

COMMITTEE ON PETITIONS

(FIFTH LOK SABHA)

TWENTY—FIRST REPORT

**[Representations regarding claims against
the Railways on account of damage and
deterioration of fresh raw mangoes due to
delay in transit]**



[Presented to the Lok Sabha on the 23rd April, 1975]

**LOK SABHA SECRETARIAT
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COMPOSITION OF THE COMMITTEE ON PETITIONS
(1974-75)

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TWENTY-FIRST REPORT OF THE COMMITTEE ON PETITIONS (FIFTH LOK SABHA)

INTRODUCTION

I, the Chairman of the Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Twenty-first Report of the Committee to the House on the representations regarding claims against the Railways on account of damage and deterioration of fresh raw mangoes due to delay in transit.

1.2. The Committee considered the matter at their sittings held on the 7th July and 6th November, 1973, 25th May, 1974 and 10th April, 1975.

1.3. At their sitting held on the 6th November, 1973, the Committee heard the views of the petitioners. At their sitting held on the 25th May, 1974, the Committee took oral evidence of the representatives of the Ministry of Railways (Railway Board).

1.4. The Committee wish to express their thanks to the Officers of the Ministry of Railways (Railway Board) for furnishing to the Committee the material and information the Committee wanted in connection with the examination of the subject.

1.5. The Committee considered their draft Report at their sitting held on the 10th April, 1975, and adopted it.

1.6. The conclusions/recommendations of the Committee on the representations have been included in the Report.

REPORT

A. *Petitioners' Grievances and Prayer*

2.1. Shri K. H. Rohara, Hony. Secretary, Ahmedabad Railway-pura Fruit Merchants' Association and other mango Merchants of Ahmedabad, submitted representations regarding settlement of compensation claims arising out of damage and deterioration due to delay in transit of fresh raw mangoes booked from South India to Ahmedabad by Parcel/Passenger trains.

2.2. In their representation (*See Appendix*) the petitioners submitted *inter alia* as follows:—

“Our members-claimants are getting regularly in the season, wagon loads of fresh raw mangoes from the South by rail and during the process of such transports some wagons do get delayed by either being detained or allowed to remain uncared for or unattended to at intermediate stations, yards or junctions with the result that such wagons are delivered late, long after the normal or even reasonable transit time. Since the contents—fresh mangoes get damaged/deteriorated, assessments are granted for the damage/deterioration by the authorised destination staff and claims are preferred on the basis of such assessments.

These claims were pending undisposed of with the Western Railway right from 1968 and since nothing fruitful came off even upto 1971, we deputed our representatives to interview the Railway Board concerned authorities for a quick and speedy disposal of outstanding claims of 1968, 1969 and 1970 but despite vehement assurance by the said Board authorities for quick, speedy and fair and square disposal of these claims our members were unable to get fair and square disposal right upto 1972 when they could receive short payments in as many as 15 cases only out of 91 pending cases of 1969 and 15 cases out of 20 for 1970, 32 out of 159 for 1971.

Our members/claimants further report to us that even in cases where the railways' liability is there in face of unexplained avoidable inordinate delays/detentions, the Western Railway Claims Branch has arranged payments ranging from 50 per cent to 70 per cent only on the ground that

there was detention at two points only and not all throughout whereas the claims for delays|detentions at one point have remained unpaid without the detention|delay being satisfactorily explained.

Now-a-days the policy of the Western Railway Claims Branch is at the very first outset to reject a compensation claim—whether it be for shortage or for damage, on any imaginary baseless ground that crops up in the fertile brain of the officer dealing with it. This results naturally in the aggrieved party putting in an appeal after appeal which also many times goes unheard of and results in repudiation being adhered to without any mind being applied to weight the pros and cons advanced by the claimant on the wrong repudiation or without any consideration for the merits of the claim. Thus when even after putting appeal after appeals resulting in a lengthy correspondence lasting for days, months and years as you will be able to judge for your own self from the statistics of claims paid, repudiated, and re-opened as maintained by the said claims branch and the time lag involved for the final disposal, the claimant is unable to get due and fair justice at the hand of these officers who have pre-planned repudiations.

The reasonable transit time is the normal transit time and not the quickest transit time and is to be arrived at on the basis of average days within which most of the wagons booked from respective stations have reached destination without suffering an undue and unaccountable detention *en route* and that is where the yard stick of 400 kms per 24 hours transit comes to the railways' rescue.

That the said yard stick of 400 kms per day was arrived at after due and sufficient assessment of all important factors of watering, fueling, and service halts and of timings taken for loading, unloading, transhipping, attaching and detaching of wagons and such other services is evinced from a majority of their wagons reaching Ahmedabad within the prescribed time limit. Thus any wagons reaching after this normal transit time will prove that there was avoidable inordinate delay at one or more points and under Section 106 of the Indian Evidence Act the special facts and circumstances under which such wagons were delayed being within the exclusive knowledge of the Railway Administration it is the primary and fundamental duty of the said Administration to furnish complete detailed transit particulars to the claimants explaining the causes of

delays|detentions satisfactorily and if the Railway cannot accept such delays|detentions, then to honour the liability for such unexplained unaccounted for delays|detentions.

Because of such a nervousness, hesitance and incompetence of the deciding authority, there are as many as more than 150 suits for such claims pending in various Ahmedabad courts and to create a psychological hallow on the litigants a Court Officer and a Court Inspector are ordered to attend the court for day to day hearings of the cases coming on board to assist the railway pleader. This is nothing but a sheer waste of public money and additions to unnecessary litigation expenses by way of allowances and salaries of these officials attending the courts. Even considering the costs incurred in defending court cases decided in favour of the railways and adding court costs, pleaders' fees and allowances and salaries of these officials attending the court it would be still more economical to sit around a table with our members and compromise all these pending cases both in the courts and the office after settlement advantageous to both the sides.

Nearly after a month only from the date we lodged our claims, we received uniformly worded cyclostyled repudiation letters. As will be observed, the said is neither an attempt to satisfy us on the issue of abnormal delays nor does it try to convince us by advancing grounds which should have been authentic, substantial or even factual that our claims were juiciously and impartially assessed with an open unbiased mind and were rightfully rejected.

The grounds for repudiation advanced being frivolous, perfunctory and baseless, are not in keeping with the spirit of Para 4608 of One Man's Expert Committee on Claims, which says:—

‘Even when claims are repudiated on sufficient grounds, the letters of repudiation sent to the claimants should be made as convincing as possible by giving full facts and points of law. This would minimise the chances of claimants going to court.’

The Railway Board have delegated certain powers for disposal of claims by payment or otherwise to the various railway claim officers with specific directions that such powers are to be used fairly, impartially and judiciously after a careful assessment of the merits and demerits of each and every claim. Para 4605 of Mrs. Lal's report has also laid down:—

‘Claims Officers should be made thoroughly familiar with the railway's liability under the amended Act. They should follow a fair and equitable policy of payment. They

should not only be fair and just in their disposal of claims but also build up a reputation'.

But in actual practice a totally inverted picture with a marked absence of such a spirit as is contemplated above is seen and the delegation of powers is misconstrued so as to be used at the sweet will and discretion of the concerned officers in paying certain claims and totally rejecting others though both have the same historical background.

We, therefore, suggest in national interest as well as in the common interests of the Railways and the Users thereof that to put a check on such tactics as adopted by the Western Railway Claims Officers there should be an Advisory Committee on claims matters which body after carefully considering the facts and records before them can guide the railways correctly. Such a body cannot only save the railways from huge cost of unnecessary litigation expenses but will also be a check not only on such nervous, hesitant and incompetent officers and also on the claimants who after realising that their appeals have finally been decided by disinterested independent members of the said body will think hundred times before resorting to litigation."

"It is now high time, the Worthy Committee intervene in common interest and direct the railway to pay up all claims of 1971, 1972 and 1973 keeping in sight the judicial pronouncements in suits disposed of so far and compromise all pending suits in various Ahmedabad Courts on terms advantageous both to the railway and claimants to prevent further leakage and wastage of railway revenues and suggest a firm final solution for all these disputes."

B. Facts of the Case

I. Delay in transit

2.3. The petitioners stated in their representation that their members—claimants were getting regularly in the season wagon loads of fresh raw mangoes from the South by rail and during the process of such transports some wagons got delayed by either being detained or allowed to remain uncared for or unattended to at intermediate stations, wards or junctions with the result that such wagons were delivered late, long after the normal or even reasonable transit time.

2.4. During their evidence before the Committee, Sarvashri K. H. Rohara and S. K. Aggarwal of the Ahmedabad Railwaypura Fruit

Merchants' Association, Ahmedabad, stated that the mango consignments received on the 9th day after booking were not in good condition. There was slight deterioration in their condition.

2.5. Explaining their view of normal transit time, the witnesses referred, during their evidence before the Committee, to the target transit time laid down in the Traffic Supplement to Gazette No. 1 dated 2.4.1965, for transportation of goods by passenger|Parcel| Goods Trains on meter-gauge and broad-gauge lines and stated that the Railway should stick to transit time at 400 kms. per day for parcels in wagon loads.

2.6. Regarding the supplement to Gazette No. 1 dated the 2nd April, 1965, referred to by the petitioners in their representation and evidence before the Committee, the Ministry of Railways (Railway Board) in their written note stated *inter alia* that those targets had been laid down by the Railway Administration for the purpose of achieving operational efficiency and were not the usual or the normal timings for the purpose of carrying the consignments to destination. These yardsticks could not therefore, be considered as a nation. These yardsticks could not therefore, be considered as a settlement of claims arising from damage to perishable goods.

2.7. In their note, the Ministry of Railways (Railway Board) also stated that an examination of these cases showed that the consignments were detained either at the booking station or at Ahmedabad by the consignor or the consignee for the purpose of loading|unloading and in certain cases the consignments were in ripe condition when they were tendered for booking. On account of the contributory negligence on the part of the senders or the consignee, it was decided to divide the risk in such cases and these were verified and negotiated for a lesser amount depending on the merits of each case.

2.8. The Director, Railway Board, in his evidence before the Committee added that sometimes the consignors also took quite a long time in loading the mangoes. There had been instances when the consignor had detained a wagon even upto 48 hours for loading. Similarly, at destination stations, the consignees had not even unloaded the wagons for 48 hours. In 1968, there were 46 cases and in 1969, there were 45 cases where such delays had occurred. Sometimes, wagons were loaded at different stations and delay took place in the loading of wagons at different stations. Such type of delays could not be on Railways' account. ■

2.9. When the Committee enquired about the delay at the loading|unloading points, the representatives of the petitioners, during their evidence informed the Committee that there was no delay at the destination station in taking delivery of mango consignments as their employees were always present for 24 hours at the station for taking delivery. The witnesses urged that the booking day should not be included in the transit time. The witnesses added that the difficulty arose on the interpretation of definition of 'delay'. No standard was laid down whether a transit period of particular number of days would not involve delay. The delay was also not defined in the Contract Act. According to judgements pronounced by the Courts, six to seven days, inclusive of the days of booking and delivery, were reasonable transit time as the distance from mango booking station in South to Ahmedabad was not more than 1600 kms.

2.10. The Committee enquired from the petitioners about the decision of the Courts in regard to transit time. They stated that the Courts had held that a period of six to seven days was the reasonable transit time, in a number of cases, depending upon the distance involved between the stations. The Court had further held that if Railway took more than seven days, it was due to the negligence on their part and they were responsible for payment of compensation claim.

2.11. The Director, Railway Board, in his evidence before the Committee stated that judges of Civil Courts of Ahmedabad in their judgements, had expressed different views on transit time. Some judges had observed that from certain stations 8 days were the normal transit time and a delay 2-3 days did not mean excessive delay. But certain judges had held that a delay of 2-3 days was an excessive delay and the Court issued decrees against the Railways by reducing the claim to 30 to 40 per cent.

2.12. When the Committee enquired from the representatives of the Railway Board whether any time limit was laid down for transportation of consignments from one Station to another Station, the Director, Railway Board, replied that no such time limit was laid down. The Railways did not, in fact, guarantee the arrival of any consignment at a particular time at the destination. He referred to Section 120 of the Railway Tariff which read that—'Railways do not guarantee the despatch of articles or animals by any particular train or delivery within any definite time or period'. Nevertheless, while

deciding the claims, what the Railways did was that they saw the average time taken by a very large number of consignments and if they found that a particular consignment had taken three or four days more than the average time, then the claim became payable, unless the delay was due to factors which under Section 73 of the Indian Railways Act, were beyond the control of the Railways like floods, riots etc. They had settled quite a large number of claims in that way and in one particular year, claims had accounted for half of the freight earned. The Director, Railway Board, added that the Railways could not lay down any time limit for transportation of goods.

II. Delay in settlement of claims

2.13. The petitioners have complained in their representations that the compensation claims were pending undisposed of with the Western Railway right from 1968 and since nothing fruitful came off even upto 1971, they deputed their representatives to interview the Railway Board concerned authorities for a quick and speedy disposal of outstanding claims of 1968, 1969 and 1970 but despite vehement assurance by the said Board authorities for quick, speedy, fair and square disposal of these claims, their members were unable to get fair and square disposal right upto 1972 when they could receive short payments in as many as 15 cases only out of 91 pending cases of 1969 and 15 cases out of 20 for 1970, 32 out of 159 for 1971.

2.14. During their evidence before the Committee, the representatives of the petitioners stated that as the matter was pending for the last many years, representatives of their Association had an interview with the then Chief Commercial Superintendent in 1967 in order to settle the issue once for all. It was pleaded before the authorities that uniform policy for settling their recurring claims might be framed for expeditious disposal of their claims. After discussion with the Railway officials, it was decided that the Railway would pay compensation for claims only in respect of these cases in which the transit time was over nine days. But after the retirement of the then Chief Commercial Superintendent, the new Chief Commercial Superintendent interpreted the transit time of nine days in his own way. He excluded the booking date and the delivery day of mango consignments from the transit time of nine days for the purpose of settling such claims. The witnesses added that according to the new interpretation, the transit time was eleven days. But nothing came out even after protected correspondence with the Western Railway Claims authorities.

2.15. The Ministry of Railway (Railway Board), in their written comments on the representation, stated that the Ahmedabad Fruit Merchants Association had been representing this matter through the Members of the Zonal Railway Users Consultative Committee, Gujarat Chamber of Commerce, Petitions Committee of Lok Sabha, through Shri Nanubhai Patel, M.P. and Shri Motianey, M.L.A. The representations received from time to time from the Fruit Merchants Association had been given due consideration and appropriate replies sent.

2.16. It was stated by the petitioners in their representation that as their claims were being rejected by the Railways on unreasonable grounds and the long correspondence with the Railways could not help them in settling their compensation claims, they had to move the courts of Law to get justice. Even claims where transit delay of 10 to 15 days was involved were rejected by the Western Railway. It was urged by the petitioners that the Railway administration should keep in view the judicial pronouncements in suits disposed of so far by the Civil Courts of Ahmedabad and compromise all cases pending in courts on terms advantageous to both the parties.

2.17. During their evidence before the Committee, the petitioners stated that 256 suits were filed against the Railways during 1967-72, for rejection of their claims. Out of 56 cases decided so far, they had lost only four cases and 52 cases were decreed with costs in their favour. They also informed the Committee that some cases won by them were under appeal by the Railways. They submitted that even in the face of such adverse judicial pronouncements, the Western Railway Claims authorities did not revise their policy and pay compensation in other similar claims. The witnesses added that they were not keen in going to the Courts, as it involved considerable wastage of time and money.

2.18. The petitioners have further stated that the Railway Administration had gone in appeal in cases lost by the Railways in the Courts with a view to block the payment of amounts decreed indefinitely till the appeals were decided. These tactics were only to harass the bonafide rail users at the cost of railways.

2.19. In their factual note, the Ministry of Railways had stated that the decision to contest these cases was taken after considering merits of each case. The day-to-day hearing of the cases were attended by Railway's Law Assistant to safeguard Railway's interest and to produce the requisite evidence.

2.20. It was further submitted before the Committee by the Director, Railway Board, during his evidence, that in all nine judgments had been delivered covering 56 cases. Three were decided in favour of the Railways and one in part. Five were decided against the Railways. The Director, Railway Board, also informed the Committee that the Railways had gone in appeal against those cases which were decided in favour of the claimants.

III. Rejection of claims

2.21. In their representations, the petitioners had complained that the existing policy of the Western Railway Claims Branch was at the very outset to reject a compensation claim—whether it was for shortage or for damage, on any ground that cropped up in the fertile brain of the officer dealing with it.

2.22. Refuting the above allegation of the petitioners, the Ministry of Railways (Railway Board), in their written comments on the representation, stated *inter alia* as follows:—

“The contention that claims are repudiated without proper examination is not correct. Each claim case is examined on merits and its admissibility determined under the extent legal provision.

The Railways' liability in respect of the claims under reference is governed by Section 74 of the Indian Railways Act. Railways are not considered responsible for the deterioration of the goods, if the detention of them were found unavoidable or if the goods when tendered for despatch were already in a ripe or over-ripe condition and were unable to stand the normal duration of transit.

Detailed investigation in all cases of mango claims referred by Mango Merchants' Association were made by the Western Railway Administration right from the booking station to the destination station to ascertain whether there was any avoidable detention and only after judging the merits of each case the decision to either settle the claim by payment or repudiation was taken.”

2.23. During their oral evidence before the Committee, the petitioners stated *inter alia* that they had preferred compensation claims against the Railways arising out of damage and deterioration of fresh raw mangoes due to delay 25 per cent to 50 per cent were verified by the destination Railway Station Staff. Their claims for damage and deterioration were preferred on the basis of the assessments granted by the destination staff. The witnesses further stated that it was

the policy of the Western Railway Claims Branch to repudiate the compensation claim at the very outset on the ground that the Railway did not take the liability for transportation of goods by a particular train or delivery within any definite period. After repeated appeals, their claims were re-opened and investigations were made for causes of delay or detention during transportation. Payments ranging from 50 per cent to 75 per cent were arranged at the discretion and will of the Railway authorities.

2.24. Explaining the policy of the Railways in regard to settlement of compensation claims arising out of damage and deterioration of raw mangoes due to delay in transit the Director, Traffic (Commercial), Railway Board, in his evidence before the Committee, stated that raw mangoes were normally booked at owners' risk rates which were 20 per cent lower than the Railways' risk rates. The policy of the Railways in the matter of payment of claims in regard to consignments booked at owners' risk rate was governed by Section 74 of the Indian Railways Act, according to which the onus of proving that the delay was on account of the negligence of the Railways was on the person who preferred the claim. Railways were not considered responsible for the deterioration of the goods if the detention of wagons was found unavoidable or if the damage or deterioration was not entirely due to detention *en route* or if the damage and deterioration were due to the condition of the mangoes at the time of the booking and inherent vice present in them. Enquiries had revealed that certain varieties of mangoes booked from stations on the Southern and South Central Railways, which were nearly 1800-1900 Kms. from Ahmedabad, attained full maturity latest by the middle of May and after that, the process of ripening on the tree itself started. Therefore, the mangoes booked after middle of May were ripe to various degrees and could not be called raw mangoes. Such mangoes did not stand the normal transit in covered wagons and deteriorated earlier on account of their inherent vice. Mangoes booked in June and earlier part of July were almost ripe and deterioration much quicker. In all the cases of claims pertaining to mangoes, detailed investigations were made right from the booking stations upto the destination stations to determine the location and causes of detention, and whether the detentions were of an unavoidable nature. After judging the merits of each case, if the deterioration was found to be due to detention of wagons, claims were settled. During the last seven years, they had paid nearly one million rupees by way of claims on mangoes booked from the Southern and the South Central Railways to Ahmedabad and the freight earned on all the consignments of mangoes from these places to Ahmedabad was Rs. 50 lakhs. Thus nearly 20 per cent of the freight earned by the Railways had gone in the payment of claims.

The Director, Railway Board, added that the liability of the Railways was more in case of consignments booked at Railways' risk rate.

2.25. The Committee enquired from the representatives of the Ministry of Railways whether at the time of booking, consignments were checked to ascertain whether mangoes were ripe and whether any consignment was rejected on that ground. The Director, Railway Board, stated that consignments were normally packed in baskets. If a Station Master suspected from the smell of the basket the mangoes in the basket were ripe, he gave such a remark in the Railway Receipt in the presence of the consignor, and the consignor would endorse it in the forwarding note. But it was not always possible to do it because it depended upon the staff available to the Station Master. In reply to a query, the Director, Railway Board, replied that the Railways could not refuse the booking of a consignment under the Railways Act, except when certain special packing conditions were lacking.

2.26. On enquiry by the Committee, the petitioners in their oral evidence before the Committee stated that there was no instance when the Railway authorities rejected the booking of the consignment on the ground that it was not fit for booking. He further stated that no merchant would like to book a damaged deteriorated or ripe consignment of mangoes intentionally. He added that in every consignment, freight was prepaid and at the time of booking, no merchant knew in how many days the consignment would reach the destination station. If the goods reached on the eighth day and if they were not in good condition at the time of booking, the whole consignment would get damaged/deteriorated during transshipment without any compensation to the merchant.

IV. Liability of Railways

2.27. On being asked by the Committee, whether the provision in the Railways Act that "Railway administration shall be responsible for loss, destruction, damage or deterioration of goods proved by the owner to have been caused by delay or detention in their carriage" was good in law or they wanted to suggest any remedial measure for consideration by the Committee, the petitioners stated that before 1961, every merchant had to prove the negligence on the part of the Railway for getting compensation. In 1961, the liability of the Railways was increased under the Indian Railways (Amendment) Act, 1961, on the consideration that it was not feasible and possible for the merchants to prove in every case that the delay or detention was due to the negligence of the Railway. It was provided that the Railway Administration would be responsible for loss, destruction, damage or deterioration of goods unless the Railway Administration

proved that the delay or detention arose without negligence or misconduct on the part of the Railway Administration or of any of its servants. The petitioners submitted that certain norms should be fixed for determination of reasonable transit time so that there was certainty as it was very difficult for merchants to prove delay in the Courts.

2.28. The Ministry of Railways (Railway Board), in their written comments on the matter, stated that the liability of the Railways for compensation claims had been clearly defined under the provisions of the Indian Railways Act. It was examined at great length by the one Man Expert Committee on Compensation Claims. The Ministry of Railways too had been issuing instructions for the guidance of the Railways from time to time. There was no ambiguity regarding the principles which govern Railways' liability.

2.29. During his evidence before the Committee, the Director, Railway Board, stated that the Railways had implemented most of the recommendations of the One-Man Expert Committee on Compensation Claims and had taken lot of pains to improve their performance. In the year 1971, 24 per cent of the consignments were partially damaged while in the year 1972 it came down to 7 per cent. In the year 1973, it was only 2 per cent and still they were trying to improve their performance.

2.30. The petitioners also informed the Committee during their evidence that in 1967, 32 per cent wagons were delayed in 1968, 37 per cent wagons were delayed and in 1969, delay in arrival of wagons was 33 per cent. The petitioners stated that when suits began to be decreed with costs in favour of petitioners in 1970, the Railway reconsidered the matter and initiated certain steps to reduce the transit delays. The result was that there was marked improvement in the working of the Railways and in 1973 only 2½ per cent wagons were delayed.

V. Transit particulars

2.31. It has been stated in the representations that any wagon reaching after normal transit time prove that there was avoidable inordinate delay at one or more points and under Section 106 of the Indian Evidence Act the special facts and circumstances under which such wagons were delayed being within the exclusive knowledge of the Railway Administration, it was the primary and fundamental duty of the said Administration to furnish complete detailed transit particulars to the claimants explaining the causes of delays|detentions satisfactorily and if the Railways could not accept such delays|detentions then they should honour the liability for such unexplained unaccounted for delays|detentions.

2.32. When asked by the Committee, whether the Railways could furnish transit particulars to the claimants so that they might be in a position to prove that the delay in transit might be due to negligence of Railways, the Director, Railway Board, stated in his evidence before the Committee that transit particulars of consignments booked at owners' risk rate were given to the consignors only in cases of non-delivery of consignments, loss or damage or pilferage. Transit particulars were not given in the case of delay in transit.

VI. Suggestions for improvement

2.33. In their representation, the petitioners had suggested for the creation of an Advisory Committee on claims which might, after careful consideration of all facts and records, guide the Railways in settling the claims. This body, the petitioners claimed, would not only save Railways from unnecessary litigation but would also act as a check on the Officers as well as on the claimants from going to a court of law.

2.34. The Ministry of Railways (Railway Board), however, stated in their written reply that the grievances of traders could always be discussed with the concerned Railway Officials and it was not necessary to constitute such an Advisory Committee.

2.35. During their evidence before the Committee, the petitioners stated that there was no Arbitration Board to deal with such cases. They also informed the Committee that the mango season was for three onths in a year. According to their calculation, the Railways earning a freight of Rs. 1½ lakhs per day for transportation of mangoes and total freight earned by the Railways during the full season was of about one and a half crores of rupees. The witnesses added that the perishable goods like mangoes were not getting the facilities they deserved. The petitioners also suggested that perishable goods might be treated at par with explosive goods in regard to their transportation.

2.36. In their written reply, the Ministry of Railways had stated *inter alia* that every year, before the commencement of the mango season, a coordination meeting for programming the movement of the mango traffic was held by the Officers of concerned Railways i.e., Southern, South Central and Western Railways wherein the assessment of the traffic anticipated for the movement was obtained and programme was prepared for the movement Railway-wise and a special watch was kept at the level of Dy. Chief Operating Superintendent (Coaching). Coaching Specials|Parcel trains were run as

required for the early clearance of the traffic and sufficient notice was given to all concerned when the specials were run.

2.37. The Committee desired to know from the representatives of the Ministry of Railways (Railway Board) whether there was any possibility of introducing an insurance scheme by which Railways might not pay such huge claims and also the consignors were relieved of applying for claims. The Director, Railway Board, stated that the Railways had not given thought to that. The total value of goods carried by the Railways was about Rs. 10,000 crores per year and the annual payment of claims made by them was Rs. 12 crores. He was not sure whether any insurance company would insure Rs. 10,000 crores worth of goods at so less a premium. Some consignors themselves arranged insurance for their goods and they received payment from the insurance companies direct for the losses incurred by them in transits. The Director, Railway Board, also informed the Committee that out of the amount of Rs. 12 crores paid for compensation, Rs. 15 to 20 lakhs were paid for perishable goods.

2.38. The Committee desired the Railway Board to furnish a statement showing the number of cases during the last two years in which the individual responsibility was fixed by the Railways for the compensation they had to pay for the delay in transit. In their written reply to the Committee, the Ministry of Railways have stated that out of 38 consignments delivered on assessment during 1972 and 1973, Railway was considered liable to pay claim for compensation only in nine cases. These nine cases were examined in detail with a view to fixing of individual staff responsibility. The examination of these cases revealed that in all these cases the detention took place due to operational reasons e.g., congestion in yards, the termination of train loads, due to congestion in the Section ahead etc. It will be appreciated that all these factors are beyond the control of the staff in which individual responsibility cannot be fixed.

2.39. The Ministry have further stated that instructions have been reiterated that special watch should be kept on the movement of mango traffic.

C. Observations|Recommendations of the Committee

2.40. The Committee find that many consignments of raw mangoes booked from different stations in South India to Ahmedabad get delayed in transit by either being detained or allowed to remain uncared for or unattended to, at intermediate stations, yards or junctions, with the result that such wagons are delivered quite late beyond the normal or reasonable transit time. The consignments of raw mangoes, on delivery after 9th day are not found to be in good condition and deterioration sets in their condition.

2.41. The Committee urge the Ministry of Railways (Railway Board) to take adequate steps while dealing with the movement of the consignments of raw mangoes to ensure that they are not allowed to be delayed at any of the intermediate station or yards etc., and thus the chances of their deterioration due to delay in transit are minimized.

2.42. The Committee note that in some cases, the consignors/consignees also take quite a long time in loading/unloading the mangoes wagons. There were as many as 46 cases in 1968 and 45 cases in 1969, where the loading/unloading of wagons was delayed by consignors|consignees.

2.43. The Committee would, therefore, at the same time, like to emphasize on the petitioners that they should extend their full cooperation to the Railways by not delaying the loading/unloading of wagons at the time of booking/delivery, as it not only causes damage|deterioration to the consignments of raw mangoes but also blocks the movement of wagons and their full utilization.

2.44. The Committee note that different Civil Courts of Ahmedabad had expressed different opinions in their judgments regarding normal transit time. The Committee feel that the Ministry of Railways (Railway Board) should work out the normal and reasonable transit time for the movement of consignments of raw mangoes from different stations to Ahmedabad, keeping in view the judicial pronouncements on the subject, the targets laid down by the Railway Administration and also the requirements of the traffic. The Committee hope that the normal time limit thus worked out will help in quick disposal of compensation claims and avoid delay in transit to consignments of raw mangoes.

2.45. It was complained by the petitioners in their representations that their compensation claims were pending since 1968. The Committee are constrained to note that 76 cases of 1969, five cases of 1970 and 127 cases of 1971 were still pending with the Western Railway in July, 1973, for want of settlement. The Committee are not happy with this state of affairs. They desire that all the pending compensation claims, except those which are sub judice should be settled expeditiously. The Committee also urge that in future the compensation claims should not be allowed to linger on so long as it not only results in unnecessary correspondence but also results in avoidable litigation. As regards the cases pending in Courts, the Committee hope that the Ministry of Railways (Railway Board) would try at their end for early disposal of these cases, preferably by compromises, out of Court, with the petitioners.

The Committee would like to be informed, if the progress made in this matter at the earliest.

2.46. According to the petitioners, it was the policy of the Western Railway to repudiate the compensation claims in the first instance, in a routine manner without looking into the merits of the cases. It was further complained by the petitioners that the cyclo-styled rejection letters stated inter alia that the Railways did not take the liability for transportation of goods by a particular train or delivery within a definite period. The Ministry of Railways (Railway Board) had refuted this allegation and had asserted that every compensation claim was examined on merits and after judging the merits of the case, a decision to reject or accept the claim was taken. The Committee would, in this connection, like to draw the attention of the Ministry of Railways to the following observations made in para 4608 of the Report of the One-Man Expert Committee on Compensation Claims (Lal's Committee):—

“One more point to be emphasized is that even when the claim are rejected on sufficient grounds, letters of repudiation sent to the claimants should be made as convincing as possible by giving full facts and points of law. This would minimise the chances of the claimants going to the Court”.

2.47. The Committee hope that the Ministry of Railways (Railway Board) will enjoin upon the various Railway Administrations to follow the above observations of the One-Man Expert Committee, in letter and spirit, while dealing with compensation claims.

2.48. The Committee note from the evidence of the representatives of the Ministry of Railways (Railway Board) that certain varieties of mangoes booked from stations on the South/South Central Railways, attained full maturity latest by the middle of May and that after that the process of ripening on the tree itself started. Therefore, the mangoes booked after middle of May were ripe to various degrees and could not be called raw mangoes. Such mangoes did not stand the normal transit in covered wagons and deteriorated on account of their inherent vice. Mangoes booked in June and earlier part of July were almost ripe and deteriorated much quicker. The Committee also note that according to provisions of the Indian Railways Act, 1899, the Railways could not refuse the booking of a consignment except when certain special packing conditions were lacking.

2.49. While the Committee appreciate that the Railways cannot refuse the booking of a consignment except when certain special packing conditions are lacking, they will very much like the Ministry of Railways (Railway Board) to analyse the figures of compensation paid by them for damage/deterioration in the condition of mango consignments with a view to find out the proportion of compensation claims paid for damage/deterioration of consignments booked in June and earlier part of July to the total amount of Compensation paid on this account. The Committee would also like the Ministry of Railways (Railway Board) to find out some ways and means to check the incidence of damage/deterioration of consignments booked during this part of the year. The Committee would like to be apprised of the result of the above analysis and steps taken by the Ministry of Railways (Railway Board) in this direction.

2.50. During the evidence before the Committee, the petitioners, as well as the representatives of the Ministry of Railways, had submitted that since 1971, the Ministry of Railways (Railway Board) were trying to improve their performance as was borne out by the figures for the years 1971 to 1973. In the year 1971, 24 per cent of the consignments were partially delayed and damaged while in the year 1972 it came down to 7 per cent. In the year 1973, it was only 2 per cent. The Committee are glad to note this improvement in the performance of Railways and hope that the Ministry of Railways (Railway Board) will continue their efforts to improve their performance so that the figures of delay and damages are brought down to the minimum extent possible.

2.51. The Committee note from the evidence of the representatives of the Ministry of Railways (Railway Board) that the transit

particulars of consignments booked at owners' risk rate are given to the consignors only in cases of non-delivery of consignments, loss or damage or pilferage. Transit particulars are not given in the case of delay in transit. According to Section 74 of the Indian Railways Act, 1890, the onus of proving that the delay was on account of the negligence of the Railways, is on the claimant who prefers the claim. The Committee therefore feel that the Ministry of Railways (Railway Board) should give transit particulars in cases of delay in transit also to the consignors so that they may be in a position to prove that the delay in transit was due, not to normal operational reasons but, to negligence on the part of the Railways. It would be unfair to expect the consignors/consignees to prove negligence on the part of the Railways without knowing the relevant transit particulars.

2.52. The petitioners had complained in their evidence before the Committee that perishable goods like mangoes were not getting facilities they deserved. It was also submitted by them that perishable goods might be treated at par with explosive goods in regard to their transportation. The Committee, in this connection, would like to stress upon the Railways that perishable goods like mangoes should be provided all facilities which they deserve. The Committee would also like the Ministry of Railways (Railway Board) to examine the feasibility of treating the perishable goods at par with the explosive goods or on any other priority basis in regard to their transportation.

JAGANNATH RAO,

Chairman,

Committee on Petitions.

NEW DELHI;

Dated the 10th April, 1975.

APPENDIX

(See para 2.2 of the Report)

Representation re. claims against the Railways on account of damage and deterioration of fresh raw mangoes due to delay in transit.

Telegram : Kismatwala

Telephone : 24920

The Ahmedabad Railwaypura Fruit Merchants Association
(Regd.) Railwaypura, Ahmedabad-2.

Ref: No. 3/73

Chairman, Committee on Petitions,
Lok Sabha, Parliament House, New Delhi.

Chairman, Estimates Committee,
Ministry of Railways, Rail Bhawan,
New Delhi.

(Through Shri B. K. Mukherjee,
Deputy Secretary, Lok Sabha Secretariat,
Parliament House, New Delhi.)

Dear Sir,

RE.: Compensations Claims arising out of damage|deterioration due to avoidable inordinate transit delays to Fresh Raw Mangoes booked from South to Ahmedabad by Passenger|Parcels Trains.

We hereby endeavour to bring to your notice for early immediate necessary action the extraordinarily peculiar policy, hitherto unknown, adopted now by the Western Railway claims branch in perfunctorily and erratically and then too quite in a casual, reckless and irresponsible manner, rejecting even the genuinely "payable-on-merits" compensation claims. Such a die-hard policy which so far has no parallel of its kind in Railways' history, has created a sense of despair, frustration and insecurity in the minds of quite a number of the Trading Public resorting to Rail for transport of their mercantile and agricultural marketable goods.

2. Nowadays the policy of the Western Railway claims branch is at the very first outset to reject a compensation claim whether it be for shortage or for damage, on any imaginary baseless ground that crops up in the fertile brain of the officer dealing with it. This results naturally in the aggrieved party putting in an appeal after appeal which also many times goes unheard of and results in repudiation being adhered to without any mind being applied to weigh the pros and cons advanced by the claimant on the wrong repudiation or without any consideration for the merits of the claim. Thus when even after putting appeal after appeals resulting in a lengthy correspondence lasting for days, months and years (as you will be able to judge for your own self from the statistics of claims paid repudiated, and re-opened as maintained by the said claims branch and the time lag involved for the final disposal), the claimant is unable to get the due and fair justice at the hand of these officers who have pre-planned repudiations and have pre-cyclostyled repudiation letters there is no other alternative left for the aggrieved and disappointed claimant but to resort to litigation at NO LESSER COSTS to himself and the railway administration. It will be quite interesting and a source of information to the Committee to call for the figures of suits field compromised out of court, contested and lost, decreed in favour of the railway and against the railway and dismissed with the total costs involved including the railway pleaders' fees paid in all such cases from 31st March 1969 to 31st December, 1972. An assessment of some of these lost and decreed cases by calling for the respective files will also prove what a huge leakage of railway revenue is effected by slip short dealings of such claims in the initial stages.

3. In our opinion the root cause of such type of disposal of payable claims is to be found either in the Negative approach by almost all the officers—the claims officers having a superfluous knowledge of the implications of the carrier's liability as assumed by the railways after 1968 or in a sort of implied directive from the immediate-in-charge to adopt such a negative policy of non-payment or short payment of high-valuation-payable claims or of arranging payment of such claims only after the issue is taken to the court and decreed. Such tactics do not lend credit either to the officers in charge of disposal of claims in particular or to the railways in general.

4. Such a negative policy of non-payment, short payment or payment only through the court cannot be, we are sure, a directive from the Railways Board but is a sort of fruitful and a convenient escape and a safeguard for the present day so called high ranking officers—claims in charge officers to resort to for their inability and incompe-

tence to take a firm and final decision on the issue before them. Such a policy also spotlights the complete dirth of proper and prompt enquiries so vital for disposal and of the total absence of a fair and just assessment of such enquiries, if undertaken, finalised and recorded on paper, *vis-a-vis* the railway's liability as a carrier.

5. Our members claimants are getting regularly in the season wagon loads of fresh raw mangoes from the South by rail and during the process of such transports some wagons do get delayed by either being detained or allowed to remain uncared for or unattended to at intermediate stations, yards or junctions with the result, that such wagons are delivered late, long after the normal or even reasonable transit time. Since the contents—fresh mangoes get damaged|deteriorated, assessments are granted for the damage|deterioration by the authorised destination staff and claims are preferred on the basis of such assessments.

6. At this stage it would not be out of place to bring out that even a small private road transport unit tries to maintain some sort of efficiency by adopting a yard stick by which its regular customers can at least come to know by what day their goods would reach their destinations.

7. It is therefore nothing new if the Indian Railways, perhaps the biggest public transport undertaking in India have also to lay down and have actually laid down a sort of uniform yard stick applicable to all railways in India indicating how a particular train will run—what speed and what distance it will cover, what service halts it will have en route and what the average running time it will have for the overall distance, whether it be a Mail, Express, Passenger or a Parcels or even a Goods train. Such a yard stick is arrived at, we are sure, after due consideration of all factors of fueling, watering and servicing of Engines and Vehicles together with time taken for passenger facilities, for loading, unloading and transshipping passengers, parcels and goods packages as also time taken for attaching and detaching goods and coaching vehicles en route.

8. The Yard Stick thus arrived at after a detailed careful consideration of these factors is put down at 400 kms per day (24 hours) for Passenger/Parcels trains and 150 kms for goods train—the time limit inclusive of the date of booking and the date of arrival on the Broad Gauge system, and a look at the timings of trains as given in various time tables published will prove that this is the standard yard stick followed by railways all over India. Thus even a rank casual travel by any train or a trader using the rail transport comes to know when roughly he or his goods will reach destination. That

these train timings are revised from time to time is by itself a sufficient proof to show that the railways have to tune up their timings in keeping with the various all around developments and even then the yard stick is strictly adhered to by enhancing or curtailing the service halts. Because of such planned movements of trains the railways get the utmost turn round and maximum usage. If such a policy is not adopted, there will be an all round chaos resulting in serious accidents and in the trains and the wagons attached running empty.

9. It is thus quite natural for our members/traders to be aware of such timings and to get the maximum advantage of facilities of comparatively quicker transit service, they invariably book their wagons under Parcel Way Bills (so that their wagons may move by Passenger/Parcels trains) by paying higher enhanced parcels freight and then too in advance so that they can look upon the railway administration in cases of delayed transits by asking for satisfactory explanations for the delay/detention or to accept liability and honour the claim thereof, for such unexplained delays| detentions which are *prima facie* cases of misconduct and negligence for the railways to explain.

10. Our members from their long relations and dealings with the railways are perfectly aware that their wagons even though booked under parcels way bills may not reach them by any particular train or at a particular hour. They are also well aware of Rule 108 of General Rule of the Railways Act under which the railways do not guarantee the despatch of their wagons by any particular train or at a particular hour nor will the railways be responsible for the arrival of their wagons at any station of destination within any definite time.

11. Our members however assert that this rule does not give the railways an inherent right to detain unnecessarily and indefinitely such wagons of theirs uncared for and unattended to at stations en route or at yards and junctions intervening in utter defiance of the aforesaid yard stick without assigning any reason or cause that can sufficiently and satisfactorily explain away the delay/detention and that cannot be attributed to negligence or misconduct of the administrations concerned, nor are the railways authorised to so transport the wagons in such a way that wagons booked on either the same day or even later reach earlier or on the same day as the delayed wagons. Rule 108 thus does not give the railways Leave, Licence and Latitude in that they will not be accountable and/or responsible even if the wagons are not delivered within reasonable time.

12. The reasonable transit time is the normal transit time and not the quickest transit time and is to be arrived at on the basis of average days within which most of the wagons booked from respective stations have reached destination without suffering an undue and unaccountable detention en route and that is where the yard stick of 400 kms per 24 hours transit comes to the railways' rescue.

13. That the said yard stick of 400 kms. per day was arrived at after due and sufficient assessment of all important factors of watering, fueling, and service halts and of timings taken for loading, unloading, transshipping, attaching and detaching of wagons and such other services is evinced from a majority of their wagons reaching Ahmedabad within the prescribed time limit. Thus any wagon reaching after this normal transit time will prove that there was avoidable inordinate delay at one or more points and under Sec. 106 of the Indian Evidence Act the special facts and circumstances under which such wagons were delayed being within the exclusive knowledge of the railway administration it is the primary and fundamental duty of the said administration to furnish complete detailed transit particulars to the claimants explaining the causes of delays/detentions satisfactorily and if the railway cannot accute such delays/detentions, they honour the liability for such unexplained unaccounted for delays/detentions.

14. To the best of our knowledge and information the destination railway's liability for such damage is on the basis of mileage involved of the various intervening railways as it is not possible to pinpoint liability for such damage/deterioration.

15. This being the uniform standard pattern of disposal of claims for damages as laid down by the Railway Board, for almost all the Indian Railways under its control, we simply fail to understand how the western railway claims branch tries to have and adopt a policy which is altogether different from the one laid down by the Board and which has no parallel of its kind anywhere on any railway, as will be seen from what follows hereunder.

16. Our members/claimants preferred claims on the basis of assessments granted by the authorised destination staff for the damage/deterioration arising out of delayed transit, calling upon the railway administration to either furnish complete transit and handling particulars explaining satisfactorily the reasons for such delays/detentions or in the alternative to honour the liability.

17. These claims were pending undisposed of with the western railway right from 1968 and since nothing fruitful came off even upto 1971, we deputed our representatives to interview the Railway Board concerned authorities for a quick and speedy disposal

of outstanding claims of 1968, 1969 and 1970 but despite vehement assurance by the said Board authorities for quick speedy and fair and square disposal of these claims our members were unable to get fair and square disposal right upto 1972 when they could receive *short* payments in as many as 15 cases only out of 91 pending cases of 1969 and 25 cases out of 20 for 1970, 32 out of 159 for 1971.

18. Our members/claimants have had thus to file suits for 1968 and 1969 undisposed of claims and will do like wise for the balance 1970 and 1971 claims.

19. Our members/claimants further report to us that even in cases where the railways' liability is there in face of unexplained avoidable inordinate delays/detentions the western railway claims branch has arranged payments ranging from 50 to 70 per cent only on the ground that there was detention at two points only and not all throughout whereas the claims for delays/detentions at one point have remained unpaid without the detention/delay being satisfactorily explained.

20. The claims officers are thus apparently unaware of the simple fact that delay at one point or more than one points is a *delay* and has contributed to the overall transit delay and the railway is under an obligation to either satisfactorily explain the causes and reasons contributing to such delays|detentions at that point or to honour the liability in *full*. This simple fact has been either inadvertently or might be with a motive and purpose overlooked with the result that in absence of sufficient satisfactory explanation forthcoming from the railway for delay/detention at that particular point the matters have been taken to the court for decisions, by our aggrieved members/claimants.

21. This funny and unpalatable practice of paying 50 to 70 per cent for delays at two points and more and repudiating claims for delays at one point is nothing but a fruitful outcome of the fertile brain of the immediate in charge officers who are either incompetent to assess the data before them *vis-a-vis* the railways liability as carriers or are even with necessary power vested in them by the administration nervous and hesitant to take a firm final decision on their own and not to arrange payment of such claims believing that the courts will come to their rescue and decide the issues for them and pass a decree with costs. They will thus be free from any responsibility. To our mind, this is nothing but a wishful thinking on their part in not realising that such shirking of responsibility entrusted to them ultimately bleeds the Central

Exchequer of heavy finances so vital to the Nation in these critical days of Famine and Economic Crisis. As Indian Patriots it is duty of these high ranking responsible officers to see that as far as possible the Nation does not loss a single paisa because of their irresponsible actions and they should be made answerable and responsible for such indifferent working.

22. We therefore, suggest in National interest as well as in the common interest of the Railways and the Users thereof that to put a check on such tactics as adopted by the Western railway claims officers there should be an Advisory Committee on claims matters which body after carefully considering the facts and records before them can guide the railways correctly. Such a body can not only save the railways from huge cost of unnecessary litigation expenses but will also be a check not only on such nervous, hesitant and incompetent officers and also on the claimants who after realising that their appeals have finally been decided by disinterested independent members of the said body will think hundred times before resorting to litigation.

23. To convince you of the veracity and force of the arguments advanced above we give vide enclosure herewith below a few statistics out of many showing how the wagons booked on the same date and/or even a day and even two later have reached Ahmedabad either earlier or on the day the delayed wagons were received and delivered.

24. These statistics are by themselves a sufficient and conclusive proof of the negligence and misconduct of the railways proving that the delayed wagons were allowed to lie unattended to and uncared for at intermediate stations, yards of junctions. Otherwise how it comes that wagons on the run booked on that day and even a day or two days later came to be reaching destination either earlier or on the day the wagons delayed were delivered.

25. Strangely enough the claims for these delays have been repudiated even after appeals and all the while the officers concerned have failed to explain satisfactorily the reasons and causes for these delays|detentions, be the delay at one point or at points more than one. If satisfactory reasons were given to these claimants, the claimants would not be thinking of resorting to litigations which are by no stretch of imagination a pleasure hunting job for them.

26. The statistics given below will also give you an idea of what a normal reasonable transit should be and will also convince you

that the damaged/delayed wagons were delayed for reasons which the railway could not satisfactorily explain except resorting to repudiation as the last way to screen the incompetence and the lack of initiative, on their part to take a final fair decision even in a genuinely payable claim.

27. Because of such a nervousness, hesitance, and incompetence of the deciding authority there are as many as more than 150 suits for such claims pending in various Ahmedabad court and to create a psychological halo on the litigants a court officer and a court inspector are ordered to attend the court for day to day hearings of the cases coming on board to assist the railway pleader. This is nothing but a sheer waste of public moneys and additions to unnecessary litigation expenses by way of allowances and salaries of these officials attending the courts. Even considering the costs incurred in defending court cases decided in favour of the railways and adding court costs, pleaders' fees and allowances and salaries of these officials attending the court it would be still more economical to sit around a table with our members and compromise all these pending cases both in the courts and the office after settlement advantageous to both the sides.

28. Can we expect a sane, sober and compromising approach from you and your worthy members on the various aspects brought out above in the common interests of the claimants, the railway was and the Nation as a whole.

29. There are as many as 150 and more suits in Ahmedabad courts filed by our members with more to follow for the 1970 and 1971 rejected claims. We therefore once again request you in common interests to intervene and suggest a firm final solution for these disputes be it even if the matter is to be placed before the hon. Minister Railways for his valuable opinion.

30. Thanking you and expecting a reply indicating what action is being taken in the matter.

Your faithfully,

Sd/- (K. H. ROHARA)
 Hon. Secretary, Ahmedabad
 Railwaypura Fruit Merchant,
 Association.