

**COMMITTEE ON PETITIONS**  
**(TENTH LOK SABHA)**

**Twenty First REPORT**



**LOK SABHA SECRETARIAT**  
**NEW DELHI**

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COMPOSITION OF THE COMMITTEE ON PETITIONS  
(1994-95)

1. Shri P. G. Narayanan — *Chairman*
2. Shri L. Adaikalaraj
3. Shri Naresh Kumar Baliyan
4. Shri Prataprao B. Bhosale
5. Shri Lokanath Choudhury
6. Prof. Sudhir Giri
7. Dr. B.G. Jawali
8. Shri Lalit Oraon
9. Shri Sarat Pattanayak
10. Shri Prabhulal Rawat
11. Shri Muhi Ram Saikia
12. Shri Gabhaji Mangaji Thakore
13. Dr. Ramesh Chand Tomar
14. Shri Arjun Singh Yadav
15. Shri Satyapal Singh Yadav

SECRETARIAT

Shri S. N. Mishra — *Additional Secretary*  
Shri G. C. Malhotra — *Joint Secretary*  
Shri Ram Autar Ram — *Deputy Secretary*  
Shri J. P. Jain — *Under Secretary*

**TWENTY-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 Twenty-First Report of the Committee to the House on the following matters :

- I. Representation for implementing the Award of Board of Arbitration under the scheme for Joint Consultative Machinery and Compulsory Arbitration for encashment of leave, etc. of Central Government Employees.
  - II. Representation from Shri V.L. Jadhav, an ex-NDS Instructor, National Fitness Corps Scheme, for absorption in service.
2. The Committee considered the draft Report at their sitting held on 21 August, 1995 and adopted it.
3. The observations/recommendations of the Committee on the above matters have been included in this Report.

NEW DELHI;  
21 August, 1995

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*Sravana 30, 1917 (Saka)*

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

# I

## REPRESENTATION FOR IMPLEMENTING THE AWARD OF BOARD OF ARBITRATION UNDER THE SCHEME FOR JOINT CONSULTATIVE MACHINERY AND COMPULSORY ARBITRATION FOR ENCASHMENT OF LEAVE ETC. OF CENTRAL GOVERNMENT EMPLOYEES

Saravashri Basudeb Acharia and Ajoy Mukhopadhyay MPs. forwarded on 15 December, 1993 a representation signed by Shri S.K. Vyas, Secretary-General, Confederation of Central Government Employees and Workers and representatives of other Government Employees Organisations, New Delhi for implementing the Award of Board of Arbitration under the Scheme for Joint Consultative Machinery and Compulsory Arbitration (JCM) for encashment of leave etc. of Central Government Employees.

1.2 The Main submissions made by the petitioners were as follows:—

- (i) A statement was laid on 9.12.1993 on the Table of Lok Sabha on the proposal not to accept the Award in Compulsory Arbitration Reference No. 3 of 1986 announced on 31.3.1989 in respect of encashment of leave of Central Government Employees while in service.
- (ii) The Central Government Employees who earn 30 days earned leave in a year have been demanding that instead of actually availing the leave at their credit, they could be allowed to encash it, as was being allowed by almost all the State Governments.  

This demand was pending discussions in the National Council of Joint Consultative Machinery, and a final disagreement was recorded in August, 1985. In January, 1986, this was referred to the Board of Arbitration which gave the Award on 31.3.1989 which has been laid on the Table of the House.
- (iii) The Government was either to implement the above award or to have a formal resolution in both the Houses of Parliament seeking approval of the proposal not to accept the said award within a period of six months after the receipt of the Award of the Board of Arbitration. The Government has however taken more than 4 years and 9 months and then also, instead of moving a formal resolution, have laid a statement on the Table of both the Houses which is no longer the approved procedure.

- (iv) The Award was given by the Arbitration Board after hearing both the Government as also the staff side representatives. If now it is being proposed to get this award rejected by the Parliament, it will be done only on the basis of what Government has to say in the matter. Therefore some method has to be devised so that staff side views are also placed before members of both the Houses thus enabling the Parliament to take an objective view and then decide whether to accept the Government's proposal.
- (v) The ground on which Government have proposed not to accept this award is that Rs. 318 crores of expenditure every year would be entailed on implementation of this award which would adversely affect the national economy. If total volume of national economy is taken into account, an additional expenditure of the tune of Rs. 318 crores is so insignificant that it cannot be viewed as causing any adverse impact on the national economy.
- (vi) Encashment of leave cannot be treated as an additional expenditure. What actually is done is to pay for the leave encashed and to reduce the credit of leave in the account of that Government servant. Naturally the liability for leave salary gets reduced.
- (vii) Since 50% of leave will be encashed and availed, the absenteeism will also be reduced to that extent bringing about a substantial cut in the overtime payments and in deployment of leave reserves. If all these factors are taken into account, the figure given by the Government will be reduced considerably.
- (viii) The entire scheme of JCM was drawn up on the pattern of Whitley Councils of the Great Britain. The provision that subject to the overriding authority of Parliament, arbitrators awards are binding on Government and staff was to signify the supermacy of the Parliament. In actual practice, the Executive in Britain have always upheld and implemented all awards. Not a single award has been modified or rejected by the British Parliament.

1.3 The petitioners, therefore, prayed that the award of the Board of Arbitration which is a verdict of an independent third party is accepted both by the Government and the Staff who were parties to the dispute.

1.4 The statement laid on the Table of Lok Sabha on 9.12.1993 by the Ministry of Personnel, Public Grievances and Pensions on the proposal not to accept the award in compulsory arbitration in respect of

encashment of leave of Government employees while in service states *inter-alia* as follows:—

The Board of Arbitration under the scheme for Joint Consultative Machinery and Compulsory Arbitration (JCM) gave its award on 31.3.1989 for Encashment of Leave while in service. The award was to be effective from 1st April, 1989 as indicated therein.

Financial implications in implementing the Award are expected to be around Rs. 288 crores and Rs. 318 crores for the year 1990-91 and 1991-92 respectively. This is on the basis of figures of Pay and Dearness Allowance for the above said years. In addition, expenditure of Rs. 158 crores and 175 crores per annum for 1990-91 and 1991-92 respectively is already being incurred on account of encashment of leave at the time of retirement. In the context of the need for exercising utmost economy in the Government spending, a recurring expenditure of more than Rs. 318 crores per annum will impose an additional burden on the exchequer, which in the present situation of the financial stringency would adversely affect the National Economy.

As per the scheme of the JCM, an Award given by the Board of Arbitration can be modified or rejected by the Government with the approval of the Parliament, either on the ground of its adverse impact on the "National Economy" or "Social Justice". The Government has rejected the above Award on the ground of its adverse impact on the "National Economy". It is, therefore, proposed to move a Resolution in the Lok Sabha to seek its approval for rejection of this Award."

1.5 The Ministry of Personnel, Public Grievances & Pensions with whom the matter was taken up, furnished their comments on 25.2.1994 as under:—

- (i) The time limit of 6 months mentioned in the Department of Personnel & Training O.M. No. 3/23/85—JCA dated 10.6.1988 and 20.2.1989 is not part of the JCM scheme. These are administrative instructions issued to expedite the processing of Awards and the time limit given is only directory in nature and is not a mandatory limit.
- (ii) (a) It would not be correct to say that an expenditure of over Rs. 318 crores per annum is "insignificant" especially keeping in view Government's desire to curtail expenditure.
- Moreover, if the "Award" is accepted, it will have repercussions on autonomous bodies and organisations which normally follow Government rules & regulations.
- (b) It may be mentioned that leave encashment as per Award was to be optional. One of the pre-conditions for leave encashment in the Award is that the Government official avails leave. Thus, there will not be implications regarding OTA payment and deployment of leave reserve. Also, deployment of employees on over time is not based on the total availability of staff in various Ministries/Departments etc. as a whole, but on

the exigencies of work in a particular office or unit thereof which cannot be foreseen. In view of this, it is not possible to work out any details of such savings if at all there may be any, in the expenditure involved on account of leave encashment.

- (iii) The proposal of the Government to reject the Award is in accordance with the scheme for Joint Consultative Machinery & Compulsory Arbitration as agreed to by both the staff side and official side.

Both the Houses of Parliament are already seized of the matter as a statement has been laid in the House on 9.12.93. It is, therefore, submitted that the Petition may not be admitted for consideration by the Committee on Petitions, Lok Sabha."

1.6. The comments furnished by the Ministry of Personnel, Public Grievances & Pensions were forwarded to Sarvashri Basudeb Acharia and Ajoy Mukopadhyay, MPs, who had forwarded the representation.

Shri Basudeb Acharia, MP *vide* his letter dated 4.4.94 forwarded the para-wise explanations offered by the petitioners (See Appendix-I) on the comments furnished by the Ministry. These were also forwarded to the Ministry for obtaining their comments.

1.7. The Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) forwarded their comments dated 30 May, 1994 stating *inter-alia* as follows:—

- "(i) (a) It is reiterated that the time of six months for implementing an Award of Board of Arbitration is only directory in nature and is not a mandatory limit.

Though Government's overall view at the initial stage itself was for rejection of the Award in view of the financial constraints, the issue was discussed again with the representatives of the staff side to see how best the Award could be implemented. This necessitated further inter-departmental consultations which took time.

- (b) As mentioned in the statement laid on the Table of the two Houses, a resolution seeking Parliament's approval to the rejection of the Award is proposed to be moved.
- (ii) (a) The formulae that emerged in the Joint Committee meeting on 6.8.95 were not in the nature of an offer from the official side but were only broad formulations, in the nature of



- modalities through which the staff side demand would be operationalised subject to the approval of the Government. However the broad formulations were not finally accepted by the Government in view of the considerable financial implications involved. As regards savings on account of OTA etc. for the reasons already conveyed, no such savings are anticipated even if leave encashment is allowed. Therefore, the net amount of expenditure on pay and dearness allowance (including leave salary paid now) is likely to go up, at least for a number of years, broadly to the extent of expenditure on leave encashment while in service. The details of anticipated expenditure of Rs. 318 crores for the year 1991-92 (See Appendix-II) have accordingly been calculated on the basis of the number of serving employees who are likely to encash leave as per the terms of the Award. Annual increase in pay and dearness allowance will raise this amount further.
- (b) As already indicated the autonomous bodies/organisations normally follow the Government rules and regulations.
  - (c) It is not correct to say that to the extent EL is surrendered, personnel become available for performing duties. If no EL is available to them after encashment, they will certainly avail of other kinds of leave like HPL, BCL etc. to meet their personal requirements. This requirement is equally applicable in case of employees working in the operational departments."

1.8 The Committee deliberated on the matter at their sitting held on 15 September, 1994 and decided to hear the views of the Hon'ble Members of the House, Sarvashri Basudeb Acharia and Ajoy Mukhopadhyay and also to take evidence of the petitioners' Organisations.

1.9. Accordingly, the Committee, at their sitting held on 6 March, 1995 heard the views of Shri Basudeb Acharia, MP, and also examined the representatives of the Central Government Employees' Confederation on the various points contained in the representation.

1.10. Subsequently, at their sitting held on 21 June, 1995, the Committee took oral evidence of the representatives of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training).

1.11. During the discussion with the Committee, the Hon'ble Member, Shri Basudeb Acharia highlighted *inter-alia* the following points:—

"This matter has been a long pending one. When the Hon. Minister of State for Personnel & Training wanted to lay the paper on the Table of the House, at that time, I had raised this objection because it violated the procedure, the rules. This was considered by JCM and when there was disagreement, then this was referred to the Board of Arbitration and the Board of Arbitration gave its award in the year 1989. Now the rule is that when an award is given by the Board of Arbitration, then either it has to be implemented or it is to be rejected. That should be done within six months. But the order

was given in 1989 and the Government by way of notification wanted to negate or reject the award. Now the amended procedure is... if the Government cannot implement the Award because of financial burden, then the Government can modify or reject the same and that is to be done not by mere notification as was done earlier. That rule was subsequently amended in 1989. The Government did not bring any Resolution... Similar system is prevalent in Great Britain. In Great Britain whenever the Board of Arbitration gives any Award it is implemented by the Government.

The next important factor is that this demand for encashment of leave is not a new thing. This is prevalent in almost all the major public sector undertakings like Steel Authority of India, Coal India, Indian Oil Corporation, etc. Also in most of the State Governments this system has been introduced and their employees are permitted or allowed to encash their leave."

1.12. The Committee pointed out that the Ministry in their comments had stated that the proposal of the Government to reject the Award was in accordance with the Scheme for Joint Consultative Machinery and Compulsory Arbitration as agreed to both the staff side and official side and requested the member to make his observations in that regard. The Hon'ble Member observed that, "Firstly, there is no major financial involvement. Secondly, the Government has not followed the rules or procedures. By merely issuing notification they wanted to negate or reject the Award. Thirdly, the members of Parliament have also been denied their right to express their views on a particular matter because of issuance of notification. Fourthly, according to the DA rules, Central Government employees will attract disciplinary action for approaching a member of Parliament though they belong to his constituency, for the redressal of their grievances. So, there is no forum to express their views.

1.13. When the Committee pointed out that the Ministry of Personnel in their comments had reiterated that six months period was not mandatory and was only directory, the Hon'ble Member stated that, "The amendment was conveyed by the order of the 20 February, 1989 Office Memorandum from the Ministry of Personnel, Public Grievances & Pensions. In para 6 it is stated that after the decision (Award) of the Board of Arbitration is received, the Award would either be allowed to be implemented or Statement laid on the Table of both Houses of Parliament within six months (proposing modification or rejection of the Award). How the Ministry of Personnel, Public Grievances & Pensions could say that this is not mandatory and it is merely a directory when it has been stated very specifically that when the Government takes the decision in regard to the modification or rejection, that statement should be laid on the Table of both the Houses of Parliament within a period of six months.

1.14. When the Committee requested the Hon'ble Member to comment upon the Ministry's reply that the Award could be rejected or modified on

the ground of its adverse impact on the national economy, he observed as under:

“Rs 318 crores is the total money involved in this proposal per annum. I have explained how this amount will not have any adverse impact on the economy. When the Government employees take leave, new recruitment has to be done to get the work done and for that also the Government has to incur some expenditure. That amount will not be less than what has been calculated by the Government. So, there will be no adverse impact on the national economy.”

In this connection the representative of the Confederation stated:

“We do not know how the Government has arrived at the figure of Rs 318 crores. The calculation was not made available to the members of Parliament. We question the basis of having arrived at this figure because in the rules which were to be framed, leave encashment was to accompany with equal amount of leave being availed, unless and until 15 days’ leave is sanctioned, another 15 days’ leave cannot be encashed. It was to be restricted for two years also. Therefore, we seriously question as to how they have arrived at that figure.”

He further stated as follows:

“One more point which we want to impress upon you is this. What is the difference between ‘availing of leave’ and ‘encashment of leave’? ‘Availing’ means, the person concerned will be taking the leave salary, he will absent himself and he will not be available at work. ‘Encashment’ means, the person concerned will be availing the same salary which he would have claimed if he has availed them; but he would be present and working during that period; and to that extent, the absenteeism will be reduced. Therefore, the figure with which they want to create this sort of an impact on the Parliament is wrong. So, we feel that the Committee may ask them as to the details of how they have arrived at that figure.”

1.15. The Committee pointed out that if the earned leave was not required and everybody was trying to encash it, why was this concept of earned leave brought into the service. The witnesses replied:

“It is not the case that all the employees would avail of the leave encashment benefit and that nobody will take leave.”

He further stated:

“It has been very clearly laid down in the rules that it is not a matter of right. It is just a facility. Leave may be granted for good and sufficient reasons. What happens is, there are some persons who have to go on leave often so much so that they do not have any balance. There are others who are conscientious and do not go on leave. It is

such people, who are penalised. Therefore, a provision was made that if he had not availed of leave at least let us allow him to encash it.”

1.16. When asked whether at all it was necessary to allow this leave if they were not availing it, the witness stated:

“In the Central Government there are nearly 40 lakh employees. Eighty percent of them are working in the operational services like the P&T, Railways and Defence factories. These workers are all operational. Sometimes they are not permitted to take leave due to exigencies of work. Nearly 80 to 85 percent of the Central Government employees are on the operational side.

1.17. As stated earlier, the above points were discussed with the representatives of the Ministry of Personnel, Public Grievances & Pensions at the sitting of the Committee on 21 June, 1995.

1.18. The Committee asked the witnesses to state the reasons for the inordinate delay in laying the Award of Arbitration on the Table of Lok Sabha. The representative of the Ministry stated:

“On 31 March, 1989, we got the Arbitration Award. Between September, 1989 and February, 1990, the decision was taken. The procedure is that after consulting informally, we go to the Committee of Secretaries. The matter was already decided by the Committee of Secretaries in 1989 itself saying that the financial implications were huge and therefore we could not agree to this demand. The matter was taken to the Cabinet. The Cabinet felt that the Cabinet Secretary should hold discussions. He had a discussion with the staff side. Some modalities were discussed to see whether it would be possible to modify this. There was no meeting ground. Again, it was sent to the Finance Ministry. The Finance Ministry took the initiative. By that time, we had reached September, 1991 when we were at the height of our financial crises. In September, 1991, the present Finance Minister called the National Council Leaders, had a discussion with them and he was trying to persuade them not to force the Government on this issue because it was not possible to agree. Finally, we have to take a note to the Cabinet. The matter went to the Cabinet. Thereafter, we completed the procedure and came to you.”

1.19. When asked to state whether there was any time limit for moving a Resolution in Parliament, he stated:

“There is no time limit, though the employees, in the petition that is before you, argued that there was a time limit prescribed. I must say in fairness to the system that we have advised all Ministries saying, as far as possible, they should try to complete the procedure within six months. But it is not a time limit arising out of any Award or any understanding or agreement with the staff side. It is a self-imposed

time limit, issued by the Government on its own. It was a decision taken by the Government arising out of some of the complaints from the staff side saying that we were taking too much time to implement the Award of Arbitration. The Government issued an office memorandum *suo motu*, on its own, spelling out what is the time limit which should be observed by various Ministries. In the case, after the decision was taken by the Government, after completing various formalities, I must admit that it took sometime for various factors. One of the factors is the continued discussion with the staff side and then discussions with the other side."

He further stated that this matter of time limit was taken to the Supreme Court. The time limit was not mandatory.

1.20. Asked to state whether the Government had got any right to violate its own decision, the witness stated:

"If there is a very serious financial implication in a particular case, I have to get the consent of the Ministry of Finance. I have to get Cabinet decision. I cannot put a time limit on the Cabinet. Cabinet says ask the Cabinet Secretary to have further discussion with the staff side."

1.21. The Committee drew attention of the representatives of the Ministry to their comments dated 25.2.95 which stated that if the Award was accepted, it will have repercussions on autonomous bodies and organisations which normally followed Government rules. The petitioners, however, had contended that the service conditions of autonomous bodies were entirely different from that of the Central Civil servants. Asked to give comments in this regard, the witness stated:

"Right from the beginning, the Government have made it clear to the staff side that this is not something which is possible to accept because the Government cannot take an extra liability to the extent of Rs 300 crores. It does not end there. In addition to Rs 300 crores, there are the autonomous bodies which will automatically follow suit. So, you have got the financial implications there. You have the problem with the Defence Forces. The Jawans etc. in the Defence Forces are compulsorily asked to go on leave for one month in a year. If you give this benefit, then all the autonomous bodies, Defence Forces will follow suit. You have the problem there. It is not in the public interest because the Defence Ministry believes that in respect of high tension jobs, Jawans etc. must have one month's leave in a year. We have serious problems in this case."

1.22. The Committee drew attention of the witnesses to the statement made by the petitioners that the Award of the Board of Arbitration given on 31.3.89 was identical and same both in content and form to what was offered as a proposal by the Government in 1985. The Committee asked the witnesses to state as to why the Government proposed to reject the

Award which it offered as a proposal in 1985. The representative of the Ministry stated that it was not factually correct. He added:

"I can submit to your perusal the minutes of the meeting held on 5 September, 1985, which you have referred to. Actually the minutes of the meeting clearly say that this is arising out of the discussions between the official side and the staff side. Some proposals are being worked out and this will be considered by the Government. This is not an offer from the official side. The offer from the Government side has a different meaning attached to it which is that it is done after completing the procedure. But here it was only a point which had arisen out of the discussions which the Government said it would consider. The minutes clearly said, 'It could be discussed further with the staff side after obtaining Government's approval'. That shows that it was not an offer."

1.23. When asked what approval they wanted from the Government, the representative of the Ministry stated:

"Because it has financial implications and no Department of the Government could have independently taken a decision in such matters. It would have required Cabinet's approval also."

1.24. The Committee pointed out that according to the petitioners since 50 percent of leave will be encashed, the absenteeism will also be reduced to that extent bringing about a substantial cut in the overtime payment and in recruitment of leave reserves. If all these factors are taken into account, the figure of Rs 318 crores as additional expenditure given by the Government will be reduced considerably. Asked to give his views, the witness stated that he did not agree with the statement. He further stated:

"That is one thing you can always argue. In our scheme of things, we have already had to spend Rs 2,000 crore on the Fourth Pay Commission's recommendations. Now, the next Pay Commission's Report is also in the offing. These are all non-Plan expenditure and we have to meet them with what little we have."

1.25. When asked how much money had been spent on account of overtime payment from 1989 onwards, the representative of the Ministry stated:

"This includes the entire spectrum of the Government of India where maximum overtime takes place. In respect of 1989-90, we paid Rs 229.81 crores as overtime. In 1990-91, it was to the tune of Rs 234.27 crores. In 1991-92, the latest figure is Rs 285.63 crores."

1.26. The Committee asked as to what will be the fate of the Award since the Government had not come forward to move the Resolution. To this the witness stated:

"We have come forward to move the Resolution. On 20 March, 1995, Government had given notice to the Lok Sabha and Rajya Sabha

Secretariats with a copy of the Resolution which the Minister wants to move.”

1.27. The Committee desired to know when many State Governments were allowing leave encashment to their employees, why could not the Central Government do so. The representative of the Ministry replied:

“The terms and conditions of the State Governments and Central Government employees are very different. There are many things which Central Government gives which may not be given by the State Governments.”

1.28. Being asked whether the question of encashment of leave had been referred to the Pay Commission, the witness stated:

“This is one of the points on which they will make a recommendation because the Fourth Pay Commission increased the encashment period from 180 days to 240 days. It is actually covered in the terms of reference. I will be happy to refer it if you want. But it is already covered. This is one of the items which the Pay Commission can look into.”

1.29. When asked whether it was mandatory for the Cabinet to have Resolution rejected by the Parliament, the witness stated that it was the legal opinion. The present Attorney General has also confirmed that action would be complete only after the resolution to that effect had been moved.

#### Observations/Recommendations of the Committee

1.30 The Committee have perused the material placed before them by the petitioners and also held discussions with the Hon'ble Member of Lok Sabha, Shri Basudeb Acharia, who had forwarded the representation, and the petitioners, the representatives of the Central Government employees. The Committee have also considered the written comments furnished by the Ministry of Personnel, Public Grievances & Pensions and the oral submissions made by the representatives of the Ministry before them.

1.31 The Committee note that the Board of Arbitration under the scheme for Joint Consultative Machinery and Compulsory Arbitration (JCM) gave its award on 31.3.89 for encashment of leave of Central Government employees while in service. The Award was to be effective from 1 April, 1989, as indicated therein. As per the scheme of JCM, an Award given by the Board of Arbitration could be modified or rejected by the Government with the approval of Parliament either on the ground of its adverse impact on the 'National Economy' or 'Social Justice'. The Government had rejected the above Award on the ground of its adverse impact on the 'National Economy'. The Government, therefore, proposed to move a Resolution in Lok Sabha to seek its approval for rejection of this Award.

1.32 The petitioners have contended that the Board of Arbitration gave its Award on 31.3.89 and the Government had to move the Resolution within six months but instead the Government had laid a statement in the House

on 9.12.93 and not moved a resolution so far. Even to lay this statement the Government had taken more than 4 years and 9 months after the Board gave the Award.

1.33 The two major issues which have emerged out of the discussion relate to:

- (i) the proposal of the Government to reject the Award on the ground of its adverse impact on the 'National Economy'; and
- (ii) the delay on the part of the Government in moving the required Resolution in Parliament to seek its approval for rejection of the Award.

1.34 The Ministry of Personnel, Public Grievances & Pensions have explained the reasons for rejecting the Award inasmuch as the financial implications in implementing the Award were expected to be around Rs. 288 crores and Rs. 318 crores for the year 1990-91 and 1991-92 respectively. This is on the basis of figures of pay and dearness allowance for the above mentioned years. In addition, expenditure of Rs. 158 crores and 175 crores per annum for 1990-91 and 1991-92 respectively is already being incurred on account of encashment of leave at the time of retirement. In the context of the need for exercising utmost economy in the Government spending, recurring expenditure of more than Rs. 318 crores per annum will impose an additional burden on the exchequer, which in the present situation of the financial stringency would adversely affect the National economy.

The petitioners have, however, stated that if the total volume of national economy is taken into account, an additional expenditure of Rs. 318 crores is so insignificant that it cannot be viewed as causing any adverse impact on the national economy. Moreover, encashment of leave, if allowed, will reduce absenteeism and therefore bring about substantial cut in overtime payments. Thus, the figure of additional expenditure given by the Government will be reduced considerably.

1.35 The Committee have been informed on 21 June, 1995 during evidence by the representative of the Ministry that the question of encashment of leave is "one of the points on which they (the present Fifth Pay Commission) will make a recommendation because the Fourth Pay Commission increased the encashment period from 180 to 240 days (at the time of retirement). It is actually covered in the terms of reference. I will be happy to refer it if you want. But it is already covered. This is one of the items which the Pay Commission can look into."

1.36 Since the Pay Commission is currently seized of this matter also and their Report "is also in the offing", as stated by the representatives of the Ministry, the Committee do not consider it necessary to go deeper into the question of desirability or otherwise of encashment of leave etc. to Central Government employees. The Committee expect that the



**Government will take a conscious view of the whole matter in the right perspective after the recommendations of the Pay Commission are available to them.**

**1.37 In regard to the delay in carrying out their intention to reject the Award, the Ministry have submitted that the time of six months for implementing an Award of Board of Arbitration is only directory in nature and is not a mandatory limit. Though Government's overall view at the initial stage itself was for rejection of the Award in view of the financial constraints, the issue was discussed again with the representatives of the staff side to see how best the Award could be implemented. This necessitated further inter-departmental consultations which took time.**

**However, the Committee find no valid justification in prolonging the matter to almost six years till 20 March, 1995 when the notice for moving the required resolution in Lok Sabha for rejection of the Award was given by the Government.**

## II

### REPRESENTATION FROM SHRI V.L. JADHAV, AN EX-NDS INSTRUCTOR, NATIONAL FITNESS CORPS SCHEME, FOR ABSORPTION IN SERVICE

Shri V.L. Jadhav, an ex-NDS Instructor (resident of house No. 7 Ber Sarai, New Delhi-110016) submitted a representation dated 5.7.91 regarding his absorption as Senior Instructor Grade II in the National Fitness Corps Schemes (NFCS) and payment of arrears due to him.

2.2 the petitioner stated *inter alia* that consequent upon the decision of the Government to transfer the services of NDS Instructors to various State Governments/Union Territory Administrations, the NFC Directorate transferred his services to Kendriya Vidyalaya Sangathan (KVS). As he was not willing to accept the grade in which he was to be accommodated, he was reverted back by the KVS to his parent department, *i.e.* 'NFC Directorate. He reported back to the NFC Directorate but they refused to take him back.

He further stated that neither his services were terminated nor was he retired from service. His absorption was not done properly and was done without his willingness. He prayed for sympathetic consideration of his case.

2.3 The Ministry of Human Resource Development (Department of Youth Affairs & Sports) to whom the representation were referred for comments stated in their reply dated 9.9.91 that the case of Shri Jadhav had been reconsidered at appropriate level in consultation with the Department of Personnel and a reply communicating the inability of the Department to accede to the request of Shri Jadhav had already been sent to him.

2.4 Shri Jadhav again sent a letter dated 26.12.91 reiterating the earlier points. This letter was also referred to the Ministry of Human Resource Development for furnishing their point-wise comments.

Meanwhile, Shri Lokanath Chowdhury, MP, also addressed to the Chairman, Committee on Petitions, letters dated 14.8.92, 23.3.93 and 3.3.94 requesting that the matter might be looked into and that the petitioner be given an opportunity for personal hearing.

2.5 Thereafter, the petitioner sent to the Chairman, Committee on Petitions, an endorsement copy of a letter dated 22.7.93 addressed to the Secretary, Ministry of Personnel, intimating that the Ministry had

decided to reappoint/reabsorb him in the Department of NSS, Government of India.

In view of the above position intimated by Shri Jadhav, it was decided not to pursue the matter unless a fresh communication was received from Shri Jadhav.

2.6 Subsequently, however, Shri Jadhav again sent a letter dated 17.1.94 stating that his absorption had not been done properly and his absorption was done in the interest of the Ministry without his consent. He stated that he was in the pay scale of Rs. 440-750 when his absorption was done in KVS *vide* Department of Youth Affairs & Sports D.O. letter dated 1.9.72. The pay scale was revised by IV Pay Commission to Rs 1640-2900 in which scale his basic pay should be re-fixed before appointing him in any attached offices of the Department of sports and the terms and conditions of the post to which he was so appointed might be made clear to him.

The matter was, therefore, against pursued with the Ministry requesting them to furnish their comments.

2.7 The Ministry of Human Resource Development (Department of Youth & Sports) *vide* their Communication dated 3 March, 1994, furnished their comments stating as under:

“Shri V.L. Jadhav was employed as NDS Instructor in a temporary scheme of Central Government, namely, the National Fitness Corps Programme. After the decision of the Government to decentralise the scheme and transfer the services of the NDS Instructor to States/NDS/KVS, Shri V.L. Jadhav joined the KVS on 1.12.72 at the Kendriya Vidyalaya, Andrewsganj, New Delhi. After his absorption in the KVS, the post of NDS Instructor held by him was abolished as soon as vacated by him in accordance with the policy of the Government to wind up the NFC Organisation. Later on, however, Shri Jadhav was relieved from the KVS on his own request to rejoin the NFC but the NFC was disbanded by that time, he was left nowhere.

The Ministry, however, in its endeavour to help Shri Jadhav again requested KVS to allow him to rejoin his duties. Shri Jadhav was informed of this and reminded several times to rejoin but he continued avoiding rejoining and ultimately filed a writ petition raising many issues including his absorption in the KVS in the Delhi High Court during 1975 which was dismissed. However, he has been constantly sending representations for his re-employment in service.

The matter was taken up with the Department of Personnel &

Training for clarification as to whether Shri Jadhav can be taken back into the Central Government service once again. Department of Personnel & Training has clarified that his services were terminated after giving him sufficient opportunities for rejoining and as such, there is no rule under which he could be reappointed in Government. However, Department of Personnel & Training would have no objection if the Department of Youth Affairs & Sports wishes to consider him for a suitable job in any autonomous body under the Department of Youth Affairs & Sports on humanitarian grounds without linkage with his past services.

Keeping in view the advise rendered by Department of Personnel & Training, the Department has decided to explore the possibility of his appointment, in Nehru Yuva Kendra Sangathan, an autonomous organisation under the control of the Department."

2.8 The Ministry of Human Resource Development (Department of Youth Affairs & Sports) was requested again to intimate the latest position in regard to the appointment of Shri V.L. Jadhav in an autonomous organisation under the control of that Department.

2.9 The Ministry of Human Resource Development have endorsed to the Lok Sabha Secretariat a copy of their U.O. note dated 19.12.94 addressed to OSD to the Prime Minister enclosing therewith a copy of their comments on the matter.

2.10 In addition to the earlier comments furnished *vide* above referred communication dated 3 March, 1994, the Ministry have stated as follows:

"The Ministry, however, in its endeavour to help Shri V.L. Jadhav requested the KVS to allow Shri Jadhav to rejoin his duties. Shri Jadhav was informed of this and reminded several times to rejoin but he continued avoiding rejoining and ultimately filed a writ petition raising many issues including his absorption in the KVS in the Delhi High Court during 1975 which was dismissed. The operative part of the judgement (dated 6 February, 1976) is as under:

"We heard the Counsel on behalf of the petitioner and the Counsel for the respondents and in our view the petition is without merit. The organisation known as NFC in which the petitioner held the post of Instructor was disbanded *vide* order dated 4 April, 1972. The petitioner is left with no legal right to the post in the NFC. In accordance with the decision of the Government of India, the petitioner was offered a post of Junior PTI by the Delhi Administration but he did not accept it. Later on, the petitioner was absorbed as a Junior PET in the KVS but this post was left by the petitioner. During the hearing of the petition the respondents again offered to appoint the petitioner to the post of Junior PET in the KVS but the petitioner did not accept the offer. The petitioner

having chosen to adopt the above course, it appears nothing more can be done for the petitioner.

The Counsel for the petitioner contended that directions should be given to the respondents to pay all the amounts due to the petitioner for the period he was in service. This prayer of the petitioner was not opposed by the Counsel on behalf of the respondents. Accordingly, we direct that the petitioner would be entitled to all the benefits that had accrued to him during the period he was in service. With this direction the petition is dismissed *in limini*."

The Ministry have further stated as under:

"In view of the aforesaid judgement Shri Jadhav was paid terminal benefits. Therefore, his claim that his services were not terminated is incorrect as it stands terminated as per orders of the hon'ble High Court.

Shri Jadhav continued sending representations through MPs, VIPs and various Ministries, Departments for his re-appointment in Government service. The matter was taken up with the Department of Personnel & Training who in turn has clarified that it would not be possible to reappoint him in Government service. However, Department of Personnel & Training would have no objection if the Department of Youth Affairs & Sports wished to consider him for a suitable employment in some autonomous organisation under the control of the Department.

Keeping in view his constant representations, the Department decided his appointment in NYK Sangathan, an autonomous organisation under the Department of Youth Affairs & Sports on humanitarian grounds. Shri Jadhav, however, categorically declined to be considered for a post in the Sangathan and insisted for his appointment in Government service which is not possible as per the clarification given by the Department of Personnel & Training."

#### **Observations/Recommendations of the Committee**

2.11 The Committee have perused the points made by the petitioner Shri V.L. Jadhav and the detailed comments thereon furnished by the Ministry of Human Resource Development (Department of Youth Affairs & Sports) from time to time.

The Committee note inter alia that the petitioner was employed as NDS Instructor in a temporary scheme of the Central Government, namely, the National Fitness Corps Programme. After the decision of the Government to decentralise the temporary scheme and transfer the services of the NDS Instructors to States/NDS/KVS, Shri V.L. Jadhav joined the Kendriya Vidyalaya Sangathan on 1.12.72. After his absorption in the KVS, the post of NDS Instructor was abolished in accordance with the policy of the

Government to wind up the NFC organisation. Later on, however, Shri Jadhav was relieved from the KVS on his own request to rejoin the NFC. But by that time the NFC was disbanded and the petitioner was left nowhere.

2.12 The Ministry, however, in its endeavour to help the petitioner again requested the KVS to allow him to rejoin his duties. He was informed of this and also reminded several times to rejoin. But, as stated by the Ministry, Shri Jadhav "continued avoiding rejoining". Ultimately he filed a writ petition in the Delhi High Court in 1975, wherein he raised many issues including his absorption in the KVS. The Writ Petition was, however, dismissed in limini by the Hon'ble High Court through their order dated 6 February, 1976.

2.13 The Committee further note that since the petitioner has been sending representations for his re-employment in service, the Ministry sought clarification from the Department of Personnel & Training as to whether Shri Jadhav could be taken back into the Central Government service once again. That Department, however, clarified that the "services were terminated after giving him sufficient opportunities for rejoining and as such there is no rule under which he could be re-appointed in Government. However, the Department of Personnel would have no objection, if the department of Youth Affairs & Sports wishes to consider him for a suitable job in any autonomous body under the Department of Youth Affairs & Sports on humanitarian grounds without linkage with his past services."

2.14 The Ministry of Human Resource Development (Department of Youth Affairs & Sports) have further stated that keeping in view the advice tendered by the Department of Personnel & Training, they explored the possibility and subsequently decided the appointment of the petitioner in the Nehru Yuva Kendra Sangathan, an autonomous organisation under the Department of Youth Affairs & Sports on humanitarian grounds. "Shri Jadhav, however, categorically declined to be considered for a post in the Sangathan and insisted for his appointment in Government service which is not possible as per the clarification given by the Department of Personnel & Training."

2.15 The Committee also note the pertinent observations contained in the judgement of the Hon'ble Delhi High Court that "in our view the petition is without merit.... The petitioner is left with no legal right to the post in the NFC."

2.16 The Hon'ble Court, however, directed that in regard to the payments of amounts due to him the "petitioner would be entitled to all the benefits that had accrued to him during the period he was in service."

Pursuant to this order, the Ministry have stated that "Shri Jadhav was paid terminal benefits" and that "his claim that his services were not

terminated is incorrect as it stands terminated as per orders of the Hon'ble High Court.”

2.17 Considering the observations made by the Hon'ble High Court and the various endeavours made by the Ministry of Human Resource Development (Department of Youth Affairs & Sports) prior to and after the judgement, the Committee feel convinced that adequate efforts were made by the Ministry to help the petitioner within the framework of the extent rules.

2.18 In view of the above position, the Committee feel that no intervention on their part is required in the matter.

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

NEW DELHI;  
21 August, 1995

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*Sravana 30, 1917 (Saka)*

(See para 1.6 of the Report)

Parawise explanation offered by the Petitioners on comments furnished by the Ministry of Personnel, Public Grievances & Pension on 25.2.94

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Para (i) (a) The Government placed a statement in the Lok Sabha to reject the Board of Arbitration Award only after the lapse of 4 years and 9 months, whereas the time limit agreed upon is only six months. It is not correct to say that the time limit prescribed to place an award before the Parliament is not mandatory and is only an administrative instruction. The Government of India's order No. 3/23/85-JCA dated 10 June, 1988 was the product of mutual discussion and agreement between the staff side and official in the JCM. It was in fact to elucidate on the procedure to be followed by various Ministries/Departments concerning the disposal of the award of the Board of Arbitration, as could be evidenced from the first para of the said O.M. copy of which is enclosed for ready reference. In any case, the delay amounting to 57 months against the stipulated period of six months, viewed even from the angle of reasonableness does not deserve to be condoned.

(b) This apart, the Ministry of Personnel *vide* their O.M. No. 3/23/85-JCA dated 20 February, 1989 conveyed the Government's decision to modify the procedure of seeking Parliament's approval in rejecting an award from that of laying a statement on the Table of both the Houses to that of formally moving a resolution in the House. This order was also issued on the basis of an agreement after discussion between the official side and staff side of the National Council JCM.

Still the Government has chosen only to place a statement on the Table of the House contravening thereby their own decision and agreement with the petitioners. The Ministry's comments are silent on this vital aspect of the procedure.

(ii) The Board of Arbitration's award in the instant case was on all fours the proposal mooted by the official side in the Committee meeting held on 6.8.95. The Award of the Board of Arbitration given on 31.3.89 was identical and same both in content and form to what was offered as a proposal by the Government. Both the proposal and award is reproduced as an annexure. The Government was, therefore, fully aware of the financial implication of the proposal as early as 1985. Either it should have been considered 'insignificant' or 'prudent to allow such an outflow' then, by the Government. Had it not been the case, such a proposal would never have been forthcoming.



Even otherwise, whenever the Government servant avails earned leave, the Government is bound to pay him leave salary. Therefore, when one surrenders the leave, meaning thereby that he performs duty during the period he is supposed to be on leave, he is entitled to both duty pay and leave salary. Technically, therefore, there is no expenditure involved, except when one accumulates beyond the prescribed limit of 240 days. Having been decided to grant encashment of leave to the extent of 240 days at the time of superannuation, the expenditure if at all any, is really insignificant. In the absence of any computation how the amount of Rs. 318 crore has been worked out, it is not possible to accept the contention of the Ministry in this regard.

(b) The service conditions of autonomous bodies are entirely different from that of the Central Civil Servants. Conditions of service is altered or amended through bilateral discussions between the Governing bodies of these autonomous organisations and the employees' Federation.

(c) It is also not correct to say that there will not be any implications or savings in the OTA if the award is accepted and acted upon. It is true that the Government servant has to compulsorily avail leave in order to become entitled for encashment of equal number of leave. This condition would not wipe out the savings on account of OTA altogether. To the extent the leave is surrendered, the personnel become available for performing duties, obviating in the process, the necessity of engaging persons on overtime duties not necessarily only for exigencies of work which could not be foreseen. Most of the, rather majority of, Central Government employees are employed by the Ministry of Defence, Railways and Postal and Telecommunications. They are all operational staff. They have to be on duty round the clock. They cannot leave the workspot unmanned just because they have completed the prescribed duty hours. Therefore, there is bound to be savings on account of overtime allowance, in case the Government accepts the award and implement the same.

(d) It is also possible to compute the extent of savings on account of overtime allowance if the ingredients that has gone into the computation of the financial implication viz. Rs. 318 crores for accepting the award is made available for the components of computation in both the cases will have to be one and the same.

# Annexure to Appendix—I

No. 3/23/85—JCA

GOVERNMENT OF INDIA

## DEPARTMENT OF PERSONNEL & TRAINING

New Delhi, the 10 June, 1988

### OFFICE MEMORANDUM

**SUBJECT:** *Joint Consultative Machinery—Procedure for processing the cases relating to arbitrable issues on which disagreements are recorded in the National Council/Departmental Council.*

\* \* \* \*

In a recent meeting they had with Cabinet Secretary, some members of the Staff Side of the National Council had expressed their concern over the delay in the implementation of the Awards given by the Board of Arbitration under the JCM Scheme.

2. The matter has been considered in great detail by the Committee of Secretaries in their meeting held on 8th April, 1988. The Committee have taken decisions on the procedure and time-Schedule for processing the case relating to arbitrable issues which are enumerated below. The Ministries/Departments are requested to follow the same—

(\*) Reproduced on pp. 110-113 of the JCM Brochure.

(1) Before a disagreement is recorded, the concerned Ministry *must obtain* approval of the Cabinet for the same. The Draft Note for the Cabinet may be prepared on the lines of the model Note already circulated by this Department O.M. No. 6/26/82—JCA dated the 17th November, 1982 and the case may be processed further without any unavoidable delay. After obtaining the approval of the Cabinet, the disagreement could be recorded formally in the Departmental Council concerned National Council. This procedure should be completed within two months' time from the date it is decided to record a disagreement.

Two months' time for recording disagreement

(\*) Reproduced on pages 56-57 of the JCM Brochure.

(2) If the Staff Side request for making a reference to the Board of Arbitration on the arbitrable item on which disagreement has been recorded, the request for reference to the Board of Arbitration in the prescribed form (enclosed with the O.M. No. 6/2/67-JCA, dated

Two months time for transmission of cases to Labour Ministry. Seven days time limit for transmittal of case to the Board of Arbitration by Ministry of Labour.

the 2nd Feb. 1968) alongwith an extract of the Cabinet decision for recording disagreement, may be forwarded to this Department (in duplicate), for onward transmission to the Ministry of Labour for making a reference to the Board of Arbitration. This should be done *with* two months of such a request from the Staff Side.

(3) The Labour Ministry would submit it for arbitration, within 7 days of the receipt of the case.

(4) It has also been felt that the case for the Govt. is not adequately argued before the Board of Arbitration and subsequently the Govt. is forced to reject the Award given by the Board of Arbitration. In order to ensure that all aspects of the case are fully and correctly presented to the Board of Arbitration, it has been decided that before the terms of reference are sent by the Ministry to this Department as envisaged in sub-para (2) above, the views of the Department of Personnel & the Ministry of Finance (Department of Expenditure) would be obtained as regards how the case should be presented before the Arbitrators.

(5) Before accepting/rejecting an Award, the case would be placed before the Committee of Secretaries after which the concerned Department or Ministry would submit the case to the Minister of State in charge of the Department for acceptance/rejection of the Award. It is, therefore, requested that suitable action may please be taken to obtain the approval of the Committee of Secretaries before accepting/rejecting the Award. In the event of the Award being accepted with the approval of the Committee of Secretaries, the Orders may be issued straightway under intimation to this Department. In the event of rejection of the Award, as approved by the Committee of Secretaries necessary action may be taken according to the Standing instructions for obtaining the approval of the Cabinet for placing suitable statements on the Table of both Houses of Parliament as required under para 21 of the JCM Scheme.

Six months time for laying statements in Parliament.

(6) After the decision (Award) of the Board of Arbitration is received, the Award would either be implemented or statements laid on the Table of both the Houses Parliament within six months (proposing modifications rejections of the Award).

(7) As soon as Government have laid on the Table of both Houses of Parliament, their statement for modification/rejection of the Award, the Secretary of the Staff Side of the National Council or of the Ministry/Department concerned would be suitably informed.

(8) The JCM cell of the Department of Personnel would monitoring the National level JCM cases and individual Departments would monitor cases with which they are concerned. However, the Department of Personnel will collect information from all.

(9) Guidelines for monitoring the cases as above are being issued separately.

(SMT. K.N.K. KARIHIYANI)  
DIRECTOR (JCA)

## Appendix—II

(See Para 1.7 of the Report)

Details of estimated expenditure of encashment of leave while in service for the year 1991-92

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1. Total number of employees	37 lakh
2. Number of employees retiring every year (as per Volume II of Fourth Pay Commission Report)	1 lakh (approx.)
3. Number of days of earned leave that can be accumulated in a year	30 days
4. Number of days that can be encashed on superannuation	240 days
5. Number of years required to accumulate earned leave of 240 days	8 years
6. With 1 lakh employees retiring every year, number of employees retiring in 8 years	8 lakh
7. Number of employees availing encashment while in service	37—8 = 29 lakh
8. Total expenditure on pay and allowance (1991-92)*	11469.12 crore
9. Pay+DA [85% of (8) above] for the year**	9748.75 crore
10. Pay+DA for a month	812.39 crore
11. Pay+DA for 15 days (leave encashment allowed is for 15 days)	406.19 crore
12. Leave encashment while in service by 29 lakh employees	$29/37 \times 406$ =Rs. 318.2 crore

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\* As per expenditure Budget 1992-93 Vol. I (Annexure-7, pages 80-81) issued by Ministry of Finance.

\*\* As per Brochure on Pay & Allowances of Central Government civilian employees 1990-91 (PIE CHART ON PAGE 1 showing percentages of Pay and DA etc.) with reference to total expenditure issued by Ministry of Finance, Department of Expenditure (Pay & Research Unit).