

COMMITTEE ON PETITIONS

(EIGHTH LOK SABHA)

SIXTH REPORT



[Presented to Lok Sabha on 12 May, 1988]

**LOK SABHA SECRETARIAT
NEW DELHI**

May. 1988/Vaisakha. 1910 (Saka)

Price : Rs. 23.00

Corrigenda to the Sixth Report
of the Committee on Petitions
(Eighth Lok Sabha)

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**COMPOSITION OF THE COMMITTEE ON PETITIONS
(1987-88)**

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Shri Balasaheb Vikhe Patil

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3. **Shri Teja Singh Dardi**
4. **Shri Anadi Charan Das**
5. **Shri Digvijaya Singh**
6. **Shri Debi Ghosal**
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15. **Ch. Sunder Singh**

SECRETARIAT

Shri K.C. Rastogi—*Joint Secretary*

Shri G.S. Bhasin—*Chief Legislative Committee Officer*

Shri O.P. Chooria—*Senior Legislative Committee Officer*

SIXTH REPORT OF THE COMMITTEE ON PETITIONS (EIGHTH LOK SABHA)

I

INTRODUCTION

1.1. I, the Chairman of the Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Sixth Report of the Committee to the House on the following matters :—

- (i) Representation from Miss Sangeeta Bahuguna, Front Office Assistant (Grade V) Samarat Hotel, New Delhi regarding withdrawal of resignation and reinstatement in service.
- (ii) Representation regarding application of rules made under chapters 4 to 9 and other provisions of Monopolies and Restrictive Trade Practices Act, 1969, to Government Companies, Cooperative Societies, Financial Institutions etc.
- (iii) Representation regarding threatened closure of Benzine Hexa Chloride Plant of Hindustan Insecticides Ltd. located at Udyogmandal, Ernakulam, Kerala.
- (iv) Representation regarding fraud in Saving Bank Department of Akola Head Post Office (Maharashtra Circle).
- (v) Representation from Shri R.C. Dwevedi regarding reinstatement in service by I.I.T., Kanpur.

1.2. The Committee considered the above matters at their sittings held on 15 and 23 July, 9, 28 and 29 October, 24 November and 8 December, 1987, 18, 19, and 28 January, and 9 February, 1988.

1.3. In connection with the representation regarding threatened closure of Benzine Hexa Chloride Plant of Hindustan Insecticides Limited, located at Udyogmandal, Ernakulam, Kerala, the Committee undertook on-the-spot study visit to Ernakulam from 16 to 17 September, 1987 and held informal discussions with the representatives of the workers of the Plant and the Chairman and Managing Director and officials of the Ministry of Industry (Department of Chemicals and Petrochemicals).

1.4. The Committee wish to express their thanks to the Chairman and Managing Director of Hindustan Insecticides Ltd., for furnishing relevant information to the Committee in connection with the examination of the subject. The Committee also express their thanks to Shri Thampan Thomas, M.P. and representatives of workers of the Plant for furnishing the relevant information.

1.5. The Committee would also like to express their thanks to the officers of the Ministries of Tourism, Industry (Departments of Company Affairs and Chemicals and Petrochemicals) and Communications (Department of Posts) for making available the information required by the Committee.

1.6. The Committee considered the draft Report at their sitting held on 10 May, 1988 and adopted it.

NEW DELHI ;

10 May, 1988

20 Vaisakha, 1910 (Saka)

BALASAHEB VIKHE PATIL,

Chairman,

Committee on Petitions.

II

REPRESENTATION FROM MISS SANGEETA BAHUGUNA, FRONT OFFICE ASSISTANT (GRADE V) SAMRAT HOTEL, NEW DELHI REGARDING WITHDRAWAL OF RESIGNATION AND REINSTATEMENT IN SERVICE

2.1. Miss Sangeeta Bahuguna, 946, Baba Kharag Singh Marg, New Delhi-110001 submitted a representation (Appendix I) to the Committee on Petitions on 26 August, 1986, regarding withdrawal of her resignation and reinstatement in service.

A. Petitioner's grievances and demands

2.2. In her representation the petitioner had stated that she was appointed as Front Office Assistant (Grade V) in the Samarat Hotel in May, 1986 on probation for a period of three months. In June, 1986, one of her colleagues was suspended by the hotel management and in the inquiry against him she had been asked by her senior officer to give evidence against her colleague. While disposing in the enquiry proceedings, Miss Sangeeta Bahuguna reportedly stated facts which were not liked by her senior officer. The result was that her immediate officer got annoyed and started victimising her giving memo on petty matters. When Miss Bahuguna met the Personnel Manager, he advised her to tender resignation and since she was in a disturbed mood, in a fit of emotions she tendered her resignation.

2.3. Miss Bahuguna stated that her resignation was not accepted by the competent authority. She also requested that her resignation may be treated as withdrawn and she should be reinstated in service.

B. Comments of the Ministry of Tourism (Department of Tourism)

2.4. The representation of Miss Bahuguna was referred to the Ministry of Tourism on 29 August, 1986, for obtaining factual comments. In their note, dated 24 December, 1986, the Ministry of Tourism stated as follows :

“During probation period her work was not found satisfactory and inspite of repeated communications, she did not show any

improvement in the work. It was, therefore, decided by the Management of ITDC to terminate her services. However, before issue of termination orders Miss Bahuguna herself tendered resignation which was accepted. As regards deposition in departmental enquiry against one of Miss Bahuguna's colleagues, she had herself repeatedly maintained that she was not deposing under any pressure from any side.

In view of the unsatisfactory performance of Miss Bahuguna during her probation period and her subsequent voluntary submission of resignation which was duly accepted by the competent authority, it has not been found possible to accede to her request for withdrawal of resignation and reinstatement in service."

In their further note dated 15 April, 1987, the Ministry of Tourism (Department of Tourism) forwarded the factual report received by them by ITDC wherein they have, *inter alia* stated as follows :

"The performance of Miss Sangeeta Bahuguna during her probation in the 2nd month was found to be unsatisfactory in respect of 'Interest in work' and 'Regularity and Punctuality.'

These adverse remarks were duly communicated to her but she did not improve upon her performance.

She was further advised *vide* memorandum dated 30.7.1986 for taking her job seriously at the Reception Counter.

She was again advised in August, 1986 to refrain from behaving rudely with her supervisor *vide* memorandum dated 17.8.1986.

During the 3rd month of her probationary period her performance was assessed as 'unsatisfactory' as she was lacking in the following fields :

- (a) Job Knowledge.
- (b) Co-operation.
- (c) Initiative.
- (d) Interest in work.
- (e) Integrity and loyalty.
- (f) Dependability.

The Reporting Officer in the performance Report summed up her performance as under :

'She is still weak in her knowledge of Front Office Procedures and Statistical work. With more initiative and interest in work, she could have by now picked up the entire job. Personal counselling and other communications did not help. She has not shown a positive attitude towards work'.

The Probationary Report was put up to the Acting General Manager, as General Manager was away on tour abroad. He, being the Competent Authority, rated over-all performance during the probationary period as 'Unsatisfactory' and passed orders for terminating her services in accordance with the terms of her appointment.

In the meantime, Miss Bahuguna submitted her resignation before the orders to terminate her services were communicated to her. Since she had tendered her resignation, the Competent Authority decided to accept the resignation with immediate effect.

It is absolutely wrong that any of the Senior Officers pressurised her to depose in a particular way in the departmental enquiry against one of her colleague. In her deposition before the Enquiry Officer, Miss Bahuguna repeatedly maintained that she was not deposing under any pressure from any side.

It is also wrong that anybody forced her to submit resignation. The acceptance of resignation was not at all related to her deposition in the departmental enquiry against her colleague.

It will be seen from the above that no injustice has been meted out to Miss Sangeeta Bahuguna. In view of the unsatisfactory performance of Miss Bahuguna during her probation period and subsequent voluntary submission of resignation by her, which was duly accepted by the Competent Authority, it is not possible to accede to her request for withdrawal of resignation and reinstatement in service."

2.5. The Committee on Petitions considered the matter at their sitting held on 23 July, 1987. The Committee were not satisfied with the explanation given by the Ministry of Tourism (Department of Tourism) and felt that the case needed further consideration and accordingly decided to take oral evidence of the petitioner and thereafter, if necessary, call the representatives of the Ministry of Tourism (Department of Tourism) for evidence.

2.6. The Committee at their sitting held on 9 October, 1987 examined the petitioner in connection with her petition and re-instatement in service. She stated in her evidence that on receiving the very first memo., she could realise that it was a case of harassment as she had tendered evidence against the wishes of the management.

2.7. Asked why she tendered resignation on her own, she replied that in view of future prospects she thought it proper to resign rather than her services being terminated by the management. She also stated that the Labour Union, of which she was a member, was fighting her case.

2.8. The Committee enquired whether she was still interested in rejoining ITDC if her case was considered favourably for reinstatement in service, the petitioner, stated that her present job was a better one. However, if she was given the same benefits that she was enjoying now, she would prefer to rejoin. She further added that first of all, she should be given salary for all the months after her forced resignation. Secondly, she should be given a job equivalent to the one that she was holding now.

2.9. The Committee, at their sitting held on 1 December, 1987, examined the representatives of the Ministry of Tourism (Department of Tourism) and Hotel Samarat. During evidence before the Committee the Director General of Tourism informed the Committee that the Labour Union had gone to the Conciliation Officer appointed by Delhi Administration and the Conciliation Officer had referred Miss Bahuguna's case to the Labour Court and once the case was referred to the court, it became *sub judice*.

2.10. The Committee was further informed that the case had been referred to the Labour Court in July, 1987. Asked to state the reasons why the Committee had not been apprised earlier about the reference of the case to the Labour Court, the Director General of Tourism, expressed his regrets for not informing the Committee earlier and stated that this was a lapse.

2.11. The Committee pointed out that on humanitarian grounds a settlement needs to be arrived at outside the court so as to give justice to the petitioner. It was further pointed out that if the petitioner was re-employed, the matter could be closed. The representative of the Ministry replied that it would not be proper to take the petitioner back in service in the same hotel, but she could be absorbed in some other hotel in Delhi.

2.12. Thereafter an offer of appointment to a temporary post of Front Office Assistant in Qutab Hotel of ITDC, was made to the petitioner. The petitioner, however, declined the offer of appointment as she considered it a fresh offer of appointment. She also felt that she was also not being properly compensated for her past service in the Hotel.

C. Observations/recommendations of the Committee

2.13. The Committee are unhappy to note that the petitioner, Miss Bahuguna, had to resign from the post of a Front Office Assistant in Samarat Hotel under some peculiar circumstances. According to her, she was forced to resign because of the attitude of some of her senior officers. However, according to the management, her work during the probation period was not found satisfactory and before termination orders could be issued, she herself chose to resign.

2.14. At the intervention of the Committee, a fresh offer of appointment to the post of a temporary Front Office Assistant at Qutab Hotel, New Delhi, was made to Miss Sangeeta Bahuguna by the Managing Director, Indian Tourism Development Corporation. However, the same was not acceptable to her as according to her it did not compensate her for past service in the Samarat Hotel. Under the circumstances the Committee do not wish to pursue the matter further.

III

REPRESENTATION REGARDING APPLICATION OF RULES MADE UNDER CHAPTERS 4 TO 9 AND OTHER PROVISIONS OF MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 TO GOVERNMENT COMPANIES, COOPERATIVE SOCIETIES, FINANCIAL INSTITUTIONS ETC.

3.1. Dr. G. Vijaya Rama Rao, M.P. forwarded a representation dated 24.3.1986 signed by Prof. Manubhai Shah, Managing Trustee Consumer Education and Research Centre, Ahmedabad and others regarding application of rules made under Chapters 4 to 9 and other provisions of MRTP Act, 1969 to Public Undertakings, cooperative societies, financial institutions etc.

3.2. The main points raised by the petitioners were as follows :

- (i) There was urgent need for protection of the consumers against restrictive trade practices and unfair trade practices indulged in by Cooperative Societies, Public Undertakings or Government Corporations etc. which were at present exempt from the provision of the Monopolies & Restrictive Trade Practices Act, 1969.
- (ii) Many of these Undertakings were carrying on industrial, commercial and trading activities affecting the consumers at large and many of them enjoyed monopolistic status leaving no scope for competition.
- (iii) A number of complaints were being received by Consumer Organisations against the Cooperative Societies as well as the State and Central Government Undertakings regarding their services and also quality of their products.
- (iv) The State owned bodies, though not subject to the MRTP provisions, took shelter of provisions of this Act to protect their interest.
- (v) That the Ministry of Industry and Company Affairs, New Delhi may be directed to issue notification under Section 3 of the Act so that Chapters 4, 5, 6, 7, 8, and 9 and rules etc. made under these

chapters and other relevant and related provisions of the Monopolies and Restrictive Trade Practices Act, 1969 be made applicable to Cooperative Societies, Financial Institutions, Government Corporations, Central Government or State Undertakings etc.

3.3. The Ministry of Industry (Department of Company Affairs) in a factual note dated 21.7.1986 stated as under :

“Under section 3 of the MRTP Act, unless the Central Government otherwise directs, the Act does not apply to the categories of undertakings owned or controlled by—

- (a) a Government company ;
- (b) the Government ;
- (c) a corporation set up under State/Central Act ;
- (d) a co-operative society registered under State/Central Acts relating to co-operative societies.

The Act also does not apply to trade unions, financial institutions and undertakings whose management has been taken over by Central Government under any law.

Section 3 of the Act itself provides that unless the Central Government by notification, otherwise directs, the Act shall not apply to certain categories of undertakings. Section 54 of the Act empowers the Central Government to issue or give conditional directions or directions with certain limitations and restrictions. Thus, the Central Government has been empowered under the law itself to partially withdraw, by notifications, the exemption presently available to co-operative societies, Government undertakings, etc. The petitioners have only prayed for issue of notification under section 3 of the MRTP Act and not for any amendment of the Act. Accordingly, the subject matter of the petition is one for which “remedy is available under the law” through notification.

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Notwithstanding the position stated above, for the information of the Lok Sabha Secretariat it may be mentioned that certain proposals for amendment of the MRTP Act, including the question of bringing Government companies and co-operative societies within the purview of the provisions relating to monopolistic, restrictive and unfair trade practices, with a view to providing better protection to consumers, are under consideration of the Government.”

3.4. The Committee took evidence of the Managing Trustee, Consumer Education & Research Centre (Shri Manubhai Shah) in connection with the petition.

Explaining the purpose of the petition, the witness stated :

“There is a provision called Section 3 under which the provision of the MRTP Act are not applicable to government undertakings, government companies, cooperative societies, financial institutions and so on and so forth. The MRTP Act consists of two basic sets of provisions. (i) It contains Chapters III and III (a) which deal with concentration of economic power, acquisition and amalgamation of undertakings, transfer of shares, etc. The second set of provisions which essentially affect the consumer are three different kinds of practices ; monopolistic trade practice, restrictive trade practice and unfair trade practice. These trade practices followed by any of the undertakings in the country hurt the consumer’s interest.....In respect of goods or services provided to the consumer, now it hardly makes any difference to the consumer whether the supplier happens to be a government company or a private company. So far as the consumers are concerned, it does not make any difference to them from where they come ; so far as consumers are concerned, there is no difference whether goods come from one sector or the other ; and that is where we felt that, the protection which is intended to be provided and the machinery called MRTP Commission which provides quick and inexpensive remedy compared to judicial forums and courts, if those provisions are made applicable to government companies, public undertakings and cooperative societies, then consumers who are being hurt in respect of either one of these trade practices, they can avail of the remedy.

3.5. Justifying the need for change in the provisions of MRTP Act so as to make them applicable to government undertakings etc., the witness explained :

“The discretion had been vested in the Central Government. Now the time has come that the discretion should be exercised, the reason being that the government companies are not now unlike in the past engaged in the manufacture of steel or production of coal. Now the government companies also make electronic goods, scooters, electric fans, etc. All consumer products are there which are being made by the government and cooperative societies. As a result, as consumers are concerned, that makes a difference in terms of getting protection. So, the whole national scene has changed.”

3.6 When the Committee pointed out that the public undertakings and government companies were answerable to Parliament, the witness stated :

“First of all, the accountability which you have in mind is between the MPs and the respective undertakings. No public hearing, no public participation takes place. We are referring about the consumer who has to get relief. Relief can be by a direction to the companies not to indulge in restrictive or unfair trade practices. This Kind of relief which is directly available to the individual consumers cannot come from the accountability to Parliament which you have referred to because one is aimed at providing cheap and inexpensive remedy to the consumers. Second is whether those undertakings to whom Government has been giving assistance by way of protection or profitability have utilised it properly. The two objects and the *modus operandi* are totally different. One can never be a substitute for the other.”

3.7. On being pointed out by the Committee that the Consumer Protection Act would take care of some of the unfair practices indulged in by the companies, the witness replied :

“The Consumer Protection Act only deals with trade practices. The Consumer Protection Act does not deal with restrictive and monopolistic trade practices. That means the consumers will not have any protection whatsoever so far as the restrictive trade practices and monopolistic trade practices are concerned. Secondly, there is a snag in the Act. The snag is that the Consumer Organisation or consumer can lodge a complaint only if the consumer has suffered loss or damage on account of unfair trade practice.

3.8. Asked whether with the application of provisions of MRTP Act to public undertakings etc. the consumers will not be exploited by the public undertakings, the witness stated that the point to be emphasised was that if MRTP Commission’s jurisdiction was made applicable to the public undertakings the consumers could straightway go to MRTP Commission for quick and inexpensive remedy of their grievance and they need not go to the Courts which would save their time and money.

3.9. Explaining the reasons for exempting the Government Companies, Public Sector Corporations and Cooperative Societies from the purview of MRTP Act, the Additional Secretary, Department of Company Affairs stated :

“As far as the question of unfair trade practices is concerned, as has been intimated to the Committee, the Consumer Protection Act has since come into force. The Act deals with the unfair trade practices, and it covers all undertaking whether public, private or cooperative. The definition of unfair trade practice made in this Act has been borrowed from the MRTP Act. Whatever provisions are there in the MRTP Act get covered in this latter Act *i.e.* Consumer Protection Act

to the extent Government undertakings are brought within the ambit of the new Act, after it came into force.”

3.10. In regard to the application of the provisions of the MRTP Act relating to restrictive and monopolistic practices to Government bodies and cooperatives, the Additional Secretary stated that the question whether the exemption granted under Section 3 should be withdrawn, had been under the consideration of the Government and a final decision in that regard was expected to be taken very shortly.

3.11. Elucidating further, the witness stated that the degree of supervision which Govt. exercised over public sector companies was there which was not there in the case of private sector companies. It was further stated that while the restrictive practices of private sector companies would always go against the interest of the consumers, there could be circumstances where some practices followed by public sector companies could be in the interest of the country as a whole. For example, the administered prices fixed by Government might be meeting the requirements of the economy, although in certain cases they might be construed as restrictive practices.

The witnesses further added :

“The administrative Ministry is always there. In case there is any case of an unfair or restrictive practice hurting the consumer, then the consumer can go to the Ministry which is another forum available. This is not available where private sector is concerned. In the private sector, the administrative Ministry can hardly do anything than going to the company-except where it comes within the MRTP Act.”

3.12. Asked to state whether Government ever issued any conditional directions or directions with certain limitations and restrictions in relation to any cooperative society or undertaking, the representative of the Ministry stated :

“Section 3 of the Act can become applicable by a direction through a notification; but evidently, Government has not decided to issue any such notification. So, there has been no notification, and consequently no direction.”

3.13. In reply to a further query by the Committee, the witness clarified :

“May I submit that right now what is being considered by the Government is an amendment of the Act to take away that exemption. If the Government decides to amend the Act, then it is an omnibus amendment. If the Government does not decide

to amend the Act, then the question whether any particular notification is to be issued separately may need to be considered."

3.14. The Committee enquired whether any instances of malpractices indulged into by the public sector companies had been brought to the notice of the Government. The representative of the Ministry stated :

"We got the report from the Director General of Investigation who looks after the complaints made in respect of those cases which are to be taken up before the MRTP Commission. He has mentioned that some cases of Public Sector Undertakings have also been brought to his notice. We do not have the whole compendium here. From his report it is seen that he did come across a few cases where letters have been sent to him mentioning something against public sector companies."

3.15. As to the result of investigation into these malpractices, the representative stated :

"Under the Act the Director General cannot investigate these complaints because these companies are not covered by the Act. He took up these matters with the companies on his own and I suppose that the companies must have done the needful to see that if the complaint is genuine, they be taken care of."

3.16. The Committee desired to know whether any and if so what action was taken by Government in the interest of consumers when any complaint of malpractice by a Government Company came to notice. To this, the witness replied :

"As far as public sector undertakings are concerned, under the Act we cannot do anything because they are exempted so far. But as far as private sector undertakings are concerned, even based on advertisement, if the advertisement is found to be misleading, then the Director General can put it before the MRTP Commission and then the company is called and the whole proceedings take place to see whether any action is necessary to stop that particular kind of advertisement or a particular unfair trade practice."

Observation/Recommendations of the Committee

3.17. Section 3 of the MRTP Act, 1969 provides that unless the Central Government by notification otherwise directs the Act shall not apply to certain categories of undertakings like Government companies Corporations and Cooperative Societies etc. No notification has so far been issued by Government to bring these organisations

within the purview of the Act and hence Government companies, public undertakings and cooperative societies continue to be exempt from the provisions of the Act. As a result the consumers in the country are denied the availability of a quick and inexpensive remedy for the redressal of their grievances against the monopolistic, restrictive or unfair trade practices indulged in by these organisations, MRTP Act provides a remedy and the MRTP Commission is the forum to which the consumers look for protection. Wherever the consumer's interests are hurt or harmed by monopolistic, restrictive or unfair trade practices indulged in by private sector enterprises, relief can be sought through the MRTP Commission but when the Government companies and Cooperative societies indulge in any objectionable trade practices the forum of the MRTP commission cannot be made use of at present by the aggrieved consumers.

3.18. Since the subject of consumer protection has been given the recognition it deserved by the enactment of the Consumer Protection Act, 1986, it is necessary that the impediments in the proper enforcement of the Act are also removed at the earliest. Undoubtedly one of the major bottlenecks in the implementation of the Consumer Protection Act is that at present it covers only unfair trade practices indulged in by the Government companies and cooperative societies. The monopolistic and restrictive trade practices of Government companies and cooperative societies are beyond the pale of the present Act and unless a proper notification under Section 3 of the MRTP Act is issued, these activities of Government companies etc. cannot be brought within the fold of Consumer Protection Act. The Committee have been informed that the matter is under the consideration of the Government.

3.19. It is a matter of common knowledge that most of the Government undertakings and cooperative societies are now carrying on a vast variety of industrial, commercial and trading activities affecting the consumers at large and many of them enjoy monopolistic position leaving no scope for competition. Under the circumstances the need for protection of consumers' interests and strengthening the consumer movement cannot be over emphasised. Furthermore if the provisions of restrictive and unfair trade practices are not made applicable to Government undertakings and cooperative societies an alibi is available to the private sector to indulge in restrictive and unfair trade practices on the ground that they are doing so with a view to counter-acting similar practices being followed by Government companies and Cooperative societies. The Committee consider that in view of the steadily increasing number of complaints against the cooperative societies and Government undertakings being recei-

ved by the consumers organisations, appropriate action needs to be taken to ensure that such undertakings/cooperative societies are made accountable for the quality of their products and the services they render.

3.20. The Committee are therefore of the considered opinion that the time has come when the Government should give serious thought to the question of withdrawing the exemption given to Government companies and cooperative societies and bring them within the jurisdiction of MRTP Commission.

3.21. The Committee desire that necessary notification in this regard be issued without further delay.

IV

REPRESENTATION REGARDING THREATENED CLOSURE OF BENZINE HEXA CHLORIDE PLANT OF HINDUSTAN INSEC- TICIDES LIMITED LOCATED AT UDYOGMANDAL, ERNAKULAM, KERALA

4.1. Shri Thampan Thomas, M.P. submitted a representation dated 3 April, 1986, regarding threatened closure of Benzine Hexa Chloride (BHC) Plant of the Hindustan Insecticides Limited. (HIL)

4.2. It was alleged in the representation that the move to close down the BHC Plant was the result of the refusal of the Ministry of Health and Family Welfare to renew the contract for procurement of BHC from HIL from 1st April, 1986. It was also pointed out that HIL had commenced production of BHC only to meet the requirements of the Ministry of Health for its National Malaria Eradication Programme. In fact the BHC Plant had been set up in 1972 only to assist the National Malaria Eradication Programme. The representation further stated :

“The decision of the Union Ministries has been very unfortunate and requires serious review. A national programme like NMEP can be and should be fully supported by the public sector unit and the sudden decision not to renew the contract with HIL has no justification whatsoever. In fact, the entire implementation of NMEP has shown that the public sector unit of HIL has fully met the requirements of this programme both in quantity and quality. The shift to the private sector and the resulting dependency on the private sector for BHC supply for an important social goal like NMEP cannot serve any useful purpose.”

4.3. The Committee called for facts from the Ministry of Industry (Department of Chemicals and Petrochemicals). In a letter dated 17 October, 1986, it was *inter alia* stated :

“The Hindustan Insecticides Ltd. (HIL) a Govt. of India undertaking, under the administrative control of this Deptt. and HIL's subsidiary namely Southern Pesticides Corporation Ltd. (SPEC), Kovvur (Andhra Pradesh) have been making supplies for the National Malaria Eradication Programme (NMEP). While HIL supplies BHC 50% WDP and Malthion, the SPEC was supplying BHC 50% WDP only. The

sale price for these materials is fixed by the Cost Accounts Branch of the Ministry of Finance in consultation with Ministry of Health. Towards the end of March, 1986, the Central Ministry of Health and Family Welfare (Deptt. of Health) issued a letter bearing No. T 14014/10/86—MAL dt. 13/17.3.86, stating that the purchase of BHC for the requirement of the States under NMEP had been decentralised and the Central Government will not procure this material from SPEC/HIL during 1986-87. After the receipt of the letter, representations were made by HIL and SPEC because the decision was detrimental to their interests and would jeopardise the production arrangements which had been set up as captive to the requirement of NMEP. We, therefore, had prolonged discussions with the Ministry of Health and they have arranged to have the supplies of about 50% WDP being made by the HIL & SPEC to NMEP. While this quantity is much less than the supply of about 9000 MT made by these organisations to NMEP in 1986-87, yet we have been informed that some more quantity is likely to become available. This is, however, not a long term solution to the problem created by the decision of the Ministry of Health and, therefore, discussions are still in progress to come to a workable arrangement in this regard.

As regards Malthion the breakthrough has not yet occurred under the NMEP but it is possible that some quantities thereof may be supplied soon by HIL to Andhra Pradesh in order to prevent the spread of any diseases in the wake of recent floods in that State.

From the above it would be seen that while no unit has closed down at present, there is a definite threat to the continued functioning of HIL & SPEC unless a workable arrangement to enable them to make supplies under NMEP is entered into. This matter, alongwith the question of diversification of the production arrangements of HIL/SPEC is under consideration."

4.4. The letter dated 13.3.1986 from the Department of Health addressed to the Managing Director, M/s Southern Pesticides Corporation Ltd., Hyderabad reads as under :

"There have been several references from the State Governments that the cost of BHC produced by SPEC is higher than the cost of this insecticide in open market. In the year 1985-86, several States were allocated BHC, which was to be procured by the Central Government from SPEC, but these States failed to give distribution/consignee list and some of them even refused to accept the material because of high cost.

It has, therefore, been decided to decentralise the purchase of BHC to the States therefore, the Central Government will not procure this material from SPEC during 1986-87."

4.5. The Secretary, Ministry of Industry (Department of Chemicals and Petrochemicals), who tendered evidence before the Committee on 28.1.88. explained the position as under :

“The National Malaria Eradication Programme is being implemented by the Health Ministry. One of the products increasingly used in this programme was BHC. It was to cater to the requirements of the NMEP that this unit at Udyogmandal was set up and later on the unit in Andhra Pradesh was set up to cater to the requirements of NMEP. Upto 1985-86, we were supplying the full requirements of the NMEP under the centralised system of purchase by the Health Ministry. The total requirement of BHC in the country is 45,000 tonnes. So, the full capacity of HIL is utilised, there is still scope for purchasing 35-36 thousand tonnes from the private sector.

The Health Ministry sent us a letter saying that they had received representations from States that the prices quoted by us were too high and that they had discontinued the system of centralised purchase. Since then we have been representing to the Health Ministry on various grounds. When we did not receive a favourable response to our letters, on the 25 January, 1988, we sent a letter, addressed from the Minister of State for Chemicals to the Minister of State for Health requesting him to convene a meeting where the officers of the Ministry of Health and the officers of HIL could be present with a view to remove all the doubts that the Ministry might have regarding supply, quality and other matters.

4.6. The witness further added :

“This unit is supplying high quality products. This particular plant of BHC is not capable of being used for manufacturing any other product. As this plant capacity constitutes only a small portion of the total requirement of BHC for the NMEP, therefore, instead of allowing this unit to close down for want of orders and allowing the workers to be without employment, we request that full quantity should be purchased from us by the Ministry of Health. This is our submission and we would request you also to kindly support us on the proposal that we have made.”

4.7. In regard to the quality of the products of HIL and their prices, the witness stated :

“As far as quality is concerned, HIL is subjected to most stringent quality control in the sense that every batch is inspected, and sent to the laboratories for checking. Then it is examined by the officers of the

NMEP at the plant itself and by those who receive it. HIL is not doing the costing on their own ; the costing is done by the Ministry of Finance. So, it is the Government which is doing the costing and the prices are fixed by them.”

4.8 As to the efforts made by the Ministry to persuade the Ministry of Health to make purchases of BHC, the witness stated :

“We have tried that at various levels, at various Departments, pursued the Health Ministry that 50% assistance given by the States should be in the form of kind and part of it should be in the form of BHC. To some extent our efforts have succeeded. When the policy had not been accepted for the two preceding years, the Health Ministry had placed orders for BHC on HIL. This year the orders have ultimately reached for full capacity of 9,000 tonnes. For 1986-87 and 1987-88 they have given us orders which constituted about 90% capacity. But this is on *ad hoc* basis. HIL till December could not know whether they are going to get orders and if they get, how much orders they would get. But here there is a state of *ad hocism* and there is always uncertainty. We have told the Ministry of Health that this kind of uncertainty should be removed.”

He added :

‘We are not closing down this plant now. But our point is that there is uncertainty. Tomorrow if the Health Ministry does not lift it from us, there is uncertainty. Next year, if they do not lift it from us, then there will be problem.

4.9 The Committee enquired whether any study had been made with a view to modernise the plants at HIL and also to make them work more efficiently. To this the representative of the Ministry replied :

“I will divide this into two parts. One is taking HIL as a whole, the Department has made a complete study and we have realised that we should not depend permanently on orders from the Health Ministry only. We should go into products where we can compete with the private sector and based on that, the HIL is already implementing two projects in Bombay. Both these projects will be completed by the end of this year and we have already started some seed marketing and the response is very good. Secondly, in Udyogmandal itself we have started facilities for manufacturing Endosulfan. It has been already started and we have been very successful.

We have also prepared a programme for the Unit to go in for more modern pesticides. The result will be that from next year onwards, the

unit's profitability will improve and they will be going to wider range of products. So far they were going in only for DDT, BHC and Malathion. Now they have diversified and working on commercial lines. The Ministry will give them full autonomy from next year. The result will be obvious.

As far as the unit in Udyogmandal is concerned, there is little scope for modernisation of BHC because its technology has not been upgraded. This is an old Plant. If we know that it has operated at 100% capacity, we can put in some efforts and money in trying to reduce the cost. But there is no significant possibility of modernising this BHC Plant. There is scope for diversifying of HIL product range and these efforts are going on. As far as BHC equipment is concerned, it cannot be used for any other product."

Reacting to a suggestion about the utilisation and modernisation of the equipment, the representative of the Ministry agreed to get this matter studied by the parent company in Japan or any other competent consultant.

4.10 The representative of the Ministry also pointed out that along with BHC the Ministry of Health had decentralised the purchase of another product malathion. Giving details in this regard, he stated :

"There is another product for which a plant was set up for making Malathion. It is worse than BHC. Malathion production is totally discontinued. We are more concerned about the future of the workers at Rasayani than the workers in Kerala. At present, in Rasayani, we are putting up two new plants. We have not engaged any new workers. We will try to absorb malathion workers in these new plants. But the problem is this : in the years 1987-88 and 1988-89 Malathion plant has no orders at all. We, in fact, have got some stocks of malathion. It is a direct product. We buy the ingredients and make malathion. Our capacity is 3200 tonnes, whereas India's requirement is 15000 tonnes. All private Companies are supplying this."

4.11 When asked to state the reasons why the Unit was not manufacturing malathion at its full capacity and from which country the technology was imported, the representative stated :

"They have decentralised this along with BHC. The States are not purchasing from us at all. We have been approaching the State Governments but they are giving 15 per cent price preference to SSI units located within their area. We are not able to compete with others because of this price preference. Therefore, we are trying to divert the workers of malathion. It will take one-and-a-half years to

do this. This is based on indigenous technology EXCEL is a private Company based in Gujarat and it is also producing this."

4.12 Asked about the export potentials of BHC to other countries, the representative stated that—"We have not explored the market so far. We have done it for Malathion but we have not done it for BHC, we will do that."

4.13 The Committee also examined the representatives of the Ministry of Health and Family Welfare on the representation regarding threatened closure of the Benzine Hexa Chloride Plant located at Udyogmandal, Ernakulam. While explaining the background of the case, the Additional Secretary of the Ministry stated as follows :

"We were running Malaria Eradication Programme from 1940 onwards right up to 1979-80. This scheme was being run as totally cent per cent centrally sponsored scheme. The National Development Council took decision in 1979-80, to run the scheme as 50 percent central share and 50 per cent State share. Till 1979-80, we had three units of H.I.L. located at Delhi, Kerala and Bombay. These units were manufacturing DDT, BHC and Malathion and the Central Govt. were purchasing these products *in toto* for Malaria Eradication Programme. From 1979-80 right upto 1985, we were getting the total amount of DDT as till today we pay hundred per cent for it. As far as BHC and Malathion is concerned, we were placing orders to HIL till 1985 and upto their capacity and the supply which went beyond their capacity, and the State Governments began to purchase these products locally through various units by calling tenders etc. Then they represented to us in December 1985 and early 1986 to purchase these products locally and we agreed to the suggestion of the State Governments."

4.14 When asked about the prices of DDT, BHC and Malathion manufactured by HIL, the representative of the Ministry stated that DDT is not manufactured by any other firm. As far as BHC is concerned, while HIL's price is about Rs. 9279/=per metric tonne, the market price ranges between Rs. 8000 and Rs. 9000. With respect to Malathion, she stated :

"As regards the price of malathion is concerned, there has been a substantial difference in the price quoted by HIL and the price which the State Governments of Maharashtra, Gujarat and Haryana were able to get locally from private entrepreneurs. The rate of HIL excluding the Central Sales Tax and freight charges was Rs. 20,713 per metric tonne to Rs. 24,354 per metric tonne in 1987-88 whereas Maharashtra and Gujarat quoted the price as Rs. 14,900 per metric tonne to Rs. 17,000 per metric tonne inclusive of Central Sales Tax

and freight. Haryana quoted the price as Rs. 15,500 per metric tonne inclusive of Central Sales Tax and freight."

To a further query whether the Ministry were placing their orders on the Units well in advance or just at the eleventh hour, the representative of the Ministry replied that "there had never been any delay. In some case it might have gone upto June but never beyond June."

4.15 Asked to state whether the terms of the contract which expired in April, 1986 would be extended further the representative explained as follows :

"As far as the total capacity is concerned, I could not find any record of the contract from our papers. I am still searching the same. In the meeting of the Secretaries' Committee held in 1976, there was a decision which says that the entire amount of insecticide produced by Delhi unit of HIL would be purchased by the Health Ministry, which we have been doing. I do not have any evidence to say anything about the other two units."

4.16 When asked to comment on the allegation that sub-standard products were being manufactured and supplied by private sector, the Secretary of the Ministry stated that "whatever we buy, we get it tested. Some States are so careful in this matter that the samples are sent in secret packings and we do not even know as to whose products we are testing."

In this connection, the Deputy Director (NMEP) informed the Committee as under :

"There are appropriate specifications laid down. Actually, the states are responsible for this and we are not getting any feedback whether they are getting any substandard material. The HIL material is one hundred per cent tested."

4.17 The Joint Secretary in the Ministry clarified the position thus :

"We are discussing three items viz. DDT, BHC and Malathion. In respect of DDT, there is no private manufacturer. It is all in the State sector. We are funding the entire supply. We place the order on HIL. There is no problem. In respect of BHC the total capacity of the Kerala unit and the one at Hyderabad is of the order of 9,000 tonnes. Upto 1979 when this scheme was 100% Centrally sponsored, we were purchasing all the material *i.e.* whatever capacity was there ; and regarding the amount required in excess of that capacity, we were purchasing it through DGS & D. We used to float tenders, then purchase and supply. After 1979, by a decision of the

National Development Council, this was made a 50-50 affair *i.e.* a combined Central and State Governments scheme. Then we allowed State Governments to procure BHC and Malathion from other sources. Whatever capacity HIL had, we used to purchase it. When the demand was more, the States purchased the additional quantities through their own purchase mechanism. In 1974-75, 3 or 4 States wrote to the Central Government saying that they would not accept our Malathion and BHC because they were able to purchase them at cheaper rates. So, they said "Instead of supplying us in kind, please give us money. Because we are contributing 50%, we will purchase ourselves. In Maharashtra, the Agro-Industries Corporation had encouraged many units to manufacture BHC and Malathion. Similarly, in Punjab, on the one hand they said they had encouraged their own Agro-Industries Corporations to set up these units, and they were able to supply at lower rates; and so, the States should be allowed to purchase from them. If you go through the statistical analysis, you will find that there is no problem as far as DDT is concerned, because there, there is no private manufacturer. In respect of BHC, whatever capacity they had, we were able to purchase through our order. Only in respect of Malathion we were not able to place order, because there is a sharp difference in price, to the extent of Rs. 2,000 or Rs. 3,000.

4.18. On a point whether the Ministry would give any guarantee that the entire production of HIL would be procured in order to avert the threat of the closure of the Unit, the representative stated as follows :

"As far as DDT is concerned, we can take that responsibility. But as far as BHC and Malathion is concerned, the State Governments are supposed to buy them. We will put it up before the Health Secretaries meeting at least to let us know for how much quantity we can place order on their behalf in the first quarter itself."

4.19. The Committee suggested that the Ministry of Health should purchase BHC and Malathion for two or three years, by which time HIL would be in a position to diversify. In this connection, the representative stated :

"I will place your suggestion before the Health Secretaries. The Government of India cannot finance the purchasing of BHC and Malathion because that is supposed to be done by the States themselves."

Observations/Recommendations of the Committee

4.20. The Committee note that Hindustan Insecticides Ltd. (HIL), Ernakulam and its subsidiary namely Southern Pesticides

Corporation Ltd. (SPEC), Kovvur (A.P.) have been supplying BHC and Malathion to the Ministry of Health for the National Malaria Eradication Programme (NMEP). The total production of about 9,000 M.T. of BHC produced at these two units was thus being used for the National Malaria Eradication Programme upto 1985-86, under the centralised system of purchase by the Ministry of Health. The total requirement of the Ministry of Health for BHC being of the order of 45,000 tonnes the balance quantity of 36,000 tonnes was being procured from private sector. Towards the end of March, 1986, the Ministry of Health issued a letter stating that the purchase of BHC for the requirements of the States under the NMEP had been decentralised and hence there would be no procurement of BHC by the Ministry of Health from HIL/SPEC during 1986-87 and thereafter. Since HIL and SPEC had been set up as captive units for producing BHC for use under the National Malaria Eradication Programme, the Health Ministry's decision to discontinue procurement of BHC naturally jeopardised the production arrangements at these units. The matter was taken up by the Department of Chemicals & Petrochemicals with the Ministry of Health but no workable solution has so far been found. Thus in a purely inter-departmental dispute which should and could have been sorted out by mutual discussions, the Committee have been called upon to intervene through the device of a petition from the employees of HIL a public sector undertaking.

4.21. As the production capacities at HIL and SPEC had been specially created for catering to the requirement of the National Malaria Eradication Programme and there is no other use of the products of these undertakings, the Committee feel that the Ministry of Health cannot unilaterally terminate these arrangements. The reason given by the Ministry of Health for doing so was that the States, who are the ultimate users, have refused to accept BHC produced in these units because of its higher cost vis-a-vis the supplies received from private sector companies. Similarly the price of Malathion produced by HIL was stated to be much higher than the prices at which private sector units were making the supplies. According to the Ministry of Industry the price of BHC supplied by HIL/SPEC is fixed by the Cost Accounts Branch of the Ministry of Finance and the quality is also strictly according to ISI specifications. The lower prices offered by the private sector units could be due to poor quality of their products. The Committee feel that against the total requirement of 45,000 MT of BHC, HIL/SPEC were producing only 9,000 MT and it should not be a problem for the Ministry of Health to ensure that this much quantity is procured by the States from the public undertakings. The representatives of the Ministry of Health had assured the Committee that the matter

regarding procurement of BHC and Malathion from HIL/SPEC would be placed before the Health Secretaries' meeting. The Committee trust that while considering the matter the important facts that the capacities at HIL/SPEC has been specially created for the implementation of NMEP and the products of these undertakings had no other users, will be kept in view. As pointed out by Ministry of Industry, the Ministry of Health should purchase the entire production of BHC and Malathion at least for two to three years, during which HIL would be in a position to diversify and make alternate arrangements for the disposal of these products.

4.22. The Committee note that a plant at Rasayani in Maharashtra engaged in the production of Malathion, another insecticide used in malaria eradication programme, is also facing problems. This plant has a capacity of 3200 tonnes whereas India's total requirement is 15,000 tonnes per annum. This entire supply is coming from private sector units, which were encouraged by various State Governments. The price differential between the products of state unit and the units in private sector is so high, that the state unit at Rasayani is not getting any orders, with the result that it faces closure. The Committee desire that efforts should be made to impress upon the Ministry of Health that the total production of Malathion at the unit at Rasayani is procured on Government account at least for sometime to enable the Ministry of Industry to plan for diversification. The Committee also feel that the possibilities of exporting BHC & Malathion may also be explored so that the installed capacity is put to proper use.

**REPRESENTATION ON REGARDING FRAUD IN SAVINGS BANK
DEPARTMENT OF AKOLA HEAD POST OFFICE
(MAHARASHTRA CIRCLE)**

5.1. The Secretary, All India Postal Employees' Union, Class III, Akola Division, had addressed a letter to the Speaker, Lok Sabha, on 10 March, 1985 forwarding therewith four individual unsigned petitions (Appendix II) submitted by 200 postal Officials in Akola Postal Division regarding fraud in Savings Bank Department of Akola Head Post Office (Maharashtra Circle).

Petitioners' grievances and demands

5.2. In their representation, the petitioners stated that one Upper Division Clerk, Shri S.A. Shende, of Saving Bank Control Organisation took advantage of his position, prepared false documents and misappropriated Rs. 22,36,703.20 from Saving Bank Deposits of Akola Head Post Office. This misappropriation was facilitated as the rules to check cases of fraud by SBCO Staff had not been framed and the system of working of the Post Office was not changed after the introduction of SBCO in place of Audit Office. The petitioners urged that a high-powered Committee of experts be appointed to investigate into the present defective system and to propose changes in working of SBCO at Akola.

5.3. The representation was referred to the Ministry of Communications (Department of Posts) on 10 June, 1986 for obtaining factual comments. In their note, dated 25 June, 1986, the Ministry of Communications (Department of Posts) stated as follows :

“It is a fact that Shri S.A. Shende, Upper Division Clerk of Savings Bank Control Organisation committed a fraud of over Rs. 22 lakhs in Savings Bank accounts standing at Akola Head Post Office. The fraud was facilitated due to slackness in supervision and not due to any lacuna in rules.

It is a fact that various Officials of different cadets are involved in this case for supervisory negligence and action against them for lapses is being taken on merits. The officials concerned have the right of appeal as per the provisions of CCS (CCA) Rules, 1965.

Action against the Postmaster (Gazetted), Junior Accounts Officers and

Upper Division Clerk, Savings Bank Control Organisation and others involved in the case in Akola Head Office is in progress.

All out efforts are being made to trace out and attach the property of Shri S.A. Shinde to meet the loss sustained by the Department.

The case has been entrusted to C.B.I. and detailed investigation by them is in progress."

5.4. The facts supplied by the Ministry of Communications (Department of Posts) did not indicate the period to which the case of fraud related and under the circumstances it was not clear whether there was delay in taking action on the part of the Government when the case was entrusted to C.B.I. and the progress made in that regard. The matter was again referred to the Ministry on 17 July, 1986 for furnishing the additional information.

In a note dated 4 September, 1986 the Ministry of Communications (Department of Posts) stated as follows :

"The period of fraud relates to 14.12.1981 to 5.7.1985.

Earlier the S.B. Journals were maintained in Sub-Offices but after a thorough re-examination of the entire system, ledgers were introduced and maintained in Sub-Offices as a measure of improvement. In Head Offices ledgers are maintained since the very beginning. The replacement of S.B. Journals has not in any way facilitated the fraud. The fraud was facilitated due to slackness in supervision and not due to lacuna in rules.

The C.B.I. authorities have finalised their investigation in the case and the charge-sheet is likely to be submitted in the court by them very shortly."

5.5. The Committee on Petitions considered the matter at their sitting held on 24 November, 1987. According to petitioners' version the fraud by a Clerk had been facilitated due to defective rules while the Ministry's assertion was that the fraud was committed due to slackness in supervision and not due to any lacuna in the rules. The Committee, therefore, decided to take oral evidence of the petitioners and the representatives of the Ministry of Communications (Department of Posts).

5.6. The Committee, at their sitting held on 19 January, 1988, examined the representatives of the Ministry of Communications (Department of Posts) in connection with representation regarding fraud in Saving Bank Department of Akola Head Post Office. During evidence tendered

before the Committee, the Secretary, Ministry of Communications (Department of Posts) while giving facts of the case stated :

“There has been a fraud in Akola and the amount which was involved in the fraud was Rs. 39 lakhs. In Saving Bank Control Organisation, one of the officials, Mr. Shende, has done this fraud which was not discovered either by the supervisory officials of the control organisation or by the Gazetted officials of the Akola Head Office or by the Assistant Post Master or by any other officer. It is the negligence, non-observance of the prescribed procedure which had facilitated this fraud and which had gone on for three/four years and thereby multiplied from a small amount to big amount.”

5.7. Giving details of the rules and procedures which were infringed or not scrupulously followed, the Secretary stated :

“Ledgers are supposed to be given to the savings bank control organisation for agreement with the balances as per the list of transactions and all that. That is one of the checks prescribed so that there is no discrepancy between the balance indicated as a whole and the balance as reported in the list of transactions. The accused official had access to the ledgers as part of his duty. He had interpolated the deposit, say for example, Rs. 500 was made into Rs. 25000 by adding some figures and all that. Later on, this interpolation was not checked at the time of the ledger agreement which is supposed to be signed by the supervisor or by the Incharge of the savings bank control organisation. He failed to detect this and the totalling was incorrect. It was shown as arithmetic error. In totalling, it was added, at the end of the ledger, as one entry.

There are certain other rules which the post office Officials also should have followed which they did not do. The Ledger Clerk is supposed to indicate on the ledger the monthly interest bearing balance for totalling at the end of the financial year. All these things can be totalled up and interest can be calculated and can be entered in the account within a week from the close of the financial year. This was not done at all.

There is another rule of the post office savings bank that the balance in a single account should not exceed Rs. 25,000. But it has exceeded in a large number of cases. Actually, this was also not detected by the post office staff. There is another rule that if there is a cheque account in a post office savings bank account, a duplicate parallel ledger card is supposed to be maintained by the counter clerk. This was not done. Had the counter clerk maintained the duplicate parallel ledger card, he would have discovered interpolation.

Then again, duplicate passbook was sought for by the accused in this case. The officers did not check why the duplicate passbook is sought for and no enquiry was made and the incharge, savings bank control organisation, had also failed to do that. There have been obvious interpolations, which could have been discovered. These were not done.

There is another point also that Shri Shende is supposed to have been rotated within the Savings Bank Control Organisation every year. This was not done by the in-charge of the Organisation."

5.8. In answer to a question as to how Shri Shende acted and dodged the provisions of the rules and also the officers, the representative of the Ministry explained :

"Mr. Shinde was working in the Savings Bank Control Organisation. In every post office we have got the counter operations on the one side and on the other side we have Savings Bank Control Organisation which monitors the activities of the counter transactions. Their main job is somewhat like an audit to ensure that the money is accounted for, the transaction is a genuine one and that the money which has been entered in the ledger has actually been given to the Government. It acts as a custodian of counter operations. Instead of doing that, he opened an account in his own name and some accounts in the names of his relatives. Having done that, they also opened accounts in commercial banks. He had access to these ledgers in his official capacity, as he is supposed to check the ledger and transactions to see that they match. When he got hold of the ledger, he entered some imaginary figures like Rs. 20,000, Rs. 25,000/- etc., to his own account and to the accounts of his relatives. Then the ledger goes back to the counter for day-to-day operations in the evening. He would go and deposit a cheque in his commercial account for Rs. 20,000/- or Rs. 25,000/- as the case may be. That cheque will come for collection at the post office in the normal course. That cheque is cleared by the counter-clerk and the Assistant Postmaster who are entrusted with this duty and the money finally goes. This is how, over a period of time, he kept on adding to the deposits of himself and his relatives and periodically kept on issuing cheques and they were cleared at the counter also.

One fine morning, when a cheque came for clearance, the counter clerk went through the ledger and found that so much amount was there. He realised that no deposit for such a huge amount was made, as he had been working at the counter for a long time. So, he got suspicious and he went and got the matter further investigated with the help of the Assistant Postmaster. That is how the entire fraud came to light."

5.9. Asked whether there was any deficiency in the rules or in their operation, a representative of the Ministry stated :

“To the best of my knowledge, the rules are reasonably effective and they are quite fool-proof. The defect lies in the application of these rules. In the recent past, we have found that there is some dilution in the supervisory duties in many cases. That is the reason why a number of fraud cases have taken place. Even if in the manner of percentages this may be low, frauds have shown a tendency to increase. And that is why we have been a little concerned and have decided to make the application of these rules and the supervisory duties more effective. This is why perhaps there has been a slight resentment because some people have been charge-sheeted. This has been done only where there has been definite violation of rules.”

5.10. The Committee pointed out that allegations have been made that Shri Shinde was enjoying tremendous powers in the Department and that such a fraud would have been difficult to commit unless other persons in the department were also involved. In this connection the Secretary of the Ministry stated :

“They don't directly come into the picture. Large scale powers have been delegated to the Superintendent of Post Offices which are exercisable in a district. He has power to punish people and to transfer them. The postmaster has similar powers within the office and he has failed obviously in the exercise of these powers. We have also not left him. The Junior Accounts Officer in-charge of the SBO, also been charge-sheeted not for a minor penalty but for a major penalty. It may involve dismissal or compulsory retirement because we found that primarily he has been very slack in his supervision. I can produce photostate copy of one such example before the Committee.

The money has been taken by Mr. Shende and his men. The others in the control organisation have not contributed directly to the fraud. Their responsibility is that of negligence actually. I doubt whether they would have got anything out of Rs. 22 lakhs. The CBI also told us that they have filed charge-sheets only against Mr. Shinde and six others belonging to his own group.”

5.11. In reply to a query about the allegation that Shri Shende was having several lucrative jobs while in service and he was never censured for his acts, the witness stated :

“He is not supposed to do any other avocation other than Government service. That is the allegation which people are making now.

Elsewhere, we have been coming across cases actually. We have been investigating them and even charge-sheeting.

One of the points made was that he was allowed to continue beyond his tenure. The tenure is four years. Then, he requested the Director (Postal Services) for extension on some domestic grounds, which was granted. This is something normally done if special circumstances are added in the petitions. We did not find anything suspicious in the acts of the Director.

We have not been able to find that he was doing any business. There is discussion that he does business. But the businesses are in others' names. We came to know about that much later. On investigation, even the CBI could not prove that he is actually the owner of the business."

5.12. The Committee enquired about the latest position of the case. To this, the representative of the Ministry replied as under :—

"The case was reported to the local police and registered on 11.7.85. Later on, the case was reported to the CBI. The CBI have completed their investigation and have submitted a charge-sheet to the court on 30 May, 1987. They have implicated in this case, one departmental official, namely, Mr. Shinde and six other outsiders who are all either friends or close relations of Mr. Shinde. They all had conspired and had defrauded to the tune of Rs. 22 lakhs. This is the present state of affairs in so far as the departmental lapses are concerned. We have charge-sheeted about 45 officials in this case, right from the Gazetted Post Master General to the counter clerk including supervisors and Incharge of savings bank control organisation. They have been served with either major penalty charge-sheets or with minor penalty charge-sheets."

5.13. The Committee enquired whether the Department had conducted inquiries on their own or had just depended on the inquiry of the investigating agency, and also what were the findings of the enquiries held at different levels. A representative of the Ministry stated as follows :—

"Investigations were carried out by the Divisional Superintendent. When he found that the amount is very large, it was conducted by the Director of Postal Services and subsequently, it has been investigated by the Addl. Post Master General. And DDG (Vigilance) has also enquired into it. The first findings were the same. One important aspect we looked into was whether there is any lacuna in the rules. The report reveals that there is no lacuna in the rules. It is entirely due to negligence in the performance of duties and slack supervision,

Mr. Shinde worked under an Accountant and the Accountant is responsible for his work."

5.14. To a question whether recoveries equivalent to the loss suffered by the Department had been made, the witness replied :—

"We have given a requisition to the Revenue Office to attach his property to make good the losses incurred by us. They had in fact auctioned 1.96 hectares of land and one house (2475 sq. feet) and realised an amount of about Rs. one lakh. That amount has not come to us because immediately after the auction, the accused official went to the higher court on appeal against the decision to auction and till the appeal is disposed of, we will not be able to lay our hands on that amount. There are certain other properties attributable to Mr. Shinde but he had obtained an interim stay from the court not to tamper with those properties. Now, we are appealing to see that the interim stay is vacated so that we can safeguard the interests of the Department."

5.15. The Committee wanted to know the steps taken or proposed to be taken to check such irregularities in future. To this, the representative of the Ministry replied :—

"Actually we have issued instructions to the Savings Banks regarding test checks, supervisory aspects and other things. It is absolutely essential that the supervisory official has a responsibility on his shoulders. We have been stressing this thing so that we can nip the evil in the bud itself.

Only the other day in our Board Meeting, we considered the instances of frauds in the Department. One of the suggestions which we had considered and approved was that a person whether he is a supervisory staff or a clerical staff—in the post office helps in discovering a fraud, he should be rewarded by way of honorarium so that he takes some interest.

What was actually decided in the Board Meeting was that we are going to evolve a scheme in which a man who is vigilant and able to find out any irregularity or some such thing, he will be suitably rewarded. It will be in addition to...his salary."

5.16. To a question whether they had found some other irregularities in the Nagpur Division in addition to the Akola Division and whether any other complaints of a similar nature had been received, the representative stated :—

“We have found irregularities on the part of 45 officials in Akola. In addition to that, there is only one offender whose name is Mr. Shinde. This is the only complaint which was received regarding this matter.”

5.17. The Committee wanted to know how the depositors were protected against such cases of fraud and misappropriation. The Secretary, Ministry of Posts, stated :—

“The moment we discover a fraud, the depositor’s interests are fully protected. We might take 2 or 3 years to convict people like Mr. Shinde; but insofar as that particular depositor is concerned, we restore his balance, whether fraud is due to negligence or fraud. We do not put the depositor to harassment. Interest is also given on his deposit. There is no scheme for insuring depositors, because it is Government’s money. There is a rule that Government’s property or its money should not be insured.”

5.18. The Committee pointed out that Government was not interested in opening new post offices in rural areas for the reason that misappropriations take place. As a result new post offices were not being opened in rural areas. In this connection the Secretary stated :—

“Actually, Government would like to open more post offices in the 7th Plan, the total number of rural post offices to be provided is 1200—so that we can tap rural financial resources for the country. As a matter of fact, two-thirds of the deposits from post offices go to the State Government concerned, and only one-third comes to the Central Government. So, both the Centre and the States are interested in securing deposits from rural areas.”

5.19. Another representative added that there was no ban on opening of new post offices. When the Committee pointed out that no new post offices were being opened, the witnesses stated :—

“Very few offices in the rural areas are opened, because of resource problem. During the last 3 years, only about twelve post offices have been opened.”

Observations/Recommendations of the Committee

5.20. The Committee are unhappy to note that one Upper Division Clerk (Shri S.A. Shende) working in the Saving Bank Control Organisation of the Akola Head Post Office committed a fraud of over Rs. 22 lakhs over a period of about 4 years but the same could not be detected in time. Although the petitioners have pointed out

that the fraud was facilitated because of lacunae in the extant rules of savings bank department of the Akola head post office, the Department of Posts maintains that the fraud was due to negligence and slackness in supervision and not due to any lacuna in rules. Obviously a fraud of this magnitude could not have taken place without the active connivance of other staff members working in the same section of the post office.

5.21. The fact that the fraud continued to be perpetrated over such a long period without detection only proves that there was something basically wrong with the system and procedures being followed in the post office. This aspect of the matter needs to be looked into very carefully with a view to obviate recurrence of such cases.

5.22. A point greatly emphasised by the petitioners is that the individual concerned namely Shri Shinde wielded lot of influence in the department and even senior officers felt obligated to him. According to the petitioners this peculiar relationship of Shri Shinde with his seniors and other colleagues in the Department enabled him to defraud the Department to the tune of more than Rs. 22 lakhs. The Committee have been informed that as many as 45 officials have been chargesheeted in connection with the fraud committed by Shri Shinde. That so many persons in one post office can be accused of negligence is a poor reflection on the system and procedures followed and calls for a thorough investigation with a view to pinpointing the loopholes and streamlining the system. The Committee would like to be apprised of the action taken in the matter.

5.23. It has been stated that CBI to whom the case was entrusted have completed their investigations and submitted chargesheets to the court on 20th May, 1987. The Committee would like the Department to vigorously pursue the case in the court and see to it that the real culprits are brought to book. Efforts should also be made to ensure that recoveries equivalent to the loss suffered by the Department are made from Shri Shinde and others who connived with him.

5.24. The Committee note with satisfaction that the depositors as such are protected against such cases of frauds and misappropriations. The Committee would like the extant instructions in this regard to be enforced in letter and spirit so that the depositors are sure of the safety of their deposits in post offices. Any impression to the contrary would only generate reluctance among the people to make deposits in post offices.

5.25 The Committee would also like to emphasize that more post offices should be opened in rural areas with a view to mobilising rural saving. The Committee have been informed that during the 7th Plan period about 1200 rural post offices were planned to be opened. However, the Committee are dismayed to note that during the last three years only 12 post offices have been opened in rural area due to resource constraints. The Committee strongly feel that more and more rural post offices need to be opened with a view to improving communication facilities as also for mopping up the surplus savings in the rural areas.

VI

REPRESENTATION FROM SHRI R.C. DWEVEDI REGARDING RE-INSTATEMENT IN SERVICE BY I.I.T., KANPUR

6.1 Shri R.C. Dwevedi, 108, Krishna Nagar, Keetganj, Allahabad, U.P., submitted a representation (See Appendix III) dated 3.3. 1987 regarding his re-instatement in service by IIT, Kanpur.

6.2 He had stated that he was appointed as Laboratory Attendant (Binder) in August, 1965 and in February, 1970, he was promoted to the post of Mech. 'C'. Later on in March, 1976, his services were terminated without assigning any reason.

6.3 The petitioner in this connection had earlier made a representation to the Committee in 1983 (Seventh Lok Sabha). The Committee took evidence of the representatives of the then Ministry of Education and Culture (Department of Education). As desired by the Committee during evidence, this matter was also referred to the then Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) to ascertain whether the termination of services of Shri Dwevedi amounted to punishment and was thus not sustainable. The Ministry of Law had opined that the order terminating the services of Shri Dwevedi was perfectly valid order.

6.4 Further, as per the then Chairman's direction, Education Adviser (Department of Education) discussed this matter with the Chairman, Committee on Petitions on 10.9.84.

6.5 The present representation was referred to the Ministry of Human Resource Development (Department of Education) on 29.4.1987 to ascertain the latest position of the case. The Ministry of Human Resource Development (Department of Education) in their note, dated 27.5.1987, stated as under :

“The then Education Secretary—Mrs. Sarla Grewal—gave oral evidence before the Petitions Committee on 2 April, 1984.”

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“The Petitions Committee, after the oral evidence, asked that Ministry to get the advice from the Ministry of Law which was obtained and sent to the Lok Sabha Secretariat with this Ministry's O.M. No.

23-44/83-T. 6 dated 23 April, 1984, along with other information as asked for therein." (See Appendix IV).

"The Educational Adviser (T) of this Ministry was called for discussion in this connection on 10.9.84 by the Chairman, Committee on Petitions."

"Educational Adviser (T), Joint Educational Adviser (T), and Deputy Educational Adviser (T) met the Chairman of the Petitions Committee who enquired the possibility of placing Shri Dwevedi in some other Institute when it was clarified to him that it was not possible for this Ministry to do so."

Observations/Recommendations of the Committee

6.6 The Committee considered this matter at their sitting held on 28 October, 1987.

6.7 In view of the opinion of the Ministry of Law that the order terminating the services of Shri Dwevedi was a perfectly valid order, the Committee decided not to pursue further the fresh representation received from Shri Dwevedi and report the matter to the House.

NEW DELHI ;
10 May, 1988

Vaisakha 20, 1910 (Saka)

BALASAHEB VIKHE PATIL,
Chairman,
Committee on Petitions.

APPENDIX I

(See para 2.1 of the Report)

To

The Chairman,
Petitions Committee, Lok Sabha,
337, PHA, New Delhi.

SUBJECT : *Miss Sangeeta Bahuguna, Front Office Assistant (Gde V.),
Samrat Hotel, New Delhi—Forced resignation.*

Respected Sir,

I beg to bring the following few lines for your kind consideration and giving justice to the applicant :

- (i) That I was appointed as Front Office Assistant (Gde V) in the Samrat Hotel, New Delhi w.e.f. 21 May, 1986 on probation for a period of three months ;
- (ii) That some time during early June, 1986 one of my colleague (Shri S.K. Roy) was suspended and enquiry was held against him ;
- (iii) That I was asked (by Shri Ashok Sood, Dy. Front Office Manager) to give evidence against Mr. Roy in the enquiry being held against him. I had then told him that I shall only state the facts known to me ;
- (iv) That I appeared before the Enquiry Committee and stated the facts in my evidence, which was against the advice or wishes given by Shri Sood ;*
- (v) That on 20 August, 1986—the date of completion of my probationary period—I had gone to see the Personnel Manager (Shri Alam). The Personnel Manager during the course of my meeting, advised me to tender my resignation as my immediate officers

*As a result of this, my immediate officers (Viz. Shri Sood and Shri V.K. Gupta) were annoyed with me and they started victimising me by giving memo. to me every now and then on very small and petty matters.

(Mr. Sood & Mr. Gupta) were unhappy. I explained the reasons to him for the annoyance—explained in para (iii) above but he was not prepared to accept my views and instead of taking remedial measures or holding any enquiry or referring the matter to the General Manager, who is competent to take decisions on such matters, asked me to resign with immediate effect.

As I was in a disturbed mood in a fit of emotion I tendered resignation against my wishes.

2. In this connection, I may state that I have always been performing my duties sincerely and efficiently. But on account of my giving evidence in the enquiry against the wishes of my officers, I was victimised, harassed and pressurised to resign.

This is highhandedness of the management and in utter disregard of the principles of natural justice. Besides the Personnel Manager (Shri Alam) has exceeded his powers as in the absence of the General Manager (Shri Sabharwal), who is abroad, forced me to resign and accepted it without placing the matter before the competent authority.

3. I would humbly request your honour kindly to look into this matter and render justice to me. The guilty should be punished. My resignation may be treated as withdrawn and I may be re-instated.

Thanking you,

Yours faithfully,

Sd/-

SANGEETA BAHUGUNA
946, BABA KHARAK SINGH MARG
(Near Gole P.O.)
New Delhi— 110001.

21 August, 1986.

APPENDIX II

(See para 5.1 of the Report)

From,
Date
AKOLA-444 001
(Maharashtra)

To,

The President,
REPUBLIC OF INDIA.
NEW DELHI

Through—Proper Channel (and copy by post)

Subject : *Mercy petition seeking protection from arbitrary action from administration and request for ordering high power investigation in the fraud amounting to Rs. 22,36,703-20 in Saving Bank department of Akola Head post office (Maharashtra circle).*

Ref.—NIL

Respected Sir,

I.....
working in postal division Akola, District Akola (Maharashtra) beg to submit this petition to seek protection to the postal staff. I have to submit for favour of consideration as under :

(A) One upper division clerk Shri S.A. Shende of Saving Bank control organisation took advantage of his position, prepared false documents and committed the misappropriation of Rs. 22,36,703-20 in Saving Bank Deposit of Akola Head post office. This misappropriation was facilitated as the enabling rules to stop frauds committed by S.B.C.O. staff, not framed and the working of the post office was not changed after the introduction of saving Bank control organisation in place of audit office. The situation shall continue till the rules are changed and I suspect that many more frauds may take place in future. I, therefore request your honour kindly to appoint high power committee of expert to investigate the present defective working and to propose changes in working so that the postal staff will be protected from Saving Bank control organisation staff. I hereby suggest that if S.B. Journals with the provision of noting date of last transaction

and next transaction are introduced in Saving Bank counter in sub post offices as well as Head offices instead of long book, will protect the postal staff from any foul play in respect of Saving Bank ledgers and we can save the department from loss.

(B) I have to submit that Postal administration has committed a grave blunder and have not changed the working in post offices to protect the interest of the department and allow the Saving Bank control organisation staff wide scope to commit fraud and now the same administration desires to recover the amount of loss from the innocent postal employees by misusing the authority by awarding the punishment of recovery on filthy grounds. I have to submit that some of the charge sheets issued to the staff of Akola division show some mistakes which have no bearing towards the loss, some mistakes are totally irrelevant and a definite opinion about the guilt of the official is included in the charge sheet itself. Thus the proceeding will be conducted by the close mind of the officer, as the administration is eager to recover the amount of loss by any foul or unfair means. I, therefore, pray your honour to save the innocent staff which is being victim due to caprice, whims and decided policy of the administration.

(C) I may also add that Shri S.A. Shende, UDC, SBCO, could commit a fraud due to Lacuna in rules and his position as UDC, SBCO, in addition to this he acquired the position of V.I.P. in Akola Head Post office, due to his friendly relations with higher officers such as Account officer, Assistant Director of postal services, Nagpur. I may quote some instances in support of my say :

- (i) Shri S.A. Shende could obtain the duplicate pass-books a priority case and the poor Post master Akola even though who was in gazetted post could not verify his claim.
- (ii) The Junior Account Officer could not shift him from his entrusted work during four years and even he could not order him to perform his duties and to attend his office for 7½ hours every day.
- (iii) Shri S.A. Shende engaged himself in a business of construction, transport, money lender and estate broker. The divisional head was knowing all his activities of his business but he could not raise any objection under the conduct rule in which the Government employee is prohibited from engaging himself in business.
- (iv) Shri S.A. Shende was owing a fleet of trucks, and half a dozen scooters and motor cycles, but the divisional head was so much coward that he could not raise his finger and ask Shri S.A. Shende about these transactions.

- (v) Shri S.A. Shende had completed his tenure and he should have been transferred out of Akola. I am informed that the divisional head managed to get Shri Shende transferred from Akola division but Shri Shende was so much powerful that he got his transfer cancelled.

I have to submit that Shri Shende became supreme authority in Akola division and before him the divisional head, the gazetted Postmaster used to bow their heads and other officers were dancing at his tune. In these circumstances, the poor postal assistants and Assistant postmasters have to act as wished by Shri Shende. In the whole episode the officers have escaped and the postal assistants and Assistant postmasters have been marked for victimization.

(D) As a postal employee I feel ashamed of such fraud, at the same time, I feel that innocent should not be punished and the real culprit should not be escaped from the punishment.

- (i) Kindly order investigation through several agencies of ministry of finance to investigate all transactions of Shri S.A. Shende and his colleagues and his family members to find out Benamy transactions and hidden wealth to make the loss good.
- (ii) The officers who were under obligation of Shri Shende and who have helped him to acquire supreme authority, are the real culprits and they should be investigated and treated as co-accused and the loss must be recovered from them.

I assure your honour that I shall prove my case from the files of the department, I am confident that each and every paisa can be recovered from Shri Shende. No doubts, that the administration has not initiated any case against me and I am not adversely affected today, but still I am encouraged to submit this petition. When I see that Shri Shende drives his bullet in Akola Head post office walks like an emperor to collect his suspension allowance and boldly submits his declaration that he is not serving any where even though he is engaged in his private business. He could engage the renowned advocates to defend his case and safeguard his property and on the other hand, my own colleagues are working under fearful condition and bearing mourning face, we are worried about their future. Some agents and the protectors of Shri Shende are also enjoying. Thus the situation is unbearable and with a view to protect my colleagues I am approaching your honour and pray mercy on my colleagues and protect the innocent officials of Akola Head Post office.

Thanking you,

I shall remain ever grateful to your honour.

Yours faithfully,

APPENDIX III

(See para 6.1 of the Report)

The Chairman,
Committee on Petitions,
Lok Sabha,
New Delhi.

REG : Representation from Shri R.C. Dwevedi, Allahabad, reinstatement in service by IIT, Kanpur.

1. That the applicant was appointed as Laboratory Attendant (Binder) *vide* appointment letter No. Adm. 34/65-II TK-201-149 dated 25.8.1965 against permanent post on one year probation.
2. That the applicant was subsequently promoted to the post of Mech. 'C' with effect from 20.2.1970 *vide* Registrar's Office Memo. No. Estt. 1083/70-II TK-4146/76596 dated 23.2.70.
3. That the applicant's services were terminated suddenly without assigning any reason *vide* Director's Office Memo. No. Estt. 1083 (A) /II TK/76-9186 dated 3.7. 1976.
4. That the matter regarding the applicant was heard by your honour on 2 April, 1984. Since then about 3 years have lapsed but till today, the applicant has not been given any information as to what has happened in his matter, that no agenda of the committee has ever been supplied to petitioner nor any document have been given to the applicant at his address.
5. That the applicant is without employment since 1976. More than 11 years have passed but nothing has been done in the matter of the applicant and he is suffering from great hardships in the present hard days.
6. That the applicant seek indulgence of your honour to expedite hearing of the applicant's matter.

7. That the applicant may be supplied with all the relevant agenda and the other relevant record inquiring the statement if any made by the Official of the concerned department.

Thanking you.

Yours
Sd/-
(R.C. DWEVEDI)
108, Krishna Nagar,
Keetganj, Allahabad.

APPENDIX IV

(See para 6.5 of the Report)

No. F. 23-44/83-T.6

Government of India
Ministry of Education & Culture
(Department of Education)
Shaastri Bhavan, New Delhi-1

Dated : 23 April, 1984.

OFFICE MEMORANDUM

SUBJECT : Committee on Petitions:

The undersigned is directed to invite the attention of Lok Sabha Secretariat to their communication No. 55/5/CI/84 dated 11 April, 1984 addressed to Education Secretary, Smt. Sarla Grewal whereby we were requested *vide* para 6 of the communication to furnish the information on three points for the consideration of the Committee. With regard to point No. 1 on page 2 of communication, the information has been collected from the IIT Kanpur. As regards points 2 and 3 we have consulted the Ministry of Law and obtained their advice. The information to the specific points is furnished below :—

Point No. 1

Please state when the contribution by the Indian Institute of Technology, Kanpur towards the Provident Fund of the employees is due and whether this contribution is credited to his annual provident fund Statement after confirmation ;

Reply

The Provident Fund Rules of the Institute provide that in the case of temporary employees the Institute's contribution is to be credited to the account of the subscriber at the end of each financial year to the extent of his subscription during the year subject to final adjustment.

The Statement of Account (Provident Fund) of Shri R.C. Dwevedi is attached herewith, which is self-explanatory.

Point No. 2

Please state whether there has been a judgement of the Supreme Court that Government cannot terminate the services of a temporary Government servant without holding an enquiry.

Reply

Ministry of Law, while giving their advice have cited the recent case (reported in AIR 1984 SC 636) (1984 April part) of Shri Anoop Jaiswal Vs. Union of India and another, the Supreme Court appeal has held as follows :

“It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred merely because of the form of the order, in giving effect to the rights conferred by law upon the employees.

13 × ×

× ×

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Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge that the order of discharge should fall to the grounds as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Art. 311 (2) of the Constitution.”

The Law Ministry has after citing this case, opined that it is not obligatory on the Government to terminate the services of a temporary Government servant only after holding enquiry, provided such a termination is not by way of punishment. However, even if the order of discharge may be non-committal, the Court has power to go into the cause for the order of termination and it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order and if the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the

court would not be debarred merely because of the form or the order in giving effect to the rights conferred by law upon the employee.

Point No. 3

Legal opinion of the Ministry of Law on the termination of services of Shri R.C. Dwevedi after eleven years of his service without holding an enquiry and without assigning any reason by IIT Kanpur.

Reply

The Ministry of Law has stated as follows :

The IIT Kanpur is an autonomous institution established under the Institute of technology Act, 1961 (an Act of Parliament) and as such the employee of the IIT Kanpur are not Government employees and as such Articles 309, 310 and 311 are not applicable to the employees of the IIT Kanpur, a statutory corporation. However, principles of natural justice are applicable to them.

The service conditions of the employees of the IIT Kanpur, therefore, will be determined by the rules framed under the Institute of Technology Act, 1961. The rules which are called statutes have been framed. Statute 13 (3) which is relevant in the case of Shri R.C. Dwevedi is as follows :

“13(3) : The appointing authority shall have the power to extend the period of probation of any employee of the Institute for such period as may be found necessary, provided that if, after the period of probation, the official is not confirmed, and, his probation is also not formally extended, he shall be deemed to have continued on a temporary basis and that his services may then be terminated on a month's notice or on payment of a month's salary in lieu thereof.”

As Shri Dwevedi has not been specifically confirmed he will have to be treated as temporary as per statute 13(3) cited above.

The Supreme Court while considering some other rules, *vide* their judgement dated 6.9.1979 (reported in AIR 1980 S.C. 42) has held “the plain meaning of the rule is that there is not automatic confirmation on the expiry of the probation period of 2 years in the first instance. On the expiry of the said period and on the fulfilment of the requirement Government servant becomes eligible for being confirmed and ultimately he is likely to be confirmed. But it is a matter of common knowledge that many branches of Government services including judicial that for administrative reasons or otherwise the confirmation is delayed and is made at a subsequent time. It may also be delayed for watching the work of the Government servant for a further period. In my opinion, the rule in question, therefore, comes under the ordinary and normal rule that without an express order of

confirmation, the Government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. It has also been stated in the said judgement that there may be several other reasons administrative or otherwise which may delay the confirmation and further that the confirmation can surely be delayed if the.....of Government servant has got to be watched further to decide whether he should be confirmed in the post or not.

It may also be mentioned that the IIT Kanpur has again obtained legal advice from another Senior Advocate at Allahabad—Shri S.N. Verma—on 14.4.84. After carefully examining the documents and papers relating to the case of Shri R.C. Dwevedi, Shri Verma has opined the services of Shri Dwevedi were not terminated by way of punishment and a simple order of termination was passed and no stigma is cast on Shri Dwevedi and hence the order of 3.7.76 terminating Shri Dwevedi from the services of IIT is a perfectly valid order.

The Ministry of Law while giving their above mentioned opinion have endorsed the opinion of Shri S.N. Verma that the order dated 3.7.76 terminating the services of Shri Dwevedi is valid.

This information may kindly be brought to the notice of the Committee.

Sd/-
(S.D. Awale)
Dy. Educational Adviser (T)

Lok Sabha Secretariat
(Shri S S. Chawla),
Senior Legislative Committee Officer,
Parliament House Annexe,
New Delhi.