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COMMITTEE ON PETITIONS

(TENTH LOK SABHA)

FIRST REPORT

[Presented to Lok Sabha on] 27 MAR 1992

LOK SABHA SECRETARIAT
NEW DELHI

March, 1992

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FIRST REPORT OF THE COMMITTEE ON PETITIONS

(TENTH 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 First Report of the Committee to the House on the following matters :—

(i) Action taken by Government on the recommendations of the Committee on Petitions contained in their Ninth Report (Eighth Lok Sabha) on the petition regarding amendment/modification of the Sikkim (Citizenship) Order, 1975.

(ii) Action taken by Government on the recommendations of the Committee on Petitions contained in their Tenth Report (Eighth Lok Sabha) on the petition regarding discrimination based on sex against cabin crew in Air India and Indian Airlines.

(iii) Action taken by Government on the observations/recommendations of the Committee on Petitions contained in their Third Report (Eighth Lok Sabha) on the representation from Shri P.N. Gulati regarding payment of arrears. [Matter was considered by the Committee at their sittings held on 21st March and 21st June, 1990]

(iv) Action taken by Government on the recommendations of the Committee on Petitions contained in their Eighth Report (Eighth Lok Sabha) regarding plight of discarded wives whose husbands have settled in foreign countries.

2. The Committee considered the draft Report at their sitting held on 9 January, 1992 and adopted it.

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

NEW DELHI;
Dated 9th January, 1992

P. G. NARAYANAN,
Chairman,
Committee on Petitions.

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CHAPTER I

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE ON PETITIONS CONTAINED IN PARAGRAPHS 2.23 TO 2.27 IN THEIR NINTH REPORT (EIGHTH LOK SABHA) ON PETITION NO. 14 REGARDING AMENDMENT/MODIFICATION OF THE SIKKIM (CITIZENSHIP) ORDER, 1975

1.1. The Committee on Petitions in their Ninth Report (Eighth Lok Sabha) presented to Lok Sabha on 3 May, 1989 dealt with the petition signed by Shri Dilli Ram Basnet and 30 other members of the Legislative Assembly of Sikkim and presented to Lok Sabha by Shrimati D. K. Bhandari, M.P. regarding amendment/modification of the Sikkim (Citizenship) Order, 1975 with a view to conferring Indian Citizenship on all persons residing in the State of Sikkim upto 5 years prior to 26 April, 1975.

1.2 Action Taken Notes on the recommendations of the Committee have been received from the Ministry of Home Affairs. The recommendations made by the Committee and the replies furnished by the Government are given in *Appendix—I.*

1.3 The Committee will now deal with the action taken by Government on one of their recommendations.

Recommendation (Para No. 2.27)

1.4 The Committee note that consequent to a meeting between the Union Home Minister and Chief Minister of Sikkim in November, 1988, a series of discussions were held between the officials of Central Government and of the Government of Sikkim to resolve the issue regarding grant of citizenship. After reaching a consensus, a notification amending the Sikkim (Citizenship) Order 1975 viz. Sikkim (Citizenship) Amendment Order 1989 had been issued on 20 March, 1989. In terms of the Sikkim (Citizenship) Amendment Order 1989 a Committee was constituted to look into the cases of genuine omissions. As per the recommendations of this Committee 73,431 persons had been found genuine and they have been declared as Indian citizens with effect from 26.4.1975. There are stated to be about 400 applications which are still under examination by the Government of Sikkim. The Committee hope that an early decision will be reached in respect of these cases too and in case there are still any grievances, the Committee would like to be intimated about it.

CHAPTER II

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE ON PETITIONS CONTAINED IN PARAGRAPHS 1.24 TO 1.32 IN THEIR TENTH REPORT (EIGHTH LOK SABHA) ON THE PETITION REGARDING DISCRIMINATION BASED ON SEX AGAINST CABIN CREW IN AIR INDIA AND INDIAN AIRLINES

2.1 The Committee on Petitions in their Tenth Report (Eighth Lok Sabha) presented to Lok Sabha on 2nd May, 1988 dealt with the petition signed by Ms. Rubeen R. Khambatta and other air-hostesses and presented to Lok Sabha by Shrimati Bibha Ghosh Goswami, M.P., regarding discrimination based on sex against Cabin Crew in Air-India and Indian Airlines.

2.2 Action Taken Notes have been received from Government in respect of the recommendations contained in the Report. The recommendations made by the Committee and the replies furnished by the Government are given in *Appendix II.*

2.3 One of the main recommendations of the Committee was that retirement age of air-hostesses might be raised to 55 years. In reply to the recommendation (Para No. 2.30) government stated that "Retirement age of air-hostesses in Air India and Indian Airlines, has been raised to 58 years".

2.4 In January, 1991, Shri Samar Mukherjee, M.P. forwarded a representation of Air India Hostesses Association addressed to the Chairman, Committee on Petitions drawing attention of the Committee to the fact that the Air India management has not so far implemented the Government directive based on the recommendations of the Committee on Petitions (*Appendix—III*). An identical representation received from Air India Hostesses Association by the Chairman, Committee on Public Undertakings in December, 1990 was also forwarded to the Committee for consideration. The Association drew attention of the Committee to the circular issued by the Air India barring Air Hostesses from undertaking flight duties after the age of 45 years and deploying the 'Officer' category of Hostesses who do not retire before the age of 45 years, in the junior most level officers on ground and deploying hostesses who do not retire before the age of 45 years, in 'clerical' position on ground and demanded that "like make cabin crew, Air Hostesses in Air India should be allowed to serve till the age of 58 years."

2.5 Factual comments received from the Ministry of Civil Aviation & Tourism on the representation are given in Appendix IV.

2.6 The Committee note with satisfaction that Government have accepted the recommendations of the Committee and both Air India and Indian Airlines have raised the age of retirement of Air-hostesses to 58 years and the ban on marriage by Air hostesses within three years of joining service has been removed. They also note with satisfaction that in regard to proof of marriage, in Indian Airlines a Trainee Air Hostess was required to submit an affidavit that at the time of her appointment she was not married and in the case of Air India a declaration by Air Hostess regarding her marital status was accceptable.

2.7 The Committee, however, note that the management of Air India have decided in November, 1990 that while female cabin crew would retire at 58 years of age the air hostesses would be allowed to fly only upto the age of 45 years subject to medical fitness for flying duties and for this purpose the Air Hostesses would be required to undergo medical examination at the age of 37 years and every two years thereafter upto the age of 45 years. Thereafter they would be assigned ground duties upto the age of 58 years.

2.8 The Committee would like to point out that the decision taken by Government in October, 1989 in pursuance of the recommendations of the Committee which was communicated to both Indian Airlines and Air India there was no stipulation restricting the flying duties by Air Hostesses in Air India only upto the age of 45 years. Further, the Indian Airlines have already amended their regulations to allow Air Hostesses to fly till 58 years of age.

2.9 In the circumstances, the Committee are unable to appreciate the decision taken by Air India to restrict the flying duties by its Air Hostesses upto the age of 45 years. They have been informed that Air India's orders of November, 1990 regarding assignment of Air Hostesses on ground jobs after 45 years is being reviewed. Further National Industrial Tribunal has been constituted by Government to go into the various issues regarding terms and conditions of the service of Indian Airlines and Air India, which is a quasi-judicial body and its verdict is binding on both the Management and the workers. The Committee hope that the Tribunal would settle the issue expeditiously.

CHAPTER III

ACTION TAKEN BY GOVERNMENT ON THE OBSERVATIONS/ RECOMMENDATIONS OF THE COMMITTEE ON PETITIONS CONTAINED IN PARAGRAPH 6.2 IN THEIR THIRD REPORT (EIGHTH LOK SABHA) ON THE REPRESENTATION FROM SHRI P. N. GULATI REGARDING PAYMENT OF ARREARS

3.1 Shri P. N. Gulati, a retired Government employee of Ministry of External Affairs in his letter dated 14.10.1985 wrote to the Chairman, Committee on Petitions that in 1964 his immediate boss *viz.* Chief of Protocol recommended 3 advance increments to him. During processing of the case, the file was lost by the Administration which was retrieved from their Record Room after a lapse of 14 years. He was given two advance increments from back date but the arrear payment of 14 years was denied to him.

3.2 The representation was referred to the Ministry of External Affairs on 4.12.1985 for comments. The Ministry of External Affairs in their note *inter-alia* stated that the recommendation of the then chief of Protocol was examined and it was observed that Shri Gulati had already been paid a lumpsum honorarium of Rs. 300/- apart from overtime allowance and had already been granted two advance increments under the Superior Performance Scheme from 1.4.63 to 31.3.64. Regarding loss of file, Ministry stated that it was sent to Record inadvertently and was retrieved in 1978.

Ministry further stated that when Shri Gulati raised the issue again for the grant of advance increments to him, the powers to grant advance increments under F.R. 27 had been withdrawn by the Ministry of Finance. The case had, therefore, to be taken up with the Ministry of Finance. The Sanction which was issued in 1979, granting two advance increments to Shri Gulati with cumulative effect from 1.4.1963, did not allow the arrears to be paid to him for the period 1.4.1964 to 19.2.1979. In 1984, the then Finance Secretary agreed to an ex-gratia payment of an amount not exceeding Rs. 10,000/- in full and final settlement of his case but Shri Gulati refused this payment and therefore a decision to close the case was taken.

On Shri Gulati's repeated requests, his case was considered by the Minister of External Affairs in December, 1985, who directed that if Shri Gulati's pension had been adversely affected due to an administrative lapse, some additional compensation on this account may be considered in the final ex-gratia payment. Ministry of Finance, however, did not agree.

3.3 The matter alongwith the above reply from the Ministry was considered by the Committee on Petitions at their sitting held on 27.6.1986 and it was decided that no further action was required on their part and to report the facts to the House.

3.4 On 30th October, 1986, Shri Gulati sent a letter stating that he had been offered Rs. 15,000/- instead of Rs. 10,000/- by the Foreign Secretary as ex-gratia payment but he did not want to accept the amount and requested the Committee to get him his dues i.e. 3 advance increments only as per his original request.

The Committee in their Third Report (Eighth Lok Sabha) reported to the House as under:

> "The Committee is satisfied with the reply furnished by the Ministry of External Affairs. The Committee also note from a letter dated 30th October, 1986 received from Shri Gulati that the Foreign Secretary has offered him ex-gratia amount of Rs. 15,000/- but he would like to have what is due to him and feel that in view of the offer by Foreign Secretary of Rs. 15,000/- which is not a paltry sum, no further intervention on their part is required in the matter."

3.5 A copy of the above Report was sent to the Petitioner. Shri Gulati, however, again sent two letters dated 18th and 21st August, 1989 stating that the Ministry had gone back on their commitment and issued sanction for Rs. 10,000/- only. He requested for reconsideration of his case. These letters were also sent to the Ministry of External Affairs for comments.

3.6 The Ministry of External Affairs in their latest communication dated the 6th March, 1990 have explained the whole case and have stated:—

> "The then foreign Secretary met Shri Gulati in June, 1986 and offered him a sum of Rs. 15,000/- in final settlement of the whole matter. Shri Gulati again rejected this offer on the plea that this figure did not take into account compensation for his having pursued the case for so many years and also did not include interest from 1964 onwards.
>
> Following repeated representations from Shri Gulati his case was examined *de novo* and it was found that as a result of a court case, Shri Gulati was appointed as Section Officer with effect from 6.9.1980 *vide* Ministry's order No. Q/PC/682/1/88 dated 13.9.1988 though he had retired from service on 31.12.1982. Thus he had been paid arrears of pensionary benefits based on Rs. 880/-, as basic pay and continues to draw pension at that rate. It was also found that if he had been granted three advance increments, his pensionary

benefits would still have been based on a basic pay of Rs. 880/-, and as such he would not be entitled to any further pensionary benefits. Thus the total amount due to him, had he been granted three increments would have been Rs. 12,136.05.

The matter was referred to the Department of Expenditure Ministry of Finance, which opined that as no decision was taken on the recommendation of the Chief of Protocol, Shri Gulati was not entitled to the three advance increments. It further stated that the grant of Rs. 10,000/- as ex-gratia payment was based on sympathetic consideration of his case. They were, therefore, not agreeable to either the grant of an ex-gratia payment of Rs. 15,000/- or for the payment of three advance increments with interests. Under the circumstances, there is little that the Ministry of External Affairs can do in the matter."

The Committee reconsidered the whole matter at their sitting held on 21 March, 1990 and decided to take oral evidence of the petitioner on the matter.

The Committee heard oral evidence of the petitioner on 21 June, 1990 in connection with his representation. Asked to explain briefly the background of his case, the petitioner stated as follows:—

"I was recommended for three advance increments and while settling this case in 1979, they had withheld it for 14 years and reduced the increments from three to two without giving any reasons. The normal procedure in the Department is that such cases are dealt within a few week's time or a few months time and decided this way or that way. At that time, the Government had its own discretion as to whether to accept the recommendation of an officer or to reject it. They have been doing this and they have done it. While reducing the increments from three to two, they have mixed this case with an earlier case where I was given two non-cumulative increments alongwith about nine to ten persons. That was a separate scheme of the Government of India after the Chinese attack. The Home Ministry had promulgated a new scheme that those people who had done good work can be given one or two non-cumulative increments for a period of one year only. But the second recommendation at the additional Secretary's level was for cumulative benefit as the very officer found previously that what he had recommended was not enough and the man deserves more. Therefore, he recommended the three advance increments which were reduced to two. In November, 1985, Government took the view that it was their discretion. I have pointed out that such like cases should be dealt with within a prescribed period. But it was not done as the file was lost for 14 years. Was it my fault that the file was lost? They were giving several excuses between 1979 to 1984.

> And I kept on turning them down or defeating them. Finally, they came up saying that it was the Government's discretion as to whether or not to accept the recommendation. My submission is that after 20 years or 21 years, the Government has no discretion as far as this case is concerned, otherwise, the rules are clear."

3.7 The Committee wanted to know whether the petitioner was satisfied with the reply of the Minister of state in the Ministry of External Affairs dated 29.11.1985 to the effect that the amount claimed by Shri Gulati could not be claimed as a matter of right since the award of advance increments is a matter of discretion exercised by the Government. The petitioner replied:

> "The letter which the hon. Member has referred to, concerns the discretion part of the Government, as far as the third increment is concerned. The two increments released already work out to something like Rs. 10,000/- or Rs. 15,000/. My submission is third increment is also essential. If the file was not lost, this case would have also got the three increments from 1964, as recommended for other cases. Therefore, the third increment is necessary. The third increment affects my pension. They have already given me the pension on the basis of two increments. If the Government releases the third increment, then my pension will go up."

The Committee further desired to know as to why he had refused the Govt's offer of Rs. 15,000/- made in 1986 and what amount he expected from the Government as a full and final payment. The petitioner replied:

> "They have referred to an ex-gratia payment of Rs. 10,000/- or Rs. 15,000/-. I do not want any ex-gratia payment on any account, even if it comes to Rs. 1 lakh. But I insist upon my dues and not on ex-gratia payment."

3.8 Asked whether the amount was paid to him as per his dues, the petitioner stated:—

> "There have been three cases before me and three cases after me. The period of these are 1962-63 and 1961-62. I have already given the names of the persons concerned. They were given the same number of increments, whatever was recommended in the subsequent cases. My proposal is of 1964. Only because my file was lost, they have reduced the number of increments from three to two. In other cases they have not done so. There are certain other cases where no increments were given. But at least, they were told that it has been decided that they will not be given increments. But I have been kept in dark without any decision. And after 21 years, they point out that it is their discretion."

3.9 Asked how much amount was due to him as per his calculation, the petitioner stated as under:—

> "It is not less than Rs. 40,000/- plus whatever increase in the pension is there. I will only accept whatever is due to me. Here, I would also like to suggest that in this kind of a thing where the file has been lost, the onus should be accepted by the Government in toto or rules should be revised."

3.10 The Committee desired to know whether any final decision was taken regarding the three increments, what his specific demand was and how the matter could be sorted out at this stage. To this the petitioner replied:—

> "All the three increments should be given to me. After 21 years they cannot have their discretion. They should think of ways and find our means as to how to compensate a man who has taken up a battle for the rectification of rules. I have spend a number of years on it. If the file was lost the Ministry should accept the onus honourably and give me all my dues."

3.11 The Committee pointed out that the recommendations made in favour of a person may or may not be accepted by the Department concerned. However, in the present case the mistake was that the file was lost by the department. The Committee enquired how he could claim that his dues should be given if the recommendations were not accepted? In reply the petitioner stated as follows:—

> "In that case, if they were not accepting it, they should have told that they were not considering my recommendation."

3.12 In reply to the question regarding the basis of his claim if the relevant file containing the recommendation was lost for 14 years, the petitioner replied:—

> "It is neither a case of rejection; if it is not on the positive side, it is neither side. It was not rejected. I know it was not accepted. I agree it remained a recommendation on paper. But after 14 years when the file was found, at least then it should have opened their eyes at that time. Moreover, they have mixed up two cases. The administrators should know that they should not mix up cases. In the first case, it was non-cumulative. This is cumulative."

3.13 When the attention of the petitioner was drawn to the reply of the Ministry of External Affairs in which it had been stated that the powers to grant advance increments under FR 27 were withdrawn by the Ministry of Finance and that, therefore, the matter had to be taken up with that Ministry, the petitioner stated:—

> "The powers were withdrawn in March, 1968, whereas this case is of 1964. When the file came out in 1978, it was referred to the

Finance Ministry. The letter has accepted that his case pertains to 1964 *i.e.* before the withdrawal of the powers. They are now coming out with the excuse to side-track the main Issue."

He added:—

"What has exactly happened is that in March or April, 1984 the file was referred for payment of full dues, *viz.* the arrears. It went from the External Affairs Ministry, passed through Finance Ministry, who did not object. They marked it to the Department of Administrative reforms. There was one Joint Secretary who wrote on the file in April or May 1984 and asked: 'Where was this file for the last 20 years.' The file came to the Ministry of External Affairs. The Junior Officers in the Ministry of External Affairs, just to safeguard their position, said: 'The file had been recorded '. The file goes back to the Department of Administrative Reforms. There was a Joint Secretary, he has written: 'If the file was recorded, it means the proposal itself had been recorded some 20 years ago by the Ministry of External Affairs. How can I give the arrears? He further said: 'Even giving of two advance increments is not in order'."

3.14 The Committee also drew the attention of the petitioner to his letters dated 18th and 21st August, 1989 to the Committee stating that the Ministry had gone back from its promise of payment of Rs. 15,000/- to him and had instead offered only Rs. 10,000/. The Committee enquired whether he would have raised the issue again even after he had been paid Rs. 15,000/- as per mutual agreement. The petitioner replied that on 24 June, 1986 he was called by the then Foreign Secretary and he told him that after recalculation it had been decided to pay him Rs. 15,000/- as ex-gratia on the condition that he would not make further representations in this regard. He, however, refused saying that he would not accept any ex-gratia payment at any cost.

3.15 Shri Gulati again wrote letters on 2 October, 1991 and 8 November, 1991 suggesting that service rules might be amended and provisions may be made for payment of interest also in case payment was delayed for more than one month.

3.16 Shri P.N. Gulati, a retired officer of the Ministry of External Affairs, through a representation submitted to the Committee on 14 October, 1985 stated that his immediate boss *viz.* Chief of Protocol had recommended grant of 3 advance increments to him in 1964. During processing of the case, the file was lost which was retrieved from their Record Room after a lapse of 14 years. He was then given two advance increments from back date but the arrear payment for 14 years was denied to him.

3.17 The Committee (1986-87) were informed by the Ministry of External Affairs that in 1984 the then Finance Secretary agreed to an ex-gratia payment of an amount not exceeding Rs. 10,000/- in full and final

settlement of the case but the petitioner refused any ex-gratia payment and a decision to close the case was taken by the Ministry.

The petitioner, however, informed the Committee in October, 1986 that *he had been offered Rs. 15,000/- as ex-gratia payment by the Foreign* Secretary but the did not want to accpet any ex-gratia payment.

3.18 The previous Committee in their Third Report observed that in view of the offer of Rs. 15,000/- which was not a paltry sum, no further intervention on their part was required in the matter.

3.19 The Committee regret to note that the Ministry had gone back on their Commitment and issued sanction for Rs. 10,000/- only in August, 1989.

3.20 As per calculations of the Ministry of External Affairs, even if the petitioner had been granted three advance increments, the arrears would have amounted to Rs. 11,7000. Moreover, he had been appointed as Section Officer with effect from 6.9.1980 and even after grant of three increments, his pensionary benefits would have been the same which he is getting now.

3.21 Taking into consideration all the facts, the Committee are of the final view that Shri Gulati might be paid Rs. 15,000/- as full and final payment particularly when the Foreign Secretary had agreed to the payment of this amount.

3.22 The Committee note that all this problem has arisen and the petitioner put to so much inconvenience as the relevant file was misplaced and could be retrieved in 1978 only *i.e.* after a lapse of about 14 years. The Committee feel that this is a sad commentry on the system of maintenance of files in the Ministry of External Affairs. The Committee hope that necessary corrective measures to improve the system of maintenance of files in the Ministry would be taken so as to avoid recurrence of such cases in future.

CHAPTER IV

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE ON PETITIONS CONTAINED IN PARAGRAPHS 3.19 TO 3.24 IN THEIR EIGHTH REPORT (EIGHTH LOK SABHA) ON THE REPRESENTATION REGARDING PLIGHT OF DISCARDED WIVES WHOSE HUSBANDS HAVE SETTLED IN FOREIGN COUNTRIES.

4.1 The Committee on Petitions in their Eighth Report (8 Lok Sabha) presented to Lok Sabha on 2 May, 1989 considered representations dated 2 May, 1988 and 11 August, 1988 from Shri K.H. Vaghela, Special Executive Magistrate and a Social Worker regarding plight of discarded wives whose husbands have settled in foreign countries.

4.2 Action taken notes have been received from Government in respect of the recommendations contained in the Report. The recommendations made by the Committee and the replies of the Government are given in Appendix V.

4.3 The Committee will now deal with the action taken by the Government on some of their recommendations:—

Plight of Discarded Wives (Recommendation Nos. 3.19—3.34)

The Committee recommended that a system of compulsory registration for all Indians staying abroad may be introduced to facilitate identification and location of any Indian citizen. In their reply, the Ministry of External Affairs infromed the Committee that enforcing compulsory registration would involve augmentation of the staff and resources of Indian Mission abroad involving an avoidable expenditure in foreign exchange. They have, however, assured that they would make all efforts to ensure registration of as many Indian national abroad as possible within the available resources. In several countries the respective Indian Mission have already undertaken a special drive to register Indian nationals. This has met with some success particularly in Bahrain. The Ministry of External Affairs on its part have issued circular instructions to Indian missions abroad in terms of which they have been asked to make all out efforts to register Indian nationals living in the area of their accreditation.

4.4 The Committee hope that a suitable mechanism would be evolved by which it would be possible to identify and locate all indians staying in a particular country alongwith their addresses marital status, their family size and other particulars relevant to desertion of wives.

4.5 As regards the question of setting up of a separate cell in the Indian

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Mission abroad to deal with work relating to rendering of all possible assistance to deserted wives the proposal was stated to be under examination. The Committee hope that it should be possible for the Government to take a decision which would help deserted wives in resolving their difficulties.

4.6 As regards declaring begamy as an extraditable offence and incorporating it in the agreements into with foreign countries, the Government of India have stated that inclusion of bigamy in Schedule II of the Extradition Act, 1962 have several legal complications and limitations. Conclusion and revision of the extradition treaties is a long drawn out process involving the consent of all the contracting states and countries which do not recognise bigamy as an offence. Besides a muslim Indian national may still not be broughtt within the mischief of such a provision on account of the relevant provisions in the Muslim Personal Law on the subject of marriage.

4.7 The Committee appreciate the legal complications and limitations including bigamy in Schedule II of the Extradition Act, 1962. However, they Would like Government to explore the possibilities of including bigamy as an offence in the Extradition agreements already entered or to be entered into with foreign countries.

NEW DELHI;
9 January, 1992

19 Pausa, 1913 (Saka)

P.G. NARAYANAN,
Chairman,
Committee on Petitions.

APPENDIX-I

(Reference para 1.2 of the Report)

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE ON PETITIONS CONTAINED IN THEIR NINTH REPORT (EIGHTH LOK SABHA)

Recommendations of the Committee

Para No. 2.23 The Committee note that consequent upon the merger of Sikkim with Indian on 26th April, 1975, the Central Government issued an order dated 16th May, 1975, in pursuance of Section 7 of Citizenship Act, 1955 which provided that "every person who immediately before the 26th day of April, 1975 was a Sikkim subject under the Sikkim subjects Regulation, 1961 shall be deemed to have become a citizen of India on that day". Under the Sikkim Subjects Regulation, 1961, only those persons who had been living in Sikkim for at least 15 years prior to its promulgation and whose names were registered in the Sikkim Subjects Registers maintained by the then Sikkim Darbar, were treated as Sikkim Subjects. Thus persons who were not Sikkim Subject on the day of merger did not become the citizens of India.

Para No. 2.24 With the issue of Sikkim (Citizenship) order, 1975, the question of conferring indian citizenship on the Sikkim Subjects appeared to have been settled for all purposes. However, in 1981, a Committee appointed by the State Government recommended that every person who had been ordinarily resident in the territory of Sikkim for not less than 5 years immediately preceding the commencement of the Constitution (36th Amendment) Act, 1975 i.e. 26th day of April, 1975 and every minor child of such person born before the said date, should be deemed to have become a citizen of India on that day. Thus an issue which had already been settled became alive once again.

Para No. 2.25 The Committee have been informed that during the period 1974-79, when the Kazi government was in power in Sikkim there had been a large influx of persons of Nepalese origin. These immigrants settled down in Sikkim for the purposes of trade and business. The settlement of these immigrants had been deliberately encouraged by the then Administration. Many of these people were enlisted as voters and given government jobs even though they were not citizens of Sikkim or India. They also became MLAs and Ministers. The problem thus acquired political overtones and there was a clamour for grant of citizenship rights on persons who were not strictly covered by the Citizenship Order, 1975. With the passage of time, the problem assumed larger proportions and the very basis namely the Sikkim Subjects Regulation, 1961 on which Citizenship Order, 1975 had been issued came to be challenged. The

vested interests pleaded that the Sikkim subjects Registers maintained under the Sikkim Subjects Regulation, 1961 were not correctly prepared as a large number of Sikkim subjects domiciled in the territory of Sikkim had not been included in the Registers for various reasons. In support of this argument it was stated that even at the time of preparing the Sikkim Subjects Registers during the Chogyal regime about 18,000 applications were pending for consideration. According to the Chief Minister of Sikkim, approximately 54,000 persons are now eligible for grant of citizenship rights. This figure has varied from time to time and different estimates ranging from 10,000 to 54,000 persons have been projected in the past.

Para No. 2.26 The Committee find that after the issue regarding grant of citizenship rights on persons not covered by the Citizenship Order, 1975 was agitated, the Ministry of Home Affairs sent a Team of officers to Gangtok in January, 1987 to study the issue in all its aspects. In the light of detailed discussions, the Team recommended that genuine cases of omission in the Sikkim Subjects Registers in regard to persons who were pre-1946 entrants or their descendents and were otherwise eligible for registration should be looked in to for rectification by a Committee comprising representatives of the Central government and the State government of Sikkim. The recommendations of the Team were accepted by the Government of India and the State Government of Sikkim also appeared to be agreeable as it nominated two representatives to serve on the proposed Committee. Later on, however, the State Government resiled and conveyed to the Ministry of Home Affairs on 28 march, 1988 that the terms of reference proposed for the Committee were not acceptable to it and therefore convening of the meeting of this Committee should pend till a final decision in the matter was reached.

Reply of the Government

[Ministry of Home Affairs O.M.No. 15012/9/88-NE III dated 29.6.1989]

Factual statement only

Recommendation

Para No. 2.27. The Committee are of the view that since the Government of India have accepted the position that there may be some genuine cases of omission which require to be looked into for rectification there should be no insurmountable difficulty in arriving at a mutually acceptable solution to the problem. Any exercise for identification of persons left out from the purview of the Citizenship Order, 1975 will necessarily have to be with reference to the cut-off date mentioned in the Sikkim Subjects Regulation, 1961, which the Government of India as a successor Government were bound to accept. The demand for re-fixing the cut-off date as five years prior to the date of merger is obviously untenable. However, genuine cases of hardship can and must be looked into as expeditiously as possible. It has been suggested that if a persons could give a convincing proof that he owned some agricultural

land in sikkim at the time of proclamation of the Sikkim subjects Regulation, 1961 it could be taken as a conclusive proof that he was a Sikkimees Subject and should beentitled to Indian citizenship. This and other relevant parameters for determining the status of an individual could be predetermined by having discussions with all the affected interests in Sikkim and thereafter a Committee, as has been proposed by the Government of India and accepted by the State Government of Sikkim could get down to the brass tracks and decide each case on its merits. The Committee would like the Government to settle the terms of reference of the proposed Committee by mutual discussions with the affected interests so as to facilitate grant of citizenship rights to such of the Sikkim subjects who may have been left out due to genuine reasons. The Committee h pe that the Government of Sikkim would adhere to their earlier stand and take a positive attitude in the matter and help find an early solution to the problem.

Reply of the Government

Para No. 2.27 Consequent to a meeting between the Home Minister and Chief Minister of Sikkim in November, 1988, a series of discussions was held between the officials of the Central Government and of the Government of Sikkim on 8.12.88, 2.2.89 and on 15.3.89 to resolve this issue. It was possible to reach a consensus in these discussions on the basis of these discussions, a Notification amending the Sikkim (Citizenship) Order, 1975, namely, Sikkim (Citizenship) Amendment Order, 1989 has been issued on 20.3.89. (A copy is enclosed at Annexure-I for ready reference). A Committee to look into the cases of genuine omissions in terms of the Sikkim (Citizenship) Amendment Order, 1989 has also been constituted. The order constituting the Committee for this purpose is at Annexure-II.

The recommendations of the Committee thus stand implemented by the Government. The latest report from Sikkim Government indicated that the process has been started and applications for dealing with the omissions have been received till 31.5.89 and those are under scrutiny by the field officers of the State.

[Ministry of Home Affairs O.M. No. 15012/9/88-NE II dated 5.9.1990]

"A meeting of the Committee constituted to look into the cases of genuine omissions in terms of Sikkim, (Citizenship) Amendment Order, 1989 was held in this Ministry on 1.6.1990 and another meeting was held at Gangtok on 19.7.1990. The Committee recommended that citizenship be granted to 40,083 persons covered in about 14,000 applications. Accordingly, 40,083 persons have been declared as Indian Citizens with effect from 26.4.1975 *vide* orders issued on 7.8.1980. The Committee has still to consider cases of about 35,000 persons."

[Ministry of Home Affairs O.M. No. 15012/9/88-NE III dated 5.9.1990]

"Another meeting of the Committee was held on 5.4.91 at Gangtok in

which about 33,348 persons in 12,265 applications were recommended for inclusion in the Register maintained under the Sikkim (Citizenship) Amendment, Order 1989. Therefore, another 33,348 persons have been declared as Indian Citizens with effect from 26.4.75. In the earlier meeting held on 19.7.90, 40,083 persons were recommended as cases of genuine omissions and have already been declared Indian Citizens with effect from 26.4.75. In total 73,431 persons have been found genuine in terms of Sikkim (Citizenship) Amendment Order, 1989, There are about 400 odd applications which are of a doubtful nature and these cases will be taken up as and when further investigations are completed by the State Govt. agencies."

[Ministry of Home Affairs O.M. No. 15012/9/88. NE.III dated 1.5.1991]

ANNEXURE-I to Appendix-II
(Reference para 2.27 of the Report)

(PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY PART-II, SECTION 3, SUB-SECTION (ii) DATED 20TH MARCH, 1989)

No. 26030/69/88-ICI
GOVERNMENT OF INDIA
(BHARAT SARKAR)
MINISTRY OF HOME AFFAIRS
(GRIH MANTRALAYA)

New Delhi, the 20th March, 1989

NOTIFICATION

S.O. 214 (E) In exercise of the powers conferred by Section 7 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby makes the following order to amend the Sikkim (Citizenship) Order, 1975, namely:—

1. This order may be called the Sikkim (Citizenship) Amendment Order, 1989.

2. In the Sikkim (Citizenship) Order, 1975, to paragraph 2, the following proviso shall be inserted namely:—

" Provided that any person whose name was eligible to be entered in the register maintained under the said regulation but was not so entered because of any genuine omission shall also be deemed to have become a citizen of India on that day if so determined by the Central Government".

Sd/-
(INDIRA MISRA)
Joint Secretary to the Government of India

ANNEXURE II to APPENDIX-I

No. 26030 / 69 / 88-IC.I

GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS /GRIH MANTRALAYA
NEW DELHI-3.

the 20th March, 1989.

O R D E R

The Central Government do hereby constitute a Committee to look into the cases of genuine omissions in terms of Sikkim (Citizenship) Amendment Order, 1989.

2. Committee will consist of:—

Government of India	Government of Sikkim
1. Addl. Secretary, M.H.A.	1. Shri K.C. Pradhan; Addl. Chief Secy. and Home Secy.
2. Registrar General of India.	2. Shri V.J. Rao, Advocate General.
3. Joint Secretary (F), M.H.A.	
4. Joint Secretary (NE), M.H.A-Convener.	

3. The Committee is authorised:—

(a) to invite applications as per the provisions of the Sikkim (Citizenship) Amendment Order, 1989;

(b) to scrutinise the said applications and conduct such enquiry as necessary either by themselves or through any officer or agency of the Central or the State Government; and

(c) to determine the eligibility of the applicant as per the guidelines annexed.

4. The Committee may co-opt any official(s)/expert(s) as special invitee(s) and is further authorised to constitute to sub-Committees as may be needed to discharge its functions.

5. Applications shall be received within the period as may be specified by the Committee to the District Collector of the concerned District in the prescribed from.

6. The District Collector shall scrutinise all such applications and upon being satisfied, shall certify that the contents are true and forward the applications to the office of the Home Secretary, Government of Sikkim at Gangtok, for scrutiny by the Committee in a manner that may be prescribed by them.

7. The Committee upon being satisfied shall recommend the names of

such applicants as are considered genuine, omissions in terms of Sikkim (Citizenship) Amendment Order, 1989, to the Government of India for issue of the necessary orders.

Sd/-
(INDIRA MISRA)
Joint Secretary to the Government of India

Copy to:—

1. Chief Secretary to the Government of Sikkim, Gangtok.
2. Secretary to the Governor of Sikkim, Gangtok.
3. Ministry of Law & Justice (Legislative Deptt.), New Delhi.
4. Ministry of Law & Justice (Deptt. of Legal Affairs), New Delhi.

Sd/-
(INDIRA MISRA)
Joint Secretary to the Government of India

Copy also to:

PS to HM
PS to MOS(S)
PS to HS
PS to AS(P)
PS to JS(NE)
PA to DS(NE)

ANNEXURE TO M.H.A ORDER NO. 26030 / 69 / 88-IC.I
DATED 20.3.89

G U I D E L I N E S

(a) Natural descendents of a person whose name is in the Sikim Subject Register.

(b) Person having recorded ownership or tenancy rights on agricultural land or of rural property within Sikkim before 26th April, 1975 and his natural descendents.

(c) Persons whose name is included in the **earliest** available voters-list prior to the 26th April, 1975, and his natural **descendents.**

(d) **Person holding a regular government job before 26th April, 1975 provided that the appointment has not been made under the 'exception' clause pertaining to non-subjects; and his natural descendents.**

(e) Holder of trade licence outside notified bazar areas prior to 26th April, 1975 and his natural descendents.

(f) He must not have entered the territory of Sikkim on the basis of work-permit.

(g) He must not have acquired citizenship of any other country.

(h) He must not be holding the status of refugee on the basis of a registration certificate issued by the competent authority.

[The criteria laid down from (a) to (e) singly or collectively are by themselves not been taken as conclusive evidence for granting citizenship, but would have to be scrutinised in the light of those at (f), (g) & (h)].

Sd/-
(INDIRA MISRA)
Joint Secretary to the Government of India

Copy to:—

1. Chief Secretary to the Government of Sikkim, Gangtok.
2. Secretary to the Governor, Sikkim, Gangtok.
3. Ministry of Law & Justice (Legislative Department), Shastri Bhavan, New Delhi.
4. Ministry of Law & Justice (Department of Legal Affairs), Shastri Bhavan, New Delhi.

Sd/-
(INDIRA MISRA)

Joint Secretary to the Government of India

Copy also to:

PS to HM

PS to MOS(S)

PS to HS

PS to AS(P)

PS to JS(NE)

PA to DS(NE)

APPENDIX-II

(Reference para 2.2 of the Report)

Action taken by Government on the Recommendations of the Committee on Petitions contained in their tenth report (Eight Lok Sabha)

Recommendation

Para No. 1.24 A petition from the air hostesses working in Air India and Indian Airlines alleging discrimination based on sex against the female cabin crew was presented to Lok Sabha by Smt. Bibha Ghosh Goswami, M.P. on 2 May, 1988. Two main grievance of the petitioners are:

(i) Age of retirement of all employees including the male members of cabin crew of the two corporations was 58 years. However, the age of retirement of air hostesses working as cabin crew was 35 years, which was extendable upto 45 years subject to medical fitness. This difference according to the petitioners, was purely on grounds of sex and should, therefore, be done away with.

(ii) In Air India, the air hostesses were not allowed to function as supervisors in the flight as the Cabin Crew Manual provided that only a Flight Purser, who was a male, could be incharge of the Cabin.

Reply of the Government

No comments.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

Recommendation

Para No. 1.25 The Committee find that the grievances of the air hostesses are not new and the same have been agitated many times in the past either before the Tribunal specially set up or before various courts. The Supreme Court while considering some writ petitions filed on behalf of the petitioners, dealt with the very issues now raised in a very exhaustive manner. In its judgement given in August, 1981, the Supreme Court in very unambiguous language pronounced that having regard to various circumstances, service conditions, promotional avenues etc. the male crew members and the air hostesses constituted two different categories and as such the question of discrimination against air hostesses did not arise. According to the Supreme Court, what article 14 of the Constitution prohibited was hostile discrimination and not reasonable classification and therefore the treatment of the air hostesses in the matter

of retirement age or service conditions in a different manner vis-a-vis male crew members was not discriminatory so as to amount to an infraction of Article 14 of the Constitution. The Supreme Court also held that the Service Regulations, under which age of retirement of air hostesses had been fixed at 35 years, extendable upto 45 years subject to medical fitness, against the retirement age of 58 for other employees, were not discriminatory and did not suffer from any constitutional infirmity.

Reply of the Government

No comments.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

Recommendation

Para No. 1.26 The Committee note that this has also been the stand of the managements of the two corporations. Therefore, whenever the petitioners have represented or filed writ petitions in Bombay High Court or Supreme Court, they were told that the Supreme Court in its judgement of August, 1981 had upheld the validity of the employees Service Regulations of the two Airlines and therefore there was no justification in the demands by the female cabin crew. The Committee feel that this tentamounts to taking too legalistic a view of the whole issue. In essence what the petitioners have been agitating for through representations and writ petitions is not merely a declaration that the provisions of the Service Regulations are discriminatory but a positive action on the part of the management to bring parity in the age of retirement of two categories of employees.

Reply of the Government

The age of retirement of the female cabin crew of both Air India and Indian Airlines has been raised to 58 years.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

Recommendation

Para No. 1.27 The Committee find that although the Supreme Court has held that fixation of different age of retirement for different categories of employees was perfectly constitutional, it has not said that the age of retirement of Air hostesses cannot be more than 35 years or 45 Years as provided in the relevant service regulations. As a matter of fact the Court has in its judgement observed that "the question of fixation of retirement age of an air hostess has to be decided by the authorities concerned after taking into consideration various factors such as the nature of the work, the prevailing conditions, the practice prevelant in other establishments and the like."... The Court has further observed that

"there cannot be any cut and dried formula for determining the age of retirement which is to be linked with various circumstances and a variety of factors"...

It is thus always open to the managements of the two Corporations to decide what shall be the age of retirement for a particular category of employees. In the past also, the age of retirement of air hostesses has been enhanced from 30 years to 35 years and again to 45 years subject to certain conditions. The Committee are, therefore of the view that the demand of the air hostesses for raising the age of retirement needs to be considered afresh in the light of the present day secio-economic environment and the arguments advanced by the petitioners. The Committee would like to emphasise that a fresh appraisal of the demands of the air bostesses cannot and should not be shunt out taking shelter under the Supreme Court judgement, which as pointed out above, does not ban a reconsideration of the issue.

Reply of the Government

The age of retirement has been increased to 58 years in the case of female cabin crew.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

Recommendation

Para No. 1.28 The Committee note with satisfaction the understanding and sympathy displayed by the Secretary, Civil Aviation, when he said during evidence before them that keeping in view the practice obtaining in European Airlines it would be worthwhile if the Boards of the two Corporation reconsidered the whole matter. It is relevant to recall the observations of the Secretary in his evidence before the committee that simply because Supreme Court has given the legal and constitutional position, it does not prevent the Boards of the Airlines from giving certain concessions to the employees.

Para No. 1.29 The Committee feel that a stage has now come for a fresh look at the service regulations, remedy the in-built bias against female employees and take necessary corrective measures with full confidence in the capabilities of our women folk.

Reply of the Covernment

The recommendation of the Committee have been noted. At present there is no instance before the Government of discrimination on the basis of sex between identical categories of employees.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

Recommendation

Para No. 1.30 Considering the general improvement in life expectancy as well as the position obtaining in several international airlines, the Committee are of the view that the retirement age of the Air Hostesses may be raised to 55 years. This can be subject to the condition that after completing 50 years of service, the Air Hostesses may be required to undergo a medical fitness test annually. The Committee are also of the view that the restriction of four years' service before an Air Hostess could get married is not warranted and should be done away with. The only reasonable restriction which the Committee feel could be imposed in keeping with the small family norm, is that the services of an Air Hostess may be terminated in case of third pregnancy after two living children. The Committee also feel that there is merit in the Air Hostesses' plea that it was very difficult for an Air Hostess to prove that she was not married. The management should not insist on such a condition and an affidavit to the effect that an Air Hostess was not married at the time of her appointment was good enough and should be accepted by the Corporations.

Reply of the Government

(1) Retirement age of Air Hostesses in Air India and Indian Airlines, has been raised to 58 years.

(2) The ban on marriage by Air Hostesses within three years of joining service has been removed. The condition of termination of service on third pregnancy, with two living children has, however, been retained.

(3) In regard to proof of marriage, all candidates offered appointments as trainee Air Hostesses in Indian Airlines are required to submit only an affidavit that the incumbent is not married at the time of her appointment. In Air India, a declaration by Air Hostess regarding her martial status in the Personal Data Sheet is acceptable.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

Recommendation

Para No. 1.31 The Committee are further of the view that just as the seniormost Cabin Crew member on board an Indian Airlines flight is allowed to supervise the functions of all other cabin crew, whether male or female, the Air Hostesses working in Air India should also be permitted to function as supervisors on board. The Cabin Crew Manual of Air India which provides that only a Flight Purser could be incharge of each zone on flight may be amended so as to provide that a Deputy Chief Air Hostess could be entrusted with supervisory functions on board. In this case also, although the Supreme Court has up-held the constitutional validity of the provisions of Cabin Crew Manual, the management of Air India can

always modify these provisions by issue of administrative instructions and bring them at par with those obtaining in Indian Airlines.

Reply of the Government

The managerial and administrative practices in the two airlines have evolved differently on account of the difference in the nature of operations of the two carriers. Whereas Air India is an international carrier operating long-haul services, Indian Airlines is a domestic carrier operating short-haul services. The job functions of Cabin Crew in these organisations are, therefore, quite different. In recognition of this fact, the Air India Cabin Crew Association which is the representative body of both female and male Cabin Crew in Air India has opposed the interchangeability of functions between female and male Cabin Crew on board Air India flights.

The functions and responsibilities of the Air Hostesses vis-a-vis Flight Pursers are distinct and separate. The Management's demand for flexibility in job functions between these two categories was opposed by the AICCA before the Industrial Tribunal headed by Justice Mahesh Chandra in 1972. Justice Mahesh Chandra too had rejected the Management's demand.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

Recommendation

Para No. 1.32 The Committee desire that a thorough review of the service regulations of employees both in Air India and Indian Airlines should be carried out with a view to removing the inbuilt bias against female employees and to provide them all necessary facilities and avenues of advancement as are generally made available by other international lines to their female employees. The Committee would like the boards of both the Airlines to complete such a review within three months and report back to them the changes effected.

Reply of the Government

The views of the Committee are accepted. It may however be pointed out that service regulations at present do not have any bias on the basis of sex against identical categories of employees.

[Min. of Civil Aviation O.M. No. H. 11013/10/89-AC(IA) dated 16.4.1991]

APPENDIX-III

(Reference para 2.4 of the Report)

11th Jan. 1991

Shri Loknath Chowdhury
Chairman — Committee on Petitions
Lok Sabha

Dear Sir,

The Petitions Committee in its 10th report of 8th Lok Sabha considered the Petition submitted by 720 Air Hostesses belonging to Indian Airlines and Air India pleading for withdrawal of discrimination against Air Hostesses, regarding age of retirement and other service conditions. The Committee strongly recommended to the Govt. of India to do away with discrimination against Air Hostesses.

The Govt. of India in their order No. AV-18022/23/88-ACIA dated 16th Oct. 1989 directed both the Airlines to allow the Air Hostesses to serve till the age of 58 years like the male Cabin Crew. A copy of the order is enclosed as Annexure-I.

The Indian Air lines management implemented the directive of Govt. of India within 3 days. A copy of the notification in this regard is enclosed as Annexure-II.

The Air India management, however, has not so far implemented the Govt. directive based on the recommendation of the Committee on Petitions.

We would like to draw your attention to a recent circular by Air India management directing the Air Hostesses either to opt for clerical jobs on ground at the age of 45 years or accept retirement. Copy of the circular is enclosed as Annexure-III.

It is rediculous to ask the Air Hostesses who are specially trained for safety and other cabin services to perform clerical jobs whilst men would continue to fly till the age of 58 years. This clearly indicates that the Air India management is continuing gross discrimination against the Air Hostesses despite the Govt. directive that "like the male Cabin Crew Air Hostesses should also be allowed to serve till the age of 58 years."

We would like you to note that in most of the leading airlines of the world the age of retirement for male and female cabin crew is identical.

We would, therefore, earnestly request you to look into the matter and prevail upon the Ministry of Civil Aviation and the Air India management to implement the Govt. directive dated 16th Oct. 1989.

Since some Air Hostesses will complete the age of 45 years soon it is requested that immediate action be taken in this connection so that Air Hostesses in Air India will get justice as recommended by the Committee on Petitions.

Thanking you on behalf of the Air Hostesses.

Yours sincerely,
sd/-

(Ruheen Khambatta)
President

ANNEXURE-I

(*Vide* Appendix III)

MOST IMMEDIATE

No. AV. 18022/23/88-ACIA

Government of India
Ministry of Civil Aviation and Tourism

New Delhi, dated the 16th October, 1989.

To,

The Managing Director,
Air India,
Air India Building,
Nariman Point,
Bombay.

The Managing Director,
Indian Airlines,
Airlines House,
New Delhi.

Subject: *Discrimination against Air Hostesses in Air India and Indian Airlines — decisions regarding.*

Sir,

I am directed to say that the question of removing discrimination in service conditions against Air Hostesses in Air India and Indian Airlines

has been engaging the attention of the Government for quite some time. After careful consideration, it has been decided as under:—

(i) that like the male Cabin Crew, airhostesses in Air India and Indian Airlines should also be allowed to serve till the age of 58 years.

(ii) that the airhostesses should be subjected to medical examination once a year after the age of 35 years, but such medical examination shall not be called superannuation medical examination. In addition, airhostesses shall be subjected to weight restriction regime which shall be very strictly observed and for which suitable executive instructions and guidelines may be drawn.

(iii) that ban on marriage by airhostesses within three years of joining service shall be removed.

2. You are requested to implement the above decisions of the Government with immediate effect under intimation to this Ministry.

3. A compliance report of the action taken may please be submitted to this Ministry within a week.

4. Please acknowledge receipt of this letter.

Yours faithfully,

sd/-
(J. R. NAGPAL)
Under Secretary to the Government of India.

ANNEXURE-II
(Vide Appendix-III*)*

From:
Finance Manager,
I.A. Hqrs., New Delhi.

To:
Regional Director,
I.A., Western/Eastern/Northern/
Southern Regions.
Dir. of Trg. CTE, IA, HYD.

No. Fin/Rules/5/4409 — 19th October, 1989.

Sub: *Retirement age of Air hostesses.*

It has been decided that, with immediate effect:—

(i) an Air hostess shall retire from the service of the Corporation upon attaining the age of 58 years;

(ii) the Air hostess should be subjected to medical examination once a

year after attaining the age of 35 years. In addition, the airhostesses shall be subjected to weight restriction which shall be very strictly observed. The details of the annual medical checks would be separately notified by the CMO in due course; and

(iii) restriction on marriage by airhostesses within three years of joining service is deleted.

2 Formal amendment to the Service Regulations shall be issued in due course.

Please acknowledge receipt.

Sd/-
(S. Chawla)
Finance Manager

CC: D.O. IA Hqrs.

CC: Dir. of Pers. IA Hqrs.

CC: MPS, IA, Western/Eastern/Northern/Southern Regions.

CC: AMIA, Western/Eastern/Northern/Southern Regions.

Indian Airlines: Bombay

Ref. BPE/ 24th October, 1989.

CC: All Departmental Heads, WR.
CC: Dy. MPS, NTB/NEC.
CC: All Station Managers, WR.
CC: All Notice Boards.

For information

Sd/-
Manager
Personnel Services

ANNEXURE-III
(Vide Appendix III)

AIR INDIA
HEADQUARTERS

HQ/65-6/5319 November 02, 1990
ALL CONCERNED

CIRCULAR

This is further to Circular No. IR/23/632 dated March 23, 1990 issued by the Director, Human Resources Development in reguard to the retirement of Air Hostesses.

2. Although the age of retirement of the Air Hostesses is on attaining the age of 58 years, subject to the conditions mentioned in the Circular referred to above, such of those Air Hostesses who would like to retire on attaining the age of 35 years but before 45 years will be eligible to opt for the same on the following basis:

I. (a) *Benefit of retirement to Air Hostesses who have crossed the age of 35 years as on August 16, 1990:*

(i) Air Hostess in service of the Corporation who, as on August 16, 1990 has crossed the age of 35 years is eligible for retirement. An Air Hostess who wishes to avail of the benefit of such retirement should within three months from August 16, 1990 clearly indicate by a written communication to the Departmental Head specifying the date from which she wishes to retire which date shall not extend beyond the date on which she attains 45 years of age.

(ii) An Air Hostess who has crossed the age of 35 years as on August 16, 1990, but has not availed of the benefit of retirement within the time stipulated in (i) above, shall be eligible before attaining the age of 45 years to the benefit of retirement upon six months notice in writing to the Departmental Head specifying the date from which she wishes to retire which date shall not extend beyond the date on which 45 years of age is attained.

(b) *Benefit of retirement to Air Hostesses who have not attained the age of 35 years as on August 16, 1990:*

An Air Hostess, in service of the Corporation, who has not attained the age of 35 years as on August 16, 1990 shall, on attaining the age of 35 years, be eligible to the benefit of retirement upon six months notice in writing to the Departmental Head specifying the date from which she wishes to retire which date shall not extend beyond the date on which 45 years of age is attained by the concerned Air Hostess.

(c) *New entrants:*

Air Hostess recruited after August 16, 1990 shall be eligible for retirement benefits on attaining the age of 35 years but before attaining the age of 45 years as per (b) above.

(d) *General:*

Notice of retirement given by an Air Hostess [under (a) or (b) or (c) above] shall be final and cannot be withdrawn by the Air Hostess.

II. *When benefit of retirement not available:*

The Competent Authority may direct that any Air Hostess who may have given notice of retirement shall not retire from the service and that such retirement shall be kept in abeyance under the following circumstances:

(i) Any disciplinary action is pending against an Air Hostesss or any disciplinary proceedings are intended or proposed to be taken against an Air Hostess by the Appropriate Authority.

(ii) Any proceedings are pending or likely to be initiated against an Air Hostess for any offence involving moral turpitude or any action has been brought against the Air Hostess by the concerned authorities prescribed under the Foreign Exchange (Regulation) Act, 1973, or the Customs Act, 1962 and/or Rules made thereunder.

III. *Terms and conditions :*

(a) An Air Hostess shall continue to be governed by the Rules/ Regulations/Order applicable to her read with Circular No. IR/23/ 632 dated 23.3.1990 mentioned above. Flying duties beyond the age of 35 years upto the age of 45 years shall be subject to medical examination.

(b) (i) An Air Hostess who has attained the age of 45 years (whether on August 16, 1990 or thereafter) and who did not opt for retirement, will be deployed and given employment on the ground by the Competent Authority in such Clerical position as the Authority deems appropriate.

(ii) Deputy Chief Air Hostess, Additional Chief Air Hostess and Chief Air Hostess who do not exercise the option to retire between 35 and 45 years of age in terms of I(a) and (b) above, will be deployed on the ground and given employment in the level equivalent to that of the juniormost level of officers (*i.e.* A.S.S. level) and will be required to perform such duties as may be assigned by the Management. Appointment in the level of A.S.S. will be out of 40% of the vacancies earmarked for outside recruitment and not out of 60% of the vacancies intended for promotions from within.

(iii) On such assignment, she will rank as the juniormost in the relevant clerical or officers category/grade to which she is assigned.

(iv) In such assignment her last drawn basic pay will be protected and she will be eligible to emoluments and benefits as applicable to the grade/post to which she is assigned. She shall not be eligible for any other allowance or benefits which she may have enjoyed as Air Hostess.

3. The above is for the information of all concerned.

Sd/-
(J.J. Rindani)
Secretary & Dy. Director—Admin.

APPENDIX IV

(Reference para 2.5 of the Report)

Factual note sent by the Ministry of Civil Aviation on the representation dated 18.2.1991 received from the President, Air India Hostesses Association, Bombay (through Shri Samar Mukherjee, M.P.) regarding alleged discrimination against Air Hostesses in Air India.

The issues raised by the Air-India Hostesses Association have been raised earlier also. The Hon'ble Supreme Court of India, in the case of Air India vs. Nargesh Meerza had held that:

> "Having regard to the various circumstances, incidence, service conditions, promotional avenues etc. of the Asstt. Flight Pursers and Air Hostesses of Air-India (Flight Stewards and Air Hostesses in the case of Indian Airlines Corporation) the inference was irresistible that Air Hostesses, though members of the Cabin Crew were an entirely separate class governed by different set of rules, regulations and conditions of service. Therefore, though peculiar conditions did form part of the regulations governing Air Hostesses that could not amount to discrimination so as to violate Article 14 of the Constitution."

Further, the Hon'ble Supreme Court in Civil Writ Petition No. 231 of 1987 (Ms. Lena Khan V/s. Union of India & Ors.) rejected the request for re-consideration of the decision in Air-India V/s Nargesh Meerza case and held as follows :—

> "Identical questions were raised before this court in a few Writ petitions earlier by some other employees of Air India and they were considered at length by a Bench of 3 Judges in Air India V/s. Nargesh Meerza and were considered in favour of Air India. We are bound by this decision. The learned Counsel for the Petitioner submits that this decision needs re-consideration and made a fervant appeal to us to refer the matter for that purpose. We do not feel persuaded to accept this request."

From this it will be evident that the Hon'ble Supreme Court of India by its Judgement of 1987 not only rejected the identical issues raised by Air Hostesses but also re-confirmed the correctness of the decision in the year 1981.

Therefore, these issues have already been settled by the judgements of the Highest Court in the country.

The Committee on Petitions (8th Lok Sabha) in their 10th Report

submitted on 9th May, 1989 had recommended that a legalistic view should not be taken and a fresh look should be given to the Service regulations. The Committee had suggested the following :

(i) Retirement age of the Air Hostesses may be raised to 55.

(ii) Restriction of four years service before an Air Hostess could get married should be done away with.

(iii) Although the Supreme Court has upheld the Constitutional Validity of the provisions of the cabin crew Air India can modify the provisions to permit Air Hostesses to function as Supervisors on board.

The Air India Hostesses Association is a non-recognised Association. The Air India Cabin Crew is the recognised Association which has been entering into settlements/agreement with Air India in regard to terms and conditions of service etc.

The Government and the Air India management have given a fresh look to the Service Regulations in regard to the female cabin crew and have decided:

(i) that the female cabin crew will retire at 58 years of age, with the stipulation that an air hostess would be allowed to fly only upto the age of 45 years subject to the medical fitness for flying duties. For this purposes, Air Hostesses are required to undergo medical examination at the age of 37 years, and every two years thereafter upto the age of 45 years, as against annual medical examination earlier. After the age of 45 years, the Air Hostesses will be assigned ground duties upto the age of 58 years. During the period of ground assignment from the age of 45 years upto the age of 58 years, her pay will be protected, subject to the condition that she will not be entitled to allowances relating exclusively to flying duties.

(ii) Air India's order dated 2-11-90 regarding assignment of Air Hostesses on ground jobs after 45 years of age is being reviewed.

(iii) the ban on marriage by Air Hostesses within three years of joining service has been removed. The period had earlier been reduced from four to three years.

It is true that Indian Airlines have amended their regulations to allow Air Hostesses to fly till 58 years of age. Since the nature of operations of the two airlines is different, Air India has taken a conscious decision to restrict the flying duties by its Air Hostesses upto the age of 45 years.

The job of the cabin crew is a strenuous and non-stop flying hours on most of Air India flights are four to five times that of the longest flight. Air Hostesses provide personalised service to the passengers, while the Asstt. Flight Pursers work in the gallies. The duties and responsibilities of the male and female cabin crew are quite distinct and separate. In fact the

All India Cabin Crew Association had objected to inter-changeability in the duties and responsibilities of the male cabin crew vis-a-vis the female cabin crew. It was subject matter of an award of National Industrial Tribunal, wherein it was held that there cannot be any interchangeability between the duties and responsibilities of male crew vs. female cabin crew. A number of Air Hostesses opt to retire from the service of the Corporation on reaching the age of 35 years. The Corporation allows them to do so with all post-retirement benefits.

Every five years the Corporation negotiates with recognised Unions the terms and conditions of service and enters into an agreement. The last settlement was entered into with the Cabin Crew Association for the period 1-10-85 to 31-8-90, which is binding on both parties.

The Air India Hostesses Association have also filed a complaint before the competent authority under the Equal Remuneration Act of 1976 seeking the following relief:—

(1) have total parity between the Hostesses and the male Cabin crew members in their conditions of service and that the Hostesses be permitted flying duties till the age of retirement, i.e. 58 years.

(2) abolish the medical examinations for the Hostesses with immediate effect, or in the alternate, make the medical examination, with its attendant limitations, applicable to the male members of the Cabin Crew.

(3) (a) abolish all forms of disparity in the promotional avenues for male and female Cabin Crew.

(b) from a common line of promotion for female and male categories of Cabin Crew, based on a common line of seniority, depending on the number of years of service.

OR

(c) make available an equal number of promotional avenues and posts as afforded to the male category.

(d) give the female category of Cabin Crew equality of status on board the aircraft, based on either grade or on years of service, vis-a-vis the male crew.

Since the proceedings before the Authority under the Equal Remuneration Act are of a quasi-judicial nature, the matter is sub-judice.

Vide notification dated December 7, 1990, the Government have appointed a National Industrial Tribunal to go into the various issues regarding terms and conditions of service of Indian Airlines and Air-India. As such, the issues raised by the Air India Hostesses Association may also be raised before the National Industrial Tribunal, so that it can go into these aspects in its entirety. An award can be given in this regard which shall be binding on both parties.

APPENDIX V

(Reference para 4.2 of the report)

ACTION TAKEN BY GOVT. ON RECOMMENDATIONS OF THE COMMITTEE CONTAINED IN THEIR EIGHTH REPORT (EIGHTH LOK SABHA)

Recommendation of the committee	*Reply of the Government*
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3.19 The Committee note with concern that cases of desertion/ discarding of married Indian women by their husbands residing abroad are on the increase. As a result the family life of a number of Indian married women whose husbands have settled in foreign countries has been ruined and they have been put to great hardships and mental and emotional stress. From the information made available to the Committee, it is noticed that many Indians after contracting marriage in India go abroad, remarry and settle there permanently leaving the Indian wives in the lurch. Unfortunately, however, there is no easy mechanism at present through which such erring husbands could be forced to come back to India. When such cases are referred to the Ministry of External Affairs or Indian missions abroad for their attention and possible help to the aggrieved parties, no serious action can be taken because it may not be possible at all to locate the particular person involved in the case. As it is there is no system in the Indian missions for keeping a track of the large number of Indians settled abroad. There is no system of registration with the Indian missions of the Indian passport holders so that in case of need they	*Compulsory registration of all Indians staying abroad* The Lok Sabha Committee on Petitions may kindly recall that in reply to a question posed by the Hon'ble Members of the Committee, the Ministry had stated that the registration was a voluntary act. It may be difficult to locate Indian nationals visiting foreign countries and to force them to register themselves with the Indian Mission concerned. Introducing a legal frame work and a system of compulsory registration of all Indians staying abroad, has been considered in consultation with the legal experts and it is felt that if there is a breach of such legal provision any punitive action against the defaulter may not be practicable, since the question of ascertaining and establishing the alleged breach has numerous difficulties and complications. Enforcing compulsory registration would involve augmenting the staff and resources of the Indian Missions/Posts abroad involving expenditure in foreign exchange apart from initiating cases in India in the courts against the passport holders. Even then the effect and the result thereof may not be commensurate with the efforts and expanses involved.

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could be identified and located. Registration of Indians settled in foreign countries is entirely voluntary. The Ministry of External Affairs have, stated that efforts are being made by the Indian missions to build up to the extent possible, information about the Indians settled in a country through the local associations—social, or cultural, and professional organisations of Indians. It has however been stated that there is in existence no legislation in India under cover of which an Indian abroad can be compelled to register himself with the concerned missions. The Committee feel that it would be desirable to have a suitable legislation on the subject. A system of compulsory registration of all Indians staying abroad say, for a period of 3 months or more with the concerned missions will surely facilitate identification and location of any Indian citizen who may be required to be contacted in connection with any case against him.	The Ministry of External Affairs would however like to assure the Lok Sabha Committee on Petitions that it would make all out efforts to ensure that as many Indian nationals abroad as is possible with manpower and resources available to Indian Missions are registered. In several countries, the Indian Missions concerned have already undertaken a special drive to register Indian nationals. This has met with some success, particularly in Bahrain. The Ministry of External Affairs on its part has issued circular instructions to Indian Missions abroad in terms of which they have been asked to make all out efforts to register Indian nationals living in the area of their accreditation. [Min. of External Affairs U.O. NO. T. 125/17/88 dated 4.6.1991]
3.20 Under the provisions of the existing law, the deserted wife can file a suit for maintenance and the maintenance decrees awarded by Indian courts could be enforced against the husband, if and when he comes to India. Again if a wife is sure that the erring husband has married without obtaining a valid divorce, she may have here complaint forwarded to the appropriate police authorities in the foreign country as bigamy is generally considered an offence in most countries including U.S.A. Further even if bigamy is committed in foreign country the wife could make a complaint before an Indian Court, provided the husband is an Indian citizen. In such cases he could be proceeded against for having committed an offence of bigamy only when he comes to India.	No Comments

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3.21 From the above it is clear that as first step action has to be initiated by the deserted wife in an Indian court or with police authorities in foreign countries. Even if a court decree is awarded in favour of a deserted wife it could be enforced against an erring husband only when he comes to India. This remedy would thus appear to be as good as useless. In the circumstances some effective methods will have to be devised by the Ministry of External Affairs to bring round the erring husband e.g. by impounding his Indian passport or otherwise putting pressure on him to see reason and seek reconciliation with his wife.	The Passports Act, 1967 does not include any specific provision for the impounding of the passport of an Indian national fleeing abroad after deserting his wife. in fact grounds on which passports may be impounded are clearly laid down in the Passports Act. The Department of Legal Affairs, Ministry of Law and Justice has observed that 'desertion' is not a criminal offence. In fact, the term has not been defined in any Indian Act, Code or Rule. The impounding of the passport of an erring husband could therefore be easily challenged in a Court of Law. Desertion cannot therefore be included as a valid ground for impounding/revoking of the passport of an Indian national. However, if the aggrieved party or deserted wife files a civil or criminal case in India and obtains summons or warrants, there exist provisions in the Passports Act to refuse passport or impound passport of offending husband/wife. [Min. of External Affairs U.O. NO. T. 125/17/88 dated 4.6.1991]
3.22 The Committee are of the view that there should be a separate cell in the Ministry of External Affairs for rendering all possible assistance to the deserted wives. This may be given wide publicity. Also instructions be issued to all our missions abroad to render all possible assistance to the complainants to trace the erring husband. Once the erring husbands come to know that they will be called upon by Government agencies particularly the Indian Missions to account for their behaviour towards their wives left in India, it may have a deterrent effect.	*Issue of the instructions to Indian Missions abroad to render all possible assistance to the complainants to trace the erring husband.* The Ministry of External Affairs has already so instructed Indian Missions abroad, In fact, whenever such a complaint is brought to the notice of the Indian Mission concerned it makes efforts to trace the erring husband and tries to bring him round through persuasion and other means. The Ministry of External Affairs, in the Consular Section, has taken note of the Committee's view that the problems of deserted wives be dealt with appropriately.

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The Committee desire that the Ministry should explore the feasibility of setting up such a cell without delay.	As regards setting up of a separate cell for rendering all possible assistance to deserted wives, the proposal is under examination in consultation with the concerned authorities in the context of the present economy drive and ban on the creation of posts. [Min. of External Affairs U.O. No. T. 125/17/88 dated 4-6-1991]
3.23 It has been stated that it may not be possible to enter into agreements with foreign countries for deportation of erring husbands in view of the fact that deportation is a procedure which is resorted to by each country under its sovereign powers and it is entirely discretionary. However, the possibility of seeking extradition of erring husbands from countries with whom Indian Government has entered into such arrangements on Government to Government basis could be explored. For this purpose the offence of bigamy would have to be declared an extraditable offence and specifically incorporated in the agreements entered into with foreign countries. The Committee desire that in the case of countries where extradition agreements already exist, the question of including bigamy as an offence in the relevant agreements may be examined for appropriate action. In cases where new extradition agreements are entered into, bigamy may invariably be included as an offence for which extradition can be sought.	*Extradition* The Lok Sabha Committee on Petition is aware that the bigamy is not an offence listed in Schedule II of the Extradition Act, 1962. The legal opinion is that bigamy is not an offence, in general, even in India. Before an exercise on extradition against an Indian national could be taken in a foreign country, this would have to be included in Schedule II of the Indian Extradition Act, 1962 and will also have to be an offence in the foreign country in which the erring person resides. Inclusion of bigamy as an offence in the Extradition Act 1962 is not free from complications. There are a number of Personal Laws in India. A Muslim Indian National may still not be brought within the mischief of such a provision on account of the relevent provisions in Muslim Personal law on the subject of marriage. In nutshell— (i) Inclusion of bigamy in Schedule II of the Extradition Act 1962 has several legal complications and limitations, and (ii) Conclusion and revision of extradition treaties is a long drawn out process involving the consent of all the contracting States and the countries which do not recognise bigamy as an offence. [Min. of Ext. Affairs U.O. No. T. 125/17/88 dated 4-6-1991]

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3.24 It has incidentally come to notice that India does not have an extradition treaty with the Government of USA. In the absence of such a treaty there is nothing more that the Indian mission can do except to exercise its good offices to contact persons concerned and try to persuade them to fulfil their obligations. Since a large number of Indian citizens are living in USA and the number of such cases in which Indians residing in USA are involved, is quite large compared to any other country, it is necessary that an extradition treaty is concluded with the Government of USA. The Committee recommend that the question of having a suitable extradition treaty with the USA may be considered at the highest level and brought about most expeditiously.	Extradition arrangements between India and the USA are presently governed by the extradition treaty concluded between the Great Britain and the USA on 22 December, 1931 which was acceded to on behalf of India on 8 March, 1942. Diplomatic notes to this effect were exchanged between the Government of India and the USA in 1965. This treaty therefore, is considered to be in force even after India's independence. Article 3 of this treaty has a list of extradition offences of which bigamy is one. [Min. of Ext. Affairs U.O. No. T. 125/17/88 dated 4-6-1991]