

COMMITTEE ON PETITIONS

(FIFTH LOK SABHA)

FIFTH REPORT

[Action taken by Government on the recommendations contained in the Sixth Report of the Committee on Petitions, Fourth Lok Sabha, relating to Petition No. 12 re. repeal of the Essential Services Maintenance Act, 1968, etc.]

(Presented on the 24th May, 1972)



**LOK SABHA SECRETARIAT
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COMPOSITION OF THE COMMITTEE ON PETITIONS
(1971-72)

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**FIFTH 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 Fifth Report of the Committee to the House, regarding action taken by Government on the recommendations contained in the Sixth Report of the Committee on Petitions, Fourth Lok Sabha, relating to Petition No. 12 *re.* repeal of the Essential Service Maintenance Act, 1968, etc.

2. The Committee considered the matter and adopted the draft Report at their sitting held on the 18th May, 1972.

3. The recommendations|observations of the Committee on the matters contained in the Report have been included in this Report.

REPORT

Action taken by Government on the Recommendations contained in the Sixth Report of the Committee on Petitions, Fourth Lok Sabha, relating to Petition No. 12 re. repeal of the Essential Services Maintenance Act, etc.

1.1. In their Sixth Report, presented to Lok Sabha on the 24th December, 1969, the Committee on Petitions (Fourth Lok Sabha) had made the following recommendations/observations on the above-mentioned petition:

“3.48. The Committee observe that the Essential Services Maintenance Ordinance, 1968, was promulgated to avert the general strike of Central Government employees in September, 1968 so as to maintain the life of the community, and it was subsequently replaced by the Essential Services Maintenance Act, 1968. The Committee also observe that the said Act is a temporary measure for a period of three years, when it is proposed to be replaced by a comprehensive legislation so as to put the Joint Consultative Machinery Scheme on a statutory basis.

3.49. The Committee appreciate that maintenance of life of the community is the foremost duty of the Government and they have to take necessary steps to achieve this end.

3.50. The Committee are happy to note that a proposal, to enact a comprehensive legislation to give statutory basis to the Machinery for Joint Consultation and Compulsory Arbitration for Central Government employees so as to minimize chances of recurrence of a general strike is under consideration of the Government. They hope that the proposed comprehensive legislation would be enacted early so as to obviate the necessity of resorting to the provisions of the Essential Services Maintenance Act,

3.51. The Committee are unhappy to note that the Government of India have as yet not ratified Conventions 87 and 98 of the International Labour Organisation. The Committee hope that Government would take early steps to

rectify these Conventions as recommended by the National Commission on Labour.

3.52. The Committee observe that the Indian Railways (Amendment) Act, 1968 was enacted to fill certain lacuna in the provisions of the Indian Railways Act regarding abandonment of trains at inconvenient places, so as to avoid any difficulty to the innocent passengers.

While the Committee appreciate that Government should have the necessary powers to deal adequately with the anti-social elements in the society so that no one should be able to take undue protection under the cover of any lacunae in the existing laws, they wish to emphasise that liberal interpretation should be put on various provisions of the law so that while dealing with the human factor the approach is pragmatic and individual cases are dealt with by Government against their own employees in a spirit of understanding and compassion.

3.53. The Committee observe that Section 36AD of the Banking Companies Act as inserted by the Banking Laws (Amendment) Act, 1968, has been enacted in order to ensure that no inconvenience is caused to the members of the public and no harm is done to the credit-worthiness of the banks. The Committee appreciate that banks are delicate credit institutions and the Government have a responsibility to ensure that they are able to function normally without any observations so that the trade and industry is not adversely affected. The Committee would, however, like to emphasise that while applying these provisions it should be ensured that genuine trade union activities do not receive any set back and also the bank employees are not harassed in any manner.

3.54. The Committee observe that the Central Industrial Security Force Act, 1968, has been enacted with a view to ensuring safety and security of the installations of the Central Government undertakings. Members of the Force have been given necessary powers to take appropriate action against those seeking to interfere with the security of the plant and installations, and pass them over to the local police authority for further action. The Committee do not consider that this Act affects adversely

in any way the trade union rights of the employees of the public undertakings concerned.

- 3.55. The Committee find that presently there are no formal rules or law to regulate the recognition of the workers' unions. There is also no law as yet in any State|Union Territory governing the recognition of unions through secret ballot. The criteria for recognition of unions are broadly as contained in the Voluntary Code of Discipline.
- 3.56. The Committee are of the opinion that in order to place the trade union movement on a sound footing it is imperative that there should be definite rules to regulate the recognition of trade unions.
- 3.57. The Committee also note that the National Commission on Labour has also made recommendations in regard to the recognition of unions and they are to be considered by the Government in consultation with the State Governments, other Ministries of the Government of India and employers' and workers' organisations for which purpose the Ministry of Labour, Employment and Rehabilitation have decided to hold a special session of the Indian Labour Conference.

The Committee hope that a satisfactory code would be evolved in consultation with the representatives of the employees' and workers' for granting recognition.

- 3.58. The Committee find that a large number of unions/federations/associations of Central Government employees were derecognised for participating in the September, 1968 strike. The Committee note with satisfaction that the various Ministries|Departments have been advised by the Ministry of Home Affairs to grant fresh recognition to such of the unions etc. which had been de-recognised after the strike of September, 1968. The Committee hope that this process of restoring recognition will be completed without any delay.
- 3.59. The Committee have noted that, as on the 19th August, 1969, 1679 employees, which included 887 temporary employees, had not been reinstated. They have further noted that by the 28th November, 1969, as many as 594 employees had benefited as a result of a review of their

cases. They would strongly urge that the remaining cases, including those of the temporary employees, should be sympathetically considered so as to mitigate the avoidable hardships to the Government employees concerned.

3.60. While the Committee are aware of the provisions of the Industrial Disputes Act, 1926, regarding retrenchment etc. of the industrial workers, they wish to emphasise that it should be ensured that all categories of employees in all sectors of employment are given due protection against retrenchment and victimisation. The Committee would like to be informed in due course of the measures taken by Government in this direction.

3.61. The Committee observe that the Government regard a need-based wage to the workers as an important objective of their socio-economic policy. They are happy to note that the Government have taken decision to appoint a new Pay Commission to review the pay structure and other conditions of service of the Central Government employees. They hope that the terms of reference of the new Commission will be sufficiently comprehensive to include the question of giving a 'need-based minimum wage' to the Central Government employees.

3.62. The Committee were informed during the course of evidence, by the representatives of the Ministries of Home Affairs and Labour, Employment and Rehabilitation, that the various recommendations of the National Commission on Labour (1969) were under consideration of the Government. The Committee hope that the recommendations of the National Commission on Labour will be expeditiously considered and necessary steps for their implementation will be taken by Government. The Committee would, in particular, like to be informed in due course, of the decisions of the Government on the recommendations of the National Commission on Labour given in Appendix V which touch on the various points raised in Petition No. 12."

[Paras 3.48 to 3.62, Sixth Report, Fourth Lok Sabha.]

1.2. The above recommendations|observations of the Committee were taken up for implementation with the Cabinet Secretariat (Department of Personnel) and the Ministries of Labour and Rehabili-

tation, Railways and Finance. The action taken replies furnished by the concerned Ministries/Departments are summed up below:

(1) *Recommendation in Para 3.50 of the Report; re. enactment of a comprehensive legislation on the Joint Consultative Machinery.*

The Department of Personnel have stated that the question of enacting a comprehensive legislation on the Joint Consultative Machinery is still under consideration. In their communication dated the 9th December, 1971, it has been stated that "it is proposed to discuss shortly with the representatives of the Staff Side of the National Council the broad features of the proposed scheme of making the Joint Consultative Machinery a statutory body. Further action will be taken after taking into account the views of the Staff Side on this matter."

(2) *Recommendation in para 3.51 of the Report re. ratification of Conventions Nos. 87 and 98 of the I.L.O.*

Convention No. 87 re. Freedom of Association and Protection of the Right to Organise: The Ministry of Labour and Rehabilitation (Department of Labour and Employment) in their communications dated the 5th March, 1970 and 14th December, 1971, stated that "the question of ratification of Convention No. 87 has been examined a number of times by the Government of India and every time it has been found that it was not possible for India to ratify this Convention. The laws and regulations as they stand at present do not warrant ratification of the Convention at this stage. It may be stated in this connection that the National Commission on Labour has expressed the hope that the implementation of the relevant recommendations made by it in respect of Trade Unions and Industrial Relations will necessitate a reassessment of the situation concerning ratification of Conventions Nos. 87 and 98 by Government in the years to come. The recommendations of the Commission in respect of Trade Unions and Industrial Relations are still under examination. The question of ratification of Convention No. 87 can be reviewed only after final decisions are taken by Government on the Labour in the field of Trade Unionism and Industrial Relations."

Convention No. 98 re. Application of the Principles of the Right to Organise and to Bargain Collectively: The Ministry of Labour and Rehabilitation (Department of Labour and Employment) in their communication dated the 5th March, 1970, stated that "there are certain difficulties standing in the way of ratification of Con-

vention No. 98 also. The matter has been reviewed again recently and it has been decided to seek clarification from the I.L.O. on some points before final decision is taken on the question of its ratification." In their subsequent communication, dated the 14th June, 1971, the Department of Labour and Employment stated that "According to the clarification furnished by the I.L.O., there is no incompatibility between the provisions of the Industrial Security Force Act, 1968 and those of Convention No. 98. This, however, solves only one of the difficulties in the way of ratification of the Convention, the most important among the others being the repugnance of the Essential Service Maintenance Act, 1968 to the provisions of the Convention. Ratification of the Convention would not be possible as long as this remains on the Statute Book.

- (3) *Recommendation in para 3.52 of the Report, re. provisions of Indian Railways (Amendment) Act, 1968 regarding abandonment of trains by Railway servants.*

The Ministry of Railways (Railway Board) in their communication dated the 31st January, 1970, stated that "the intention of the two amendments viz., Sections 100A and 100B is to prevent sudden and deliberate abandonment of trains by Railway servants at inconvenient places and squatting on the track by staff and public as a recourse for ventilation of their grievances, respectively. In fact, very few cases have been dealt with exclusively in terms of provisions of these two amendments even during the last strike on 19th September, 1968 and during normal times, recourse to these provisions will be infrequent. The observations of the Committee have, however, been noted."

- (4) *Recommendation in para 3.53 of the Report re. Section 36AD of the Banking Companies Act as inserted by the Banking Laws (Amendment) Act, 1968.*

The Ministry of Finance (Department of Banking) in their communication, dated the 12th March, 1970, stated that the "Government accept the recommendation of the Committee. The Reserve Bank has been requested to bring the recommendation to the notice of the banks for their guidance."

- (5) *Recommendation in para 3.54 of the Report, re. Central Industrial Security Force Act, 1968.*

The Ministry of Home Affairs in their recommendation dated the 13th July, 1970, intimated to the Committee that the "observations of the Committee have been noted."

(6) Recommendation in paras 3.55 to 3.57 of the Report, re. rules to regulate recognition of trade unions.

The Ministry of Labour and Rehabilitation (Department of Labour and Employment) in their communication dated the 5th March, 1970, informed the Committee that "the recommendations of the National Commission on Labour on the subject are being examined in consultation with the various interests concerned. No final decision in this respect has so far been taken." In a subsequent communication dated the 23rd September, 1970, the Department of Labour and Employment informed the Committee that "the recommendations of the National Commission on Labour on the question of recognition of unions were discussed at the Labour Ministers' Conference and the Standing Labour Committee in July, 1970. In the light of the conclusions of the Standing Labour Committee which are being finalised, decisions will be taken and appropriate legislative action initiated". In another communication dated the 14th June, 1971, the Committee were informed that "The Conference of the representatives of Trade Union Organisations was held on 20th and 21st May, 1971. Although there was some divergence of views, there was near unanimity on what were the essential problems demanding solution and also a broad measure of agreement on the lines along which solutions could be found. The Trade Unions Organisations were requested to constitute a small committee or working group to go into the question of recognition as a bargaining agent and type of machinery for settling industrial disputes so as to secure 'Strife-free' growth and report to Government within a couple of months.

At the Conference of the representatives of Employers' Organisations held on 22nd May, 1971, concern was expressed regarding the large number of closures of industrial units and deterioration in the state of industrial relations in the country. It was agreed that productivity should be increased and industrial peace maintained at any cost. Employers were advised not only to co-operate in securing social and economical objectives through democratic methods but also to share the burden that was likely to be put on them. The role of State in maintaining law and order and normalcy was also emphasised. They were also advised to give thought to these problems and give their suggestions.

It is now proposed to consider the basic aspects of industrial relations policy at a tripartite meeting so that some concrete conclusions could be reached." In a further communication dated the 20th August, 1971, the Department of Labour and Employment intimated

to the Committee that "The Trade Unions Organisations were requested to constitute a small group to go into the question of recognition as a bargaining agent. Accordingly, the representatives of the INTUC, AITUC and HMS met at New Delhi on 29-7-71 and agreed to meet again at Madras in August. Government in awaiting the results of these discussions, the final decision will, however, have to be taken by a tripartite body i.e. Indian Labour Conference or the Standing Labour Committee at its next meeting before Government is in a position to take any action for promoting legislation on the subject of recognition." In their communications dated the 14th December, 1971, the Department of Labour and Employment informed the Committee that "In pursuance of a request made by the Labour Minister at the Conference of the Representatives of Trade Union Organisations held on the 20th and 21st May, 1971, the representatives of the INTUC, the AITUC and HMS held a series of meetings in order to have mutual consultations on the questions of dispute-settlement machinery and the method of determination of the representative character of trade unions and to report to Government their agreed views. At the 27th Session of the Indian Labour Conference held in October, 1971, the representatives of the Workers' Organisations requested the Chairman to give them more time, say, six months for further consultations so that they could come to some agreed consensus. This request was acceded to by the Conference. In the circumstances Government can take a final decision in the matter only after the outcome of these consultations is known."

(7) *Recommendation in para 3.58 of the Report re. grant of fresh and interim recognition to the de-recognised federations/unions etc.*

The Ministry of Home Affairs in their communication dated the 9th March, 1970, intimated to the Committee that "Orders regarding the grant of fresh and interim recognition to the de-recognised federations|unions|associations have already been issued to the Ministries|Departments, and it is for them to implement the orders. From the information so far received, it appears that in most of the cases the federations|unions|associations have been granted fresh and interim recognition upon the completion of the necessary formalities. In the remaining cases also, such recognition would be granted on the concerned employees' organisations completing the formalities such as making the application for grant of fresh and interim recognition. The Ministry of Railways (Railway Board) in their communication dated the 31st January, 1970, informed the Committee that "Negotiating facilities of All India Railwaymen's Federation and recognition of six Unions affiliated to this Federation which

were withdrawn following their participation in the strike on 19-9-68, have been granted afresh."

- (8) *Recommendation in para 3.59 of the Report re. re-instatement of employees who had participated in the 19th September, 1968 strike.*

The Ministry of Home Affairs in their communication dated the 9th March, 1970, intimated to the Committee that "the Government have recently reviewed the question of re-instatement of employees, who participated in the strike of September, 1968". The Ministry of Home Affairs furnished a copy of the following statement made by the Minister in the Ministry of Home Affairs in the Lok Sabha on the 2nd March, 1970, and stated that necessary orders in this regard had been issued to the Ministries|Departments:

"As the House is aware, Government have reviewed from time to time their original orders regarding action to be taken against Central Government employees who participated in the illegal strike of 19th September, 1968, and have announced several relaxations. All those who were not charged with violence, intimidation or active instigation have been reinstated. Temporary employees discharged under similar circumstances have been taken back in service. After taking all the circumstances into consideration particularly the fact that these employees have now been under suspension for about a year and a half and conditions have returned to normal, Government have now reviewed the position. All the remaining employees still under suspension will now be reinstated. Orders to this effect are under issue. This will of course be without prejudice to the cases pending in courts, or appropriate disciplinary action under the service rules. Those employees who participated in the strike and were absent for duty suffered a 'break in service' under the normal operation of the rules. The hardships suffered as consequence have been greatly mitigated by subsequent relaxations. Government have also decided that the break in service should now be condoned with immediate effect without, of course, reopening any adverse effects that they might have already undergone. The days of absence will be treated as dies non. It has further been decided that the fact of the participations of the employees in the last strike would not henceforth be taken into

account for purposes of their confirmation, declaration of quasi-permanency or promotion."

In response to Starred Question No. 51, answered in Lok Sabha on the 31st March, 1971, regarding the number of Court Cases pending against Central Government employees for participating in the September, 1968 strike, the Prime Minister (Shrimati Indira Gandhi) stated that "(a) Latest information is available only in regard to the States of Andhra Pradesh, Mysore, Bihar, Maharashtra and Orissa and the Union Territory of Delhi, where the total number of pending cases is 132. Latest information from the States of U.P., Assam, Madhya Pradesh, Rajasthan and Kerala is awaited. It will be placed on the Table of the House, as soon as it is available. No cases are pending in the other States and Union Territory Administrations. (b) All State Governments and Union Territory Administrations have already been advised to have the pending prosecution cases scrutinised with a view to terminating the legal proceedings according to law, in cases where there is not sufficient evidence. Apart from this, there is no proposal to withdraw the prosecution cases. State Government and the Union Territory Administration concerned have also been requested from time to time, to ensure expeditious disposal of the pending cases." In response to another Starred Question No. 224 answered in the Lok Sabha on 2nd June, 1971, the Prime Minister (Shrimati Indira Gandhi) again stated that "No proposal is under consideration of Government for withdrawal of Court cases pending against the Central Government employees who participated in the strike of September, 1968." Answering supplementary questions in the House, the Minister of State in the Ministry of Home Affairs stated that "There is no question of punishing Government employees. The policy of the Government in regard to prosecutions has all along been that law should be allowed to take its own course and that there should be no interference in that. As I have said, it is not the policy of the Government to withdraw the cases. But we have been impressing upon the State Governments that legal processes should be expedited and the cases that are pending should be terminated as early as possible according to law." In response to Starred Question No. 572 answered in Lok Sabha on the 26th April, 1972, the Minister of State in the Department of Personnel (Shri Ram Niwas Mirdha) stated that "Representations have been received from time to time, from Central Government employees for the withdrawal of Court cases and disciplinary proceedings pending against the employees who had participated in the strike of September, 1968.

While the policy of Government has all along been to allow the law to take its own course, all State Governments and Union Territory Administrations have been advised, from time to time, to have pending Court cases scrutinised with a view to terminating the legal proceeding according to law, in cases where there is no sufficient evidence, and also to take steps to expedite the disposal of the pending cases. As a result of this action most of the Court cases have now been disposed off. Action has also been taken by the various Ministries|Departments concerned to expedite the disposal of disciplinary proceedings wherever they were still pending. In these circumstances, there is no question of issue of any general orders for the withdrawal of Court cases or disciplinary proceedings."

The Ministry of Railways (Railway Board) in their communication dated the 31st January, 1970, informed the Committee that "In the context of strike on the 19th September, 1968, initially about 3832 employees were suspended and 1713 temporary employees were discharged. All these cases have been reviewed at various levels including Railway Board, in accordance with Government's decision, as a result of which all employees except 79 suspended and 15 discharged employees who have been charged for violence and intimidation, have been put back to duty." In response to Unstarred Question No. 5418 answered in Lok Sabha on the 9th May, 1972, the Minister of Railways (Shri K. Hanumanthaiya) stated that "The temporary employees whose services had been terminated, were put back to duty in pursuance of the general policy of the Government. The period of their absence between the date of termination of their service and the date on which they were put back to duty, has been treated as 'dies non' in accordance with the general decision of the Government. They are, therefore, not entitled to any wages for the said period. In the case of permanent employees, payment for the period of suspension, on account of arrest, prosecution etc. has been regulated by the competent authority in accordance with the extent orders."

(9) *Recommendation in para 3.60 of the Report re. provisions of the Industrial Disputes Act, relating to retrenchment etc. of Industrial Workers.*

The Ministry of Labour and Rehabilitation (Department of Labour and Employment) in their communication dated the 5th March, 1970, informed the Committee that "suitable action will be taken after a decision has been taken on the recommendation of the National Commission on Labour in this respect." In a subsequent communication dated the 28th November, 1970, the Committee were

informed that "This recommendation was discussed at the 29th meeting of the Standing Labour Committee held in July 1970. Necessary action is being taken in the light of deliberations of the meeting of the Standing Labour Committee. It will take some time before the provisions of the Industrial Disputes Act are actually amended.

(10) *Recommendation in para 3.61 of the Report re, need-based minimum wage to the employees.*

The Ministry of Finance in their communication dated the 22nd August, 1970, intimated that the "question regarding need-based minimum wage for Central Government employees has been included in the terms of the Third Pay Commission in the following terms:—

"Having regard to all relevant factors, the Commission may, while enquiring into the level of minimum remuneration, examine the Central Govt. employees' demand for a need-based minimum wage, which is based on the recommendations of the 15th Indian Labour Conference."

(11) *Recommendations in para 3.62 of the Report re. implementation of recommendations of the National Commission on Labour.*

The Ministry of Labour and Rehabilitation (Department of Labour & Employment) have intimated to the Committee from time to time, the latest position on the steps taken by them to implement the various recommendations of the National Commission on Labour, touching the various points raised in Petition No. 12, as enumerated in Appendix V (Enclosure) of the Sixth Report of the Committee on Petitions. The last communication on the subject from the Department of Labour and Employment was received on the 14th December, 1971. The position is summed up below *seriatim*:—

(a) S. Nos. 1 to 4.

A decision in the matter is still to be taken. Some of the recommendations referred to in these items are at present under consideration by the Third Pay Commission.

(b) S. No. 5.

The question of 'Outsiders' in trade union functionaries was discussed at the 29th Session of the Standing Labour Committee (July, 1970); it was agreed that the question of reduction in the number of 'Outsiders' on the executives of unions should be decided by the unions themselves within the limits set by the existing law. In

view of this decision, no further action is called for on this particular recommendation.

(c) S. No. 6

The question of amending the definition of the term 'industry' under the Industrial Disputes Act, 1947 was discussed at the 29th Session of the Standing Labour Committee (July, 1970) and it was generally accepted that there was need to extend the protection on the lines of the Industrial Disputes Act to services like hospitals and educational institutions etc. It was urged by some representatives that the Industrial Disputes Act should be amended specifically to cover hospitals and educational institutions; some others, however, urged that separate legislation be introduced for these services. It was finally agreed that Government should take a decision on the basis of these two alternative suggestions. Necessary action has already been initiated by Government to amend the definition of the term 'industry' under the Industrial Disputes Act in the light of the Standing Labour Committee's conclusions mentioned above.

(d) S. No. 7.

This is only an observation. No specific action is called for.

(e) S. Nos. 8 and 9

These are covered in the comments pertaining to recommendations in paragraphs 3.55 to 3.57 given in the foregoing paragraphs.

(f) S. No. 10.

This is covered in the comments pertaining to recommendation in paragraph 3.51 given below.

(g) S. No. 11.

This matter is already under consideration of the Department of Personnel in consultation with the Department of Labour and Employment. Action in this regard is to be taken by the Department of Personnel.

(h) S. No. 12.

The Ministry of Finance have already set up the Third Pay Commission.

Recommendations/Observations of the Committee

1.3. The Committee note that the question of enacting a comprehensive legislation to give a statutory basis to the Joint Consultative

Machinery is still under consideration of the Government. The Committee hope that the proposed legislation would be finalised early in consultation with the various interests concerned.

1.4. The Committee note that there are certain legal difficulties in the way of ratification of Convention No. 87 of the I.L.O. by Government and that the position would be reviewed after final decisions are taken by Government.

1.5. The Committee recommend that Government should frame rules for the recognition of workers' unions, wherever there are none at present.

1.6. The Committee note that all those Government employees who participated in the 19th September, 1968 strike but who were not charged with violence intimidation or active instigation have been re-instated by the Government. Temporary employees discharged under similar circumstances have also been taken back in service. The Committee also note that in regard to the cases pending in the Courts, the policy of the Government is to allow the law to take its own course, although it has been impressed upon the State Governments that the legal processes should be expedited according to law.

1.7. The Committee note that the question of giving due protection to the industrial workers against retrenchment and victimisation is under consideration of the Government. The Committee hope that suitable measures in this direction would be taken at an early date so as to achieve quickly industrial peace and higher productivity.

1.8. The Committee are happy to note that the Government have included the question of need-based minimum wage for Central Government employees in the terms of the Third Pay Commission which is currently examining the matter.

ANANT PRASAD SHARMA,

Chairman,

Committee on Petitions.

NEW DELHI;

18th May, 1972.