Traffic Supdt., Gondal, who took over later could not be expected to know the contents of the earlier files of the ex-Saurashtra State Railway.

3. It was thus that not till July 1954 the Western Railway increased the intra-port charges combining the increases to be effected, in the first two instalments in one increase. Since the increases were made, the Railway Board have been receiving protests from the trade. The Rly. Board have, however, instructed the Rly Administration to go ahead in giving effect to the balance of instalments of increase in the rates, subject to the Railway satisfying themselves that they do not in any way contravene effective agreements, if any, with the parties. The Western Railway have given effect to the 4th instalment of increase with effect from 1st April 1957.

This has been seen by Audit who have observed as under:--

“According to the Memorandum of discussion of 1951 between the Government of Saurashtra and the Ministries of Finance, Transport and Railways, the rates for intra-port charges had to be increased progressively. The Ministry after due consideration of the above Memo, decided to increase the port charges to the level of standard terminal charges of Rs. 0-8-0 per ton of wagon capacity in 5 instalments in 8 years. Whether the increase should have been made by the Railway Administration in 10 years or 8 years, the first increase should have been made by the Railway Administration in May 1951, as directed by the Railway Board.”

Dated: 21st November, 1957. *Director, Finance (Expenditure)*
Railway Board.

APPENDIX X S.R. (I)

(Reference Para 45 of the Report)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

SHORT NOTE

Para 20 (i) Southern Railway.

Regarding overdrawal of rations at concessional rates on the Southern Railway

Short notes on the various cases of losses and the action taken in the matter indicating the latest position may be forwarded. Remedial measures taken to avoid irregularities of such nature may also be mentioned.

Consequent on the decision of the Ministry of Labour in May 1952 that the money equivalent of the concessional element in the case of supplies irregularly drawn by an employee from the Railway Grainshop, did not amount to an overpayment of wages and that its recovery was, therefore, not permissible under the payment of Wages Act, 1936, the Southern Railway did not make any recovery in respect of such cases arising after the 12th December 1952, and also suspended recoveries that were being made in earlier cases. However, reconsidering the matter in consultation with the Ministry of Law later, the Railway Board advised the Rly. Administration on 16th December 1953 that the earlier ruling was suspended and that such recoveries were not illegal. The Southern Railway then enforced the recoveries in cases detected after the 16th December 1953, but past cases were not reopened.

The stand taken by the Railway Administration was considered in detail in the Board's office and after protracted correspondence between the Railway Administration, the Railway Board and the Ministry of Law, a decision was taken in April 1957 that (i) the recoveries which were stopped from 12/12/52 cannot be waived and (ii) the cost of rations overdrawn in respect of cases which came to light between 12/12/52 and 15/12/53 cannot be waived and should also be recovered from the staff concerned.

Board's decision was communicated to the Railway Administration on 11/4/57 and they were directed by the Board that recovery

in all these cases should be started within a month of the instructions and reports submitted to the Railway Board. The Railway Administration have since taken steps to effect the recoveries.

The High Court of Rajasthan, on an appeal filed by the General Manager, Northern Railway against the decision of a lower court in September 1955, has, however, held that recovery on account of overdrawal of rations at concessional rates was not covered by the deductions permissible under the Payment of Wages Act.

As the existing orders issued to the Railways to effect recoveries from the wages of Railway employees on account of overdrawal of rations were based on the advice given by the Ministry of Law, that Ministry was requested to advise whether in view of the judgment given by the High Court of Rajasthan against the action taken by the Northern Railway Administration in accordance with the orders issued by this Ministry as referred to above, the earlier orders in the matter should be revised and uniformity brought in the matter on all the Railways. A reply from the Ministry of Law is still awaited.

If the Ministry of Law consider that the existing orders should be reversed, necessary action may have to be taken by this Ministry to stop the recoveries in this case also.*

This has been seen by Audit.

Dated 10th December, 1957.

Director, Finance (Expenditure)
Railway Board.

*The Ministry of Railways (Railway Board) have since intimated that in the light of the advice received from the Ministry of Law, instructions have been issued to the Railways to stop the recoveries on account of overdrawal of rations at concessional rates.

APPENDIX XI

(Reference Para 59 of the Report)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

MEMORANDUM

SUB: *Manufacture of Locomotives and Boilers by TELCO.*

The Public Accounts Committee in paragraphs 56—61 of their Thirteenth Report raised certain questions, which are summarised as follows in paragraph 74 of the Committee's Seventeenth Report:—

- (i) Taking over TELCO as a State undertaking;
- (ii) Adjustment, in the firm prices of locomotives, of the over-payments made for initial and double normal depreciation; and
- (iii) Appointing a team of technical experts by the Railway Board to go into the whole question of the costing system in force in TELCO, who should also investigate whether the subsidiary business like the manufacture of trucks etc. which is a commercial venture undertaken by TELCO, was not getting any benefit at the expense of the Railways.

Earlier, the Public Accounts Committee, in their Fifth Report (1952-53), had expressed concern over the payments made to TELCO even for the pre-price periods and had recommended *inter alia* that "Government should come to an early decision on the advisability of their taking over from TELCO the manufacture of boilers and locomotives and running it as a State Industry".

2. After the Committee's meeting with Railway Board in April, 1956, the position has been summed up as below, in Serial number

25 of the Main Conclusion /Recommendations of the 17th Report of the Committee on the Appropriation Accounts (Railways) 1953-54:—

Para No. of the Report	Conclusions/Recommendations.
------------------------------	------------------------------

74-75 (i) The Committee are unable to accept the view reiterated by the Railway Board that the payments made to TELCO on account of initial and double normal depreciation were strictly in accordance with the contract and that the effect of allowing larger amounts for depreciation in the development period would be that the quantum of depreciation to be allowed in the post-development period would be less than what it would have been had the depreciation been spread equally over the entire life of the assets. The Committee consider the Railway Board's statement as misleading for the reason that, though the allowance for the depreciation for the post-development period might be correspondingly less, the excess payments made in the development period could not be completely recouped in the post-development period inasmuch as the Agreement with the Company would expire in June, 1961.

79 (ii) The Railway Board should apprise the Committee of the recommendations made by the Tariff Commission on the question of fixation of firm prices of locomotives and boilers manufactured by the TELCO and other cognate matters as also the decisions taken by the Railway Board thereon.

3. Copies are attached of the Tariff Commission's Report and of the Government of India, Ministry of Heavy Industries' Resolution No. Eng. Ind. 17(17)/56 dated 23rd November, 1956, in which the recommendations of the Tariff Commission and the decisions of the Government thereon were embodied. The prices recommended by the Commission as a result of their enquiry and accepted by the Government, are shown in the subjoined statement, which indicates also the prices asked for by TELCO in their quotations to the Railway Board.

STATEMENT

		(in units of rupees)	
Type of Locomotive/Boiler		Price per unit quoted by TELCO.	Price per unit recommended by Tariff Commission and accepted by the Govt.
		Rs.	Rs.
I. Deliveries in 1st Price Period :			
(1-2-54 to 31-3-55 for Boilers)			
(1-7-54 to 31-3-55 for Locomotives)			
Locos YP I order	(26 units)	7,20,396	6,90,105
Boilers XC I order	(2 units)	3,68,098	3,40,908
Boilers YD	(39 units)	2,08,272	1,75,512
II. Deliveries in the 2nd Price Period :			
(1-4-55 to 31-3-56 for both locomotives and boilers)			
Locomotives YP II order	(42 units)	6,63,028	6,37,829
Boilers YD	(13 units)	2,08,272	1,63,216
YP	(12 units)	1,98,269	1,52,229
YG	(6 units)	1,86,006	1,50,867
YF	(8 units)	1,27,742	1,13,622
XE	(3 units)	2,83,539	2,55,610
III. Deliveries in the 3rd Price Period			
(1-4-56 to 31-3-58 both for locomotives and boilers)			
<i>Locos</i>			
YP II order	(8 units)		5,40,905
YG II order	(50 units)		5,11,562
YP III order	(70 units)		4,42,755
YG III order	(14 units)		4,44,873
<i>Boilers</i>			
YF	(39 units)		92,719
XE	(6 units) with clothing		2,37,696
	(8 units) without clothing		2,27,584
XC	(22 units)		2,08,290

Note : I. The figures for units produced by Telco in the development or pre-price period but delivered in the first price period are shown below :

	Cost of production per unit	Cost per unit accepted.
(i) <i>Locos</i> YPI Order 8 units	534,300	6,90,105
Boilers XCI Order 10 units	284,961	3,40,908
Boilers YD I unit	153,683	1,75,512

For the above units there was no price.

For the above units there was no price quotation from TELCO, who had based their quotations with reference to the period of production and not the period of delivery; therefore, only the cost of production has been shown in the above cases. As the Tariff Commission have accepted the Railway Board's view that pricing will be based on deliveries and not production the price for these units include proportionate profit over and above the cost of production in the development period. The extra cost, however, is more than offset on the same principle by the lower prices for units produced in the 1st/2nd price period and delivered in the 2nd/3rd price period owing to the prices recommended by the Tariff Commission being progressively less.

Note 2:—In quoting prices, TELCO spread the total quantum of the depreciation evenly over the entire period upto the expiry of the Agreement (i.e. from 1954 upto 1961), and also quoted separately for profit. These quotations except those relating to development period shown under the first price period shown in the note above, have been adjusted in Column 2 above, so as to arrive at the composite (aggregate) quotations such as would permit ready comparison with the prices recommended by the Tariff Commission.

The prices accepted on the recommendations of the Commission, when compared with the prices asked for by TELCO, involved a reduction of about Rs. 33 lakhs in the aggregate amount payable for stock delivered in the first two price periods (1954-56). For deliveries in the third period (1956-58) for which TELCO had quoted no prices, the Commission recommended substantially lower prices than those recommended by them for the two earlier periods, as will be seen from the figures in column 3 above.

4. The following observations are made by the Ministry of Railways on the three specific issues raised by the Public Accounts Committee:—

(i) *Taking over TELCO as a State Undertaking*

At the meeting of the Railway Board with the Public Accounts Committee in May, 1955, the Railway Board suggested that "it would not be advisable for a variety of reasons to take over the concern at this stage when the production had reached the target, despite the initial delays and lapses". This was embodied in paragraph 61 of the Public Accounts Committee's 13th Report which further read as follows:—

"The Committee note the views of the Railway Board. They do not overlook the considerations urged by the Railway Board. The Financial Commissioner for Railways assured the Committee that the building up of prices from estimates of labour, materials and overhead charges will be checked by the appropriate experts which was the surest way of arriving at a demonstrably fair and reasonable price. The Committee welcome the assurance and would like to watch the future developments in this case with an open mind before coming to any conclusion."

The Public Accounts Committee's conclusion in effect was, that a decision on the question of nationalisation could be taken after seeing whether the prices would come down in the price periods. The prices recommended by the Tariff Commission and accepted by the Government for the third price period (1956-58)—for instance, an average of Rs. 4.73 lakhs per metre gauge steam locomotive—do not compare unfavourably with the landed cost of about Rs. 4.58 lakhs based on 1956 quotations for a similar locomotive from British firms. The prices per unit as recommended and accepted for deliveries in the first and second price periods—for instance, Rs. 6.90 lakhs and Rs. 6.38 lakhs for locomotive, as against British landed costs in period (May 1955) of Rs. 4.15 lakhs—were no doubt on the high side. As, however, the Government had asked the Commission to conduct the necessary cost investigation and to recommend fair prices of locomotives and boilers manufactured by TELCO and as the Commission recommended substantially lower prices for deliveries in the 3rd price period than in the earlier two periods, with an indication of still lower prices in all likelihood for deliveries beyond the 3rd price period, it was considered that it would not be appropriate

to reject the Commissions' recommendations even in regard to prices for the first two periods, particularly when these two periods had already elapsed. Having regard to the aforesaid level of prices recommended by the Tariff Commission for the third or current price period and the prospect of still further reduction in the prices beyond the third price period, the Government consider that there is hardly any case, on the ground of prices, for nationalisation. Such a step will involve payment (including almost certainly "fair compensation") by the Government of about Rs. 7 crores, whether financed as immediate cash or in any other shape. As mentioned earlier, the prices recommended by the Commission for the third price period are not unreasonable in comparison with the landed costs of *British* firms; such a comparison is supported by the fact that the agreement with TELCO specifies the ceiling of landed cost of *British* products as the basis for the purpose of prices payable during the development period. Even on merits, the prices of the U.K. stock, with the long history of steam locomotive manufacture in U.K., would be a more reasonable basis of comparison than the landed costs with reference to, say, Japanese and Czechoslovakian prices, which are as low as Rs. 3 lakhs (approximately) per metre gauge locomotive. The Ministry of Heavy Industries have explained in discussions in this connection that it has not been their practice to penalise indigenous industry in the matter of protection or to treat it as uneconomic because of its inability to compete with imports from Japan or from East European countries. Apart from this, it was considered purely on practical grounds that, under the circumstances as they have developed in TELCO Factory, the cost of production cannot be brought down appreciably below the prices recommended by the Commission for the third price period. In fact, the Commission have gone so far as to suggest that landed costs do not afford a proper standard of comparison at all.

As the prices recommended by the Tariff Commission are limited to deliveries up to 31st March 1958, negotiations have been started with TELCO to arrive at satisfactory arrangements for prices for deliveries beyond 31st March 1958. At a meeting with the Railway Board on 2nd April 1957, TELCO's representatives were urged to submit quickly their price quotations for deliveries beyond 31st March 1958, to enable the Ministry of Railways to consider the matter further. If no satisfactory arrangements are reached through these negotiations, or for any other reason, arising out of these negotiations or otherwise, nationalisation is considered to be in the public interest, the position will be reviewed further by the Ministry of Railways.

(ii) *Adjustment, in the firm prices of locomotives, of the over-payments made for initial and double normal depreciation.*

The position, from the point of view of the Railway Board, was fully explained to the Tariff Commission. As suggested in paragraph 78 of the Public Accounts Committee's Seventeenth Report, the additional payment on account of initial and double normal depreciation was brought to the notice of the Commission in paragraph 12 of the statement of the case which was prepared by the Railway Board, in consultation with Audit, (copy enclosed) for submission to the Commission. The Commission have summarised the Railway Board's point of view as under in their Report:—

“The Board, therefore, suggest that the prices payable to TELCO should be linked to the landed costs, less a reduction therefrom with reference to at least a portion of the development expenditure. Conceding that TELCO may have been hampered by various difficulties beyond their control in reaching the stage of stable production within the period originally envisaged in the Agreement, the Railway Board are prepared to accept a reduction from the landed costs with reference to only half the development expenditure for the purpose of arriving at the prices during the price periods.”

While the Tariff Commission accepted that it was not improbable that the price arrangement embodied in the Agreement was based on some such understanding as that mentioned by the Railway Board, they expressed their inability to endorse the proposed adjustment of half the development expenditure in the prices payable in the price period because—

- (i) the understanding referred to was not specifically incorporated in the Agreement which contained nothing to suggest, in the formula laid down for determination of prices, that these prices would not exceed the landed cost during the fixed price periods; and
- (ii) the considerations of equity were opposed to the Railway Board's contention, inasmuch as the recovery of one half of the development subsidy in eight annual instalments would inflict unjustifiable loss on the Company, who had already made considerable sacrifices by remaining without profits during the period 1946-54, when it had not been shown to have committed any breach of the

agreement and when its higher costs were found to be due to facts mostly beyond its control.

In accepting the recommendation of the Tariff Commission in this matter, the Government took account of the fact that TELCO would almost certainly seek the remedy open to them under the contract, namely, arbitration, if the Tariff Commission's recommendation had not been accepted or had been modified in any respect to the disadvantage of TELCO. It was also considered that in that event, it was extremely unlikely that the conclusions arrived at by a quasi-judicial body like the Tariff Commission as a result of an expert technical and cost examination would be reversed or modified by any arbitrator. While considering this point earlier, the Public Accounts Committee themselves were "doubtful whether the provisions of the existing clause 5(v) of the First Schedule to the above contract could be invoked for recouping the excess payments already made to TELCO, as there was no agreement for such a course being taken through any price formula or for effecting cash recoveries from the Company". (P.A.C's. 13th Report, 1954-55—para. 56).

As against the excess payments made to TELCO during the development period on account of special depreciation, the Public Accounts Committee have appreciated that "the allowance for the depreciation for the post-development period might be correspondingly less", but have pointed out that "the excess payments made in the development period could not be completely recouped in the post-development period inasmuch as the Agreement with the Company would expire in June, 1961." The Ministry of Railways consider, however, that in any negotiations to regulate the arrangements beyond June, 1961 (i.e. either in fixing the purchase price payable to the Company in the event of Government deciding to buy the TELCO undertaking, or in the formulation of price arrangements under a future agreement), the Ministry of Railways as the sole purchasers in the country of the locomotives/boilers, for the production of which TELCO is equipped, would be in a position to press for due allowance being made on this account.

(iii) *Appoining a team of technical experts by the Railway Board to go into the whole question of the costing system in force in TELCO who should also investigate whether the subsidiary business like the manufacture of trucks etc., which is a commercial venture undertaken by TELCO was not getting any benefit at the expense of the Railways.*

The Commission, before they took the investigation in hand, were also expressly requested to pay attention to the above matters. In their report, they have made certain suggestions for improvements in the costing system as well as in certain other matters, for the pur-

pose of achieving efficiency and improvement in production and maximum utilisation of indigenous material and capacity in the manufacturing processes at TELCO. The attention of TELCO has been drawn, in paragraphs 3 and 6 of the Government's Resolution on the Tariff Commission's Report, to the need to implement these recommendations of the Commission for effecting improvements. The progress in these matters will be watched closely by the Railway Board. At a meeting with the Railway Board on 2nd April 1957, TELCO's representatives reported that improvements in regard to costing and absorption of surplus labour were already in hand. The Tariff Commission have also held, as a result of their investigation, that the subsidiary projects and activities of TELCO "cannot be held responsible for the slow development of TELCO's locomotive/boiler division", but in fact "have helped to utilise some of the spare capacity in the locomotive/boiler division". In regard to the apportionment of idle time of men and machines among the various accounts, the Commission have indicated that the allocation has been made correctly according to the special concession granted by the Railway Board to the Company under the "formula for the allocation of overheads" which form part of the Agreement between TELCO and the Railway Board. The Commission have concluded, however, that the problem of allocation of idle time between loco work and non-loco work is "going to be of much less importance for the future", as "the idle time has now been greatly reduced and further, the orders for road-rollers and underframes which were previously executed in the loco shop side by side with loco work have now been completed."

It is admitted that, while the problem will not be of much importance for the future, the accepted formula of loading the locomotive works with the entire idle time of men and machines has resulted in an increased cost of Rs. 5.64 lakhs during the first and second price period. It was explained by the Railway Board's officers during discussion before the Tariff Commission that the formula of allocating the overheads, which has been incorporated as part of the agreement, though finalised in 1954 after the period of production had started, had been drafted in '53, keeping in view the then conditions of the development period. It was thought that the proviso in the formula for review by mutual agreement could be availed of if the prices quoted by TELCO were unreasonable. As it was the prices were not quoted by TELCO until 31st March 1955 and 10th May 1955, and soon after that the question was remitted to the Tariff Commission as no agreement could be reached on the question of fair prices. The occasion for a review by mutual agreement did not, therefore, present itself at any stage. As already explained, however, Government considered that it would not be appropriate to reject the Tariff Commission's recommendations in regard to the price for the first two period's recommendations in regard to the

price for the first two periods when these periods had already elapsed, particularly when the Commission had recommended substantially lower prices for deliveries in the third period than in the earlier two periods with an indication of still lower prices in all likelihood for deliveries beyond the third price period.

5. The two recommendations (i) and (ii) in item 25 of the summary of the main conclusions/recommendations of the Seventeenth Report of the P.A.C. have been reproduced verbatim in para 2 *ante*.

In regard to recommendation (i), it has already been explained that the Ministry of Railways consider that in any negotiations to regulate the arrangements beyond June '61, i.e., for fixing purchase price payable to the Company in the event of the Government buying the TELCO undertaking or in the formulation of price arrangements under a future agreement, the Ministry of Railways, as sole purchasers in the country of locomotives and boilers for the production of which TELCO is equipped, would be in a position to press for a due allowance being made on this account. The possible amount that will be left unrecovered on an approximate calculation made by Audit as embodied in the Thirteenth Report of the P.A.C. (para. 58) was about Rs. 114 lakhs. It is difficult to furnish a more precise figure, as the special depreciation on account of the further expansion now in hand cannot be readily assessed, but the total amount is likely to be in the region of Rs. 150 lakhs.

The Railway Board, according to item (ii) was to apprise the Public Accounts Committee of the recommendations made by the Tariff Commission on the question of the fixation of firm prices of locomotives and boilers manufactured by the TELCO and other cognate matters as also the decisions taken by the Board thereon. The main recommendation in regard to prices and the decisions taken by the Government have already been explained in paragraphs 3 and 4 *ante*. A copy of the Tariff Commission's Report and of the Government's Resolution accepting the recommendations of the Commission are also attached herewith. It has been suggested by Audit that the following important points which the Tariff Commission have referred to as explaining the higher prices recommended by them should be brought out herein along with the remarks of the Ministry of Railways:—

- (i) Paras: 9·1 to 9·5 of the Commission's Report. (*paras. 7 and 30 of the Railway Board's Memorandum to the Tariff Commission*)—
High capital cost of TELCO per unit of capacity and delay in expanding TELCO's capacity and output.

Audit's summary of Tariff Commission's observations

The Tariff Commission has stated that the Railway Board should have taken care to stipulate in the agreement with TELCO the

number of locomotives and boilers which would have made their economic production possible. The failure on the part of the Railway Board to do so has resulted in higher prices.

Remarks of the Ministry of Railways

At the time the original negotiations were conducted by the Railway Board with the Company in 1947, it was apparently accepted by the Company's Consulting Engineer that 50 locomotives and 50 boilers would be an economic unit of production. Assessing the annual requirements, as far as they could be foreseen then, the agreement was framed with reference to 50 locomotives and 50 boilers in the light of factors appreciated at the time.

As regards the delay in expanding TELCO's capacity and output, it was explained by the Railway Board's Officers during the discussions before the Tariff Commission that the Railway Board could not reasonably be expected to place any formal orders in 1951 or 1952 for the supply of an increased number of units *viz.*, 100 when TELCO was so far behind target even in reaching a production of 50.

- (ii) Paras. 10·2 and 10·3 of the Commission's Report (*Paras 40, 41, 42 and 43 of the Railway Board's Memorandum to the Tariff Commission*)—TELCO's obligation to produce 75 per cent. of locomotive components and heavy rejections of castings

Audit's summary of Tariff Commission's observations

The Commission has concluded that the policy of the Railway Board regarding the use of indigenous components and castings has affected the prices of the locomotives and boilers inasmuch as their use resulted in reduction in output and thereby increased the burden of overheads. Besides, the indigenous components cost more than the imported ones. The use of indigenous castings resulted in a certain amount of potential capacity of the shops being wasted on replacement and rectification of defective parts. Had TELCO been allowed to make use of imported components to the extent necessary to increase its output in accordance with the capacity of the erecting shop, the production would have increased resulting in lower costs.

Remarks of the Ministry of Railways

TELCO themselves were a party to the decision in this connection in 1951 which was in line with the policy of the Government in other fields of private sector. Moreover, in this calculation of 75 per cent., castings were specifically excluded, as it was realised that local foundries, at the then stage of their development, were incapable of producing satisfactory castings. The Tariff Commission have viewed the rejection of castings procured by TELCO somewhat indul-

gently, accepting the plea of TELCO that the Company did not have access to the more reliable steel foundries already booked up with Chittaranjan's requirements. It was not considered worthwhile contesting this point, as the Technical Report of the Tariff Commission indicated that defective castings would be eliminated by February, 1957.

(iii) Para. 16 of the Commission's Report (*Paras 4·22 (i) and (iii) of the Railway Board's Memorandum to the Tariff Commission*)
Capital employed inflated by outstanding dues

Audit's summary of the Tariff Commission's observations

The Commission has pointed out that had the Railway Board paid the full price for the stock delivered by TELCO from time to time and not limited it to the landed cost, the additional payment to the Company on account of profit would have been avoided partly inasmuch as Government could have borrowed the amount required @4 per cent. against the 7 per cent. profit payable to TELCO on the moneys due to it by Government.

Remarks of the Ministry of Railways

When the prices payable were *sub judice* it was considered by the Ministry of Railways that the full price claimed by TELCO could not reasonably be paid and provisional payments were, therefore, limited to the landed cost. In fact, TELCO had not even submitted their quotations until a year after the price period had commenced.

The point raised in para 22 (iii) of Railway Board's Memorandum to the Tariff Commission has been conceded in para 20·5 (iii) of the Commission's Report.

This has been seen by Audit.

Dated the 24th August, 1957.

*Director, Finance (Expenditure),
Railway Board,
New Delhi.*

MEMORANDA ON TELCO

*Replies to points on which the Public Accounts Committee like to
have further information.*

Points 1 to 9.

Dated the 15th November, 1957.

*Director, Finance (Expenditure),
Railway Board.*

Points on which the Public Accounts Committee would like to have information in regard to TELCO

- 1. The reasons for referring the question of cost of Locomotives to be supplied in accordance with the provisions of a subsisting contract between Government and the TELCO to the Tariff Commission whose main function is to recommend to Government the quantum of protection to be given to a new industry to be established, may be stated*

The prices quoted by Telco for the locomotives and boilers manufactured by them for delivery during the Price Periods were considered excessive in comparison with the landed costs of similar imported products. Telco on their side, pleaded their inability to quote prices lower than those which they had quoted, and which, they claim, were based on their actual cost of production. No agreement on prices could be reached with the Telco and the Financial Commissioner, Railways after first consulting the Commerce and Industry Ministry got Telco, at a meeting of their Board of Directors on 22nd August, 1955, to agree to a price enquiry being entrusted to the Tariff Commission. The Public Accounts Committee, earlier, as a result of their meeting on 4th May, 1955, had suggested, in their 13th Report (para 60), that the costs of Telco should be examined by technical experts. Any examination by Railway Board's technical experts would have been considered as unilateral, and would not have been acceptable to Telco. It was, therefore, considered that the Tariff Commission, as an impartial, semi-judicial body with its staff of technical and cost account experts, would be in the best position to be entrusted with the work and to recommend fair prices to be paid to Telco. The reference to the Tariff Commission was notified in a Government Resolution dated 10th October, 1955. The Railway Ministry's statement of their case was submitted to the Tariff Commission in June 1956, after it had been verified and vetted by the Comptroller and Auditor General.

Audit has seen the Memorandum and has observed as under:

"There is nothing in the files of Railway Board to indicate whether the proposal to entrust the enquiry to the Tariff Commission originated with the Financial Commissioner, Rlys. or the Ministry of Commerce and Industry.

The entrusting of the enquiry to the Tariff Commission does not appear to be clearly covered by the terms of the Indian Tariff Commission Act, 1951. Audit does not share the view that the Tariff Commission only was in the best position to be entrusted with the work and to recommend fair prices to be paid to Telco. The Public Accounts Committee in their 5th Report, based on their sittings in September 1952 had suggested that if there were difficulties in reaching agreement on cost, the matter must be referred for arbitration. The appointment of an arbitrator is also provided in the agreement. Technical and cost accounts experts could as well have been placed at his disposal just as in fact a technical expert was placed at the disposal of the Tariff Commission. Nor does Audit consider that the mutually acceptable arbitrator would have been more restricted in his findings than the Tariff Commission. He would undoubtedly have based this enquiry on the terms of the agreement, which is what the Tariff Commission has done. But these terms need not have stood in the way of mutually accepted arbitrator recommending fair prices on considerations of equity bearing in mind the amount of assistance the Telco had already from the Government."

2. At what price were the Singbhum Works sold to Tatas and whether it was a fair one?

The Singbhum Works were sold to Tatas for Rs. 25.39 lakhs. The price was fixed on the following considerations as laid down in an agreement dated 20th August, 1947 between the Government and Messrs. Tata Sons Limited :—

- (i) For all property and assets purchased and taken over by Government from the Peninsular Locomotive Co. Ltd., and now in the Singbhum Shops or whose transfer to Singbhum has been agreed upon, the *undepreciated Book price* at which the property and assets are borne in the latest accounts of the E.I. Rly.
- (ii) For all property and assets added by Government after the purchase of property and assets from the Peninsular Locomotive Company Ltd., referred to in (i) above up to 31st March, 1940 and included in the schedules hereto the price shall be the actual cost plus fifty per cent. to allow for increased present day replacement value, less depreciation calculated at the present income-tax rates.

- (iii) For all such stores to which the Government is entitled in connection with the Singhbhum shops as the Company shall select and Government may agree to sell, the price shall be the actual cost to the railway of those stores.

Note :—All property and assets of the description referred to in (ii) above but acquired subsequent to the said 31st March 1940 if Government decides to sell the same to the company shall form the subject matter of a separate agreement.

2. During the discussions held in September, 1944 between the representatives of Tatas and Railway Board for determining the basis of selling price of the Singhbhum shops, the representatives of Tatas urged that to burden a permanent industry like the manufacture of boilers with machines and buildings at inflated prices would not be an unmixed blessing for the Government itself although it would secure to the Government a higher price for the Singhbhum shops at that moment. F.C., Railways made it clear that the Railway Board had no intention to charge an inflated price for the shops but they wished to secure a *reasonable* price for the assets which they were selling to the company.

This has been seen by Audit.

3. *Was the arrangement of charging the double normal depreciation made through exchange of letters, legally valid? On what consideration was it arrived at?*

This Ministry are advised that the arrangement agreed to through the exchange of letters between this Ministry and Telco is legally valid.

The circumstances under which this agreement was arrived at are detailed below:—

2. While the main draft agreement for the manufacture of boilers and locomotives by Tatas, was being negotiated between the representatives of the Railway Board and the representative of Tata Sons Ltd., a proposal, among others, was made by Tatas at a meeting on 14th September 1944, that since Tatas would be establishing the workshop at a time when prices were at a high level and this might be particularly so when machinery for Locomotives was purchased, depreciation should be allowed at a much faster rate in the first few years so that after about 7/8 years the book values represented the normal values of plant and equipment that the Company possessed, such normal values to be determined by

mutual agreement. In the course of subsequent discussions, the Tatas representatives were assured that the Railway Board agreed with the principle of extra depreciation. The firm wanted the same verbal guarantee in the shape of exchange of letters and a formal proposal in writing was sent by the firm on 12th July, 1945 when the firm came to know that Government were contemplating a modification in Income Tax Law which would permit additional depreciation as a relief from taxation of profits, in order to counteract the high post-war prices that had to be incurred by Industrial enterprises. This request from the firm was referred to the Central Board of Revenue on the 23rd July, 1945, and the C.B.R. were asked to state whether the assurance given to Tatas in this regard would embarrass them in any way.

3. The Central Board of Revenue in their reply assured the Railway Board that they would not be embarrassed by the contemplated assurance to Tatas by the Railway Board. They, however, pointed out that the effect of adding initial depreciation to cost of production would be to swell costs in the first year and to reduce them in the later years and in their opinion, instead of allowing this initial depreciation to enter into production costs, it should be specifically provided that the normal rates on the basis of the expected life of the plant etc. should be the rates that should enter into production costs. However, as the Central Board of Revenue stated that they would not be embarrassed, the Board decided to agree to the suggestion of Tatas. The Railway Board's intention in agreeing to this concession was that as no profits would accrue to Telco during the development period, the special depreciation allowed to industries under the Income Tax Law would not be effective until Telco reached profit earning stage and the Company could, therefore, get relief only if the special depreciation was taken as included in the cost of production. This has also been stated by the Financial Commissioner, Railways, before the Public Accounts Committee (para 139 of the 13th Report—Vol. I of PAC refers) and this was also the stand taken by the Ministry of Railways before the Tariff Commission (Para 15.1 of Tariff Commission's Report refers).

4. Railway Board's acceptance was conveyed to the Tatas on the 27th September, 1945, with a copy of the draft letter which was to be exchanged between the Railway Board and Tatas drafted in consultation with the Government Solicitor, on the 15th of October, 1945. Tatas agreed to the draft letter proposed by the Railway Board. The normal exchange of letters did not, however, take place till the main agreement was signed on the 20th of August, 1947. On the 23rd September, 1947, Tatas requested the Railway Board for the issue of the letter incorporating the understanding

reached in 1945 with reference to initial and double depreciation. Accordingly, on the 14th of November, 1947, the Railway Board issued the relevant letter.

Audit has reserved its comments on this Memorandum.

4. *Is it a fact that under the above arrangements 90% of the cost of the factory has already been borne by Government on account of excessive prices paid by Government in purchasing locomotives from Telco?*

The position is illustrated in the statement enclosed. It shows that the total depreciation to end of 1957-58 calculated in terms of the Agreement on Loco Division assets is about 74% of its total capital cost, out of which the share borne by the Locos/boilers is about 47 per cent., of the capital cost the balance being attributable to non-loco jobs done in the loco Division. It is expected that by the end of 1960-61 (when the present agreement with Telco expires) the corresponding figures will be 88% and 58% respectively.

This has been seen by Audit.

Statement showing the Original Capital cost of loco Division at Telco, normal depreciation and special depreciation (initial, additional normal and development rebate) worked out at Income-Tax rates chargeable to cost and the amount of depreciation actually borne/expected to be borne by Loco/ Boilers delivered by M/s. Telco to end of the Contract period.

(Rupees in lakhs).

	Original Capital cost (Loco Division)	Total depreciation (Normal and special at Income-Tax Rates Loco Division)			Amount of depreciation (Normal and Special borne by Loco/boilers delivered by M/s Telco)		
		Normal	Special	Total	Normal	Special	Total
I. (a) Original Capital cost as on 31-3-1957 as per Telco's Books .	777.44						
(b) Less Debenture Interest capitalised, not so far excluded by the Company.	26.20						
	<u>751.24</u>						
(c) Further estimated additions proposed during 1957-58.	83.00						
TOTAL .	<u>834.24</u>						
	(100%)						

No further additions are anticipated during the rest of the contract period.

Nil.

II. Total depreciation charged to end of 1957-58 as per Telco's Books to end of 1956-57 and estimated for 1957-58.	273.62 (32.8%)	340.15 (40.8%)	613.77 (73.6%)	181.80 (21.8%)	212.64 (25.5%)	394.44 (47.3%)
III. Further depreciation estimated for the years 1958-59 to 1960-61.	96.31	22.39	118.70	70.33	23.42	93.75
IV. Total depreciation to end of the Contract period, i.e. upto 1960-61	369.93 (44.3%)	362.54 (43.4%)	732.47 (87.7%)	252.13 (30.2%)	236.06 (28.3%)	488.19 (58.5%)
V. Estimated saving by agreeing to Special depreciation.						
(a) Normal Depreciation					44.03	
(b) Profit					43.58	
					87.61	
TOTAL						
VI. Amount paid in excess on account of Special Depreciation.					148.45 (17.8%)	

5. *The extent to which the equipment ordered for locomotives and boilers are being utilised on non-loco works may be indicated.*

A statement is enclosed which shows percentage of machine-hours utilised for non-loco jobs done by Telco during the period 1948-49 to 1956-57. It will be observed that utilisation of equipment ordered for locos and boilers for non-loco jobs is reducing with increase in the tempo of Loco production.

As regards setting up time referred to by Tariff Commission in para 13.2 of their report, it has always been included in production time except in a few cases in 1954-55 and 1955-56. This has also since been adjusted.

The Audit has seen this memo and has observed as under:—

“It should not be inferred from the statement as furnished by the Railway Board that the balance of percentage of total machine hours in loco-shops at Telco has been utilised for loco contracts only. The balance includes also idle time, the percentage of which is indicated below:—

<i>Year</i>	<i>Machine hours.</i>
1948-49	38·09%
1949-50	47·85%
1950-51	47·75%
1951-52	63·41%
1952-53	66·94%
1953-54	55·54%
1954-55	33·26%
1955-56	22·54%
1956-57	24·47%

This idle time has been charged entirely to loco boiler contracts, as a special concession granted by the Railway Board to the Company.”

A statement showing the percentage of total machine hours in Loco Shops at Telco utilised for non-loco contracts is given below:—

<i>Year</i>	<i>Machine hours</i>
1948-49	23·69%
1949-50	30·70%
1950-51	24·94%

<i>Year</i>	<i>Machine hours</i>
1951-52	20·98%
1952-53	15·74%
1953-54	11·36%
1954-55	8·03%
1955-56	5·43%
1956-57	*5·09%

6. *Two copies of the Report submitted by the Cost Accountant on this question of prices may be forwarded.*

Only one copy of the Cost Accountant Report was supplied to this Ministry by the Ministry of Commerce and Industry. However, it is understood that the Lok Sabha Secretariat (Public Accounts Committee Branch) have already asked for copies of the report from the Ministry of Commerce and Industry who are considering the request of the Lok Sabha Secretariat.

This has been seen by Audit.

7. *The Tata Industries Ltd. has been appointed as agent of the German firm of M/s. Krauss Maffei for supplying components to Telco, on which the Tata Industries Ltd. are paid commission. Why did not Telco deal directly with the German firm and avoid the payment of the commission which went to add to the cost of the Locomotives? What is the arrangement of commission received by the Tata Industries so far year by year?*

From the information gathered by this Ministry, it is understood that orders are not placed by Telco on M/s. Krauss Maffei through M/s. Tata Industries Private Ltd., but are placed by Telco direct and routed through the Telco Department in London. This is company's normal procedure for all orders placed in Europe for the Locomotives and Foundry Divisions.

Neither Telco, nor M/s. Tata Industries Ltd. receive any rebate or commission from M/s. Krauss Maffei, whether directly or indirectly through Telco Department, London, on Telco's purchases of locomotive parts and components. Under Clause 10 of the Technical Aid Agreement between Telco and M/s. Krauss Maffei (an extract of which is enclosed) M/s. Krauss Maffei should offer supplies of locomotive parts and components at competitive international prices and on other principal terms and conditions, such as

*The percentage of 5·09 has been worked on the basis of the capacity of the machines for 1955-56 as the information regarding the potential capacity of the machines during 1956-57 was not available.

deliveries etc., which are as favourable as those offered by other responsible manufacturers. In fact, Telco placed orders on other suppliers where M/s. Krauss Maffei's prices were not competitive.

This has been seen by Audit.

(Enclosure to Q. No. 7)

Extract of Agreement made on 24-7-1950 between Tata Locomotive and Engineering Company Ltd., and Krauss-Maffei.

Purchase of Locomotive units and parts

10. KM shall aid and assist Telco to establish at the Telco Works as rapidly as possible the manufacture of all locomotive and locomotive boiler parts and components so that the number of such parts and components required to be imported shall be progressively reduced to a minimum. Telco will purchase from KM at prices to be negotiated, all locomotive units and parts which it finds necessary to import into India, provided that KM is able to offer supplies at competitive international prices and on other principal terms and conditions, such as deliveries, which are as favourable as those offered by other responsible manufacturers. So long as the conditions are satisfied by KM, Telco will not place orders with any other party outside India for delivery of any units or parts and components of locomotives and locomotive boilers, unless proprietary items are specified in the particular loco or boiler specification. In such cases, Telco will inform KM before orders are placed elsewhere for these proprietary items.

For the purposes of this clause the comparison of international prices will be made on the basis of the landed duty paid cost in India of the different tenders.

APPENDIX XII

(Reference Para. 66 of the Report)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

MEMORANDUM

SUB:—Recommendations No. 13 and 14 in the 17th Report of the Public Accounts Committee

(Paragraph 14 of the Audit Report 1955—Central Railway—Purchase of Barsi Light Rly. on 1st January, 1954).

For an adequate appreciation of this case, it is necessary to keep in view all the relevant terms of the contract with the Barsi Light Railway Company bearing directly or indirectly on the purchase price and the deductions therefrom on acquisition of the Railway by Government. These clauses are reproduced below:

- “26. The Company shall, at all times, maintain and keep in good condition and repair, to the satisfaction of the Secretary of State, the permanent-way and all works, rolling stock and appliances appertaining to the said railway, in such manner as will, to the satisfaction of the Government Engineer in executive charge of the road, avoid all risk of danger or annoyance to the ordinary road traffic.
27. The Company shall adopt and apply all such improvements in the said railway and in the rolling stock and appliances thereon as the Secretary of State may from time to time consider necessary or desirable for the safety or convenience of the Public.
28. The Company shall, without delay, proceed to carry out all improvements, repairs and alterations which, in the opinion of the Government Inspector, may be necessary or desirable to comply with the requirements of the Act, or to maintain the said Railway and the rolling stock, works and appliances connected therewith upto a proper standard of efficiency, upon receiving notice to that effect from or on behalf of the Secretary of State at their

office in the Bombay Presidency, and shall in like manner and upon receipt of the like notice carry out all repairs which, in the opinion of the Government Engineer in executive charge of the provincial road, shall be necessary to maintain the same in a proper state for the safety and convenience of the public.

If at the termination of this contract any repairs, alterations or improvements shall be necessary or desirable to satisfy any or either of the above requirements, the cost of such repairs, alterations, or improvements shall be certified by the said Government Inspector or the said Government Engineer, as the case may be, and the Secretary of State shall be at liberty to deduct any sums so certified which shall not be chargeable to capital under clause 34 of this contract, from any moneys payable to the Company under the purchase clause of this contract.

43. In the event of the determination of the Contract by such purchase as aforesaid, the Secretary of State shall, within four calendar months from the termination of the Contract, pay over to the Company in England in sterling a sum equal to the total amount of the capital expenditure in sterling incurred by the Company with the sanction of the Secretary of State on the undertaking, capital expenditure in rupees being converted into sterling for this purpose in accordance with the arrangements from time to time mutually agreed upon, but subject to the deduction of such sums (if any) as may be due from the Company in respect of depreciation or defective maintenance under clause 28....."

2. Under clause 43, therefore, the purchase price was to be only the capital outlay of the Company and deductions therefrom were permitted of "such sums (if any), as may be due from the Company in respect of depreciation or defective maintenance under clause 28". The opinion of the Ministry of Law consistently has been that, since the conjunction between the words "depreciation" and "defective maintenance" in clause 43 is "or", and not "and", the word "depreciation" in clause 43 means the same thing as "repairs, alterations and improvements" referred to in clause 28. This view which had been expressed by the Ministry of Law on two occasions prior to 1st January, 1954, was confirmed by that Ministry again in April, 1954 in the following terms; "To avoid any argument turning on these two words, clause 43 has advisedly (though at the cost of some apparent vagueness) said depreciation or defective maintenance under Clause 28. Therefore, we can deduct all sums due under clause 28,

but none which is not due under it." It is thus clear, that there could be no claim for deduction from the purchase price unless the omission to remedy depreciation had resulted in defective maintenance.

3. The P.A.C. in paras 39-40 of their 17th Report, have referred to the purchase of the Barsi Light Railway as "a business deal" quite apart from legal and technical aspects. Even from the purely commercial standpoint, of value received for money paid, it is clear that the Government gained from the fact that the purchase price, under clause 43, was limited to the capital expenditure incurred during a time when prices were very much lower—about half the railway line having been constructed before World War I and the remaining at the price levels obtaining in 1927-28 and 1928-29. With this ceiling to the purchase price, any deduction therefrom beyond what is expressly permitted by the contractual provision as explained in the foregoing paragraphs, could not have been enforced. Consequently there could have been no claim for depreciation based merely on the life of the assets, unless such depreciation had resulted in maintenance falling below the "proper standard of efficiency". The only question, therefore, is whether any factual evidence on the condition of the assets had come to notice prior to 1st January, 1954 which could have been the occasion for preferring a notice on the Company to serve as basis for a claim later. This is examined in the succeeding paragraph.

4. Before taking a decision to purchase the Railway, a special technical-cum-financial examination of the Railway had been made in 1952 by the Central Railway Administration who, in reporting the results, stated categorically as under in regard to the condition of the assets of the Barsi Light Railway:—

"The age of rails on the different lengths varies from 54 years to 23 years. The surface of the rail has become work hardened and no extensive renewal is necessary in the next 20 years.

* * * *

The two B.S. class locos. are 47 years old. Of the 13 F class locos., 10 are 22 years to 26 years old and 3 are only 2 years old. Of the 9 G class locos., 7 are approximately 23 years old and 2 are 13 years old. All locomotives are in good state of repairs and efficiently maintained.

* * * *

The entire coaching stock is electrified and 33, coaches fitted with dynamos. Of the goods stock, all the covered wagons are also fitted with electric lights.

The Railway has 120 coaching vehicles all of which are over 20 years old and some as much as 55 years old. There are 292 goods vehicles varying in age from 25 to 55 years. In spite of the age the stock is in good condition. All coaching and goods vehicles are in a good state of repair.

On a condition basis, no heavy renewals of rolling stock will be necessary in the immediate future.

* * * *

The existing machines are old but in good condition and are able to meet present day requirements. They would, however, require replacement on a programme basis over a long period.

* * * *

The points and crossings are in good order and no large scale renewals will be required in the next 20 years.

* * * *

The stations, track, bridges, quarters, workshops and other assets in the charge of the Engineering Department have been well maintained and are generally adequate for the traffic offering; no undue expenditure is anticipated within the next few years in bringing them up to the Indian Government Railway standards."

The only doubtful remarks in this 1952 Report, if at all, were the following:—

"The original steel through sleepers have started cracking at the lugs; attempts at welding the cracks were unsuccessful and up to date 12.12 miles have been replaced with wooden sleepers. For 1950-51 1048 wooden sleepers were renewed in 1951-52, 18,260 steel sleepers were replaced by wood and 759 wooden sleepers were renewed. In 1952, it is proposed to replace 20,000 steel sleepers by wood. The Company propose to continue replacing about 10 miles of steel sleepers by wood, each year. This rate of renewal is adequate, and will have to be continued until all the steel sleepers are out of the road."

In the face of such a generally satisfactory report on the condition of the Railway's assets, item (iv) of the claims mentioned in the Audit Para. and in para 35 of the PAC's 17th Report—(viz., Rs. 16.47 lakhs for renewal of assets which had outlived their normal life) would not have been sustainable, apart from the fact that renewals, even on Government Railways are only on the basis of the actual condition of the assets and not on the basis of their age, and that the lower speeds and lighter traffic on the narrow gauge railways tend, by and large, to lengthen the life of the assets beyond those obtainable on the wider gauges. A further inspection of the Barsi Light Railway's assets, which was ordered by the Central Railway Administration in June 1953, also confirmed the good working condition of the rolling-stock, machine, tools, plant and other equipment of the mechanical department as well as signal stores and equipment and buildings and civil engineering tools, plant and machinery. In Recommendation No. 13 of the P.A.C. though mention is made of the inspection carried out in 1952 which had "disclosed that a large number of the Company's assets e.g., plants, machinery, rolling stock and permanent way and other structures had long passed their normal lives," the criticism appears to be chiefly of the condition of the steel trough sleepers; reference has been made to the fact that attention to the replacement of these by wooden sleepers was invited in the "special inspection of the condition of the assets of the Barsi Light Railway conducted in November 1953." The allusion evidently is to the results of the inspection already referred to, which had been ordered in June 1953, and as a result of which the District Engineer, Central Railway, Poona reported as under in November, 1953:—

"The permanent way is being maintained in good working order and as regards replacement of cracked trough sleepers with wood sleepers, the Executive Engineer, Barsi Light Railway, stated that supplies are on the way and, if received, would be put in the road even now. Permanent way is being maintained in good order."

In spite of the reference to cracked trough sleepers, the above report reiterated the remarks about permanent way—which term includes sleepers as well as rails being maintained in good working order. The inspections of the Government Inspector of Railways for the successive years ending 31st March, 1952 and 31st March, 1953 also, while they contain a mention of the proposal to replace 20,000 trough sleepers by wooden sleepers, had not brought to light any deficiencies in respect of sleepers nor had he qualified in any way his countersignatures for these years in regard to the good working

condition of the assets of the Railway. In view of such unqualified certificates by Inspecting Officers, which were recorded, notwithstanding the fact that they were aware that certain steel trough sleepers had started cracking at the lugs and that the company had prepared a programme for replacing these sleepers with wooden sleepers, the Ministry of Railways consider that there was no ground, on facts, for serving any notice for repairing deficiencies in maintenance, on which a claim for deduction from the purchase price could have been subsequently based. Even if a claim had been made,—as in fact one was made later in respect of certain lengths of rails and sleepers,—it could not have been sustained in the face of repeated unqualified certificates of maintenance in good working order as referred to. The claim particularly in respect of rails, which figures as item (iii) of the claims mentioned in the Audit Para. and in para. 25 of P.A.C.'s. 17th Report (*viz.*, Rs. 14.27 lakhs) in any case was completely insupportable considering that the report of the Central Railway special inspection in 1952 had indicated categorically that no extensive renewal of rails—the age of which varied from 54 years to 23 years—would be necessary “in the next 20 years”. There was also no reference to rails either in successive reports or the Government Inspector of Railways or in the Central Railway's Report of November 1953. Even the Company's own survey of the condition of track in 1950 on which the company drew up its five year programme of sleeper renewals had indicated that no thorough replacement of rails was necessary for several years. It is significant that the Company in their letter of 17th June, 1954 (extract enclosed, *Annexure A*) while refuting the claim for deductions from the purchase price on account of deferred sleeper and rail renewals based their stand solely on the condition of the sleepers and rails and did not take shelter on any merely technical ground that the Ministry of Railways had not preferred a notice in time *i.e.* 1st January, 1954. This issue (*i.e.* that the notice had not been sent in time) was raised by them only much later (December 1954). The fact that the Ministry of Railways had not realised, until April 1954, that they could *suo motu*, and independently of the Government Inspector on the one hand and the Government Engineer, on the other issue notice to the Company did not therefore, make any difference in the circumstances..

5. This leaves the two items connected with sleepers (*viz.* Rs. 9.01 lakhs) to which a specific and detailed reference has been made in Recommendation No. 13 of the P.A.C. The following statement shows the position of the renewal of sleepers on the Barsi Light Railway Sections in question.

Year	Scattered sleeper renewals	Programmed sleeper renewals
1950-51	1048	18,260
1951-52	2411	19,000
1952-53	344	—
1-4-53 to 31-12-53	928	—
1-1-54 to 31-3-54	273	—
1954-55	1084	—
1955-56	3397	10,345

It will be observed that no re-sleeping was done after the purchase of the line upto the end of March, 1955 and apparently this was not found necessary. The ex-Barsi Light Railway had renewed as many as 37,260 sleepers between 1955-56 found it necessary to renew only 10,345 sleepers (on a programme basis). Enquiries have also confirmed that there is no record of any speed restrictions, imposed after 31st December, 1953 on account of defective track, nor have any accidents occurred since 1st January, 1954 on account of any such defects.

Even though there is nothing on record to indicate that the then Chief Engineer Central Railway who also went on the special inspection party in December 1953 explained the position to Government Inspector of Railways in detail, nor are there any records to show the stoppages of the inspection special at specified mileages for detailed inspection of the track; but it is unlikely that the position was not discussed at the time of the inspection. The then Chief Engineer retired and left the country early in 1954, but the remarks of the then Dy. Chief Engineer concerned of the Central Railway, who also accompanied the Inspection Party are reproduced below:—

“I was not aware of the report submitted by the Executive Engineer, Kurdwadi of the Barsi Light Railway Company drawn up in 1950, which was not then available on the Railway records. I was, however, aware of the fact that a programme of sleeper renewals had been drawn up and was being implemented. This fact was also known to the Government Inspector of Railways as may be seen from item 7(c) of his detailed Inspection Report for the year ending 31st December, 1953. The certificate dated 31st December, 1953 signed by the representatives of the Barsi Light Railway Co. and countersigned by the Chief Engineer, Central Railway and the Government Inspector of Railways stated that the whole of the permanent way had been maintained

in good working condition and repair. The Inspection Party's conclusion therefore, was that though the programme of sleeper renewals was not worked up to in full, consistent with the certificate of good repair which was issued at the end of the Inspection."

The above facts which have been brought out as a result of the special enquiry which has been made in compliance with Recommendation No. 13 of the P.A.C., indicate clearly that it was not considered that the conditions of sleepers had reached a stage at which maintenance could have been legitimately described as falling short of the "proper standard of efficiency" and that, on the other hand, it was contended that, even though the programme of sleeper renewals had not been worked up to in full, it had progressed to an extent consistent with the certificate of good repair.

6. Coming now to Recommendation No. 14 of the 17th Report of the P.A.C. to the effect that the Central Railway Administration did not make the real purpose of the special inspection of the Barsi Light Railway in December 1953, clear to the Government Inspector of Railways, it is submitted that it is inconceivable that the Government Inspector of Railways could have failed to understand that there was a special purpose in the out-of-course inspection ordered in December 1953 (unconnected with the normal annual inspection made in March, every year) or that he could not have appreciated the significance of the extract from Railway Board's letter which had been given to him by the Central Railway (extract reproduced below) and particularly of its caption (underlined):

"II. Deduction on account of defective maintenance and depreciation.

The Railway Board agree to your proposal regarding a special inspection of the B.L. Railway by the Government Inspector of Railways in the latter part of December, 1953. Necessary arrangements should be made immediately for the same. G.I.R. should be accompanied by Chief Engineer and Deputy Chief Engineer of your Railway.

As regards the question whether any deduction is required to be made in respect of "depreciation" as distinct from "defective maintenance" as occurring in clause 43 of the principal contract, the matter is receiving attention and the final decision will be communicated to you in due course."

The Deputy Chief Engineer who accompanied the Inspection party of the Government Inspector of Railways in December, 1953 later stated in this connection as under:—

"I would state that at the Conference held in Board's office in April 1954, at which FA & CAO, CME and I were present, the Government Inspector of Railways was specifically asked whether he was still of the opinion that the permanent way assets were maintained up to an adequate standard of repair. He stated that he stood by his report and that the track of the Barsi Light Railway Company was maintained in satisfactory order. This stand by the Government Inspector of Railways was also maintained when he signed the certificate of amounts payable by the Barsi Light Railway Company towards the end of April 1954, when he stated that he could only certify the reasonableness of the cost as worked out by the Railway Officers and he could not take any responsibility for the admissibility or otherwise of the recoveries claimed."

It is significant that as late as April 1954, when the Government Inspector of Railways attended a meeting in Railway Board's office (Copy of the Minutes enclosed as Annexure 'B') he made no suggestion that the inspection he had carried out in December 1953, was only a routine and general inspection, and considering that the meeting discussed mainly what deductions could be enforced for defective maintenance, it is reasonable to expect that he would have dissociated himself from such discussions or at least made it clear that without a further inspection he could not indicate what should be the deductions. His countersignature of the certificate to the effect that the assets were maintained in good working order was recorded without any qualification, and the existence of a sentence in his detailed inspection report which read "It was intended to re-sleeper 10 miles of sleepers during 1952-53, but on account of the difficulty of getting the sleepers in time, this could not be done" was not only not a qualification of certificate but could even be considered as evidence that the certificate of good working order was given with full knowledge of, and in spite of the existence of, a programme of sleeper renewals during 1952-53 but also in spite of its now having been carried out.

Incidentally, it may also be mentioned that the original estimate of Rs. 4.99 lakhs of cost of re-sleeping to be completed by 31st December 1953, and 4.02 lakhs after that date seems to have been on the high side based as it was on the Company's previous costs—At the cost of sleepers now supplied to the Central Railway, adjusted to the

then prevailing prices, the cost of the re-sleeping programme not completed by the Barsi Light Railway items (i) and (ii) of the claims under reference—works out to only about Rs. 4½ lakhs.

Summing up, the view of the Ministry of Railways is—

- (i) That in view of the substantial advantage gained by the Government, under the contract, of having to pay as purchase price only the actual capital expended, no considerations extraneous to the terms of the contract could have been imported into the case when it came to making deductions from the purchase price;
- (ii) That legal opinion on the meaning of the provisions of the contract has been consistent in denying to Government any right to make deductions for any depreciation of assets unless it has resulted in the assets falling below the "proper standard of efficiency".
- (iii) That all the evidence of all the Reports of the Inspecting Officers—both the Government Inspector and the Officers of the Central Railway, who inspected Barsi Light Railway on four distinct occasions before its purchase, supports the view that the assets were maintained in good working order for the purpose of the contract provisions, as witnessed by the certificates recorded by the officers without attaching any qualification to them or detracting from them. Even if the inspection by the Government Inspector of Railways in December, 1953, is discounted, it will be seen that care was taken to arrange a special inspection much earlier. It is difficult to hold that either the Railway Board or the Central Railway could, even as a measure of prudence or caution, have issued a notice in the face of the recorded results of these inspections.
- (iv) That, in view of this evidence of the state of assets, it would not be correct to presume, merely from the fact that a programme of track renewal had been made out by the Company, that the state of the assets at the time they were taken over could have been the occasion (or have sustained) any notice for setting right defective maintenance on which a claim for deductions under clause 28 could have been founded.

This has been seen by Audit.

NEW DELHI;
The 14th August, 1957.

Director, Finance Expenditure,
Railway Board.

ANNEXURE 'A'

Extract of letter No. nil dated 17th June, 1954 from Sir Percival Griffiths, C.I.E. of the Barsi Light Railway Company, 39 Lombard Street, London E.C. 3 to Shri N. C. Deb, Director, Finance, Railway Board, New Delhi.

* * * * *

You suggested that I might put down very briefly our main attitude with regard to the deductions which it was suggested should be made from the purchase price. Those deductions, you will remember, fell into four categories—

- (i) Deferred sleeping.
- (ii) Rail renewals.
- (iii) Writing off of three locomotives.
- (iv) Abandoned assets.

As regards the re-sleeping, our view is that the sleepers are in fact in good condition, with many years of life in them, and that this is borne out by the fact that neither in his Take Over Inspection, nor on any previous occasion, had the Government Inspector any adverse comments to make on them. It is true that in his Taking Over Report he referred to the deferment of a portion of a previous-prepared re-sleeping programme. There was, however, no obligation on the Company ever to have such a programme, and if we had not had such a programme the question would never have been raised in view of the satisfactory condition of the sleepers. In fact the programme was undertaken purely as an administrative measure to guard against the possibility of an accumulation of renewals at a later date which would have resulted in an undue strain on our resources. I feel sure that, in the absence of any adverse comments from the Government Inspector for the handing over of this Railway, you will accept this view.

* * * * *

ANNEXURE 'B'

Minutes of a meeting held in the office room of the Financial Commissioner, Railways, on 14th April, 1954 in connection with the purchase of the Barsi Light Railway

(Copy circulated under Shri D. Sandilya, Joint Director, Railway Board's D.O. No. F(X)I-51-PR/3 of 17th April, 1954)

Present:—

1. Shri P. C. Bhattacharyya, Financial Commissioner, Railways.
2. Shri H. R. Krishnan, I.C.S. Joint Secretary, Ministry of Law.

3. Shri R. C. Khanna, Director, Railway Audit.
4. Shri R. C. Sood, Government Inspector of Railways.
5. Shri K. Krishna Rau, F.A. & C.A.O., Central Railway.
6. Shri J. W. E. Gurr, Chief Mechanical Engineer, Central Railway.
7. Shri K. L. Ghei, Officer on Special Duty (Finance), Railway Board.
8. Shri D. D. Basu, Deputy Secretary, Ministry of Law.
9. Shri R. W. Wilson, Dy. Chief Engineer, Central Railway.
10. Shri D. Sandilya, Joint Director, Finance, Railway Board.

At the outset, F.C. Railways explained the object of the meeting and the need for coming to early decisions in view of the fact, that, under the contract, payments to the company had to be made by the 30th April. He stated that the issues were:—

- (a) whether a claim for "depreciation" could be sustained; and
- (b) whether deductions on account of the non-renewal of over-aged assets could be made within the meaning of the phrase "defective maintenance".

The above points and other related issues were then discussed in detail with particular reference to (a) Clauses 28 and 43 of the contract, and (b) the certificates (i) the general certificate regarding the assets being in good working order signed by the B.L. Railway Administration and the Central Railway Administration and countersigned by the Government Inspector of Railways and (ii) the detailed Inspection Report issued by the Government Inspector of Railways on the basis of his special Inspection on the 29th and 30th December, 1953.

As regards "depreciation", the note prepared by Director of Railway Audit outlining the development of the concept of depreciation and the provision for the installation of Renewals Reserve Funds in the various contracts with railway companies entered into by Government in the same period as that of the B.L. Railway contract was gone into. The Director of Railway Audit was of the view that the word "depreciation" in clause 43 had significance apart from being an equivalent of the expression "defective maintenance". Shri Krishnan stated that the interpretation of clause 43 would have to be determined by the legal construction of the clause and other related clauses of the same contract rather than with reference to

other contracts. The word "depreciation" had not been mentioned in other clauses. There was discussion about whether what the practice was in connection with depreciation on Government Railways could be regarded as a guide. Here the Government Inspector of Railways and the Central Railway's representatives stressed the point that renewals of assets was usually done on a condition basis. In the light of the material supplied by the D.R.A. in his note, the Ministry of Law's representative agreed to re-examine the precise meaning of the phrase "depreciation" in clause 43. A copy of the D.R.A.'s note was to be supplied to them.

As regards "defective maintenance", the position was that the Government Inspector of Railways (and the Central Railway Administration) had certified the "good working order" of the assets. In the detailed Report, the Government Inspector of Railways had mentioned two items: (i) a shortfall in the programmed renewal of sleepers and (ii) non-execution of P.O.H. repairs of certain units of rolling stock. The question was whether the cost of these works, which were not executed, could be deducted from the purchase price. At this stage, the point arose whether Government on their own could also initiate action now and request the authority designated in Clause 28 to certify the cost of renewals which were due. The construction of clause 28 was examined and it was considered that the advice of the Law Ministry should be obtained as to whether the portion of the clause "to maintain the said Railway and the rolling stock, works and appliances connected therewith up to a proper standard of efficiency" authorised Government to state without reference to the Government Inspector of Railways what the proper standard of efficiency should be and to what extent deficiencies in these could be deducted from the purchase price having regard to the existence of several overaged assets. The point for examination, therefore, was whether the first part of the first sub-para. referred only to the Government Inspector's directions under the Indian Railways Act and whether for maintaining the proper standard of efficiency Government could issue directions independently and get the costs certified by the Government Inspector. The representative of the Ministry of Law stated that they would examine this question.

APPENDIX XIII

(Reference Para 66 of the Report)

No. INS. 1-N(51)/56

GOVERNMENT OF INDIA

MINISTRY OF TRANSPORT AND COMMUNICATIONS

(DEPARTMENTS OF COMMUNICATIONS & CIVIL AVIATION)

(RAILWAY INSPECTORATE)

Dated New Delhi, the 5th July 1957

OFFICE MEMORANDUM

SUBJECT:—*Para 15 of the 17th Report of the Public Accounts Committee—Purchase of Barsi Light Railway.*

The undersigned is directed to invite a reference to the Lok Sabha Secretariat Office Memorandum No. 169-PAC/57 dated 21st June, 1957 and to this Ministry's interim reply No. INS. 1-N(51)/56 dated the 25th June, 1957. A memorandum on the subject is enclosed for the information of the Public Accounts Committee (with 40 spare copies).

2. A copy of this Memorandum was forwarded to the Comptroller and Auditor General and his comments are as follows:—

“Note containing comments on the Memorandum.

Para 5.

An extract of Railway Board's letter of the 8th December, 1953, with a fully indicative caption “deductions on account of defective maintenance and depreciation” was furnished to the Government Inspector of Railways by the Central Railway on the 12th December, 1953. If the implications underlying the deductions on account of defective maintenance and depreciation were not clear to the Government Inspector, he should have called from the Central Railway Administration any elucidation necessary in the matter as also copies of the relevant clauses of the contract pertinent to the deductions on the above account. An experienced administrative officer of his rank needed no specific instructions from the Railway Administration to understand his duties and responsibilities in regard to the object underlying the inspection. If he had no clear conception

of the purpose of the Inspection, there was nothing to prevent him from seeking the same also from the Chief Engineer, Central Railway who accompanied him on this inspection."

3. In view of the position explained in paragraphs 3(g), 4, 5 and 6 of the Memorandum, no useful purpose would have been served if the Government Inspector of Railways had made a reference to the Ministry of Railways or the Central Railway Administration for a clarification since the Railway Ministry had not, at that time, obtained an authoritative legal interpretation on the question of applicability of the clause of the Contract for the purpose of making deduction from the purchase price. This Ministry, therefore, considers that no change in the views already expressed in this Ministry's Memorandum is called for in the light of the above comments by the Comptroller and Auditor General.

Joint Secretary to the Government of India.

MEMORANDUM

SUBJECT:—*Paragraph 15 of the Public Accounts Committee Report, (Vol. I) Ministry of Communications, 1955.—Purchase of Barsi Light Railway.*

Paragraph 43 of the Public Accounts Committee's Seventeenth Report, leads to recommendation No. 15 which states as follows:—

"The fact that the Railway was to be purchased by Government was within the Government Inspector's knowledge and he should have been more careful in countersigning the certificate of the Engineers of the Barsi Light Railway that the assets of that Railway were maintained in good working condition and repairs during the period ending 31st December, 1953, without any qualification. The Committee place on record their displeasure at the perfunctory manner in which the Government Inspector signed the certificate without realising for a moment the implications thereof. The Committee are distressed over the manner in which this case has been handled and would suggest that a thorough investigation should be made into this case and responsibility fixed for the various lapses on the part of the persons concerned which led to the purchase of the Railway at a higher cost."

2. In compliance with the aforesaid recommendation of the Public Accounts Committee, the Ministry of Communications carried out an investigation into the part played by the Government Inspector of Railways, Bombay Zone, and have given very serious

consideration to all the aspects of the case. In doing so, the Ministry have also taken into account the normal inspection report of the year 1953 as well as the types of inspection reports and maintenance certificates which are given by the Inspectors of Railways in the course of the discharge of their functions. One of the duties of a Government Inspector as laid down in Section 4(2) of the Indian Railways Act 1890, is to make such periodical or other inspections of any railway or of any rolling stock used thereon as the Central Government may direct.

3. At the outset it would be convenient if the part played by the Government Inspector of Railways in respect of purchase of the Barsi Light Railway is summarised in a chronological order—

- (a) the Government Inspector of Railways carried out the normal annual inspection of this Railway in March 1953 and made no mention of the arrears in re-sleeping programme though he recorded that he understood that the Railway was going to be taken over by the Government of India on 1st January, 1954;
- (b) on the 10th December 1953 the General Manager, Central Railways, wrote to Government Inspector of Railways that "the Government of India are purchasing the Barsi Light Railway with effect from 1st January, 1954. The Ministry of Railways, Railway Board, have requested that a special inspection of the Barsi Light Railway in the later part of December 1953 should be arranged. The Railway Board have also directed that the Chief Engineer and the Deputy Chief Engineer of this Railway should accompany you for this purpose. A copy of the certificate issued by you on your inspection of Barsi Light Railway line on the 17th and 18th March 1953 is enclosed for ready reference.....";
- (c) the very next day, i.e., 11th December, 1953, the Government Inspector of Railways wrote to the General Manager, Central Railway, asking for a copy of the Railway Board's letter referred to in the General Manager's letter dated 10th December, 1953;
- (d) on the next day, i.e., 12th December, 1953, an extract from and not the whole of the Railway Board's letter dated 8th December, 1953, relevant to the question of inspection, was forwarded to the Government Inspector of

Railways. This extract consisted of only one sub-paragraph which was as follows:—

* * * * *

“Deduction on account of defective maintenance and depreciation: The Railway Board agree to your proposal regarding a special inspection of the Barsi Light Railway by the Government Inspector of Railways in the later part of December, 1953. Necessary arrangements should be made immediately for the same. Government Inspector of Railways should be accompanied by Chief Engineer and Deputy Chief Engineer of your Railway”.

* * * * *

- (e) in accordance with the Railway Board's desire to have the special inspection conducted “in the latter part of December 1953” the Government Inspector of Railways carried out the inspection and countersigned the maintenance certificate on 7th January, 1954. In this, the certificates of the Agent, Executive Engineer and Loco Officer of the Barsi Light Railway dated 31st December, 1953, that all the assets of the Railway have been maintained in good working condition and repair during the period ending 31st December, 1953, were countersigned by the Government Inspector of Railways on 7th January, 1954;
- (f) within 4 days, i.e., on 11th January, 1954, Government Inspector of Railways prepared a detailed report of his inspection in which he mentioned the arrears of re-sleepering programme which formed subject matter of the consideration of the Public Accounts Committee; and
- (g) on 14th April, 1954, there was a meeting in the room of the Financial Commissioner, Railways, when for the first time, the Government Inspector of Railways was brought in for a discussion whether a claim for depreciation could be sustained and whether deductions on account of the non-renewal of the over-aged assets could be made within the meaning of the phrase “defective maintenance”. It was on this occasion that the Government Inspector of Railways was made acquainted with clauses 28 and 43 of the contract between the Barsi Light Railway and the former Secretary of State and it was also observed that the matter required further examination by and advice of the Ministry of Law. In this

meeting, the Government Inspector of Railways stressed the point that the renewal of assets was usually done on a condition basis. In other words, while the Ministry of Railway were not clear in their mind regarding the applicability of the clauses referred to above for the purpose of making deduction from the purchase price the exact import of the Government Inspector of Railways' maintenance certificate and the detailed report were known to the Railway Ministry.

4. The Ministry of Communications have gone carefully into the nature of the maintenance certificates and the annual inspection reports submitted by the Government Inspector of Railways and it has been found from precedents that the practice is to give certificates of maintenance on a condition basis which has no particular relation to the age of the assets. The maintenance certificate of the Government Inspector of Railways only stated that the assets of the Railway had been maintained in good working condition and repair. It has to be borne in mind in this connection that the previous report of March 1953 also was an unqualified report without the mention of any arrears of re-sleeping programme. It appears that the arrears of relaying and re-sleeping programme and in the renewal of rolling stock have existed on all Indian railways during the last several years and will probably continue to exist for several years more. Further, if this condition regarding arrears in re-sleeping programme were to stand in the way of countersigning any such certificate given by the heads of departments of Indian railways, no Government Inspector, it has been asserted, would be able to countersign any maintenance certificate of any railway. A Government Inspector of Railways does usually give an overall clean certificate even when it is within his knowledge that arrears in re-sleeping exist provided that he is satisfied that such arrears do not involve risks in the working of the railway according to the normal standards. In this particular case, the Government Inspector of Railways did not impose any speed limitations or qualify the certificate in any way. It can, therefore, be concluded that so far as the maintenance certificate goes, the Government Inspector of Railways did not err on the side of any particular leniency. Nor could he be considered to have performed his function in a perfunctory manner because his detailed report was signed within four-days of the countersignature of the maintenance certificate. If the Railway had given him a little longer notice for the special inspection, it would certainly have been possible for them to get both the certificate and the detailed report at the same time and sufficiently in advance of the date of taking over of the Railway, i.e., 1st January, 1954. As

against this date, it would be observed, in this connection, that the maintenance certificate was countersigned by the Government Inspector of Railways only on 7th January, 1954.

5. It would further be noticed that even though it was within knowledge of the Government Inspector of Railways that the Railway was going to be purchased by Government, the part which could be played by his inspection report in terms of Clauses 28 and 43 of the relevant contract was never communicated or explained in any other way to the Government Inspector of Railways at the time of the inspection. It will be noticed from paragraph 3(b) (c) and (d) above that even the extract of the letter of the Railway Ministry containing the phrase "deduction on account of defective maintenance and depreciation" was forwarded to him at his own request and that extract was both preceded and followed by asterisks which left the position vague so far as the Government Inspector of Railways was concerned. It was for him to conduct a special inspection which he did and in the detailed report he had mentioned the arrears of re-sleeping. It was, therefore, for the Railway Ministry and not for the Government Inspector of Railways to prepare their line of action *vis-a-vis* the Barsi Light Railway on the basis of the detailed report together with the maintenance certificate. From the proceedings of the meeting in the room of the Financial Commissioner Railways, it appears that the Railway Ministry themselves were not clear in their mind about the legal interpretation of the clauses. Nor was the Government Inspector of Railways asked even on that occasion to state clearly whether his certificate of good working order should or should not be modified in view of the short fall in the renewal programme. This Ministry venture to think that it was open to the Ministry of Railways to get the certificate, which in any case was available after the acquisition of the asset, modified in view of his detailed report and existence of the clauses of the contract with the Barsi Light Railway. If the Railway Ministry had wanted to get the certificate qualified, they should have asked the Government Inspector of Railways even during this meeting to qualify his certificate.

6. The Ministry of Communications, therefore, would submit that it was for the Ministry of Railways and not for the Government Inspector of Railways to take whatever action should have been taken in respect of deductions, on the basis of the maintenance certificate and the detailed report submitted by the Government Inspector of Railways. As the Public Accounts Committee themselves have been pleased to record "the Central Railway Administration did not make the real purpose of the special inspection of the Barsi Light Railway in December, 1953, clear to the Government Inspector of Railways". The Government Inspector of Railways gave the

maintenance certificate on a conditional basis and himself submitted the detailed report, which in the opinion of this Ministry, is the special inspection report required by the Ministry of Railways, which should have been taken into account in deciding whether any recoveries were admissible or not. It could not be argued that the maintenance certificate could *ipso facto* override the statements regarding arrears of re-sleeping mentioned in the inspection report if any recoveries were admissible on account of the arrears. In other words the maintenance certificate could not be treated alone and divorced from the detailed report which the Railway Administration had wanted of the Government Inspector of Railways in their letter dated 10th December, 1953.

7. The Public Accounts Committee have themselves observed in paragraph 39 of the Report "In reply to a specific question from the Railway Board, the Ministry of Law have observed on 21st April, 1954, that the Government could *suo moto* and independently of the Government Inspector, on the one hand, and the Government Engineer on the other, issue notice to the Company if certain repairs, alterations and improvements were considered necessary or desirable to meet the requirements of clause 28 of the contract. It is unfortunate that this question was not posed just a few months earlier. Again, for the same reason, the possibility of recovering the cost of uncompleted sleeper replacements from the Company by resorting to arbitration under Clause 47 of the contract was ruled out by the Ministry of Law".

8. Taking into consideration all the circumstances of the case the Ministry of Communications would submit that so far as the Government Inspector of Railways is concerned, he performed his duties duly and diligently and the regrettable fact that no efforts were made to get the purchase price of the Barsi Light Railway reduced on account of depreciation or defective maintenance could not be attributed to any particular lapse or lack of care on his part.

Joint Secretary to the Government of India.

APPENDIX XIV

(Reference Para 70 of the Report)

Office of the Comptroller and Auditor General of India, New Delhi.

Note for the information of the Public Accounts Committee concerning para 13 of Audit Report, Railways, 1955—Avoidable expenditure on freight on 150 Locomotives.

The Public Accounts Committee have made the following recommendation against serial Number 12 Appendix III to their Seventeenth Report for 1955-56:—

“The Committee await a detailed note setting forth the full facts of the case”.

The following are the full facts of the case:—

(i) *Shipment of 100 locomotives from U. K. to Bombay.*

A quotation was received on the 26th June, 1951, through the India Stores Department Shipping Brokers, from the Calcutta Conference Lines, for the shipment of 100 Y.P. locomotives and tenders under manufacture with the North British Locomotive Co. Glasgow, at £2400 for each erected locomotive, the offer being open for acceptance till the 31st July, 1951, with shipment to end of September, 1952. The quotation was made on the understanding that it covered shipment of the whole contract and the Lines reserved the right to withdraw the quotation in the event of any smaller quantity than specified being offered. The rate quoted was considered very high when compared by an Officer of the India Stores Department on the 21st July 1951 with a quotation received in 1949 of £2350 for the much bigger and heavier ‘W.G.’ locomotive. This comparison, however, was defective as it did not take into account the 15% general increase in freight rates that came into force in September, 1951 and which would have been taken into account by the Lines when quoting for Y.P. locomotives as the shipment of these locomotives was not expected to commence until November, 1951. The quotation was again considered on the 28th July, 1951, by an officer of the India Stores Department, but as the charter party market was on the downward move, and a further drop was likely depending on a settlement in Korea, it was decided not to accept the offer but to wait for the expected drop in the freight market. The Brokers

were accordingly told, that the freight quoted by the Conference Lines was high and that they should negotiate further for a reduction. Instruction were also issued to the Shipping Branch of the India Stores Department that the Brokers should also be asked to make enquiries from tramp steamers and to see whether freight by Belships (Norwegian Line) or ships of a similar type would not be cheaper than the Conference Lines rate. The Brokers, however, did not succeed in securing a reduction from the Conference Lines, but they got the period of acceptance extended to the 30th November, 1951 with shipment to end of December, 1952. The Conference Lines in agreeing to the above extension, however, warned the Brokers on the 19th November 1951, that if the acceptance of this quotation was not received by the 30th November 1951, they would have no option but to withdraw it. The Brokers in their letter dated the 22nd November, 1951 recommended to the India Stores Department the acceptance of this offer. The last para of this communication reads as under:—

“For your information, we are enclosing, herewith, copies of letters sent to the Secretary of the Conference and in view of the overwhelmingly strong position of the Lines under present conditions, we would suggest that their offer be accepted”.

Before a decision could be taken by the India Stores Department on this recommendation, the Brokers informed the Shippers on the 28th November, 1951, that they have ascertained from the suppliers on the 27th November, 1951, that the delivery of locomotives would not commence until March, 1952, and would continue thereafter @2 per week, taking about 12 months to complete the supply and requested that the period of shipment be extended accordingly at the current quotation of £2,400 to the 30th April, 1953. This letter and a subsequent conversation between the Secretary of the Conference lines and the Representative of the India Stores Department Brokers led the India Stores Department to believe that the letter was regarded by the Conference as a development which made it unnecessary for the India Stores Department to reply to their letter of the 19th November, 1951. The minute 57 recorded in this connection in the file of the India Stores Department on the 11th December, 1951 reads as under:—

“As agreed with you I phoned Mr. Peat (Brokers) and told him that we did not reply to the offer of £2400 per locomotive by the 30th November 1951 in view of the unofficial assurance he had received that the docket 48(a) [Broker's letter dated 28th November, 1951] was

being regarded by the Conference as altering the position and making it unnecessary for us to reply so promptly.....”

The offer was, however, withdrawn by the Conference. Revised quotation at £2,475 per locomotive open for acceptance upto the 17th December, 1951, with shipment upto 30th April, 1953, was received by the Brokers from the Conference Lines on the 3rd December 1951 and was forwarded to the India Stores Department on the 6th December, 1951. In forwarding the revised offer, the Conference Lines in their letter of the 3rd December, 1951 to the Brokers observed as under:—

“The Lines have given this matter very full and careful consideration and we are now instructed to advise you that as no acceptance of their quotation (given you in June last) had been received by the 30th November, the Lines must—in accordance with their letter of 19th November—withdraw their offer.”

The offer of the 3rd December, 1951 was not accepted upto the 17th December, 1951. On the 31st December, 1951, the Brokers informed the India Stores Department that the Conference Lines gave the datum line for refusal or acceptance of the revised offer upto the 4th January, 1952. It was then decided in early 1952, in consultation with the Deputy Financial Adviser that the revised offer of the Conference Lines should be accepted.

(ii) *Shipment of 50 Locomotives from Continental Ports to Madras.*

For shipment of 50 locomotives (under manufacture with Krauss Maffei Germany) a quotation was received from the Outward Continental Indian Conference, dated the 31st October, 1951 at £2,400 per erected locomotive, the offer being open for acceptance till the 14th November, 1951, with shipment to end of December, 1952. This quotation was also made on the understanding that it covered shipment of the whole of the contract and the Lines reserved the right to withdraw the quotation in the event of any smaller quantity than specified being offered. This quotation was also not accepted. Later, a quotation of £2,475 was received from the Outward Continental Conference for shipment to Bombay or Madras (the shipment for Madras being subject to the further condition of availability of proper unloading facilities) and this offer was accepted. Of the 50 Locomotives, 10 were shipped to Madras and the remainder to Bombay.

2. At the time, this paragraph was discussed by the Public Accounts Committee in their meeting held on the 24th January, 1956,

The Secretary, Ministry of Works, Housing and Supply offered the following remarks:—

(i) *Shipment of 100 Locomotives.*

When the delivery period of these locomotives instead of being to end of December, 1952, was extended to April, 1953, the whole offer had to be revised, because in the case of shipping companies the delivery period is very important. In the revised offer, the Shipping Company gave a quotation of £2,475. Meanwhile, the Director General, India Store Department, London was making enquiries from other shipping companies whether lower quotations could be got elsewhere. They were told that no other quotation would be available till about March or April 1952 and that there were signs that the freight would rise. The revised offer was, therefore, accepted.

As the offer of the Shipping Company was on an all-or-none basis, it was not open to them to tell the Conference Lines that they accepted their offer at the lower rate upto December, 1952, and thereafter they should give a further quotation. They seemed to have no other option in the matter.

In regard to the question whether any attempts were made by the India Store Department to negotiate with the Conference on payment of extra freight in respect of locomotives to be delivered during the period of extension, the Secretary read out the contents of the letter received from the Conference stating that "when the new date of completion of shipment became the end of April, 1953, the Lines considered the quotation afresh and even if £2,400 had been applied by the Lines in respect of shipment to end of December, 1952, they would have asked for a higher figure than £2,475 for the period of extension as it is only right that they should cover themselves when quoting so far ahead". Further re-examination of the position by them disclosed that there was a chance of freights going up in March/April, 1952, because of the increase in seamen's wages and if they had started negotiations, perhaps a further fortnight or a month would have elapsed and freights might have gone up still further.

The Secretary also stated that he believed that the letter of the 28th November, 1951 was written by the Brokers to the Conference Lines after being authorised to do so by the India Store Department. He also stated that if the specified dates of delivery had not been adhered to, the Government might have had to pay damages as Shippers reserve space for goods and the Government has, therefore, to adhere to these dates.

(ii) *Shipment of 50 Locomotives.*

To the question why if there were doubts about proper port facilities at Madras, the Director General India Store Department did not find out in advance whether adequate facilities existed in Madras, the Secretary replied that the Director General, India Store Department and Brokers all knew that Madras Port did not provide facilities for cranes. Only one shipping Company, the Hansa Lines had these crane facilities and they were at that time not authorised to land at Madras. Further, he stated that as in the case of shipment of the 100 locomotives, the original quotation in this case was for shipment upto December, 1952, but the suppliers asked for a longer delivery period to end of April 1953 and the original quotation did not hold good for the changed conditions.

3. The Director of Audit Indian Accounts in U.K. was asked to examine the views expressed by the Secretary with reference to the files in London. The following facts have emerged as a result of the examination:—

Apart from the qualifying clause in the quotation of the shipping Company, there is nothing in the files to support the contention that the contract was on an all-or-none basis. It would appear from a reading of the quotation that the phraseology "all-or-none basis" evidently has reference primarily to the total number of locomotives offered to the Company for shipment as opposed to the period during which they should be shipped and it does not appear to debar shipment of some locomotives at a lower rate and the others at a higher in case the Lines later demanded an increase. In actual practice, it is seen that the Conference Lines do agree to quote different rates for different periods of shipments of the same lot of locomotives. In the case of contract PR 4923 for a lot of 30 ML type Diesel Locomotives, the Conference Lines quoted two rates (i) £1,500 per locomotive shipped upto March 1955 and (ii) £1,700 per locomotive shipped from April, 1955 to December, 1955. In this case, 53 locomotives were shipped upto December, 1952 and 47 thereafter. If negotiations had been carried out with the Shipping Company for payment at the original rate of £2,400 per locomotive upto December, 1952, and at a higher rate for the remainder, it is possible that payment of freight at the higher rate for the *entire* consignment might have been avoided. It is possible that the Shipping Company might have withdrawn their offer as a result of such negotiations but the contention of the Secretary that "it was not open to them to tell the Shipping Company that they accept their offer at the lower rate upto December, 1952 and thereafter they should give them a further quotation and that they had no other option in the matter" does not appear to be well founded. In fact, if the quotation had been accepted by

the stipulated date, namely, the 31st July, 1951 or even a little later, the question of extending the offer to cover shipment upto April, 1953 would not have arisen at that time, as it was not until the last week of November, 1951, that this complication came into the picture. In that event, the Company of course would have had the right to demand higher freight for locomotives shipped after December, 1952. But it is unlikely that they would have demanded higher freight in respect of the locomotives already shipped before that date. From the scrutiny of the actual implementation of this contract as well as some other contracts, it is possible even in respect of shipment after December, 1952, that freight might not have been increased. In the case of the shipment of the 100 Y.P. locomotives at the higher rate of £2,475, only 76 locomotives were shipped upto 31st March, 1953 and 24 during the period April-October 1953 but the Conference did not demand any increase even though the offer was couched in terms very similar to the first. From the Conference Lines letter dated the 3rd December, 1951 forwarding the revised quotation, it is apparent that it was primarily owing to the inordinate delay that took place in accepting the Conference Line's offer of June, 1951, and not so much the fact of the shipping period having been extended by three or four months, that the Lines put up their rates from £2,400 to £2,475.

In regard to the statement that (in November/December 1951) when the position was stated to have been re-examined, the freight rates were going up, there is no evidence in the files of the India Store Department to show that this view was held by them at that time. In fact, even at that stage, the India Store Department were hoping that they might be able to obtain a lower quotation from Belships or other shipping companies, and it was only when they felt that there was no other course that the revised offer of Conference Lines was accepted. In other words, the view expressed by the Secretary, that freights were going up does not appear to be the view held by the India Store Department that freights were going down which was indeed the only reason for not accepting the Conference offer in time.

The letter from the Shipping Company from which the Secretary quoted was dated the 23rd December, 1955 and lends no support to the suggestion (of which there is no contemporaneous evidence on the files) that an attempt was made to secure extension of the period of delivery by paying extra freight during the extended period. The opinion expressed four years after the event as to the possible action of the Conference in relation to the delayed deliveries if the offer of the £2,400 has been accepted does not carry much weight.

There is no evidence in the file to the effect that the Brokers' letter, dated the 28th November, 1951, informing the Conference Lines

requesting an extended delivery period was issued with the approval of the India Stores Department, although it is seen from the files that some conversation took place between the Brokers and the India Store Department, the exact matter discussed being not clear. The Brokers in their letter of the 22nd November, 1951, recommended to the India Store Department the acceptance of the offer of the Conference Lines. As a result of this letter, a minute, dated 27th November, 1951 was recorded on the India Store Department file which indicates that the department had contacted the Brokers over the telephone regarding a quotation from Belship, but there is no reference in the minutes to the question of extending the delivery period. On the 28th November, 1951 the Brokers forwarded to the India Store Department a copy of their letter of the 28th November, 1951 (addressed to the Conference Lines) in which the question of the revised delivery period was mentioned for the first time. It is very likely that the India Stores Department might have been interested in the introduction of the extended delivery period in November 1951 to delay their acceptance of the offer which they considered was high and which they hoped with further negotiation to reduce.

As regards the liability of the Government to pay damages to the Shipping Company in the event of non-delivery of goods for shipment within the specified period, there is no known case where damages have been asked for or levied by the Shipping Company in such circumstances.

(ii) *Shipping of 50 Locomotives.*

With regard to the statement that there was no doubt about port facilities at Madras and that every body knew about their inadequacy, an extract of the minute dated 2nd January, 1952, recorded in the file of the India Store Department is reproduced below:—

“What U.K. Conference mean by adequate shore facilities at Madras since the Outward Conference made a clear quotation? The crane at Madras is 60 tons and if the latter Conference thought this provided sufficient margin for the beam, it is not understood why U.K. Conference should not. (A Y.P. locomotive weighs 52½ tons and the margin seems very little to me but the Conference know the weight to their beams. In any case, we could no doubt take off wheels.)”

According to a marginal note recorded against the above minute, this point was not to be considered by the Conference until 7-1-1952. It appears that as a result of this the Outward Continental Indian Conference and the Calcutta Conference in their quotations dated

8-1-1952 and 5-2-1952, respectively, provided that the lump sum of £2,475 per locomotive and tender would apply for Bombay and Madras, but that shipment to Madras was subject to confirmation regarding the lifting facilities at that port. Further, in the last paragraph of the letter, dated 5-2-1952, it was stated as under:—

“We would add that it had been hoped to have received by this time, definite information regarding the lifting gear at Madras, but this is so far not available. As soon as it is to hand we will advise you.”

In addition to the above, the Brokers in a letter, dated 7th May, 1952 with regard to the shipment of locomotives to Madras stated:—

“At the moment, there are grave doubts as to whether the crane at Madras can lift these locomotives, and until such time as a loading beam has been delivered to Madras, we shall not be able to make further bookings. We understand that the Clan Line are having a loading beam modified in the U.K. and propose to ship out with the first consignment of North British Y.P. locomotives to Madras. This arrangement has now completely altered, and we are awaiting further information from the Conference regarding the prospects of discharging at Madras.”

While it will be seen that there was doubt even as late as May, 1952 regarding the prospects of discharging Y.P. locomotives at Madras, no enquiries were made by the India Store Department from the authorities in India about the port facilities before the expiry of the offer.

Enquiries made from the India Store Department, London, also reveal that there was no shipment of any locomotives to Madras before the shipment of these Y.P. Locomotives.

APPENDIX XV

(Reference Para 70 of the Report)

GOVERNMENT OF INDIA

MINISTRY OF WORKS, HOUSING AND SUPPLY

Note for the Public Accounts Committee—Para 13 of Audit Report, Railways 1955—Avoidable expenditure on freight on 150 loco- motives.

(a) Why was no enquiry made in regard to the transshipment facilities available at Madras before rejecting the quotation of £2,400?

No enquiry was made by the India Store Department, London in regard to the transshipment facilities available at Madras before rejecting the quotation of £2,400. The Director General, India Store Department, London have explained that this was not considered necessary as they were aware of the inadequate crane facilities at this port on the basis of their previous experience and knowledge. It should also be appreciated that any further enquiries by the department for the purpose of communicating the same to conference lines might well have impaired or lessened the conference responsibility for arranging supply of necessary gear etc. for despatch of the Locomotives at Indian ports.

In this connection, it has been pointed out that in their letter, dated the 10th December, 1951, the U.K. conference extended their quotation given on 3rd December, 1951 to Madras also, but with a rider. The India Store Department accordingly raised the question for the purpose of elucidation from the U.K. conference as to why they had added the rider when the outward continental conference in their quotation of 31st October, 1951 had not done so. This was done as it was considered necessary that such elucidation should be obtained in view of the circumstances under which this rider had been made taking into account the previous offer of the outward continental conference, and as it would not have been correct to have referred to continental conference and enquire from them why they had not made their quotation a conditional one.

As it happened ultimately, the question was not answered by the U.K. conference, but by the continental outward conference who also added a rider to their quotation of the 8th January, 1952. This is not surprising as the two conferences function more or less ordinarily as one body and have a common chairman.

In further elucidation of the apparent failure of the India Store Department to take advantage of the quotation of £2,400 submitted by the Continental Conference for shipment to Madras, it may be pointed out that if they had accepted it without awaiting the result of the efforts their Freight Forwarding Agents were making to get the U.K. Conference, to reduce their identical quotation for despatches to Bombay, they would have jeopardized whatever chance they had of success in the negotiations referred to. As the offer in question expired on November 14, 1951 and the result of the negotiations with the U.K. Conference did not become available until after that date, the apparent failure to avail of the offer is not difficult to understand.

- (b) *The circumstances which led to the alteration of the delivery schedule and under whose authority it was accepted? Under whose authority the letter, dated the 28th November, 1951, was written by the Brokers because of which Government had to pay £75 more as freight for the shipment of a loco.*

2. It may be stated that as a result of negotiations between the Railway Board and M/s. North British Locomotive Company the India Store Department, London, was asked to place the order subject to their (India Store Department's) Standard Conditions of Contract and the *force majeure* clause of the L.M.A. Safeguarding clauses (Annexure I). It will be seen that once such a clause is accepted the Purchaser does not seem to be entitled to repudiate the contract or recover any damages for late supply. The question of delay was, however, taken up by the India Store Department with the firm in October 1951 and they stated that there would be delay firstly because of the time taken between the date of their offer and the placement of the order and, secondly, because of the necessity for collaboration with Krauss Maffei with whom the contract for 50 Y.P. locomotives was placed, through the then Consulting Engineers M/s. Rendel, Palmer & Tritton. Copies of the relevant letters are contained at Annexures II and III. An extract from India Store Department's letter, dated 13-8-1955 addressed to the Railway Board, which explains the reasons for delay in placing the contract is also enclosed (Annexure IV).

It may also be mentioned that under special agency arrangements, the Brokers (Bahr Bahrend & Company) have to keep in touch with suppliers and arrange booking of ships to comply with actual availabilities. The India Store Department have stated that though there is nothing on record, it is recollected by the officer dealing with the case that the Brokers advised the then Deputy Director General that the suppliers were behind in the original promise of delivery and thereupon the Deputy Director General authorised them to write

their letter, dated 28-11-1951 (Annexure V). It is felt that in order to limit the Government liability for as long a period as possible, it was reasonable to get Conference to fix the rates for the locomotives to cover the extended period of delivery.

As regards 50 Locomotives ordered with M/s. Krauss Maffei, although it was intimated originally that there would be a little delay in completing the delivery and a part of the supply would extend beyond December, 1952, actually all the 50 Locomotives were delivered and shipped before December, 1952. There was, therefore, no question of alteration of the delivery schedule in regard to these 50 Locomotives.

NEW DELHI;

Secy. to the Govt. of India.

Dated the 19th June, 1956.

ANNEXURE I

Copy of Force Majeure Clause

"The delivery period provided for is stated in good faith and the contractors shall not be held responsible and shall incur no penalty nor shall the Purchaser be entitled to repudiate the contract, recover any damages or withhold any payments already due in the event of failure or delay to complete or delivery any locomotive, boiler spare part or other item the subject matter in whole or in part of this contract if the said failure or delay is caused directly or indirectly by recognised *Force Majeure* or any other cause beyond the control of the contractors. In the event of any such failure or delay the time or times for delivery or any other act hereunder shall at the option of the contractors be extended by such time as is necessary to overcome the said failure or delay and its consequences and to effect delivery in accordance with this contract and the dates for any future payments or credits by the Purchaser shall be correspondingly extended. The decision of the contractors as to the length of time attributable to any particular delay and the corresponding extension of time or credits or payments shall be conclusive."

ANNEXURE II

*Copy*WK. 3294/51.P.S.
11th October, 1951.

Dear Sirs,

Contract No. K.3294/S.6560/15-1-1951.

I trust that satisfactory progress is being made with the manufacture of the 'Y.P.' Locomotives against the above contract. As delivery is scheduled to commence next month, I shall be glad to have your production programme as early as possible so that arrangements may be made in advance for their shipment

Yours faithfully,
for Director General,
India Store Department.The Locomotive Manufacturers Co. Ltd.,
82, Victoria Street,
London, S.W. 1.

ANNEXURE III

Copy

LOCOMOTIVE MANUFACTURERS COMPANY LTD.

82, Victoria Street,
London, S.W. 1.

JWV/EJ.

L. 121/02.19806.

Your Ref: WK. 3294/51.PS

17th October, 1951.

Dear Sir,

Contract No. K.3294/S.6560/15-1-1951.

We duly received your letter of 11th October asking for the production programme in connection with this Contract so that you might make arrangements for shipping.

These Locomotives will not be ready at the time stated in the original quotation because, as you are no doubt aware, considerable delay occurred before the order was placed and further delay has been inevitable due to the necessity for collaboration with Messrs. Krauss Maffei through the Consulting Engineers on numerous modification detail.

We will give you good notice of the time when the Locomotives will be ready in order to facilitate your shipping arrangements.

Yours faithfully,

LOCOMOTIVE MANUFACTURERS COMPANY LTD.

Sd/- Director.

The Director General,
India Store Department,
32.44 Edgware Road,
London W. 2.

ANNEXURE IV

S. 6560/50 CJB/RLY 3,

13th August, 1955.

Extract of Letter to Director of Finance, Railway Board, Ministry of Railways, Government of India, New Delhi.

Subject:—Increased Cost claim on 100 YP Locos.

2. The Contract was placed on the basis of N.B.L.'s letter dated 22nd September 1950, addressed to Shri A. K. Chanda wherein they had stated: "Delivery to commence November, 1951, and complete in September 1952, on the promise that orders will be placed very soon." The instructions to place the formal order were received only in December, 1950 (Shri Chanda's DO No. FC/EU/Locos dated 23rd December, 1950 refers) and the contract was actually issued on 15th January, 1951. In October 1951, when the commencement of supply was nearly due, we asked the firm to confirm that satisfactory progress had been made with the manufacture of the locos to which they replied that there will be considerable delay in supply, firstly because of the time taken between the date of their offer and the placement of the order and secondly because of the necessity for collaboration with Messrs Krauss Maffei through the then Consulting Engineers, Messrs. Rendel, Palmer & Tritton.

3. As a result of negotiations between the Railway Board and M/s. North British Loco. Co., this Department was instructed to place the order subject to our Standard Conditions of Contract and the Force

Majeure Clause of the L.M.A. Safeguarding Clauses. After placement of contract with the N.B.L. Co., the Railway Board directed that in accordance with the terms of the Technical Aid Agreement, the contract should be placed with the L.M. Co., (Mr. Chanda's DO letter No. FC/EU/Loco dated 18th January, 1951 refers). When however, the contractual documents were despatched to the L.M. Co., they agreed to accept the order only if it was subject to all the terms of the Locomotive Manufacturing Association's Safeguarding Clauses. You will have noticed from our letter S. 6560/50. FWJS/RLY dated 20th February, 1953 that the L.M. Co., had consistently refused to accept the order on the conditions originally agreed to by N.B.L. Several meetings with N.B.L. Co. Ltd., subsequently however, resulted in this firm agreeing to the original conditions and the claims computed on this basis, were found to be beneficial to the Government; as intimated to the Railway Board in this Department's letter No. S. 6560/50 JI/RLY 3. dated 4th February, 1954; and therefore recommended for your approval.

ANNEXURE V

Copy of letter from M/s Behr Behrend & Co. to the Calcutta conference.

JSGP JAP.

28th November, 1951.

The Secretaries,

U. K./Calcutta Conference,

M s. J. B. Westrav & Co., Ltd.,

138, Leadenhall Street,

London, E. C. 3.

100 Locomotives and Tenders to Bombay.

Dear Sirs,

We wish to refer to your letter of the 19th instant and to our reply of the 22nd instant regarding rate of freight on the above.

We have only ascertained yesterday that delivery of this Contract will not commence until March 1952 and according to Suppliers, will continue thereafter at the rate of 2 Locomotives and Tenders per week. Since this means that the Contract will not be completed for at least twelve months, we would request you to extend your offer to cover the shipment of these Locomotives at your current quotation until the 30th of April, 1953.

Yours very truly,

APPENDIX XVI

(Reference Para 76 of the Report)

MINISTRY OF WORKS, HOUSING AND SUPPLY

Note to the Public Accounts Committee relating to the Purchase of defective and unserviceable rails—S. Nos. 30 to 32 in Appendix II of the P.A.C's. 13th Report.

“S. No. (31)—This case (relating to the purchase of unserviceable rails) has been grossly mishandled by the India Supply Mission, Washington and requires further detailed investigation. It is a sad commentary on the working of the Purchase Wing of the Mission. The Committee would like to have a fuller report on the transaction and what action is proposed to be taken against other officials at fault.”

A full report of the case is given below:—

In April, 1948, the Prime Minister of the Government of Mewar requested the late Ministry of Industry and Supply to ascertain prospects of the early supply of 10420 tons of 50 lbs rails together with necessary accessories for Chittorgarh-Kotah Railway Project, from “Outside the pool” and added that “the formal indent will be placed by the General Manager, Mewar State Railway, Udaipur on hearing from you.”

2. A cable was accordingly sent by the Ministry of Industry and Supply to the India Supply Mission who replied as under on August 5, 1948:—

“1218 YOUR CABLE 1(1) (2) (1)/48 JULY 1 NEW FIFTY POUND RAILS STOP UNDER PRESENT CONDITIONS EXTREMELY UNLIKELY 10420 TONS HALF 20840 COULD BE DELIVERED WITHIN TWELVE MONTH PERIOD STOP HOWEVER WE WILL EXPLORE ADDITIONAL POSSIBILITIES STOP COST OF FIFTY POUND RAILS WOULD BE APPROXIMATELY 113 DOLLARS HALF 226 DOLLARS PER SHORT TON ANGLE BARS 6—40 DOLLARS HALF 12—80 DOLLARS PER 100 POUND AND BOLTS NUTS 9 DOLLARS HALF 18 DOLLARS PER 100 POUNDS STOP 65 POUND RAIL COULD PROBABLY BE PROCURED

MORE EASILY STOP ADVISE IF THIS WEIGHT ACCEPTABLE IF 50 POUNDS RAIL NOT AVAILABLE STOP PRICE OF 65 POUND RAIL DOLLARS 87—28 HALF 174—56 JOINT BARS DOLLARS 6—24 HALF 12—48 PER 100 POUNDS BOLTS AND NUTS DOLLARS 8—40 HALF 16—80 PER 100 POUNDS."

3. On receipt of a copy of India Supply Mission's cable of August 5, the Mewar State Railway wrote as under to the Ministry of Industry and Supply:—

"The persual of costs of 50 lb and 65 lb. rails given in the telegram shows that the total cost for even importing the 65 lb. rails would be the same as of 50 lb. rails. The price of 65 lb. rails is shown as 87 dollars, 28 cents per short ton, as against 113 dollars, per short ton for 50 lb. rails. Therefore, if availability of 50 lb. rails is not certain, I will be grateful if you could kindly wire the India Supply Mission, Washington, to negotiate for 65 lb. rails. But in this case the tonnage will increase from 10420 to 13550 standard Br. weight. If the American supply is in short tons, which I presume is equal to 2000 lbs. per short ton against the standard 2240 lbs. per ton Br. weight, then this tonnage will further increase to 15200 short tons. Of course the corresponding requirements of joint bars and bolts and nuts as required, would be supplied with these 65 lb. rails, rates for which are acceptable.

2. I would be grateful if the India Supply Mission could let us know the final price and the period within which these can be supplied to enable me to arrange for submission of the formal indent."

4. The reply sent to the India Supply Mission by the Ministry of Industry and Supply on September 11 was as under:—

"IF AVAILABILITY OF 50 POUND RAILS NOT CERTAIN MEWAR STATE RAILWAY PREPARED TO ACCEPT 15200 (HALF 30400) SHORT TONS 65 POUND RAILS AND ACCESSORIES AAA PLEASE CABLE FINAL PRICE AND DELIVERY PERIOD."

Subsequent exchange of correspondence between the India Supply Mission and the Ministry indicates that the steel quota allocated to India being small, delivery of new rails would have to be spread

over a considerable period of time particularly as another demand for 90 lb. rails was pending procurement.

5. The India Supply Mission cabled as follows to the Ministry of Industry and Supply on October 22:

“HAVE OFFER TENTHOUND TONS FIRST QUALITY 56/60 POUND RELAYING RAILS SUITABLE FOR USE IN CONTINUOUS TRACK FOR DELIVERY WITHIN ONE YEAR OR LESS AT 75 (HALF 150) DOLLARS PER NET TON WITH FISHPLATES AT DOLLARS 4.25 (HALF 8.50) PER ONE HUNDRED POUND STOP OFFER SUBJECT TO CONFIRMATION ON QUICK ACCEPTANCE STOP CABLE ADVICE.”

The note recorded by Mr. Bishop of the India Supply Mission on the offer for relaying rails prior to the issue of the above cable is as under:—

“This could solve the problem. I see no reason why India should pay \$ 100-110 for rails for a side track when relayers would do. Shall we cable India?”

The above figure of \$ 100-110 was apparently taken from the letter of offer from American Rail and Steel Co. reproduced in para 7 below.

6. The note recorded in the Ministry following receipt of I.S.M.'s cable of October 22. is as under:—

“The rails offered are not the usual good quality rails, but relaying rails. The price of \$ 75 per ton is apparently FOB and this is comparable to prices of previous offers. The Mewar State Railway may be asked to give their comments urgently. Draft telegram submitted for approval.”

The cable was repeated to the Mewar State Railway on October 29, who replied as under on November 23:—

“OFFER FOR TEN THOUSAND FIRST QUALITY RAILS 56/60 POUNDS WITH FISHPLATES IS ACCEPTED SPECIFIED RATES REQUEST EARLY ARRANGEMENTS.”

As the significance of the word “relaying” was clear even to the non-technical Assistant handling the case in the Ministry of Industry and Supply, it could not be assumed that the fact that 2nd hand rails would be supplied had not been taken into consideration by the Mewar State Railway in communicating the above decision.

7. The India Supply Mission was, therefore, informed on November 27, to accept the offer for relaying rails which they did on December 1. The contract was based upon American Rail and Steel Co's original quotation of October 18, as confirmed by letters of November 27 and November 29. The original offer mentioned first quality relaying rails, the letter of November 27. good quality relaying rails and the letter of November 29 relaying rails only. Mr. Bishop, the Supply Assistant, has recorded words No. 1 and No. 2 against the words 'relaying rails' in the letter of November 29, presumably following discussions with the suppliers. The original quotation of October 18, reads as under:

"As you know, we are one of the largest dealers in used rails in the United States, and in this particular instance, we are probably better equipped to serve you than anyone else as we already hold a large tonnage of these rails and have options on additional quantities to be taken up.

We could guarantee to furnish you, therefor over a period of one year or less, 10,000 tons of 56 pound and 60 pound good quality relaying rails suitable for any purpose for which they might be used in India.

Furthermore, we could make shipment of about 3,500 tons immediately.

It should be further noted that we would be able to make firm prices for the duration of such a contract. We doubt that you would find anyone in the trade today in a position to do that. As of today, we would agree to furnish these rails at a price of \$75.00 per net ton, with angle bars at 4.25 per 100 lb. As you know, the price of new rails of this weight—if they could be secured and export quota were available, would cost about \$110.00—\$120.00 per ton.

Please note that this is not to be considered as a quotation, inasmuch as you have stated that you do not have authority to purchase at this time, and, by the time you receive such authority we may have to dispose of some of our stocks. Should you secure such authority in the near future, however, we feel reasonably certain we can make a firm offer as outlined herein. Needless to say, if it became known that you were even remotely interested in purchasing this quantity of rails, prices would increase immediately. We suggest, therefore, that considerable discretion be observed in this respect until you are in a position to act."

8. It is presumably because of the above note sounded by the suppliers that no regular enquiry was issued to other dealers. Mr. McCusker's explanation for this is as under:—

"In setting up the analysis sheet a recommendation was set-forth pointing out that experience gained in purchasing used rails over the previous 12 to 18 months had shown that in the very active sensitive 'spot' market that existed for used rails that if we went out and broadcasted our need any offerings that were withdrawn and prices stiffened. This was set-forth as the opinion of Mr. Bishop the person who had purchased all our steel demands for the previous two years. He had proved during this time to have sound judgment. He operated under my jurisdiction and I concurred in his recommendation. This was presented to the Director at the time of signing the contract and he concurred.

9. The financial standing of American Rail and Steel Co. was not checked before the contract was placed. With regard to this aspect, Mr. McCusker's explanation is as under:—

"Business in this country is done on the basis of experience you have with the companies you deal with and the character of the individuals who set the policies of these companies. We had had dealings in the past with Milton Canter, the dominant interest in this Company. Originally as Washington representative of Hyman Michaels & Co. and then as the principal in Pan American Trading & Investment Corp. At the time of entering into the subject contract he had completed or was completing four contracts valued at \$154,000—all of them to the best of our knowledge satisfactory.

The Auditors cite a current Dun & Bradstreet report which stated "that authorised capital unknown. However \$1,500 is paid in..." and intimates that this indicates the financial standing of the company and as such raises a question of the company's financial responsibility. It is not unusual for companies in this country that are closely held to be unwilling to publish figures on their companies or to show large investments in the form of paid-in-capital. The lack of a large investment in capital does not necessarily mean they cannot or will not fill a contract satisfactorily. The important factor here was what was our past experience with the person that offered

us what in the general consensus of opinion was the most advantageous deal to us. Our experience has been favourable."

10. Provision was made in the contract placed on December 1, for supply of 2nd quality rails to the maximum extent of 45 per cent. of the total. This provision was introduced without the prior concurrence of the Ministry. Mr. McCusker's explanation on this point is as under:—

"Suitability of No. 2 for the purpose indicated by India was considered after checking with technical advice, namely, inspecting authorities, Robert Hunt and Pittsburgh which is our usual procedure and as also advised by the dealers in the market. The consensus of opinion was that No. 2 rail which was accepted in U.S.A. for secondary track was suitable for the Indian Railway which does not carry as heavy a traffic or traffic at such high speeds. No record is made of consultation with the Director on this specific point, but certainly the usability of No. 2 was clearly understood by all.

Question.—What is your recollection of Mr. Bishop's pencil notation on American Rails quotation with regard to quality of rail as offered?

Mr. McCusker.—It seems to me that in view of the fact that the American Rail in their second letter and in their third letter did not specifically say first quality, Mr. Bishop discussed this with them to obtain clarification of the quality of rail they were offering.

Question.—No. 2 being inferior to No. 1, was it not considered reasonable to obtain a reduction in price assuming that No. 2 was acceptable?

Mr. McCusker.—I remember that both Mr. Bishop and I had talked to Mr. Milton Carter to see if a reduced price will be acceptable to him, but we found that his offer at that price was take it or leave it."

11. On January 5, 1949, the General Manager of Mewar State Railways recorded the under-noted note:—

"While discussing the question of arrangement of materials with the Joint Director, Civil Engineering, Railway Board, Mr. Baijal, it transpired that there was suspicion about the rails that have been offered, to be second hand

rails. I, therefore, went and saw Mr. Natesan in this connection and after discussion it transpired that they were second hand rails. I told him that if these rails are second hand, and if the meaning of the weight of rails as indicated in the telegram, namely 60 to 56 lbs. is loss of 4 lbs. weight in 60 lb. rails, it would indicate that these rails have lost weight due to wear upto 6-66 per cent. The wear is usually in the head only, and therefore, it is likely that these rails may not be suitable for our requirements and may give bad running and bad guage.

2. Mr. Natesan, therefore, suggested that the rails offered are worth over Rs. 25,00,000 and, therefore, one of the Officers of the Rajasthan Railway should go and inspect the things for himself. I replied that we are short-handed and it would be difficult to arrange accordingly. I suggested to him to send a cable to India Supply Mission, America, and obtain the information with regard to the profile of rails, loss of weight in rails, length of rails and as regards their condition with regard to hogging. Mr. Natesan immediately wrote down the cable, got it approved by me, and made arrangements to have it issued.
3. Further developments will be decided on receipt of the reply from America.

Sd./- P. S. Khamesra,
General Manager,
Rajasthan Railway."

The Ministry of Industry and Supply thereupon cabled to the India Supply Mission as under:—

"1(1)2(1)48-1(5)AAA OUR CABLE EVEN NUMBER DECEMBER EIGHTEENTH RAILS FOR MEWAR STATE RAILWAY AAA RAJASTHAN RAILWAY EXPRESSES DOUBT REGARDING SUITABILITY OF RELAYING RAILS OFFERED YOUR CABLE 1781 OCTOBER TWENTY-SECOND FOR TRACK LAYING PURPOSES FOR NEW CONSTRUCTION AAA PLEASE THEREFORE SEND BY AIR MAIL TO US AND GENERAL MANAGER MEWAR STATE RAILWAY UDAIPUR PROFILES OF THE WORST RAILS UNDER OFFER AAA ALSO CABLE LENGTH OF RAIL AAA ARE THE RAIL END FREE FROM HOGGING AND PERCENTAGE LOSS IN WEIGHT OF ORIGINAL AAA."

In reply, the Mission advised the Ministry as follows:—

"2353 YOUR CABLE 1(1)2(1)/48-I(5) JANUARY 3 RAILS FOR MEWAR STATE STOP SUITABILITY IS ASSURED BY INSPECTION STOP RELAYING RAILS ARE GRADED ON BASIS THEIR SUITABILITY FOR TRACK LAYING PURPOSES IN USA WHERE EQUIPMENT IS HEAVIER AND SPEEDS MUCH FASTER STOP NUMBER 1 RELAYING RAILS ARE ADJUDGED SUITABLE FOR MAIN LINE USE IN USA AND NO. 2 RAILS FOR SECONDARY LINE USE STOP PERCENTAGE WEIGHT LOSS DOES NOT EXCEED 4 AND 5 PERCENT RESPECTIVELY STOP PROFILES BEING FORWARDED AIR MAIL STOP ORDER PLACED FOR THIS TRACK DECEMBER FIRST."

12. The profile of a rail was also sent but it was not that of the worst rail as required by the Ministry. The rail selected was one out of the lot of 3,000 tons then ready for shipment. The letter forwarding the profile is not traceable in the Ministry's records, but what looks like the profile in question has been found in the routine papers and appears to be the profile of an old rail. Mr. McCusker's explanation on this point is as under:—

"Page 8-Reference the request for a profile. We had made it clear in our cable suggesting the use of relayers that it would take a year to deliver the 10,000 tons. . . . Therefore, when a profile was called for as we saw it, it was to give the ultimate user a picture of the type of rail he would get and particularly the foot of the rail. All rails to be supplied under the contract would be American sections and the profile was therefore representative. We interpreted the request as being for the only document obtainable a representative profile."

13. Although the contract in question was issued on December 1, 1948, and the Ministry had been informed on January 5, that suitability of rails was ensured by inspection, the inspection contract was not issued till March 19, 1949, and the work was entrusted to Pittsburgh Testing Laboratory who were already carrying out inspection of the rails on behalf of American Rails and Steel Co. Mr. McCusker's explanation on the former point is as under:—

"On December 17, 1948, Robert Hunt has written quoting his price and terms for the inspection of this contract. On January 18, 1949 he has reminded about his quote. On 16th of February, Mr. Bishop has discussed with Robert Hunt on the telephone. On January 19, Pittsburgh Test

Laboratory has sent in their quotation for inspection on this contract. On this letter, there is a note recorded by Mr. Bishop, dated February 14 that 'this is a better quotation than that of Robert Hunt and that Canter (American Rail) has advised on February 14 that he is presenting 1,250 tons of rails at Norfolk for immediate shipment. P.T.L. men are on the scene making preliminary inspection for Canter's account. Since they are and this is better quote than Hunt's I advised P.T.L. to proceed'."

It will be seen from the above that although the inspection contract was actually issued on the 19th March instruction to proceed with the work had been given on February 14.

14. Mr. McCusker's explanation for having entrusted inspection to the same party as was doing the inspection for the supplier is as under:—

"There are two established concerns of independent inspectors that have been in existence in this country for a great many years and are considered experts on railroad equipment. One is Robert W. Hunt and Co. and the other is Pittsburg Testing Laboratory. It is not unusual for them to be hired by the two parties to a given transaction with regard to railroad equipment. There has never been any indication as to their lacking independence in such circumstances. Generally speaking, with railroad equipment, there has never been any question as to the type of inspection that these two concerns would do. This is adequately proved by the fact that of all the used rails we have purchased this is the only one on which we have received a complaint and either Hunt or Pittsburgh were the inspectors on all our used rail contracts."

The Inspection contract did not specify any details of the specification to which supplies were to be inspected. The relevant portion of Mr. McCusker's evidence on this point reads as under:—

"Question.—The inspection contract issued does not lay down specifications for the rails purchased to which the inspector is required to comply. You have already said that the specifications for the relaying rails are well-known to the inspector and also to the trade. Reading the photostat AREA specification in the file, which has been supplied by P.T.L. subsequently on request at the time complaint was received from India, it is stated in para

2(d) that "the maximum wear allowed in each case shall be specified by the user or the purchaser". This maximum wear has not been specified either in the contract on American Rail nor in the inspection contract on P.T.L. The subsequent correspondence with P.T.L. after the complaint has been received.

Mr. McCusker.—First of all, I believe that the AREA specifications for used rails in the last part do set forth the percentage of wear permitted, this is not expressed in percentages but is expressed in fractions of the whole that the wear may not exceed. At the time we concluded to buy relayers as is known in the records, Mr. Bishop checked with Robert W. Hunt with respect to the percentage of wear involved in No. 1 and No. 2 relayers and he has noted on one of the cables previously referred to that this percentage was 4 and 5 per cent. respectively. Whether the wear permitted and expressed the AREA specifications is comparable to the 4 and 5 per cent. I am not in a position to state. Obviously four years later and after receipt of the complaint, it seems clear that we should have specified in details what we wanted P.T.L. to do. Alternatively, at the time we placed the contract we knew P.T.L. as one of the two authorities with the independence we wanted to pass on and inspect used rails in accordance with what we understood was an acknowledged description in the trade, i.e., No. 1 and No. 2 relayers."

15. The Inspection Report furnished by the Pittsburgh Laboratory contained a stipulation to the effect that the report covered the condition of the rail as seen by the Inspector and reflected his best judgment and that no liability was accepted for defects that might have been overlooked by him or for error of judgment or for claims that might ensue on the part of the ultimate receiver of the merchandise. It would be relevant to point out that ordinarily inspection agencies do not accept liability for inspection errors.

16. The Mission had been directed to take procurement action on the assurance of the Prime Minister of Mewar State that a formal indent would be placed later, and also on the acceptance of the offer by the Railway. The Railway, however, placed an indent in May 1949 only for 1092 tons, the quantity shipped by that time. No formal indent for the balance quantity was placed by them despite repeated reminders. In September, 1949, the Railway intimated that as Government of India was to take over the Rajasthan Railways they would not commit themselves to the purchase of the balance

quantity. The Industry & Supply Ministry thereupon asked the India Supply Mission on September 27, 1949 to intimate the possibility of cancellation or suspension of the balance undelivered quantity, without any financial repercussions. The matter was taken up with the supplier on September 30 but they insisted in reply that contractual obligations should be honoured by India Supply Mission and added that "8,000 tons have already been shipped or are at the dock or are en route to the dock and that they have already made commitment for the remaining 2,000 tons". On October 11, following discussion with Director, a cable was issued to the supplier, instructing them that "No further quantities against this contract are to be shipped to sea-board". To this the reply received from the suppliers was "Too late to make changes. Our Commitments already made. Unless shipping instructions are received within 3 days they will consider themselves free to make shipment to any U.S. port without prior notice to India Supply Mission."

The delivery period specified in the contract was as under:—

"approximately 3,500 tons in 4th quarter 1948. Balances to be shipped within 12 months from date."

As on 30-9-1949, the position was that 3,362 tons had already been shipped while 4054 were awaiting shipping instructions from the India Supply Mission and the supplier was under no obligation to ship the balance until 31-12-1949. It was not, therefore, possible to cancel the contract unilaterally. It is true that the contract did contain the under-noted Termination Clause:—

"Termination of Contract: If at any time during the term of this contract, the plans of the Government of India change for any reason, we shall have the right to terminate this contract by notice to you by registered letter. In respect of such of the material that is complete and ready for shipment within thirty days after such notice, we agree to accept delivery thereof at the contract price and terms.

In the case of remainder of the undelivered material, we may elect (a) to have any part thereof completed and take the delivery thereof at the contract price and (b) to cancel the residue (if any) and pay you a prorated amount of the contract price based upon the stage of completion to be certified by you. You shall deliver all such material in process of manufacture to us and shall return to us any funds remaining on our credit. No payment shall

be made by us for any material not yet in process of manufacture on the date notice cancellation is received."

but as is obvious from the wording the clause is really intended for application to cases in which manufacture is necessary and not to cases in which purchase of second hand material is involved. A categorical statement having been made by the suppliers in this case to the effect that they were already committed to the purchase of such material as had not already been shipped or was about to be shipped, the India Supply Mission presumably thought that little would be gained by invoking the clause. They had no reason at that stage to doubt the *bona fides* of the firm. In fact, as will be observed from the under-noted statement regarding the dates on which the supplier notified availability of the material and asked India Supply Mission to make shipping arrangements therefor, the correctness of their statement that the material was either in hand or they stood committed to its purchase would be proved;

Date of Notification	Rails	Angle Bars
16-2-49	2016	7046
18-2-49	350	1223
24-3-49	560	2333
5-4-49	2240	6192
30-9-49	2250	6220
31-10-49	1500	4960
17-10-49	200	400
4-11-49	450	1097
16-11-49	1300	3121

Delay in despatch was due to the time taken by the India Supply Mission either in obtaining necessary export licence or in finding necessary shipping space.

On receipt of confirmation from India that cancellation on payment of compensation was not desired the contract was allowed to run its course, the last shipment being made from U.S.A. on January 31, 1950. The contract delivery period was extended beyond December 31, 1949 because the export licence had expired and fresh licence had to be obtained.

17. Particulars of shipment made against this contract are given below:—

Date	Quantity (Tons)
23-3-1949	1020.3
3-4-1949	343.12
10-4-1949	329.1
15-5-1949	227.2
19-5-1949	556.2
24-6-1949	304.2
16-7-1949	583.6
12-11-1949	1107.8
12-11-1949	157.1
21-11-1949	664.94
24-11-1949	450.2
	286.7
	367.8
	162.00
23-12-1949	196.84
	201.55
	306.06
	112.7
24-12-1949	460.7
	997.00
31-1-1950	80.5

18. It was only on 15-5-1950 that the Railway Board advised the India Supply Mission through the Directorate General of Supplies and Disposals for the first time that rails of some odd sections and poundage had been received and that a large number of rails and fishplates were unserviceable. The complaint did not specify the nature of defects nor did it say what the defective quantity was. The data contained therein was insufficient for lodging a claim against the suppliers. It is also known from legal advice since made available that a long period of time having already intervened between the date of despatch of most of the consignments and the date of receipt of the first notification that there was anything wrong with

the stores supplied, there was little possibility of a claim filed at that stage being found legally sustainable because law requires that "the claim must be preferred as soon as defects are discovered or ought to have been discovered". On receipt of D.G.S. & D's letter, the India Supply Mission asked the Inspecting Agency to explain how rails of odd section and poundage had been passed. The Inspection firm stated that no separate record had been kept of the numbers of 56 lb and 60 lb. rails accepted but that steps had been taken to ensure that the correct no. of angle bars were sent for each size. They reiterated that the rails approved by them met the requirements of the specifications. These remarks were communicated to the D.G.S. & D. on July 19. On October 13, 1950 India Supply Mission received a cable from the Railway Board stating that American Rail and Steel Co. had offered them direct some relaying rails of the same quality as previously supplied and that the quality of the latter having been found unsatisfactory, the firm should be informed that offer was unacceptable. The contents of this cable were communicated to the suppliers on October 19 who resented them, and stated in their reply of October 23 that an inspection having been carried out before shipment they could not believe that there was any truth in the complaint. The Railway Board was requested on October 19, 1950 to furnish specific details. A reply to this letter was received on 5-3-1951 which indicated that out of 35,375 nos. of rails received in India against the purchase order, 21,327 were found fit for use of main line track, 7,350 could be used on unimportant track after removing defects and the remaining 6,698 were unfit for utilisation on railway track. It was stated that 11,917 nos. of angle bars could also not be used.

On the date of receipt of this letter the legal position in terms of the warranty clause included in India Supply Mission's Conditions of Contract appended to the contract was that the claim had become time-barred except in respect of the last consignment of 80 tons which was shipped on 31st January, 1950. The aforesaid warranty clause reads as under:—

"You warrant that everything to be furnished hereunder shall be free from all defects and faults in material, workmanship and manufacture and shall be of the highest grade and consistent with the established and generally accepted standards for material of the types and in full conformity with the specifications, drawings and samples, if any, and shall if operable operate properly. This warranty shall survive inspection of, payment for, and acceptance of the goods but shall expire (except in respect of complaints notified to you prior

to such date) 15 months after their delivery or 12 months after their arrival at destination in India which-ever shall be sooner."

Apart from the fact that the general proposition of Law explained in para 18 above, over-rides the specific provision contained in the warranty clause regarding the time-limit within which claim must be preferred, it has to be pointed out that the decision given by the New York Court of Appeals on the motion regarding arbitration in this case implies that the clause itself does not apply to the contract because the firm claims that the printed appendix in which it was included and to which a reference was made in the body of the contract, did not reach them.

On the basis of the data contained in the letter of 5th March, 1951, a complaint was lodged with the suppliers on 4th June, 1951. In their reply to the complaints notified on 4th June, 1951 the suppliers replied as under:—

"We note your statement that a report from the Government of India indicates that some 40% of the rails sections, have been deemed unserviceable, that the rails were of different sections, that the spacing of angle bar holes was not uniform, and that the turnouts were unfit for railway track."

We find this report entirely inexplicable. Our records indicate that the material we purchased against this contract was considerably superior to the minimum requirements set out in the contract. It is inconceivable, that "14,048 pieces were badly bent, kinked and worn out." As you know, every piece of rails shipped was inspected and accepted by the Pittsburgh Testing Laboratory, whom you retained and designated as the certifying agency for the material and upon whose certificates of approval payment was predicated.

Pittsburgh Testing Laboratory was not our representative in this transaction, and we are not called upon to defend its findings. It was our experience throughout, however, that Pittsburgh Testing Laboratory's inspection was most rigorous. Upon several occasions, it rejected material which both we and our suppliers were satisfied conformed to contract specifications.

While it is true that all of the rail shipped was not of the same section, this is entirely immaterial. The contract provided only that the rail should be suitable for use in continuous track, and all of the rail shipped met these provisions.

Similarly as to the angle bars, it is of no consequence that they were of different types. Rather, the important consideration was that the angle bars match the rails, as the contract provided. The bars in all instances matched the accompanying rail. In fact, it would have been impossible for the bars not to have matched the rail, for all shipments of rail and angle bars were lifted from a specific section of track.

The turnouts you refer to were purchased together with a substantial quantity of rail from the Norfolk and Southern Railroad. All of this material was practically new, the rail being almost 100% No. 1. It was lifted by the railroad, not because the material was worn out, but because the railroad desired to replace the lifted rail with heavier equipment more capable of supporting the new and heavier Diesel locomotives the railroad was in the process of acquiring.

In its entire history our company has never encountered the slightest dissatisfaction with any railroad equipment it has supplied. In the instant transaction, we took particular pains to see that all minimum requirements were substantially exceeded. Purchases of rail of the requisite weights which were deemed merely adequate for this contract were set aside for other purposes, and rail of superior quality was obtained at considerably greater expense. No effort was spared to assure shipment of material of excellent grade.

When each shipment was delivered to the designated port, and proper shipping documents were presented together with the certificates of your agents accepting the material, our responsibility, of course ceased. Nevertheless, we are considerably disturbed at any criticism of the India Supply Mission arising out of this transaction, particularly since such criticism indirectly reflects upon our organization.

If the report referred to in your letter is actually concerned with the material furnished by us, we are certain that it has no basis in fact.

The D.G.S. & D. was requested on July 6, 1951 to furnish further details. The full facts of the case were brought to the notice of the Ministry only on 15-4-52. The Ministry instructed the India Supply Mission on 7-5-52 to lodge a formal claim with the suppliers on the basis of such information as was available with them pending receipt of further details from the Railway Board. The Mission accordingly lodged a claim for damages on 4-6-52. The Suppliers repudiated the claim in their letter dated 19-6-52 and stated that "if reports have emanated from India that certain rail is not of the quality set forth in our contract then it can only be that the rail

under reference was not the rail provided by the Company." This reply not being satisfactory, the India Supply Mission filed a demand for arbitration on 10-7-52 and claimed a sum of \$200,000 by way of compensation.

19. The Supplier, applied to Court of Law in New York for an order staying arbitration on the ground—

- (a) that the contract contained no provision for arbitration, since the copy of the standard conditions of contract stated to have been enclosed with it was not received by them;
- (b) that the warranty clause having expired the matter could not in any case be referred to arbitration. This and three other successive applications of the Supplier were dismissed by the New York Court. The first finally moved the Appellate Court for leave to appeal against the judgment of the New York Court and for stay of arbitration proceedings. The Court of Appeals, New York upheld the application of the Suppliers and turned down the India Supply Mission's case for arbitration. The case went against us because the Court of Appeals held that "a court cannot say that the intent to arbitrate was so clearly expressed as to warrant a direction that parties proceed to settle their dispute by arbitration." A copy of the judgment of the Court of Appeals is enclosed. The India Supply Mission's Legal Adviser advised the Mission to abandon the claim on the ground that the claim had become Statute barred. Relevant extract from India Supply Mission's Legal Adviser's letter dated 13th June 1955 reads as under:

"The practical consequences of the present decision (which is a final one) is that any remedy that we may wish to pursue would have to be through the medium of the law courts. In this connection, it should be noted that a few of the deliveries were made over six years ago and these would be Statute barred. On the other hand, a substantial portion of the deliveries were made from November 1949 onwards and these would not be Statute barred. With regard to legal proceedings, our Counsel, as well as ourselves, are of the strongest opinion that the Court would find against us on the grounds that the complaint, was not made promptly after arrival of the material in India. Our full views on this subject are already on record and it will be recalled

that the only reason that we advised arbitration was that we felt that there was just a possibility the arbitrators might be disposed to override the technical defence.

In all the circumstances, we have no alternative but to advise abandonment of the claim."

20. The facts revealed by this unfortunate case do point to the need for tightening up the existing procedure in the India Supply Mission in the following respects—

- (a) that the contract form should be so modified that the Standard Conditions of Contract become an integral part of it instead of being appended thereto, as at present; and
- (b) that the exact significance of the warranty clause and the remedies available thereunder should be explained to the indenting departments so that they are fully alive to their responsibilities in the matter. It will be necessary to explain to them that the period of limitation specified therein notwithstanding it is necessary that claims for replacement/reimbursement are filed promptly on discovery of defects giving rise to the claim and that such claims are invariably accompanied by available documentary evidence for their substantiation. It will also be necessary to point out that the period of limitation under the warranty clause commences not from the date of the receipt of the last consignment but from the date of the receipt of each consignment considered independently unless the stores involved are so inter-connected that they cannot be brought into use until after the arrival of the last consignment.

As regards (a) above, necessary instructions have been issued to the India Supply Mission on 13-2-1956 and they have been asked to so modify their contract form as to make the Standard Conditions of Contract an integral part of it.

With regard to (b) above, necessary instructions have been issued to all the indentors explaining the significance of the warranty clause and the need on their part to report promptly the defects and damages noticed in the stores received by them, vide Office Memorandum No. PII-1(38) 56(A), dated 13-2-1956, copy enclosed.

21. Consideration has also been given to the question as to whether it is necessary to recommend to the controlling authority of the consignee that suitable action be taken against him for failure to report receipt of defective material as and when consignments arrived. As has been explained in para 18 above, the general proposition of law that claims for replacement of defective material must be preferred as and when the defects are discovered or ought to have been discovered over-rides the specific proviso regarding limitation contained in the warranty clause. It would, however, be unreasonable to expect the consignee to appreciate such legal subtleties nor could he be expected to know that the period of limitation specified in the Warranty clause commences from the date of receipts of each consignment considered independently and not from the date of the receipt of the last consignment. While it is true, therefore, that Government's failure to seek legal redress has arisen out of the consignee's failure to report the matter promptly, the fact that he was not aware of the full implications of the failure to take prompt action has to be taken into consideration in assessing what action should be taken against him. The matter has been brought to the notice of the Ministry of Railways for such action as they may consider necessary in the matter. The Railway Board have also been asked to intimate the sale proceeds of unserviceable material because the quantum of loss sustained in this case will have to be reduced to that extent.

22. The main points of Audit criticism and the explanation offered by the dealing officials in their defence have been set forth in the above note. Some of the points pleaded in defence are not altogether without substance. In the main, however, it cannot be denied that the case had been badly handled by officers of the India Supply Mission. On receipt of the preliminary Audit Report from India Supply Mission's Audit Officer, the then Director, Shri H.A. Sujan was asked to make a thorough investigation of the case and send a detailed report to Government.

Mr. Sujan's report indicates that Mr. Bishop who was the junior most official handling the case in its earlier stages either misrepresented the case to his superiors or failed to put it up properly. His comparison of the prices of new rails *vis-a-vis* old rails was incorrect. He was also at fault in including a proviso in the contract to the effect that the second quality rails would be acceptable to the extent of 45%. He was also the one responsible for arranging the inspection contract. Mr. McCusker under whom he worked leaned much too heavily on him and is, therefore, to be held primarily responsible for the lapses referred to because Mr. Bishop was after

all only a clerk. In any case no action could be taken against Mr. Bishop because he had resigned from service long long before the trouble started in this case.

Shri Sujan has held Mr. McCusker responsible for mishandling the case on the following counts :

- (i) For not inviting competitive tenders in arranging purchase of second hand rails, as required by India Supply Mission rules, which prescribe that tenders must be invited from all suitable suppliers for stores exceeding \$10,000 in value.
- (ii) For placing a contract of this magnitude without verifying the financial stability and soundness of the firm.
- (iii) For not obtaining the specific orders of the Director in taking these important and far-reaching decisions.
- (iv) For accepting a mixture of No. 1 and 2 relaying rails without bringing the implications of such acceptance to the notice of the Ministry or the indentor or even drawing the attention of the Director to the fact that such a clause was being inserted in the Contract.
- (v) For placing inspection contract on Pittsburgh Testing Laboratory who were engaged at the time by the contractors themselves and failure to consult the Director before making this commitment.
- (vi) For laxity and irresponsibility with which the contract progressed and failure to scrutinise inspection reports with the care and diligence that is normally required of a Purchase Officer.
- (vii) For not taking prompt action to lodge a claim with the firm.

Mr. McCusker being a local recruit and an American National it was doubtful whether Government could proceed against him in the same way as they could against an employee subject to normal rules. It was also feared that his dismissal might have repercussions on the Arbitration case which was then *sub-judice*. The Director of India Supply Mission was therefore advised that full particulars of the case should be placed before Shri C. C. Desai (Secretary, Ministry of Works, Housing and Supply who was then on tour in Washington) for final orders. Shri Desai discussed the case with the officers on the spot and decided that in the peculiar

circumstances of this case, Mr. McCusker should be asked to resign his post. Mr. McCusker was relieved of his services in the Mission on the 31st December 1952.

Shri Sujan's report indicates that although the officials principally at fault in this case were M/s. Bishop and McCusker, Shri Palit, who was at the time of the issue of the contract the Director, India Supply Mission could not escape responsibility altogether as he was holding charge of the post at some important stages viz., at the time of signing of the contract with the firm for the supply of second hand rails, at the time of the receipt of the Ministry's request for cancellation of this contract and at the time of the receipt of the first complaint from India that the stores were not according to specification and were unserviceable. The charge against him principally was that if he had checked and made sure before approving the purchase proposal and signing the contract (a) that the purchase was in fact competitive and (b) that authority for permitting purchase of 2nd quality rails existed the loss might have been obviated. It has, however, to be conceded in his defence that in his position as head of the Mission he could not be expected to check the correctness of each of the statements made by his sub-ordinate officers and was entitled to presume that all matters of details had been properly examined by them. The second charge against him was that he did not insist on physical verification of available stock at the premises of the suppliers before accepting the decision that cancellation was not possible. The points made in para 16 above have to be counted in his favour in considering this aspect of the case. As regards the third charge namely, that proper follow up action was not taken on the first complaint from India, the position is that Mr. McCusker never brought the Director into the picture at this stage. In any case, as Shri Palit is no longer in service having resigned in March 1951, it was decided that the question as to whether it was open to Government to proceed against him in a court of law be examined in consultation with the Ministry of Law. The Ministry of Law advised that "as there is no evidence to establish negligence before a court of law there is no reasonable chance of success if any civil suit were instituted against him." In view of this legal opinion, the question of instituting a civil suit against Shri Palit has been dropped.

Shri H. A. Sujan.—It would appear that data regarding the defects noticed in the consignment became available to the India Supply Mission as per D.G.S. & D's letter of March 5, 1951 which was seen by Shri Sujan, the then Director of the Mission before it was passed on by him to Mr. McCusker with the remarks "A very serious case, a detailed report please." No action was actually taken

on this letter for nearly three months after its receipt in the Mission. Mr. McCusker has already been made to resign, amongst other things, for failure to take prompt action on this letter. However, it was considered that the seriousness of the case having come within the knowledge of the Director, it was his duty to ensure that timely action was taken on the case. It was, therefore, decided to call for Shri Sujan's explanation for this administrative lapse on his part.

His explanation in brief was that the remedies available under the law having already become time-barred as explained in para 18 above, it cannot be said that failure to take prompt action had put Government to any loss. In any case, the primary responsibility for failure to take timely action was that of Mr. McCusker who had failed to submit a report to the Director in accordance with his written directions. The force of these arguments had to be recognised. Nevertheless Shri Sujan could not be absolved of blame altogether as he should have chased Mr. McCusker when he did not submit the report within a reasonable time. For this lapse, it was considered, that the ends of justice would be met if Government's displeasure was communicated to him. This has been done and a copy of the remarks has been placed on his Confidential file.

"S. No. (30) (i) : In the case referred to in para 27 of the Audit Report (Railways), 1953 relating to the purchase of defective and unserviceable rails, the India Supply Mission, Washington failed to observe the elementary principles of prudence in placing reliance, without verification, on the statement of the foreign firm about shipment of the rails. The Committee would like to express their disapprobation over the perfunctory manner in which the Mission handled this transaction from the very start."

Attention is invited to para 16 of the main note. The observations of the Committee have however been brought to the notice of all the officers of the India Supply Mission.

"(ii).—The Ministry of Works, Housing and Supply should have consulted the indenter, viz., the Ministry of Railways before asking the India Supply Mission to go ahead and place the order with the firm"

The Ministry of Railways were not the indentors. The Indentors were the Rajasthan Railways. As shown in the full report of this transaction (Paras 1—6), it was only after the acceptance by

the indenter (Rajasthan Railways) of the offer obtained and communicated by the India Supply Mission that the Ministry of Industry and Supply authorised procurement action. Since the Ministry of Railways were not the indentors, the need to consult them before authorising the India Supply Mission to place the subject contract did not arise. The actual indenter was consulted.

“(iii)—While the contract contained a provision that the firm was responsible for any defect or fault detected by the purchaser in the stores on their arrival in India, the Committee fail to understand why the claim could not be preferred earlier against the firm and earnest attempts made to effect recovery. The Committee would like to know the action taken against the officials responsible for the delay in preferring the claim.”

For full particulars of the action taken from time to time please see para 18 of the main Note. As regards action taken against the Purchase Officers please see para 22 of the full report above.

“(iv)—It is somewhat extraordinary that the inspection contract was placed on the same private firm which had been hired by the supplying firm in connection with the purchase of these very rails. The Committee are perturbed that the salutary principle that Inspectors should not in any way be connected with the purchase of the particular goods has been departed from in this case.

The Inspection Reports were also reported to contain an unusual type of statement that they covered only the condition of rails seen by the Inspector and reflected his best judgment and no liability was accepted for defects that might have been overlooked by him or for errors of judgment or for claims that might ensue from the ultimate receiver of the merchandise. It passes the comprehension of the Committee how Inspection Report based on random inspection, particularly when the goods were secondhand, were accepted by the India Supply Mission, Washington.”

Attention is invited to paras 14 and 15 of the main Note. The force of PAC's criticism is admitted. Mr. McCusker who was responsible for the lapses has been made to resign. The comments of the Committee have been noted and brought to the notice of the India Supply Mission.

“S. No. (32) : The debit for Rs. 7 lakhs representing the value of totally unserviceable rails which was lying under ‘Suspense’ should be adjusted as a valid charge against the Railway concerned, without requiring the Ministry of Works, Housing and Supply to insist on too meticulous a fulfilment of the normal requirements of the supplies conforming to original specifications which it is in any case now impossible to do.”

The Ministry of Railways have in their letter No. 55/W/171/39, dated the 9th January, 1956, advised the Western Railway, Bombay, as under :—

“In view of the recommendations of the Public Accounts Committee, it has also been decided by the Railway Board that the debit on account of the rejected rails may be accepted by you.”

The draft Note has been shown to Railway Board.

NEW DELHI;
The 22nd August, 1956.

Secretary.

ENCLOSURE I

STATE OF NEW YORK
COURT OF APPEALS

No. 342

In the Matter of the Application of
American Rail & Steel Co., Appel-
lant for an order staying certain
arbitration attempted to be held by
India Supply Mission (Government
of India).

OPINION

UNREVISED AND UNCOR-
RECTED. NOT FOR PUBLI-
CATION.

Respondent.

..... X

DYE, J.:

The issue here is whether a contract for the purchase and sale of a quantity of used steel rails and angle bars bound the parties to settle

disputes arising there from exclusively by arbitration. Whether it did or not depends on purchase order language providing, viz.:

"This contract is placed in accordance with the conditions of contract Form ISM 826 Rev. Copy attached and can be modified or supplemented, only in writing and signed by both parties hereto."

Paragraph 25 of the afore-mentioned form provided:

"ARBITRATION: All questions and controversies arising in connection with this contract shall be submitted to arbitration in New York, N.Y., in accordance with the rules of arbitration of the American Arbitration Association."

When a dispute arose as to whether the used rails delivered corresponded in quantity and quality to those called for in the purchase order, the purchaser demanded that it be settled by arbitration. The seller then made the within motion for a stay claiming that arbitration was not called for by the contract documents since the purchase order did not mention it and that Form ISM 826 Rev. on which the purchaser relies, was not attached or that its contents were otherwise brought to the seller's attention. While respondent attempts to deny this assertion by saying that it was their practice to attach said form, it, nonetheless, takes the position that its omission "does not change the situation." The motion for stay was denied in Special Term on authority of *Matter of Level Export Corp.* (305 N.Y. 82, reversing 280 App. Div. 211). Upon appeal, such denial was unanimously affirmed in the Appellate Division, First Department, and the parties were directed to proceed to arbitration. We granted leave in order that the controversy might be examined in light of our subsequent decision in *Matter of Riverdale Fabrics Corporation* (306 N.Y. 288). That Case dealt with a salesnote for cotton yarn containing a clause reading "This contract is also subject to Cotton Yarn Rules of 1938 as amended". Paragraph 31 of those rules contained an arbitration Clause. We deemed such reference was ineffective "to render arbitration the exclusive remedy" because the intention to do so was not clearly expressed. This distinguished the holding in the *Level* case for there the verbatim reference in the main contract to the salesnote provision did not, as a matter of law, raise any substantial issue as to the making of the agreement to arbitrate (Civil Prac. Act. & 1458, subd. 2). In our view this case more closely resembles *Riverdale* than *Level* and, accordingly, a court cannot say that the intent to arbitrate was so clearly expressed as to warrant a direction that parties proceed to settle their dispute by arbitration.

The order should be reversed and motion to stay arbitration granted with costs.

Order of the Appellate Division and that of Special Term reversed with costs in all courts and matter remitted to Special Term for further proceedings in accordance with the opinion herein.

Opinion by Dye, J. All concur.

ENCLOSURE II

Copy of Office Memorandum No. PII-1(38)/56(A) dated the 13th February, 1956, from the Ministry of Works, Housing and Supply, New Delhi, to All Ministries of the Government of India, etc.

Subject:—Defects and Damages noticed by the Consignees in supplies arranged by the Purchasing Organisations of the Ministry of Works, Housing and Supply—Notification of claims for replacement reimbursement.

Investigation of circumstances leading to the loss sustained by Government in the case relating to purchase of secondhand rails by the India Supply Mission for the Rajasthan State Railways has pointed to the need for tightening up procedure, and alerting indentors consignees as to their rights and obligations in the matter of claiming replacement of defective supplies. The Standard Warranty clause included in India Supply Mission's Conditions of Contract reads as under:—

“WARRANTY AS TO QUALITY: You warrant that everything to be furnished hereunder shall be free from all defects and faults in material, workmanship, and manufacture and shall be of the highest grade and consistent with the established and generally accepted standards for material of the type ordered, and in full conformity with the specifications, drawings, or samples, if any, and shall if operable operate properly. This warranty shall survive inspection of, payment for, an acceptance of the goods, but shall expire (except in respect of complaints notified to you prior to such date) fifteen months after their delivery or twelve months after their arrival at ultimate destination in India, whichever shall be sooner.”

The advice given by the Ministry of Law following an analysis of the implication of this clause is that the period of limitation under the warranty clause should be deemed to commence not from the date of receipt of the last and final consignment but from the date of receipt

of each consignment considered independently, unless the stores involved are so inter-connected that they cannot be brought into use until after the arrival of the last consignment. They have further emphasised that the period of limitation specified in the Warranty notwithstanding, it is necessary that claims for replacement/reimbursement are notified promptly on discovery of defects giving rise to the claim. In this connection it may be pointed out that a claim is inadmissible in the eyes of the Law unless it is preferred as soon as the defects are discovered or ought to have been discovered by the Consignees.

2. It is hardly necessary to emphasise furthermore that a claim must be fully documented to be legally valid. In other words, full details of the defects giving rise to the complaint, quantity and value involved, photographic or analytical evidence of the defect etc. have to be furnished to enable the Purchasing Organisation to lodge a proper claim. As direct correspondence with the supplier is apt to weaken the case indenting officers consignees should refrain from doing so, and leave it to the Purchasing Organisation to serve a properly worded legal notice on the suppliers on the basis of the date furnished by them.

3. The Ministry of Railways, etc., are requested to bring the above to the notice of all the indenting officers consignees under their control for guidance and compliance.

To,

All Ministeries of the Government of India.

Secretary to the President.

Military Secretary to the President.

Prime Minister's Secretariat.

Cabinet Secretariat.

Lok Sabha Secretariat.

Rajya Sabha Secretariat.

Department of Parliamentary Affairs.

Partition Secretariat.

Planning Commission.

Community Projects Administration (Planning Commission).

Supreme Court of India.

Union Public Service Commission.

Election Commission.

Department of Atomic Energy.

Comptroller and Auditor General of India.

All Offices attached and subordinate to the Ministry of W.H.&S.
(except D.G.S. & D. I.S.D., London, and I.S.M., Wash-
ington)

Copy to:—

1. The Director, India Supply Mission, Washington.
2. The Director General, India Store Deptt., London.
3. The Director General, Supplies and Disposals, New Delhi.

Prompt action should be taken on all complaints regarding defects and damages notified by the indentors consignees. On receipt of a complaint, immediate action should be taken to examine the contract and to file a claim for damages with the supplier before it can become time-barred. Legal Adviser should invariably be consulted before lodging a claim with the suppliers. Once a claim is made, it should be pursued with the utmost expedition so that Government is not put to any avoidable loss.

4. All Sections of the Ministry of W.H. & S. (except C.R., P. I and P. II).
 5. P. I Section.
 6. Chief Audit Officer (F.R. & S.), New Delhi.
 7. Chief Pay and Accounts Officer (W.H. & S.), New Delhi.
 8. Ministry of Finance (Supply Wing).
 9. Guard File.
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APPENDIX XVII

(Reference Para 82 of Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

MEMORANDUM

With reference to the disciplinary aspect of the cases mentioned in paras 10 and 11 of the Railway Audit Report, 1955, the Public Account Committee have observed as under in their recommendations Nos. 9 and 10, contained in Appendix III of their 17th Report:—

Recommendation No. 9:—Even after three years since some of the high-ranking Officers of ex-Saurashtra Railway had been suspended and charge-sheeted for the various financial irregularities committed by them in the matter of stores purchases as disclosed in Para 10 of the Audit Report, it had not been possible to finalise disciplinary action against them, although the charges, involving misappropriation and forgery, were of a very serious nature warranting criminal action. (The total estimated loss in this case has been reported as Rs. 5,23,792.)

The Committee are distressed to see the routine manner in which this case has been dealt with by the Railway Board. They are at a loss to understand why when the Report of the Departmental Committee which investigated this case revealed that the officers concerned had forged documents which called for criminal investigation, the case had not been reported to the Police for concurrent action. In the opinion of the Committee, delay in finalising the Departmental action might have a prejudicial effect due to loss of evidence such as may be available on the criminal proceedings that might have to be instituted.

The Railway Board should pursue this case which has been referred to the U.P.S.C. for advice, vigorously.

(Paragraphs 17, 19, 20).

Recommendation No. 10:—The same Officers (General Manager and the Chief Mechanical Engineer) who were involved in the case referred to against S. No. 9 are

reported to be responsible for the irregularities disclosed in Para 11 of the Audit Report also. The disciplinary action against them should be expedited.

(Paragraph No. 22)

As regards delay in the finalisation of departmental action, the same is accounted for by several weighty factors as explained below:—

Investigations following the receipt of an anonymous letter in January, 1952, by the FA & CAO, Western Railway, alleging huge advance payments of over Rs. 4 lakhs by the Regional Accounts Officer, Bhavnagarpara, revealed serious irregularities in the purchase of stores worth over Rs. 13 lakhs committed by the General Manager and other senior officers of the ex-Saurashtra Railway. Following the report of the Fact Finding Committee, and in accordance with the recommendations of the General Manager, Western Railway, the General Manager, the Chief Mechanical Engineer and the Chief Accounts Officer, Ex-Saurashtra Railway, were placed under suspension from 14-5-52 and the Controller of Stores was transferred away from the Western Railway to the Central Railway. In January, 1954, he also was placed under suspension.

In October 1952, charge-sheets embodying a number of irregularities detected by the Fact Finding Committee were served on the Officers after getting the charge-sheets vetted by the Railway Legal Advisers. All the officers submitted their defence statements by February, 1953, to the General Manager, Western Railway, who forwarded them to the Board in June, 1953, with his detailed comments on the various points raised in the written statement of defence. Later, an Enquiry Committee, as required under the rules, was set up to conduct an oral enquiry into the charges against the four officers.

3. The Committee commenced their work in September, 1953, and devoted on an average more than 7 hours a day on all working days. After recording of the evidence on 16-2-54 time was given to the accused officers up to 8-3-54 to file their final written statements. From 10-3-54 onwards the Committee Members were placed on special duty to give their full time to studying the voluminous record, evidence etc. and write their report. The report was submitted by the Committee on 30th June, 1954. For speeding up the enquiry, the charge-sheeted officers were requested by the Committee

to attend on Sundays and Holidays also and in spite of some resistance to the suggestion the Committee arranged for some sittings on Sundays and Holidays. The main report is in two volumes covering 684 pages; 5 volumes contain the defence of the officers and the oral evidence recorded by the Committee; 3 volumes of appendices contain the relevant documents to which the Committee had to refer during the course of the oral enquiry.

4. The Enquiry Committee Report was received in the Board's Office on 12th July, 1954. This had to be fully gone through before a note summarising in a concise form the salient points of defence put forward by the accused officers and the result of the Committee's investigation was submitted to the Board in October, 1954. The case was then considered by the Railway Board and a tentative decision was taken in December, 1954, that the officers were guilty of the charges and that the General Manager and the Chief Mechanical Engineer should be dismissed from service and the Chief Accounts Officer and the Controller of Stores removed from service. This decision was finalised in January, 1955, and the Western Railway were addressed on 25-1-55 to serve a show cause notice on the accused officers. According to the procedure in the matter of serving the 'show cause' notice it was necessary to supply the officers with copies of the Enquiry Report. This meant that the copies of the report had to be made out by the Railway Administration after weeding out portions with which the accused officers were not concerned. All this involved meticulous scrutiny of the voluminous report and a considerable amount of clerical labour. Besides certain other difficulties were experienced by the Railway Administration in making out the reports to be sent to the charge-sheeted officers. The 'show cause' notice could, therefore, be served on the officers by the Western Railway only in June 1955. The officers were asked to submit their replies within one month. The officers concerned were granted an extension of time by six weeks for replying to the 'show cause' notice; in the case of the General Manager further extension of time by one week was granted as he could not give his reply within the time previously allotted owing to illness. The officers submitted their replies to the General Manager, Western Railway, by October, 1955. During November, 1955, and January, 1956, the General Manager, Western Railway, submitted his report to the Board on the replies of the officers to the 'show cause' letters.

5. On examination of the replies it was considered that the penalty should be enhanced in the case of the Chief/Accounts Officer from removal to dismissal from service and reduced in the case of the Controller of Stores from removal from service to with-

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holding of increments for three years. This necessitated a further 'show cause' letter being served on the Chief Accounts Officer. In the meantime, the case against the General Manager, the Chief Mechanical Engineer and the Controller of Stores was referred to the Union Public Service Commission for advice in February, 1956. The Chief Accounts Officer's reply to the revised 'show cause' letter was received, with the General Manager's comments thereon, in March, 1956. After examination of the reply, his case was also referred to the Commission for advice on 2-4-56.

6. The advice of the Commission is awaited. Generally, it is not the practice to remind the Commission in such matters. However, in view of the delay which has already occurred in this case, the Commission have been reminded twice to tender their advice as early as possible. In a communication dated 21-1-57, the Commission have advised the Board that they hope to make their advice available to the Board in about two to three months' time. Orders will be issued as soon as their advice is received and considered.

7. The proceedings against the officers have dragged on for some time. This is accounted for by the fact that the case is very complicated and a vast mass of details had to be collected from various sources and examined. The magnitude of the case and the work involved is evidenced by the fact that the main report of the Committee alone covers as many as 684 pages, and is perhaps the bulkiest report ever produced in a case of departmental action. Apart from this, the accused officers also occasionally adopted dilatory and obstructive tactics. A number of relevant records of the ex-Saurashtra Railway which were taken over from the Government of Saurashtra and handed over to the representative of the General Manager of that Railway have been found, in the course of the enquiry, to have disappeared. This added to the delay, as, in the absence of these records, the evidence of some of the retired Saurashtra Government and Railway officials had to be taken to establish the actual procedure obtaining on the Saurashtra Railway prior to Federal Financial Integration. Under the rules it is necessary to supply to the accused officers copies of the report of the Enquiry Committee at the time of asking them to 'show cause' why the penalty proposed should not be imposed on them. The report, as already stated above, covers 684 pages. Copies thereof had to be made out by the Railway Administration after weeding out portions with which the officers were not concerned and supplied to them. On receipt of the replies, the Railway Administration had to examine the points—relevant and irrelevant—raised in the replies very carefully. As only the

joint efforts of many officers could cope with the amount of the work involved, no special officer was appointed to examine the voluminous defence of the four officers running into hundreds of pages—which were prepared by them in consultation with the Railway's legal advisers. This work was done by certain officers on the Railway outside their office hours in addition to their day-to-day regular work. Some time was, therefore, taken for this also. The task of the railway was made more difficult as none of the Members who constituted the Committee were available for consultation, they either having retired or been transferred away from the Western Railway.

8. As regards the P.A.C.'s observation about not initiating prosecution concurrently with departmental proceedings, the position is that, after considering the replies of the officers, the Board were not sure whether in view of the legal implications which had come to notice through the defence of the officers, a prosecution would be successful. It was considered that the proper course in this case would be to first finalise the departmental action and then hand over the papers to the Special Police Establishment to examine whether the case is fit for launching prosecution. Incidentally, the line of action taken by the Board is consistent with the extant policy of the Government, according to which the question of launching prosecution should be considered after the departmental proceedings are concluded and the penalty, if any, imposed. In accordance with the Board's decision the S.P.E. was addressed in March, 1956, to start investigation of the case against the four officers so as to consider whether the case is fit for launching prosecution. The S.P.E., Bombay, have already advised us that a case has been registered against the officers and that investigation is under progress. If the investigation reveals that the case is fit for launching prosecution, this will be done but only after departmental proceedings against the officers are finalised.

This has been vetted by Audit.

NEW DELHI;
Dated 12th June, 1957.

Joint Director, Finance (Budget),
(Railway Board).

MEMORANDUM

In continuation of the memorandum submitted to the PAC in regard to the disciplinary action against the officers of the ex-Saurashtra Railway mentioned in items 9 & 10 of App. III of their 17th Report it is stated that the advice of the Union Public Service Commission was received on 12-6-57 and has been accepted. Accordingly orders have been issued on 30-7-57 dismissing Sarvashri J. M. Pandya, the General Manager, M. R. Pandya, the Chief Mechanical Engineer, and L. B. Audich, Chief Accounts Officer, from service and removing Shri M. M. Parekh, Controller of Stores, from service. The question of payment of Government's contribution to the Provident Fund and the special contribution to the Provident Fund for these officers is under examination. Action is also being progressed regarding the prosecution of Sarvashri J. M. Pandya, M. R. Pandya and L. B. Audich.

Dated 17th August, 1957.

*Director, Finance (Expenditure),
Railway Board.*

APPENDIX XVIII
(Reference Para 83 of Report)
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

MEMORANDUM

SUBJECT:—*Infructuous expenditure in the purchase of Oil Tank Wagons. (para 83 of Public Accounts Committee's 17th Report 1955-56.)*

The Public Accounts Committee have observed *inter alia* as under :—

“The Committee regret to mention that the Railway Board have taken too complacent a view of this matter. They would like to reiterate the recommendations made by them and desire that the Board should re-open the case and allocate responsibility for the failure in their Office which had culminated in this waste of Public money.”

The matter has been examined further by the Board, as desired. The Memorandum submitted by the Board on the last occasion to the Public Accounts Committee covered item 29 of Appendix II to the 13th Report of the Committee, which reads as under:—

“The Committee should like to know who were the officers responsible in the Railway Board for not pursuing the case relating to the purchase of oil tank wagons, referred to in para 26 of the Audit Report, 1953 and finding out from the I.S.M., Washington, what action had been taken by them in claiming rebate from the Canadian Firm on account of the late delivery of the wagons. The Committee should also like to know what action the Railway Board propose to take against them for the loss caused to the Exchequer through their contributory negligence.

The Committee are surprised that negotiations had not been conducted in this case with the Belgian firm before finalising the deal with the Canadian firm. They are not satisfied with the justification put forward for the

favourable treatment accorded to the Canadian firm. The Committee wish to record their dissatisfaction over the manner in which this transaction was handled by the Railway Board."

The offer of the firm which had been accepted in 1947 was expressly on the understanding that the firm would not agree to any penalty clause in so far as deliveries were concerned. The Committee's observations in regard to this transaction as contained in the second sub-para of the remarks extracted above, were "noted". In the circumstances, the only course left was to authorise the India Supply Mission, Washington, to negotiate any rebate for the late supply that might be possible and this was done in December, 1948. Failure to follow this up cannot in itself be considered to have culminated in waste of public money though it is possible that, if the correspondence had been pursued actively with the I.S.M., Washington, at the time, some of the extra expenditure inherent in a contract which did not prescribe a penalty or rebate for late deliveries might have been retrieved.

As already explained, the officer-in-charge of the Branch, who in December, 1948, had initiated the correspondence with the I.S.M., Washington, resigned on the 8th January, 1951. If he had continued in service it could be expected that he would have pursued the matter from personal recollection of such an important case which he had handled. His successors who were not familiar with the case cannot be blamed for oversight in the matter of following up the case through the issue of timely reminders. The responsibility of the lower staff and particularly of the Section Officer was not so clearly defined in this respect in the past and they cannot, therefore, be held responsible for the omission to issue timely reminders. The procedure for ensuring that timely reminders are issued has been modified as a result of Organisation and Methods measures introduced since 1955. Extracts of paragraphs 665 and 666 of the revised Manual of Office Procedure of the Railway Board's Office (Provisional Issue) circulated for the information and guidance of staff in June, 1955, are enclosed together with a copy of office order recently issued to further improve matters in this connection (Office Order No. 139 of 1956.)

The correspondence with the I.S.M., Washington, having now been revived, the question of securing a rebate from the firm, if possible, is being pursued actively.

*Director, Finance (Expenditure),
Railway Board.*

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

Office Order No. 139 of 1956.

A case has come to notice in which due to the failure of a Branch in not having taken proper and prompt follow-up action, the Government has been put in an embarrassing position.

In this connection the attention of all Section Officers and branches is drawn to the instructions contained in paras. 665-666 and 905-907 of the revised Manual of Office Procedure (Provisional Issue) and to the following extract from Minute No. 7 of the O. & M. Meeting held in the Board's office on 28-11-1955.

"Director Efficiency Bureau pointed out that the "Suspense" & "Reminder" Diaries were not being properly maintained and drew attention to paras. 665 and 666 of the Manual of Office Procedure. It has been suggested that instead of the Diarist maintaining a single diary for the Section as a whole, each Assistant should keep his own note of the "Reminder" & "Suspense" cases in an engagement diary and should himself get the files out on the due dates for further action. This change would enable Assistants to keep a better and continuous watch on the progress of cases handled by them. The Director Efficiency Bureau also pointed out that at the last meeting of the Organisation and Method Division of the Cabinet Sectt. held on 9th November, 1955, it was agreed that the Revised procedure for marking of files for "Reminder" & "Suspense" by Assistants be adopted. All concerned were, therefore, requested to note and ensure that this is followed."

While the above instructions provide an adequate safeguard against such lapses, and while necessary corrections to paras 665 and 666 of the Manual of Office Procedure have been made in the final issue of the Manual of Office Procedure which is now under print, it is necessary farther, to ensure against such lapses, that all Section Officers should personally, by means of random checks, make it a point to see that the "Suspense" and "Reminder" diaries are being maintained by each Assistant and that in accordance with the entries made therein, cases are being submitted and progressed regularly.

MEMORANDUM

In continuation of the Memorandum already submitted to the Public Accounts Committee on item 29 of App. III of their 17th Report it is stated that the I.S.M. have now forwarded a copy of a letter received by them from M/s. Canadian Car & Foundry Co. Ltd. in which the firm have adhered firmly to the position they had previously taken and have definitely turned down the request for a rebate. There is, therefore, no option now but to treat the case as closed.

This has been seen by Audit.

New Delhi, the 14th August, 1957.

*Director, Finance (Expenditure),
Railway Board.*

APPENDIX XIX

MINISTRY OF WORKS, HOUSING AND SUPPLY

S. No.	Para No.	Ministry Concerned	Particulars of the item	Remarks
1	2	3	4	5
18	60	<u>Railways</u> W.H. & S.	<p>(i) The Indian Supply Mission, Washington should not have accepted the suggestion of the American manufacturers in placing the orders for the components and fittings direct on the U.K. manufacturers. In the opinion of the Committee, the India Supply Mission overlooked two important considerations in the procurement of such stores through the Director General, India Store Department, London viz., first, that it was an agency which was responsible to Govt., and secondly, it could progress the indent effectively being on the spot.</p>	<p>This observation has been brought to the notice of the I.S.M., Washington.</p>

(ii) The India Supply Mission failed to press the question of payment in sterling for specialities ordered in this case from the U.K. by cancelling the earlier arrangement even at the time when the assistance of the Director General, India Store Department, London was invoked by the American manufacturers to progress their contact for the specialities. This had resulted in payment to the tune of 1.7 million dollars for British made components and fittings.

(iii) In view of the fact that 240 out of the 470 locomotives were received in India without the components and fittings which had to be obtained from U.K. and fitted into the locomotives, the technical experts of the Railway Board could, therefore, conceivably have accepted deliveries of the locomotives without their components and fittings. It is unfortunate that this possibility

The I.S.M. in fact took up the matter with the D.G.I.S.D., London, that the outstanding be paid to the U.K. firms in sterling, but investigations revealed that the necessary licences to manufacture and export the speciality had been granted to the U.K. firms, only on condition that they accounted to the Board of trade for the dollars they earned by such exports. Since this involved a change of procedure, requiring the prior concurrence of the Board of Trade, coupled with the fact that the quantities outstanding, at that time were not considerable the D.G. I. S. D. informed the mission that not much good will come out of discussion with the Board.

This concerns the Railway Board.

had not been indicated by the Railways Board to the India Supply Mission. If it had been done, it would not have only saved the payment for the 'specialities' in dollars but also have reduced, if not avoided the loss of Rs. 20 lakhs entailed by the late delivery in the procurement of 'specialities' from the U.K.

18

63

RailwaysW.H. & S.

(iv) The Committee await a note from the Works, Housing and Supply Ministry about the claiming of damages from the Company for delayed deliveries in this case.

A draft note has been prepared but its finalisation is held up for want of certain material information from the Railway Board and the India Supply Mission. They have been reminded. The note will be submitted as soon as it is finalised and concurred in by Audit.

APPENDIX XX

(Reference Page 84 of the Report)

(MINISTRY OF RAILWAYS (RAILWAY BOARD))

Public Accounts Committee's Report—17th Report

Conclusion/Recommendation No. 18 (iii) of the 17th Report of the P. A. C.

Conclusion/Recommendation

- (iii) In view of the fact that 240 out of the 470 locomotives were received in India without the components and fittings which had to be obtained from U.K. and fitted into the locomotives, the technical experts of the Railway Board could, therefore, conceivably have accepted deliveries of the locomotives without their components and fittings. It is unfortunate that this possibility had not been indicated by the Railway Board to the India Supply Mission. If it had been done, it would not have only saved the payment for the 'specialities' in dollars but also have reduced if not avoided, the loss of Rs. 20 lakhs entailed by the late delivery of the delay in the procurement of 'specialities' from the U.K.

(Paragraph 62).

Railway Board's remarks

The facts of the case are that when the locomotive builders were not able to keep to the target dates for delivery of the locomotives in view of the inability of the U.K. firms to supply 'specialities' in time, a direction was issued by the Railway Board to the Director, India Supply Mission, Washington. This direction was to the effect 'that unless a fitting is required in connection with the erection of a locomotive and its test, no locomotive is to be detained for want of receipt of a minor fitting; and if such fittings are not received in time, the locomotives are to be shipped with advice to D.G., I.S.D., London, to send the proper number of fittings of each type of which the locomotives are deficient, to be shipped direct to the Controller of Stores, G.I.P., Railway, Bombay. Arrangements will be made to fit locomotives with such fittings on

arrival in India.' It was also made clear that adjustment of fittings etc. should be done under the supervision of a representative of the locomotive builders and at their cost. It will be appreciated from this that the receipt of locomotives in India without minor fittings (or fittings not essential for the erection of a locomotive and its test) was accepted as an unavoidable practical solution, in order to obviate further delay, *in the circumstances as they developed*. It does not follow from this that such an arrangement could have been willingly agreed to even at the outset and indicated by the Railway Board to the India Supply Mission.

2. On the other hand, it will be apparent from what is set forth below that the Railway Board would not only have had no justifiable ground for adopting such a course, but would also have been blameworthy if they had done otherwise than ask the Contractor to obtain the component fittings himself.

- (i) It has never been the practice to order locomotive from abroad without certain fittings and to make special arrangements to obtain such fittings separately and assemble them on the receipt of locomotives in India.
- (ii) The inspecting officers must, under the rules, ensure that every component fitted on the locomotive performs its functions satisfactorily when the locomotive is given a hydraulic and a steam test at the Builder's works. The inspection certificate is completed only after full satisfaction with regard to the locomotive as a whole and the individual components. This procedure is adopted notwithstanding that the fitting or fittings might have been inspected at the sub-contractors' works, as it is necessary to ensure that the method of fitting the components to locomotive, has been correctly adopted and all precautions have been taken for efficient performance of the components as well as the locomotive.
- (iii) It is of the utmost importance that the overall responsibility of the builder in this matter is clearly defined. The following is a relevant extract reproduced from clause 2(b) of Indian Railways' Specification R-32-54:—

"The tests of the materials used in the construction of the work contained in this specification will, as far as possible, be carried out at the works of the maker of

the material in order to facilitate the work but notwithstanding that the Contractor shall have obtained the materials to be employed in this Contract from Makers approved by the Inspecting Officer, and that such materials shall have stood the specified chemical and physical tests to the satisfaction of the Inspecting Officer, the Contractor's responsibility for their efficiency in every way shall remain the same as if the materials had been manufactured and tested by himself, the intention of the Contract being that all materials used shall be of the highest quality. For example the Contractor shall be responsible for damage if the tyres shall, in the opinion of the Purchaser, not wear in the manner which may reasonably be expected from tyres of the highest quality made by Makers of the highest reputation."

The above clause is designed to fix the responsibility on the contractor, not only for the separate performance of the fittings obtained from the sub-contractors, but also for any consequential damage which might result on the locomotive or any assembly thereof due to the failure of a particular fitting obtained from the sub-contractors.

3. It has been suggested that, if the Railway Board even in the first instance had accepted delivery of locomotives without their components and fittings, "it would not only have saved the payment for the 'specialities' in dollars, but also have reduced, if not avoided, the 'loss' of Rs. 20 lakhs entailed by the late delivery of the locomotives which was attributed to delay in the procurement of 'specialities' from the U.K. Apart from the question whether it would be correct to hold that there has been avoidable 'loss' in this and all similar contracts of the Government in respect of which dollar payments were outstanding at the time of the devaluation of the rupee in September 1949, the quantum of assumed extra payment, viz., Rs. 20 lakhs is open to question. In computing this figure, it appears to have been assumed that since 370 locomotives were delivered after September 1949, i.e., after devaluation, all the 'specialities' required for these locomotives were paid for after September 1949. As, however, the value of the 'specialities' was included in the total price payable under the locomotive contracts, and progress payments were to be made to the suppliers under the contracts, the progress payments included part payments on account of these 'specialities'. Under the terms of payment for

the locomotives, 50% of the price was payable in 5 instalments within 8 months of the placing of the contract, about 20% on locomotive tender inspection, and the balance on production of the shipping documents. Thus, even for locomotives which were due to be delivered before September 1949 but were actually delivered after devaluation, substantial progress payments were made before devaluation—September 1949. Information of progress payments actually made etc. has since been received through the Ministry of Works, Housing and Supply in a note from Accounts Officer, India Supply Mission, Washington, dated May 10, 1957, an extract of which is enclosed. It will be seen from this that while the maximum figure of loss due to devaluation on account of specialities is Rs. 4.5 lakhs, a more realistic estimate indicates a figure in the region of Rs. 2.7 lakhs only. The computation of the figure of Rs. 2.7 lakhs does not allow for the fact that even if orders for specialities had been placed direct by the Railway Board with the British Manufacturers, the delay in the delivery of some of the locomotives would not perhaps have been obviated. The Works, Housing and Supply Ministry will, no doubt, furnish information in regard to delayed deliveries as desired in paragraph 18(iv) of Appendix III of the 17th Report of the Public Accounts Committee. But whatever information may be supplied by the Works, Housing and Supply Ministry, a reasonably approximate assessment of the additional payment would still not exceed Rs. 2.7 lakhs, and to this extent the estimate of Rs. 20 lakhs in the Audit paragraph will stand superseded.

Audit has seen this memorandum and only wish to add that the figures in regard to the loss in devaluation mentioned in the memo are under verification by the Audit Officer, Washington.

New Delhi, the 14th August, 1957.

*Director, Finance (Expenditure),
Railway Board.*

Extracts from Memo from the Ministry of Railways No. 56-B(c)-2498/XVII/18/9.W dated the 19-10-57.

“The A.D.A.I. (Rlys.) have now advised that the figures of the loss due to devaluation given in that Memorandum (mentioned above) have been verified by the Audit officer, Washington.

APPENDIX XXI
MINISTRY OF RAILWAYS
(Railway Board)

**MEMORANDUM ON ECONOMY ACHIEVED AS A RESULT OF
REGROUPING.**

In para 83 of their 13th Report, the Public Accounts Committee stated in June, 1955 as follows:—

“The Committee should like to watch further results. In the meantime, they would suggest that the Board should try to evolve some method by which to segregate the financial effect, if any, that may have arisen out of regrouping.”

2. The committee for the first time raised this General question of economy resulting from regrouping in para 22 of their Second Report in February, 1952. The Railway Board submitted in October, 1953 a memorandum (Appendix XVIII of the 10th Report) detailing broadly the directions in which savings were effected. A fuller appreciation was given in a pamphlet, “Review of the working of the regrouped Railways during 1951-52 and 1952-53”, circulated in February, 1954 to Members of Parliament along with the Railway Budget 1954-55. The P.A.C., in para 31 of the 10th Report presented in June 1954, however, desired a more comprehensive memorandum on the subject discussing the financial effects of the regrouping of Railways. In pursuance of this recommendation a further memo was presented in April 1955 (Appendix XXII of the 13th Report) explaining the difficulties of isolating and ascertaining the financial effects of regrouping on account of number of developments which had occurred immediately prior to, during and after regrouping.

The PAC have again desired *vide* para 83 of their 13th Report quoted above, that an attempt should be made to evolve some method by which the financial effect of regrouping could be segregated.

3. Before dealing with the specific aspect of economy achieved, it is perhaps relevant to trace briefly the background against which the decision to regroup railways into a smaller number of zones was taken by the Government. The need for regrouping of the

Indian Railway System was felt almost from the beginning of this century but there were various difficulties in the way, the principal one being the existence of a number of railway managed by companies under contracts with the Government for stipulated periods. The last of these was transferred to State Management only in October, 1944. In 1947 there was the partition of the country which broke up the North Western and Bengal Assam Railways, small portions of these being left in India viz. the Eastern Punjab and Assam Railway, and the question of regrouping thus assumed even greater importance as the route mileage of the resulting 9 units of the Indian Railway Admn. varied widely from one another. On the integration of the 20 ex-State Railways in April, 1950, regrouping became inevitable in the interests of satisfactory administration and the problem became one of immediate urgency. After due consideration and with the approval of Parliament it was decided in 1951 to regroup the Indian Railway system into six zones, (later changed in 1955 to seven zones on the basis of the increasing work load of one of the units). Thus, regrouping was basically an administrative necessity; the resultant financial advantages were really incidental.

4. Before dealing with these advantages it is perhaps relevant to refer to the developments which have taken place subsequent to regrouping which have a bearing on the aspect of economy resulting directly from regrouping. Almost simultaneously with the regrouping of the Indian Railways, the First Five Year Plan was launched, and this involved gearing up the Railways to carry the increasing load of traffic generated by developments in various sectors of industry, trade and agriculture. The magnitude of this increase will be evident from the fact that in five years the figure of originating traffic rose by about 25% from 91.4 million tons in 1950-51, to over 114 million tons in 1955-56. The rise in the figure of net ton miles of traffic carried has been even higher and is 35% in the same period. This increase in the quantum of work done has inevitably involved substantial increase in expenditure on stores and extra staff at all levels. Secondly, the service conditions of staff have been liberalised from time to time since 1951-52 in the matter of scales of pay, allowances etc., and the cost of periodical increments on the progressive time scales of pay alone has been about a crore a year. Thirdly, substantial administrative reorganisation has been undertaken on the larger zones, the divisional system of administration as in vogue on the Eastern (ex. E.I. portion) and Eastern Punjab being adopted in place of the full District System on the Western and Southern Railways and the partial District system on the Central.

5. The developments have rendered the assessment of financial results of regrouping an extremely difficult problem and in spite of continuous efforts for evolving a satisfactory solution of this problem since 1952 when the regrouping of Railways was completed, the Railway Board have been unable to devise any suitable method of segregating or eliminating the effect of the extraneous factors which have supervened from time to time. The Efficiency Bureau of the Railway Board have devoted considerable time and thought towards evolving a suitable formula for evaluating the financial results of regrouping, but without any success. Expenditure before and after regrouping can be compared only on the basis of "other things remaining the same". In other words, correct allowances have to be made for expenditure relating to factors like substantial changes in the level and pattern of traffic, the holdings of rolling stock, the scales of pay and allowances of staff, the price level of Railway Stores purchased, etc., all of which are, by and large, independent of the number of units into which the Railways may be grouped for purpose of administration. It is not possible to make any proper allowances for increase in expenditure as a result of the increase in work done as the expenditure at various levels does not rise uniformly or in fixed proportion to the increase in work done. Nor can proper allowances be made for the effect of additional rolling stock obtained since 1951 or the additional facilities in handling traffic since provided which have contributed to the increase in earnings and also to some extent in expenditure. In other words, it would not have been possible by classification of expenditure, in any greater detail, to arrive at the expenditure that would have been incurred but for the increase in traffic and in the quantum of work and the changes in service conditions and but for the administrative reorganisation undertaken when the larger zonal railways were formed. Even the maintenance of subsidiary *pro forma* registers to extract information, such as what would have been the expenditure on salary and allowance due to the revision of scales and other changes brought about by the implementation of the Adjudicator's Award and the Joint Advisory Committee's recommendations even if the old system of organisation continued on the grouped Railways together would have involved a tremendous increase in work and expenditure incommensurate with the accuracy or utility of the information. It is, therefore, not possible to attempt more an assessment in general terms of the effect of regrouping such as those already given in the previous memoranda.

6. Regrouping of two or more Railways into a single administrative unit should lead to certain economies both administrative and

operational; on the administrative side, such as those flowing from the centralisation of the administrative organisations of the constituent Railways, and on the operational side, the elimination of junction points facilitating operation of through train services beyond the previous limits. Pooling of engines at convenient points with a view to their utilisation on extended runs and closing down of the smaller sheds have resulted in economies and better utilisation of power and rolling stock. A number of interchange points between adjoining railways having become part of a Single System after regrouping, movement of wagons through these junctions has become free and there has been remarkable improvement in the movement of traffic passing through these points. There has also been improvement in transshipment performance and in the movement of empties. A good deal of illustrative data has been furnished in the earlier memoranda on the subject presented to the Committee and Parliament which indicated the improvement in operation subsequent to regrouping and incidentally leading to increased earnings or economies in expenditure. The figures furnished previously were to the end of 1953-54 only. Later figures relating to 1954-55 and 1955-56 would not perhaps be relevant to the consideration of this limited question as the effects of the works undertaken during the first two years of the First Five Year Plan and rolling stock put into service would also have reflected themselves in the improvement in operation. There can perhaps be no doubt from an analysis of the performance during the years 1952-53 and 1953-54 that regrouping has led to improvement. What is not possible is to determine the exact value of the economies achieved by regrouping, taken by itself, since a lot of other factors, as mentioned above, have intervened since the inception of regrouping. In the circumstances it is hoped that the Committee will agree that an evaluation of the financial effects of regrouping in concrete figures is not a feasible proposition.

7. This has been seen by Audit.

NEW DELHI;

Dated the

Joint Director, Finance (Budget)

Railway Board.

[Enclosure to Railway Board's Memo. No. 54-B
(c) 2498(18) dated the 26th March 1957]

APPENDIX XXII

NOTE ON OUTSTANDING RECOMMENDATIONS OF THE P.A.C.

Enclosure to Ministry of Railways No. 56-B(c)-2498/XII dated the 23rd November, 1956. (Ref. Appendix I, items 2, 3, 4, 5, 7, 10, 12, 13, 18, 20, 21)

Remarks of Railway Board

17th Report

Appendix III

Item No.

1. The Committee's observations have been noted in the Ministry of Railways and the Railway Administrations have also been suitably instructed in the matter.
2. The procedure in this matter is being evolved by the Ministry of Finance.
3. The demand for excess grants has already been placed before Parliament.
4. Necessary instructions have been issued to the Railways.
6. (i) This recommendation is linked up with the general question raised in para 10 of the 13th report of the Committee which is under consideration by the Ministry of Finance in consultation with the other Ministries and the Railway Ministry would await the decision.
(ii) A note will be submitted.
12. Railway Ministry is not concerned.
16. It is noted that the information should be indicated through Audit report. The Western Rly. administration has been instructed to see that the figures are duly verified by their Chief Auditor.
19. A settlement has been reached on the question of rates of haulage of postal vans and the revised rates will be effective from 1-4-56.

20. The Eastern Rly. Administration has been advised to approach the owners of the building viz., the Life Insurance Corporation of India (Hindustan Co-operative Insurance Unit) with a view to settling the outstanding issue amicably. A further report on the finalisation of the lease will be submitted in due course.
26. As would be observed from para 6 of the Appropriation Accounts Part-I—Review for 1954-55 the percentage of remission has registered a further improvement from 20·54 per cent in 1953-54 to 19·76 per cent in 1954-55. Details of such figures would continue to be included in the appropriation accounts as already promised in para 2 of the Memo on the subject, submitted to the P.A.C. in February, 1956 (Appendix XII to 17th report).
30. Machinery already exists in the fuel control organisation on each Railway for carrying out periodic checks on cinders recovered from coal ashes. However, the Committee's observations have been brought to the notice of the Railway Administrations with the instructions to arrange for surprise checks of Fuel Inspectors in addition to periodic tests to guard against hidden cinders of $\frac{1}{2}$ " size and above in ash dumps and to prevent fraudulent admixture of cinders below $\frac{1}{2}$ " size or of raw coal broken to cinder size with cinders of $\frac{1}{2}$ " and above.
31. It has been decided that the Board's displeasure should be conveyed to the Dy. General Manager (Personnel) concerned for his carelessness in having issued an incorrect sanction and that the Senior Accountant concerned of the Accounts Department should be reduced from his present post to that of a Junior Accountant for a period of one year for his negligence in having allowed payment of Special Pay to the staff without ascertaining whether the sanction of competent authority had been obtained.

APPENDIX XXIII

(Reference Appendix I Item 6)

MINISTRY OF RAILWAYS

(Railway Board)

Memorandum explaining the action taken on item No. 5 contained in Appendix III of the 17th Report of the Public Accounts Committee.

In Item 5 contained in Appendix III to their 17th Report the Public Accounts Committee have recommended as under:—

“The Committee would once again reiterate the recommendations made by them in recent years that a suitable procedure should be devised by the large spending Ministries like the Ministry of Railways, whereby they should be able to ascertain telegraphically, if necessary, from the Purchase Mission abroad about the precise position in regard to the supplies within the financial year and estimate the total requirements as accurately as possible. In the opinion of the Committee, the position should improve if the Railway Adviser attached to the Indian High Commission in London is entrusted with the task of chasing the indents placed with the various suppliers and manufacturers in the U.K. and the Continent and thus keeping a constant progress check over them.”

The causes leading to the lapse of funds in respect of the supplies have been analysed and it has transpired that the funds lapsed are mainly those for foreign payments for Bulk orders for Rolling Stock placed abroad. With a view to narrowing down the variations in respect of such items Instructions have already been issued to the various agencies of procurement abroad to prepare their forecasts very carefully and as accurately as possible, and to advise any major changes in their forecasts by the 10th March each year.

Notwithstanding all the difficulties pointed out by some of them they have been requested to furnish telegraphically in the third week of March every year important modifications to the previous forecasts so that the final modification may be as close to the actual as possible.

As regards the suggestion of the Committee that the Railway Adviser attached to the Indian High Commission in London should be entrusted with the task of chasing the indents placed with various suppliers and manufacturers in U.K. and the Continent, it may be mentioned that the Railway Adviser functions in a purely technical capacity and his duties are in the nature of a consulting Engineer (i.e. clarifying specification, interpreting these to foreign manufacturers, accepting technical deviations and modifications etc., and prescribing standards of inspection). The work of progressing supplies against contracts placed is the responsibility of the contracting authority namely the I.S.D. and they (I.S.D.) will, as far as possible, comply with the instructions as brought out in paragraphs 2 and 3 of the note, and that the Railway Adviser to the High Commission will assist the D.G., I.S.D., who will indicate the position of supplies against different contracts monthly.

This has been seen by Audit.

NEW DELHI;
The 20th August 1957.

Director Finance, (Expenditure),
Railway Board.

APPENDIX XXIV

(Reference Appendix I Item 7)

GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

(Railway Board)

SUB.:—Splitting up of the important savings under the various grants into suitable categories in the future reviews on the Appropriation Accounts (Rlys.)

The Public Accounts Committee, as a result of their discussion on para 45 (on statement of expenditure on important Open Line Works and New Constructions) of the Appropriation Accounts of Railways in India for 1953-54—Part I—Review have desired in the 2nd sub-para of recommendation No. 6 of their seventeenth Report Vol. I that “in the future Reviews on the Appropriation Accounts (Railways), the Railway Board should split up the important savings under the various grants into suitable categories, e.g., non-receipt of supplies and/or debits therefor, slow progress of works, etc., and give details under each category to enable the Committee to appraise the overall utilisation of savings properly.”

2. The above recommendation of the Public Accounts Committee has been noted for compliance and in future the explanations under grants No. 16-Open Line Works-Additions and No. 17-Open Line Works-Replacements would, *inter alia*, bring out the savings duly categorised as is already being done at present in the case of the other works grants, namely No. 15-Construction of New Lines. No. 18-Open Line Works-Development Fund as also No. 12A-Open Line Works-Revenue-Labour Welfare and 12-B-Open Line Works Revenue-Other than Labour Welfare. The savings relating to Annexure D-Statement of expenditure on important open line works and new D—Statement of expenditure on important open line works and new explained similarly in the relevant para of the Review.

(b) As, however, the Appropriation Accounts for the year-
1954-55 have already been printed and signed copies:

thereof sent to the Comptroller and Auditor General of India, the effect of the above changes will be reflected in the Review on the Appropriation Accounts for 1955-56 and onwards.

The above arrangement has had the concurrence of Audit.

NEW DELHI;
The 29th December, 1956.

*Joint Director, Finance (Budget),
Railway Board.*

APPENDIX XXV

MINISTRY OF RAILWAYS (RAILWAY BOARD)

Recom- mendation No.	Details of recommendation	Ref. to Para No. of the Report	File No. on which action is being taken	Action taken or the present position of the recommendation
1	2	3	4	5
7	The question of recovery of the freight amounting to Rs. 10 lakhs paid in excess to the India Company, as commented upon in para 8 of the Audit Report (Rlys.), 1955 has been very much delayed. It should be pushed to an early decision and a detailed note submitted to the Committee as soon as the settlement with the firm has been arrived at.	9	51/W/219/3	The position as set forth in para 8 of the Audit Report (Rlys.) 1955, was discussed fully with the Comptroller & Auditor General. A refund of approximately Rs. 6 lakhs has been claimed from the Company in the light of these discussions. Out of this, a claim for refund of about Rs. 3.7 lakhs is supported by the Iron & Steel Controllers' Certificate. The Company have so far refused to accept the claim. Efforts are, however, being made to bring home the claim against the Company. A detailed note will be furnished to the Committee after the consultations with the Company are completed.

11 The Committee should be informed of the result of the claim for compensation from the manufacturers for the supply of defective cylinders to be lodged by the Director Genl., India Store Deptt., London. The Committee are surprised that this reputed firm of manufacturers should advance the absence of a formal guarantee clause in the agreement as an argument for repudiating the claim for defective supply of Cylinders, as under the established custom and usage in trade, the manufacturing firm was bound to deliver supplies which were free from defect.

As regards the responsibility of the Consulting Engineers in the above case and of the other firm which supplied cylinders direct to the Chittaranjan Locomotive Works, the Railway Board should examine the local aspect of the matter in consultation with Director General, India Store Deptt., London and take further action to claim compensation from them.

28 53/964/M

28

The claim against the manufacturers has been pledged by the DG, ISD, London, setting forth the arguments fully on certain lines as indicated by the Board. He has also been asked to take legal advice in regard to the responsibility of both the Consulting Engineers and of the other firms which supplied cylinders direct to CLW. Advice has been received from DG, ISD, London that he is examining the reply from the manufacturing company and he has been reminded on 23/11/56. According to the latest advice received, the firm has made an offer to the DG, ISD of a payment to Government of India of £10,000 purely as a contribution towards the cost of rectification or replacement of certain cylinders, "without admission of liability". "as a gesture of goodwill." The DG, ISD is examining the reply received from the Manufacturing Company. Further developments will be reported to the Committee in due course.

21 The Committee would draw the attention of the Rly. Board to the recommendations made by the Rly. Convention Committee of 1954 in Para 25 (b) of their Report and emphasise that the Railway Board should urgently look into the matter of assessment of rent in regard to the Class III and Class IV staff qrs. and thus ensure that a fair return of rent commensurate with the capital cost is obtained from all residual buildings.

69 50-B(C)-2498/
XVII/21.

The question of assessment of rent in regard to Class III & Class IV quarters is still under consideration of the Board as this involves the basis of charge which has been in vogue on the Railways over several decades. Further Developments will be reported to the Committee in due course.

(Sd.)

*Joint Director Finance, (Budget),
Railway Board.*

APPENDIX XXVI

(Appendix I Item 8)

MINISTRY OF RAILWAYS

(Railway Board)

MEMORANDUM

This Memorandum is submitted with reference to Item No. 7 of the Recommendations of the P.A.C. in their 17th Report in which they dealt with para 8 of the Audit Report 1955. To facilitate a proper appreciation of this case, the following facts are stated:—

2. The Indian Iron and Steel Company has been supplying metal sleepers to the Indian Railways since 1931. Prior to the agreement of 7th September 1948 between the Railway Board and the Firm referred to in the Audit Report the Company was supplying pig iron and converting it into cast iron sleepers under a contract originally entered into for a period of two years from 1st October 1940 and subsequently extended by the Railway Board for further periods of two years at a time, and when the last extension of two years was sanctioned from 1st October 1946, the Railway Board agreed to allow the Company, by way of profit, 10 per cent. on the billed prices of the supplies of pig iron, which were to be based on the original "base rate" of pig iron of Rs. 40-13-9 per ton plus extras to cover increases in the cost of manufacture sanctioned on the basis of Auditor's certificates from the Company. The price of pig iron paid by the Railways under the contract actually worked out to Rs. 82-12-4½ per ton for the period October 1947 to March 1948. As early as April/May 1947, the Company had indicated that they should receive a price of at least Rs. 86 per ton, explaining that this was a conservative estimate which might be exceeded on the basis of the actual cost of production during 1947-48, and finally, on 4th November 1947, the firm gave 3 months' notice of termination of the contract on the ground that the price allowed to them under the contract was unworkably low and there was no alternative for them but to terminate the contract. After discussions an agreement was arrived at for the contract to continue till 31st March 1948 and the Railway Board called for tenders for the supply of cast iron sleepers. The number of sleepers for which tenders were called was 418,943 to be supplied during 1948-49. (This was apart from outstandings of 933,300 sleepers at the end of 1947-48). The tenders received from other firms came only to

126,598 sleepers. This company, instead of formally submitting a tender, had submitted an offer both on behalf of themselves and on behalf of their sub-contractors-Messrs. Burn & Co., and Tatanagar Foundry Company, and in view of the relatively small number of sleepers offered by the other tenderers, discussions were entered upon with this Company. In a letter dated the 24th February 1948, the firm stated that the price of pig iron had been enhanced by Rs. 20 per ton with effect from 1st February 1948, that this interim increase of Rs. 20 included Rs. 10 per ton towards cost of production and Rs. 10 for freight disadvantage, but the firm were agreeable to forgo the latter in consideration of the fact that the condition of sale of pig iron excluded loss due to freight disadvantage.

3. It is necessary to explain at this stage that, long before 1st November 1949, the date on which the iron and steel control was extended to pig iron, and even before this contract was being negotiated, it was the accepted commercial practice for the firms manufacturing pig iron to notify to the Iron and Steel Controller "the current commercial rates" separately F.O.R. Calcutta, F.O.R. Tatanagar, F.O.R. Hirapur etc. In a price notification issued by this particular Company, as far back as 1946, the commercial price per ton of pig iron Grade I F.O.R. Hirapur was shown as Rs. 101 while F.O.R. Calcutta Port it was shown as Rs. 94. The difference of Rs. 7 between the two rates represented the element of freight ("place extra") from Calcutta to Hirapur, taking the port price as the basic commercial selling price and quoting a higher price ex-Works; the commercial rate F.O.R. Works was, however, quoted as a composite figure of Rs. 101 and the difference due to the "place extra" was not shown as a distinct component of that price. It will be evident, therefore, that in commercial circles even before the control order was extended to pig iron, a price structure for pig iron more or less similar to the structure of prices for controlled items was already in vogue, but with the essential difference that, while for controlled items the price was fixed by the Iron and Steel Controller, the "commercial price" for pig iron was still free from control and depended upon what the firms quoted and the other party accepted.

4. It is against this background that the expression "commercial prices ruling at the time F.O.R. Company's Hirapur or Kulti Works" used in clause 5 of the Agreement of 7th September 1948 (which took effect from 1st April 1948) should be considered. In the original draft agreement sent by the firm with an offer on the 2nd January 1948, it was stated that the draft was based upon the existing contract "altered to suit the present conditions", and the expression was "the Railway Board shall pay to the Company for the pig iron supplied under this agreement at the commercial prices ruling at the time of billing

F.O.R. the Company's Hirapur or Kulti Works". The firm subsequently offered, on the 24th February 1948, to forgo Rs. 10 for freight disadvantage, so that the price would be the commercial price less Rs. 10. When finalising the contract, however, this figure of Rs. 10 was omitted, and the price was expressed as "Commercial price F.O.R. Works less the final increased freight disadvantage figure that the Ministry of Industry and Supply, Government of India, may approve."

5. The payment for supply of cast iron sleepers under this contract have been made according to the contract as it stands, *vis-a-vis* the contract, therefore, there has been no overpayment, except to the extent that the reduction for "the final increased freight disadvantage figure that the Ministry of Industry and Supply, Government of India, may approve" was taken at Rs. 11-11-0 per ton for supplies from 1948 to March 1949, and Rs. 11-2-6 from April 1949 to October 1949, instead of being taken at Rs. 15 per ton. (From 1st November 1949, of course, control was imposed and the reduction at the rate of Rs. 15 for freight disadvantage was correctly made). The lower rates from April 1948 to October 1949 were adopted in the payments because these had been formally advised by the Ministry of Industry and Supply to the Ministry of Railways on the basis of calculations made by the Iron and Steel Controller. It has been ascertained from the files of the late Ministry of Industry and Supply that they had decided to adopt an *ad hoc* freight disadvantage figure of Rs. 15 per ton even for period prior to 1st November 1950, without any meticulous relation to the actual supplies during the period, and since the "final increased freight disadvantage figure" fixed by the Ministry of Industry and Supply was thus Rs. 15, a claim against the Company has been made for refund of the difference which comes to about Rs. 3.73 lakhs. The Iron and Steel Controller has confirmed that the freight disadvantage figures of Rs. 11-11-0 and Rs. 11-2-6 as applied do not represent the final increased freight disadvantage figure, and this figure of Rs. 15 has, in fact, been adopted for payments made under D.G., I & S's contract for supplies made even prior to 1st November 1949. In spite of these facts having been presented to the Company's Directors in discussion on 18th June 1957, they have taken the stand that they have been advised that this rate would not be binding on them for the period before 1st November 1949 on which date only control was introduced for pig iron.

6. The "overpayment" has been worked out in the Draft Para on the basis that there was no justification for the payment of anything over and above the retention price *ex-works*, and that the "place extra" representing the difference between the port price and the prices *ex-Hirapur or Kulti* was never incurred by the firm since the pig iron did not move outside their factories at all. A reference has

also been made to the opinion expressed by the Iron and Steel Controller "that the place extra paid by the Railway was in excess of the fair retention price to which only the Company were entitled". In a subsequent note, however, the Iron and Steel Controller also expressed the opinion that there was nothing inherently wrong in the Indian Iron and Steel Company's charging the place extra even though the pig iron did not move out of these stations, and that under "a literal interpretation of the Clause 5 of the agreement, it would seem that it would not be incorrect for the Company to charge the place extra for Hirapur/Kulti on pig iron utilised in the cast iron sleepers". In the course of discussions with the Iron and Steel Controller, he has clarified that the word 'entitled' referred to what he considered justified from the angle of equity rather than what the firm could charge under the contract.

7. The Iron and Steel Controller also drew attention to the fact (which has been verified from the late Industry and Supply Ministry's file) that the retention price was retrospectively applied to D.G., I & S's ex-works purchases of pig iron supplied between 1st February 1948 and 31st October 1949, i.e. supplies made prior to the imposition of control on pig iron prices on 1st November 1949, *per contra*, for supplies made on and after 1st November 1949 even for D.G. I & S's ex-works contracts entered into earlier than 1st November 1949, prices were paid according to the price structure under the control order, i.e. port price (which itself included not only ex-works retention price but freight disadvantage also) *plus* place extra, this last being expressly indicated in the control order separately for each destination station. If the Ministry of Railways were to press for a retrospective modification of the prices under the Company's contract of 1948 on those lines which were applied to D.G., I & S's contemporaneous contracts with the Company, the Railways would be liable to pay approximately Rs. 5.2 lakhs as additional payment for supplies since 1st November 1949, as against Rs. 7.77 lakhs approximately recoverable from the firm for supplies made from 1st April 1948 to 31st October 1949 i.e. this would result in a net advantage of Rs. 2.57 lakhs in favour of the Railways. Initially, in March 1956, the Company had shown some inclination to consider a settlement on the basis of refunding the amount of Rs. 2.57 lakhs to the Railways, but they have now taken the stand that the prices in contemporaneous contracts with other parties have no relevance to the contract with Railways, and in the discussions held with the Company's Directors on 18th June 1957, they did not change this stand.

8. The present position is that the Company have been informed that Railways would consider withdrawing their claim to the difference of Rs. 2.57 lakhs if the Company would agree to pay Rs. 3.73

lakhs on the basis of the difference between the freight disadvantage figures originally adopted and the final increased freight disadvantage figure of Rs. 15. But they have also been informed that if they do not agree to a settlement on this basis, and they still desire to have an arbitration (as suggested by them in 1955), the Railway Ministry will claim refund on both counts in arbitration. Their reply to this is still awaited.

This has been seen by Audit.

NEW DELHI:
Dated 24th August 1957.

(Sd/-)
Director, Finance (Exp.),
Railway Board.

APPENDIX XXVII

(Reference App. I item 11)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

Note Regarding action taken on recommendation No. 17 of the 17th Report of the Public Accounts Committee

The Board, after considering the Joint Directors' report, desired that the explanations of all the officials involved should be called for. Accordingly, the General Manager, Northern Railway, was addressed in May 1956 to obtain and forward the explanations of the officials concerned to the Board. These were received on 22nd January 1957. The General Manager has explained that the delay in sending the explanations of the officials was mainly owing to the fact that one of the officials involved was away on leave.

On receipt of the explanations of the officials, the case was examined, and it is considered necessary to probe a little further into the matter before any conclusion is reached as to the action against the officers. The matter is receiving attention. The P.A.C. will be advised further as soon as the action is completed.

NEW DELHI;

Dated 11th May 1957.

*Joint Director, Finance (Budget),
Railway Board.*

APPENDIX XXVIII
(Reference App. I item 15)
MINISTRY OF RAILWAYS
(RAILWAY BOARD)
MEMORANDUM

Recommendation No. 22 of the XVII Report of the Public Accounts Committee—Vehicle reserved for the exclusive use of other Government Departments.

In para 70(i) of their 17th Report of the Public Accounts Committee desired to know the amount of claims outstanding against the Ministry of Defence on 31st March 1956 as also the steps taken to ensure recovery thereof.

A sum of Rs. 5,09,368-5-0 representing repairs and maintenance charges is outstanding against the Ministry of Defence on 31st March 1956. This is in respect of Eastern, Northern and Western Railways only as detailed below:—

(a) Eastern Railway	Rs. 210372-12-0
(b) Northern Railway	Rs. 153310-7-0
(c) Western Railway	Rs. 145685-2-0
TOTAL	<u>Rs. 509368-5-0</u>

No debits are outstanding in respect of Central, North-Eastern Southern and South-Eastern Railways.

Against the outstandings pertaining to the Eastern Railway a bill of Rs. 16,000 has already been accepted and the remaining three bills are under verification by the Defence Authorities. A bill of Rs. 1,25,200-1-0 pertaining to the Western Railway has also since been accepted by the Defence Authorities. The acceptance of the remaining outstanding bills is being pursued with the Defence Department by the Railways concerned.

This has been seen by Audit.

(Sd/-)

Director, Finance (Expenditure),
Railway Board.

Dated 17th July, 1957.

APPENDIX XXIX

(Reference App. r item 16)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

Statement of Action taken or proposed to be taken on the Recommendations of the Public Accounts Committee.

S. No.	Particulars of the Report	Item No. as per summary of the Recommendation	Particulars of Item	Remarks of the Ministry
1	17th Report	23	The Committee should be informed of the steps the Railway Board contemplate to effect recovery of Rs. 1.07 lakhs outstanding from a firm of contractors which was working the Shillong out- agency on the Assam Railway.	Negotiations with the firm of contractors have been started with a view to settling this matter. The Public Accounts Committee will be advised of the final decision when taken.

(Sd.)

**Joint Director, Finance (Budget),
Railway Board.**

APPENDIX XXX

(Reference App. I item 17)

MINISTRY OF RAILWAYS (RAILWAY BOARD)

Note on reasons for the delay in the finalisation of the recommendations No. 24 of the Seventeenth Report of the P.A.C.

The recommendations of the Public Accounts Committee have been noted and action on these lines has already been initiated by the Railway Administration. The N. E. Railway has submitted to the Board a proposal for *ad hoc* adjustment. This proposal was examined by the Board who have directed the N. E. Railway to make a further review of the expenditure on works estimated to cost over Rs. 50 thousands and report to them, and the report is awaited. (The F.A. & C.A.O., N. E. Railway was last reminded demi-officially on 19th January 1957 and 6th February 1957).

Since this work involves the review of a large number of works, it is apprehended that the N. E. Railway may take some more time to report to the Board and for this latter to finalise the issue in consultation with the Comptroller and Auditor General of India. A report will be submitted to the P.A.C. after action has been completed in the light of their recommendations.

(Sd/-)

*Joint Director, Finance (Budget),
Railway Board.*

New De'hi, dated 2nd April 1957

APPENDIX XXXI
 (Reference App. I item 19)
MINISTRY OF RAILWAYS
 (RAILWAY BOARD)

MEMORANDUM

In paragraph 81 of the seventeenth report of the Public Accounts Committee, the following observations were made:—

“81 Amendment of the Payment of Wages Act to ensure the recovery of debits from the stations traffic staff.—The Committee regret to note that this matter is pending for consideration by the Ministries of Railways and Labour for more than 5 years. They desire that the various implications arising from the recommendations made by the Committee in this case might be carefully examined at an inter-Ministerial meeting and the whole matter expedited. In the meantime, the Committee should like to know the extent of improvement effected in the recovery of outstandings of traffic debits since the Committee last examined this matter”.

2. A substantial reduction in the amount of admitted debits outstanding for the last 4 years for recovery has been secured in 1955-56. as will be seen from the figures below for the last 4 years.

Date	Balance of admitted (in lakhs)	Total Station outstanding (in crores)	Railways, income (in crores)
31.5.1953	20.5	3.4	271 (for 1952-53)
31.5.1954	18.1	3.5	274 (for 1953-54)
31.5.1955	19.9	3.7	287 (for 1954-55)
31.5.1956	17.4	3.8	314 (revised estimate for 1955-56)

The improvement is particularly striking when the increase in traffic earnings is taken into account. The percentage of admitted debits outstanding to traffic earnings has shown a satisfactory drop in 1955-56 as compared to that in 1953-54.

3. This improvement has resulted from the issue of detailed instructions to facilitate clearance such as (a) insistence on immediate payment of debits of Rs. 5 or less and prompt and regular

recoveries through salary bills of amounts larger than Rs. 5, (b) making special arrangements for staff to pay in cash instalments in cases where the debits cannot otherwise be recovered within a reasonable period, disciplinary action being taken where the situation has arisen from continued neglect or inefficiency of the employee and (c) the transfer to posts unconnected with booking and delivery of goods, parcels etc., traffic of staff the debits against whom exceed a substantial sum (say, Rs. 1,000.)

4. The question of amendment of the Payment of Wages Act has also been examined in consultation with the Ministry of Labour. Certain major amendments to the Payment of Wages Act have been initiated and are under consideration, though it has not been possible to introduce piece-meal legislation since the position in respect of various provisions is not clear in view of pronouncements by different courts and all these provisions need amendment to avoid ambiguities. While the general question of the admissibility of recoveries from employees is one of the points to be clarified, it has transpired, on detailed investigation, that the limitations in the Payment of Wages Act have not operated appreciably, in actual practice, as a hurdle to the recovery of admitted debits. It is now clear that the delay in amendment of the Payment of Wages Act in this regard in itself has not prevented the recovery of debits from the Station traffic staff to any significant extent.

5. Every effort is being made to maintain the improvement in the position, so that the quantum of outstanding may, be reduced progressively.

This has been seen by Audit.

(Sd/-)

Director, Finance (Expenditure),
Railway Board.

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