

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

11

ELEVENTH REPORT

(Ministry of Home Affairs)



**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2006/Jyaistha, 1928 (Saka)

ELEVENTH REPORT
COMMITTEE ON PETITIONS
(FOURTEENTH LOK SABHA)
MINISTRY OF HOME AFFAIRS

(Presented to Lok Sabha on 22 May, 2006)



LOK SABHA SECRETARIAT
NEW DELHI

May, 2006/Jyaistha, 1928 (Saka)

CB. 1. No. 335 Vol. XI

Price : Rs. 32.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Eleventh Edition) and Printed by the Manager, Government of India Press, Minto Road, New Delhi—110002.

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COMPOSITION OF THE COMMITTEE ON PETITIONS

Shri Prabhunath Singh — *Chairman*

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2. Shri Raj Babbar
3. Shri Nandkumar Singh Chauhan
4. Shri N.S.V. Chitthan
5. Shri M. Jagannath
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8. Adv. Suresh Kurup
9. Smt. Nivedita Mane
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13. Shri Damodar Barku Shingada
14. Shri Mansukhbhai D. Vasava
15. Shri Vijoy Krishna

SECRETARIAT

1. Shri P. Sreedharan — *Joint Secretary*
2. Shri A.K. Singh — *Director*
3. Shri U.B.S. Negi — *Under Secretary*

TENTH REPORT OF THE COMMITTEE ON PETITIONS
(FOURTEENTH LOK SABHA)

INTRODUCTION

I, the Chairman, Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Eleventh Report (Fourteen Lok Sabha) of the Committee to the House on the following matters:—

- (i) Representation regarding alleged illegal absorption of Shri G.S. Matharoo, an officer of the Ministry of Home Affairs, in Municipal Corporation of Delhi; and
- (ii) Petition requesting to consider the transferred employees of Chandigarh Administration to Municipal Corporation of Chandigarh on deemed deputation.

2. The Committee considered and adopted the draft Eleventh Report at their sitting held on 19 May, 2006.

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

4. For facility of reference and convenience, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
19 May, 2006

29 Vaisakha, 1928 (Saka)

PRABHUNATH SINGH,
Chairman,
Committee on Petitions

The Ministry was requested to forward the name of Shri G.S. Matharoo through proper channel along with necessary cadre clearance/NOC. It was also requested that his ACR for the last five years, vigilance clearance report and integrity certificate might also be forwarded.

3. Shri G.S. Matharoo on 4.9.2001 submitted an application to the Ministry of Home Affairs for the post of Additional Deputy Commissioner/Joint Assessor in MCD and requested that his application might be forwarded to MCD. He also intimated that he had already given an advance copy of his application to MCD.
4. The Ministry of Home Affairs *vide* its letter No. A 35014/82/2001-Assistant Director.I(C) dated 6th September, 2001 forwarded the application to the MCD along with photocopies of his ACRs, integrity certificate and vigilance clearance.
5. MCD has intimated that after considering the assessment of ACRs of Shri Matharoo as Outstanding for the last five years and vigilance clearance, he was appointed as Additional Deputy Commissioner in MCD on deputation basis in the pay scale of Rs. 12000-16500 with the approval of the then Commissioner, MCD, Shri S.P. Aggrawal, the Competent Authority for the purpose.
6. Consequent on his appointment to the post of Additional Deputy Commissioner, the Ministry of Home Affairs placed the services of Shri Matharoo at the disposal of MCD *w.e.f.* 25.9.2001 *vide* MHA's Office Order No. A-35014/82/2001-Assistant Director.I(C) dated 24th September, 2001.
7. Shri Matharoo joined MCD on 26-9-2001 and he was posted as Additional Deputy Commissioner (HQ) *vide* MCD's Office Order No. F. 11(2)/CED(II)/86/Pt.II/208/27710-81 dated 26.9.2001.
8. The MCD segregated one post of Addl. Deputy Commissioner from deputationist quota for specifically utilizing it as Secretary to the Commissioner and transferred and posted Shri Matharoo as Secretary to Commissioner, MCD, *w.e.f.* 01.02.2002 *vide* MCD's Officer Order No F-11(2)/CED(II)86/Pt.II/12/2488 dated 31st January, 2002.
9. As per the Recruitment Rules for the post of Addl. Deputy Commissioner in MCD as notified by the Govt. of NCT of Delhi (then Delhi Administration) *vide* its Notification No. F9/66/82-LSG dated 7th January, 1983, the pay scale prescribed for the post was Rs. 1200-2000 (now revised as Rs. 12000-18000). The method of recruitment was by promotion and transfer on deputation in the ratio of 50:50. As per the Recruitment Rules, officers belonging to IAS, Central Services Group 'A' and State Civil Service Class-I drawing a minimum of Rs. 1200 per month were eligible for appointment to the post.
10. In response to the MCD's letter No. 17981/CED dated 5.7.2002, UPSC conveyed its approval *vide* its letter No. 5/24(1) 2002-RR dated 10.10.2002

for filling up the vacant posts of Addl. Deputy Commissioner/Joint Assessor & Collector as per the following details as a one time measure pending finalization of RRs:

- | | | |
|-----|---|---|
| (a) | Name of the Post | Additional Deputy Commissioner/Joint Assessor & Collector |
| (b) | Method of recruitment | 50% by promotion on selection 50% by deputation (for the cadre as per notified RRs). |
| (c) | Field of promotion | Assistant Commissioner/Deputy Assessor & Collector with Five years regular service in the Grade of Rs. 10000-15200. |
| (d) | Composition of DPC for promotion | (i) Chairman/Member, UPSC—Chairman
(ii) Commissioner, MCD—Member
(iii) Addl. Commissioner, MCD—Member |
| (e) | Field of deputation | Officers of the IAS, Central Services Gr. A and State Civil Service Gr. A
(i) holding analogous post on regular basis in the present cadre/department; or
(ii) with 5 years regular service in the cadre rendered after appointment thereto on regular basis in the scale of Rs. 10000-15200/- or equivalent in the present cadre/department. |
| (f) | Consultation with UPSC is necessary on each occasion. | |
11. As per the draft Recruitment Rules for the post of Secretary to Commissioner prepared by the MCD, the post is to be filled up by deputation/absorption of officers under Central/State Govts./UTs having following eligibility:
- (a)(i) Holding analogous posts on regular basis in the parent cadre/department; or
 - (ii) with five years service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs. 10000-15200/- or equivalent in this parent cadre/department;or
 - (b)(i) Bachelor's degree from a recognized University or equivalent.
 - (ii) Ten years experience in administration.
12. The draft RRs for the post of Secretary to the Commissioner have been approved by the Corporation and the UPSC. The draft were finally approved by the 'Corporation' *vide* Resolution No. 317 dated 25th August, 2003 and were forwarded to the Govt. of NCT of Delhi in November, 2003 for notifying in the official gazette. However, the same are yet to be notified.

13. Pending notification of the RRs, the MCD issued a circular No. F. 11(47)/CED(III)2003/138/RK/80 dated 11.9.2003 addressed to all Secretaries, Govt. of India/Chief Secretary, Govt. NCT of Delhi inviting applications for filling up the post of Secretary to Commissioner on deputation/absorption basis in MCS.
14. In response to MCD's letters Nos. 273581/CED dated 15th October, 2003 and 16th October, 2003, the Ministry of Home Affairs *vide* its letter No. A. 35014/82/2001-Assistant Director. V dated 31st October, 2003 intimated MCD that it had no objection to the absorption of Shri G.S. Matharoo as Secretary to the Commissioner, MCD (equivalent to the level of Addl. Deputy Commissioner/Joint Assessor & Collector in MCD) subject to his tendering technical resignation under Rule 26(2) of CCS (Pension) Rules, 1972 from the post of Under Secretary, Ministry of Home Affairs effective from the date of his absorption in MCD. MCD was requested that his technical resignation might be obtained and sent to the Ministry of Home Affairs.
15. The Commissioner, MCD in exercise of the power vested in him under section 92 of the DMC Act, 1957, absorbed Shri G.S. Matharoo in MCD as Secretary to the Commissioner in the pay scale of Rs.12000-16500 with immediate effect *vide* MCD's Office Order F.11(47)/CED(III)/2003/14/29385-455 dated 3.11.2003.
16. Consequent upon his permanent absorption in the post of Secretary to the Commissioner in MCD, the technical resignation of Shri Matharoo, a permanent Section Officer of the CSS cadre of MHA, holding the post of Under Secretary (*in situ*) was accepted from the forenoon of 03.11.2003 *vide* MHA's Office Order No. A. 22013/7/2003-Assistant Director. I dated 13.2.2004. It was mentioned in the aforesaid Office Order that Shri Matharoo stood relieved from the Ministry of Home Affairs w.e.f. the same date."

1.5 After perusal of the comments furnished by the MHA, the Committee took oral evidence of the representatives of the MHA at their sitting held on 15th June, 2005 and 27th January, 2006.

1.6 The Committee when desired to know if there was any criteria or system to appoint a person on deputation basis or the process adopted in that regard, the witness, the then Commissioner, submitted:

"No internal recruitment has been done in corporation since 1970 till date. There are so many reasons. A number of vacancies exist in corporation. So, we demand persons on deputation mostly from the Central Government. The process is that the posts of Deputy Commissioner, Additional Commissioner are field posts. Therefore, this is not only in this case but there are also so many cases whose name can be quoted. For example Renu Jagdav who have now come as Director (Personnel), Kishan Lal who used to be Director (Personnel) earlier and Sanjeeta Kampani is also in the list."

In this regard, the Secretary, MHA added:

"...Normally when we demand people on deputation, we demand panel by circulating the order for sending the names. It is upto the department as to whom it can spare and whom it can not. The request can be made for any particular officer as it happened in this particular case and there are also so many cases like that. As Commissioner told me because it happened in 2001 and at that time his predecessor was Shri S.P. Aggarwal and he did not know why it was written for this particular officer. It is matter of that time when he did not join and particularly his name was recommended. I would like to say again that normally we write for panel and persons are selected by advertising circulating vacancies. But some times in some particular cases request has also been made for a particular officers."

1.7 The Committee also desired to know as to why the procedure was overlooked, even when the particular officer was not eligible to fill the post, the witness, the then Commissioner, MCD replied:

"Sir, I can not say it because I was not there at the point of time."

1.8 The Committee desired to know as to whether the application of Shri Matharoo should have been routed through his parent department or the MCD had the power to accept his application direct. Responding to this, the witness stated:

"Sir, normally, this is a practice that when there is any appointment against any post vacant in any institute then the said institute calls for the applications and applications received against that post are sent to that organisation. This is the normal practise but there are cases where the organisation calls for the application of a particular person and that application is forwarded by us."

The witness also stated as under:—

"Sir, as I have already urged that when it is particularly mentioned in the document that a particular post is there in this pay scale and the officers, who are drawing the same scale are eligible and they must have service of a particular period then we see whether that person is capable for that post or not. As I have already stated that there was no mention about the pay scale in the letter received from MCD. In that letter they just asked for his application and vigilance clearance".

1.9 The Committee desired to know as to why they did not try to get information regarding pay scale and accepted the application of Shri Matharoo, the witness replied:—

"Sir, as I have already urged that normally when the scale and the eligibility conditions are mentioned in the letter then, we just see whether the applicant is eligible or not. Since, in this case neither pay scale was given nor experience of the service of the service required was mentioned, they did not seek such kind of information, thus we forwarded the application. That is why the said responsibility lies with the borrowing organisation. They should see that the person, whom they are appointing against the specific post is eligible for that or not. If they had mentioned the eligibility conditions then we would have examined his application as per the reference."

Regarding responsibility of the Department in the matter, the witness responded as under:—

"...I do not mean to say that we do not have any responsibility in this matter. I mean in case to say that when they asked for a particular candidate I said we had already such cases, when name of a particular person was called from some other organisation and it was sent then since there was no mention of pay scale and eligibility criteria that is why we not examined for that point of view."

1.10. On being specifically asked as to what should be the procedure as per rules, the witness submitted that advertisement should be given for filling up of vacant posts, but the practice was being followed since many years in MCD to fill a post without giving advertisement.

1.11. The Committee also desired to know from the Ministry as to what should be the procedure regarding NOC at the time of absorption of Shri Matharoo in MCD, the witness submitted as under:—

"When a person goes on deputation for the first time, application is called for at that time but for absorption only no objection certificate is called for."

1.12. On the said procedure, the witness from DOPT responded as under:—

"There are two things in this. First when we forwarded the application for deputation then it is necessary to get cadre clearance. His vigilance clearance is also sought to see that no case is pending against him. It is the job of the concerned department. If he gets promotion in such a department then it is the concern of the borrowing department but in such a case the borrowing department has to inform the parent department that they were to give him a higher level and the parent department has no objection in it."

The witness further added:—

"Is it necessary to get cadre clearance and approval of the parent department at the time of absorption. There are two things in it. First is promotion and second is absorption. It is necessary to seek approval for absorption."

However, the witness from the MHA clarified:—

"Shri Matharoo was absorbed in the same scale of deputation. This was not a case of promotion. They demanded the NOC which the Ministry of Home Affairs has given."

In this regard, the witness from DOPT stated:—

"Generally it is the borrowing department which has to decide that they want to absorb such and such a person against such and such a post. Thereafter letter is forwarded to his parent office and they will enquire that there is no vigilance case pending or any dues outstanding against the said official. In such matters cadre clearance is necessary."

1.13 As regards to the another question as to whether the post of Assistant Deputy Commissioner in MCD was advertised or circulated in various Central Ministries, the MHA in their written comments stated:

"The MCD *vide* its letter dated 04.09.2001 intimated the Ministry of Home Affairs that name of Shri G.S. Matharoo was under consideration in MCD for appointment to the post of Additional Deputy Commissioner/Joint Assessor and Collector on deputation basis. The Ministry was requested to forward the name of Shri G.S. Matharoo through proper channel alongwith necessary cadre clearance/NOC. It was also requested that the ACR for the last five years, vigilance clearance report and integrity certificate might also be forwarded. Shri G.S. Matharoo submitted an application on 04.09.2001 to the Ministry of Home Affairs for the post of Additional Deputy Commissioner/Joint Assessor in MCD and requested that his application might be forwarded to MCD. He also intimated that he had already given an advance copy of his application to MCD. The Ministry of Home Affairs *vide* its letter dated 6th September, 2001 forwarded the application to the MCD alongwith photocopies of his ACRs, integrity certificate and vigilance clearance."

1.14 As regards the reasons for not asking for a panel of officers the MHA *vide* their written comments *inter-alia* stated that MCD, being a field agency, have to perform various obligatory functions for which a post can not be allowed to be kept vacant. Circulation of a post and filling up of the same takes considerable time. In the past 126 officers had been brought on deputation during 2001-2004 for various organisations of the Government without circulating the posts.

1.15 On being asked as to whether any advertisement was given to fill up a post if this was a normal practice, the witness from MCD stated:—

"MCD being a field agency, has to perform various obligatory functions since it takes long time to fill up a post through a list of candidates in circulation, so that is why in MCD appointments were made on the basis of individual nominations. As I have submitted that during 2001-2004, 126 officers were given appointment in MCD without seeking the list of candidates through circulation."

1.16 On being enquired that Shri Matharoo was not eligible even then it was not felt necessary to consult others, the witness, Secretary MHA stated as under:—

"We did not recommend it. We have recommended him to appoint him to any post. If any borrowing department demand any officer on deputation then generally a penal of officer is demanded or in some cases a particular officer is demanded. It is responsibility of borrowing department to satisfy the qualification of an officer to go on deputation for that post. If the borrowing department writes to me that it requires particular officer, mentioning its qualification, he can be sent after examining the same. But sometimes it is mentioned in the letter that there is such and such number of vacancies and corporation wants that this particular officer may be sent for that purpose. There are so many departments in India where their RR's and qualification are not available. In good faith because it is the responsibility of borrowing department, we did not recommend, I would like to explain it. A demand was made for the post from there and his name was referred with NOC that we do not have any objection if he is selected. His confidential report had also been sent. In my opinion it is a matter of the year of 2001."

1.17 On being asked as to whether MCD had consulted UPSC at the time of giving the pay scale of Under Secretary to Shri Matharoo, the witness, the then Commissioner answered:

"No sir, because under the Section 96(2) of DMC Act, there is a provision that there is no need to consult the Commission in case of officers coming from Centre or State to Corporation on deputation."

1.18 Regarding obtaining clearance of DOPT/UPSC for his appointment in MCD, the MHA in their written submission stated that the Commissioner, MCD has been vested with the power made Section 92 of the Delhi Municipal Corporation Act, 11957 to make appointment of all municipal officers and other municipal employees whether temporary or permanent. However, as per the approval conveyed by UPSC *vide* its letter dated 10.10.2002 for filling up the vacant posts of ADC/Joint Assessor & Collector, as a one time measure pending finalization of RRS, consultation with UPSC was made mandatory on each occasion, which implied that it was necessary for MCD to consult UPSC while making appointment for the post of ADC/Joint Assessor & Collector on deputation basis but the same was not done in the instant case.

1.19 In response to a question as to whether the parent office is consulted before absorption/promotion in the serving organisation, the MHA replied:

".....MCD *vide* its letters dated 15th October, 2003 and 16th October, 2003 had indicated that Shri G.S. Matharoo had applied for absorption to the post of Secretary to Commissioner, MCD and that the competent authority had accorded approval for such absorption. The MHA was, accordingly, requested to issue a 'No Objection Certificate'. In response, the Ministry of Home Affairs *vide* its letter dated 31st October, 2003 intimated MCD that it had no objection to the absorption of Shri G.S. Matharoo as Secretary to the Commissioner, MCD (equivalent to the level of Addl. Deputy Commissioner/Joint Assessor & Collector in MCD) subject to his tendering technical resignation under Rule 26(2) of CCS (Pension) Rules, 1972, from the post of Under Secretary, Ministry of Home Affairs effective from the date of his absorption in MCD. It was accordingly requested that technical resignation from Shri Matharoo might be obtained and sent to the MHA. The Commissioner, MCD in exercise of the powers vested in him under section 92 of the DMC Act, 1957, absorbed Shri G.S. Matharoo in MCD as Secretary to the Commissioner in the pay scale of Rs. 12000-16500 with immediate effect *vide* MCD's Office Order dated 03.11.2003. The MCD *vide* its letter dated 04.11.2003 forwarded technical resignation dated 03.11.2003 of Shri G.S. Matharoo effective from the date of his absorption in the MCD. Consequent upon his permanent absorption in the post of Secretary to the Commissioner in MCD, the technical resignation of Shri Matharoo a permanent Section Officer of the CSS cadre of MHA, holding the post of Under Secretary (*in situ*) was accepted from the forenoon of 03.11.2003 *vide* MHA's Office Order dated 13.02.2004."

1.20 The Committee were informed that under section 96(c) of the MCD Act, there is no need to consult UPSC in the matter relating to appointment, then why MCD sought

approval of UPSC on 05.07.2002 for filling the vacant post of ADC/Joint Assessor and Collector. Responding to this, the Ministry stated as under:

"Section 96 of the DMC Act, 1956 stipulates that no appointment to any Category 'A' post, within the meaning of Section 90(8)(i), shall be made except after consultation with UPSC. However, as per the proviso (c) to this Section, consultation with UPSC is not necessary with regard to selection for appointment to a post, when at the time of such appointment, the person to be appointed is in service of the Central Government or a State Government in a Class-I Post. Section 98 empowers the Corporation to make regulations with regard to service matter of its officers/employees. As per the provision of Section 98(2) of the DMC Act, the UPSC were requested *vide* MCD's letter dated 05.07.2002 for amendment to the Recruitment Rules for the post of Additional Deputy Commissioner/Joint Assessor & Collector. The request was not for filling up the vacant posts of Additional Deputy Commissioner/Joint Assessor & Collector."

1.21 On being enquired by the Committee as to whether it was necessary to take approval of UPSC, the witness from DOPT replied:

"We did not talk to him. May be it was the opinion of MHA that there is a provision for not taking suggestions from them. We would have to find out whether it is legally correct or not."

1.22 On being enquired about the deputation and absorption of Shri Matharoo, Secretary, MHA submitted as follows:—

"...As per my own views absorption orders should have been issued only after notification of recruitment rules were issued. It is the views of the Ministry of Home Affairs. But, keeping in view the administrative exigencies, the Municipal Corporation of Delhi absorbed him before issuing notification of rules...."

1.23 In response to a question as to whether Shri Matharoo was eligible to apply for the post of ADC in MCD, the MHA in their written comments categorically stated that Shri Matharoo was not eligible for it. However, it was upto the borrowing organisation to decide the matter. In this regard, the MHA also stated:

"In September, 2001 the MCD had requested MHA to forward the name of Shri G.S. Matharoo, who was holding the substantive post of Section Officer in the Ministry of Home Affairs' Cadre and was working as Under Secretary on *in-situ* basis, for consideration for appointment to the post of Addl. Deputy Commissioner/Joint Assessor & Collector in MCD on deputation basis. The application of Shri Matharoo was, accordingly, forwarded to the MCD. As regards the minimum requirements for the post, it is the responsibility of the Department/Organization taking an officer on deputation to ensure that the concerned officer is eligible for the post. However, while forwarding the application, MHA had not certified that he fulfilled all the minimum, requirements for the post."

1.24 As per the conditions stipulated by UPSC, Shri Matharoo was not eligible for appointment in the grade of Rs. 12000-16500. Responding to a question as to whether this fact was placed before the Appointment Committee of MCD, which considered the case of Shri Matharoo's absorption, the MHA stated as under:—

"The MCD segregated one post of Addl. Deputy Commissioner/Joint Assessor & Collector in the pay scale of Rs. 12,000-16,500/- from deputation quota for specifically utilizing it as Secretary to the Commissioner. As per Recruitment Rules (approved by the UPSC/Corporation but yet to be notified) for the post of Secretary to the Commissioner, the mode of recruitment to the post is by way of deputation/absorption of officers under Central/State Governments/UT Administrations. Since Shri Matharoo was already holding the post of Additional Deputy Commissioner/Joint Assessor & Collector in the scale of pay of Rs. 12000-16500, his case for absorption was approved by the Commissioner, MCD. Since Shri Matharoo was absorbed against a diverted post and it did not involve creation of a new post, approval of the Standing Committee of MCD was not obtained."

1.25 When the Committee desired to know as to what post, Shri Matharoo was holding in the MHA when he was appointed on deputation basis, the witness deposed that he was *in-situ* Under Secretary in MHA since August 1999 and worked about two years before he proceeded on deputation basis. The witness also deposed that there is no such provision that after working on the post of Under Secretary for such period, he would be appointed on the post on regular basis.

1.26 The Ministry of Personnel, Public Grievance and Pensions (Department of Personnel & Training) *vide* their OM No. 21/35/2005-CSI dated 27.01.2006 stated that *in-situ* promotion means promotions granted "in situation where one may be working." In the present context, all *in-situ* promotion were granted in the year 1999. Keeping in view the acute stagnation in the Central Secretariat Service (CSS), Government decided that all the Section Officers who are included in the select list of Section Officers upto 1987 may be promoted by personal upgradation. It was also confirmed by DOPT that while granting *in-situ* promotion from the grade of Section Officer to the grade of Under Secretary, the seniority position had been kept in view in as much as a specific Select List of Section Officer upto 1987 has been prescribed as the cut off recruitment year. The DOPT also stated that in case of *in-situ* promotion, the promotion is personal to the incumbent of the post of Section Officer against the upgraded post and is not against any regular vacancy of Under Secretary. He continues to hold the post of Under Secretary till he gets adjusted against regular vacancy in that Grade. The incumbent of the post will continue to perform the same duties and responsibilities (which he performed in the Section Officer's Grade) even while holding the post of Under Secretary (*in-situ*).

1.27 The DOPT also clarified that a person holding an *in-situ* post can not be considered for the next higher post by promotion. However, there is no bar on an officer holding an *in-situ* post from making an application for appointment on deputation fulfils basis outside the cadre if he otherwise fulfils the eligibility conditions as prescribed for the post on deputation by the borrowing organisation.

1.28 The Committee enquired about the seniority position of Shri Matharoo on the substitutive post of Section Officer in the cadre at the time of his promotion on *in-situ* Under Secretary and also as to whether orders regarding reservation of persons belonging to SC/ST category are followed in the context of *in-situ* motion. The DOPT in a written note furnished to the Committee, stated as under:—

"Shri Matharoo was a permanent Section Officer belonging to Select List of 1987 on the cadre of Ministry of Home Affairs and his position in the Common Seniority

List popularly known as CSL issued on 3.12.1997 was at 4745. It is further stated that the CSL No. of the last general category officer in the Selected List of 1987 is 4809 (Shri P.K. Ravi). There are no specific instructions for regulating reservation for SCs/STs in the matter of *in-situ* promotion/personal upgradation. The question as to whether it was legally necessary to provide reservation to SCs/STs while order personal upgradation to the grade of Under Secretary was, the examined in details in consultation with the Ministry of Law, who opined that it was legally necessary to give reservation in the upgradation, considering that the officers are likely to continue as such for a considerable period without any likelihood of reservation. Further, the considered opinion of the learned Attorney General of India was obtained who also opined that it was legally necessary to provide reservation to the SCs/STs while making such upgradation. Accordingly, while ordering *in-situ* upgradations in August, 1999, reservations for Scheduled Castes and Scheduled Tribes at the prescribed rate of 15% and 7-1/2% respectively, was provided. As a result, whereas general category Section Officers upto Select List 1987 were given *in-situ* upgradation, SC category officers upto the Select List 1989 and ST category officers upto the Select List 1991 were given such upgradation.

1.29 The Committee desired to know as to whether a person who was given an *in-situ* scale can be given a jump on deputation or he can go in the same level. Responding to this, the witness stated that a person on deputation gets scale and deputation allowance but in some cases to encourage officials one level jump is also given.

1.30 In the context of appointees being given option either to get deputation allowance or next higher grade, the MHA elaborated the rule position stating that as per the instructions on the subject as laid down by Govt. of India *vide* OM No. 2/29/91-Estt. (Pay III) dated 5th January, 2004, an employee appointed on deputation/foreign service may elect to draw either the pay in the scale of deputation/foreign service post or his basic pay in the present cadre plus deputation (duty) allowance thereon plus personal pay, if any. It was also informed that MCD follows service rules, regulations and instructions of the Central Government issued from time to time.

1.31 The Committee were informed by the witness from the MCD that the scale of pay attached to the post of Secretary to the Commissioner had been upgraded from Rs. 12000-16500 to Rs. 14300-18300 but this scale had not been given to Secretary to the Commissioner till that time.

1.32 Responding to a query as to who makes review of the scale and qualification, the witness from MCD submitted that it is responsibility of the department to see whether he qualifies for the post. The witness also informed that RR for the Additional Deputy Commissioner have been notified but the same have not been notified for Secretary to the Commissioner.

1.33 When the Committee desired to know as to which rank, Shri Matharoo was placed in the Corporation at the time of his appointment on deputation basis, the Secretary replied:

"His substantive rank was Section Officer, however, *in-situ* means in the situation where you are working. But upgrading the same post he was given the *in-situ*

promotion of Under Secretary which is not a regular promotion. He was drawing the Pay and Allowances of Under Secretary."

1.34 The Committee when desired to know about the post or rank on which, Shri Matharoo was placed at the time of his appointment on deputation in the Corporation, the witness, the then Commissioner stated:

"A person which comes on deputation in our Corporation, is given a higher rank and pay scale. He was working in scale of pay of Rs. 10000-15200/- at that time. He was appointed in the Corporation in the pay scale of Rs. 12000-16500/-. It exists for everybody except the IAS and IPS. The officers of the DANICs, Customs, Excise, Land and Estate Services, State Civil Services are given the option to take either Deputation allowance or one pay scale above."

1.35 The witness from DOPT also stated that as per their calculation it will take another 3 to 4 years for the batchmates of Shri Matharoo to reach the rank at which Shri Matharoo is presently working in MCD.

1.36 When pointed out that there was so much haste in MHA on the action on the request of MCD as the action was taken by the MHA on the same day the application was issued on 04.09.2001, on 05.09.2001, it was received in MHA, and the action was taken on 06.09.2001, the Secretary, MHA stated:

"I can tell you the reason for the same. The officer was working in the Ministry of Home Affairs. I'm saying by conjecture because when the offer came from MCD or he was told that he is being taken the action started. Since he was working in the Ministry, so he pursued his case because normally when the case of an officer is received from his own ministry, he pursues it with some interest thinking that if it is finalised quickly he may be relieved from there. I would like to say that it has not happened in a day, however, this has been a haste."

1.37 The Committee inquired about the urgency in the appointment of Shri Matharoo in MCD that steps were taken hurriedly without any rule, without the approval of the Government and without completing the formalities on paper. The witness respond that the recruitment rule is sent to the Delhi Government for notification in anticipation of approval.

1.38 When the Committee desired to know as to whether the appointment of Shri Matharoo in MCD was slip of mind or blunder, the witness, the then Commissioner submitted as under:—

"In this regard, I would like to say only this much that it has been committed that inadvertently. Here because, only this is that our Corporation formulate the Recruitment Rules. There is a 21 member appointment committee in the Corporation. There are 21 members in the committee. The Committee consist of 4 members groups the opposition and rest of the members one from the ruling parties. 21 members committee means one fourth members of the Corporation, appointment committee is a very important committee. The Committee decided that there should a post of A.D.C., because, earlier, there was no post of Secretary. Because, it is an important post. All the councilors, MLAs and MPs do have their contact with him. The Committee approved the R.R. and after passing it the Corporation sent it to the UPSC and the UPSC approved it and sent it back. We

were extending his deputation for years. After a period of these years extension is not granted, therefor, I think that they have done it in a hurry. It seemed that after a period of three years extension was not granted. In majority of cases the Ministry of Home Affairs do not grant extension. I receive hundred files a day; out of them files are of court cases. We make a detailed study of such files. As far as administrative cases are concerned, I admit that all this have happened in haste. Inadvertent mistake has been committed and we can get it inquired as to which level it has been committed in the Corporation."

1.39 On being enquired as to when MCD came to know that an inadvertent mistakes had been committed, the witness reported that they realized it when the MHA wrote a letter to them in that regard. In this regard, the witness also added:—

"...The Corporation had already taken action in this regard. To identify the mistake, we sent the Additional Solicitor General to enquire as to whether mistakes have taken place in this report. We realised that we should not have made hurry."

1.40 On being enquired as to what action they had taken to rectify the mistakes when the Ministry and Corporation felt that some mistakes had been committed the witness responded as under:—

"...in the last meeting of this Committee, I have submitted that the MCD by writing a letter on 4 September, called for the application of Mr. Matharoo. That application was sent back to MCD on 6th September, after getting vigilance clearance. In that letter, although it was written as to for what post Shri Matharoo was being considered but nothing was mentioned regarding the pay scale. Information regarding the post was just written. When I forwarded the name then as I have already mentioned, we have not considered his eligibility. It is the duty of MCD to consider his eligibility. They were to perform this duty."

1.41 As regards lien of Shri Matharoo in the Central Government, the MHA informed that in view of his absorption in the MCD w.e.f. 03.11.2003, the question of retaining his lien in Central Government does not arise.

1.42 In response to a question as to whether the Ministry had examined the representation regarding alleged irregular appointment of Shri Matharoo in MCD, the MHA, in their written comments, stated:

"Ministry of Home Affairs has examined the representation regarding alleged irregular absorption of Shri G.S. Matharoo in Municipal Corporation of Delhi. The Ministry of Home Affairs is of the view that it would have been advisable for the MCD to wait for notification of Recruitment Rules by Government of NCT of Delhi before issuing the order absorbing him as Secretary to the Commissioner. However, the MCD has justified the decision on administrative exigencies."

1.43 On being pointed out that there were media reports about the corruption charges and CBI inquiry against Shri Matharoo, the MHA in their written reply commented as under:—

"The Central Bureau of Investigation has registered a case bearing No. EOU-I-205-A-0005 dated 9th May, 2005 under Section 13(2) read with 13 (1) under Prevention of Corruption Act, 1988 for investigation into the allegations of

possessing assets disproportionate to his known sources of income. Further investigation is in progress."

1.44. The MHA furnished a list of 31 officers of MCD against whom action were taken in pursuance of CBI/vigilance/cases registered under Prevention of Corruption Act/Allegations of possessing assets disproportionate to their known source of income during the year 2005 including Shri Matharoo. It was reported therein that two officers namely Shri Brij Pal Singh, EE and Shri R.B.S. Bansal, EE were suspended on the allegation of possessing assets disproportionate to their known source of income during the year 2005.

1.45. The Committee desired to know the name of those persons who were suspended and those who were not suspended after the CBI raid held during the last one year. Responding to this, the witness from MCD stated as under:—

"Sir, there is a list of officers who were raided. Some of them were suspended but most of them were left and there are 33 officers against whom action was taken till 16th June. This is as per the decision of the competent authority that most of them remained suspended and only few were suspended."

The witness also stated:

"Though this decision was of the competent authority but we have seen one thing that those who were suspended, were involved in trap cases and most people who were not suspended were involved in the cases of disproportionate assets."

The witness further stated:

"There was a case of disproportionate assets on Shri Brijpal Singh, he was suspended. Shri R.B.S. Bansal was suspended in the same case and Shri Raj Mohan Singh was also suspended in the same case."

On being inquired as to who were the persons who were not suspended, the witness replied as under:—

"...In the case of disproportionate assets, Shri G.S. Matharoo was not suspended."

1.46 The Committee asked if the Government would like to get the matter be examined by CBI or by an independent agency for giving priority to a person and protecting him, a person who was taken on deputation and deputed on a post higher than his previous post, to create a post of Secretary and to upgrade the pay scale although yet to be given, not seeking advice of UPSC, suspending some officers during raid under the same case and leaving the people like Matharoo, so that the factual position could be traced. Responding to the same, the Special Secretary, MHA stated:—

"Sir, if we look at the whole episode, it required to be examined."

On being enquired as to whether CBI is a competent agency for this examination. The witness, the Special Secretary responded in affirmation.

Observations/Recommendation

1.47 In his representation, the petitioner stated that Shri G.S. Matharoo, an officer of Ministry of Home Affairs was appointed as Additional Deputy Commissioner/Joint Assessor and Collector (Rs. 12000-16500) with effect from 26.09.2001 in MCD on deputation basis by flouting all the prevailing norms. According to him, there was no vacancy circular for the said purpose and no clearance was also taken from DOPT in the matter. He was a Group 'B' Officer in the Ministry and thus was not eligible for the said post. Shri Matharoo subsequently applied for the post of Secretary to the Commissioner for which he obtained NOC from the MHA and got absorbed in the MCD. The petitioner stated that no recruitment could be made till the recruitment rules for any post are approved by the Central Government and published in the Official Gazette. In this case, according to the petitioner, no RRs were approved and notified. Cadre Clearance of DOPT was also not taken for this appointment as Secretary to the Commissioner. Shri Matharoo had never been a regular Group 'A' Officer in the Ministry and therefore the question of his eligibility for the post of Additional Deputy Commissioner or Secretary to the Commissioner in the MCD does not arise. To give Shri Matharoo further career advancement, the post of Secretary to the Commissioner, was further upgraded to Deputy Commissioner in the pay scale of Rs. 14300-18300 in MCD (Director in the Central Ministries). The various issues arising out of examination of the subject by the Committee are discussed in the succeeding paragraphs.

1.48 The Committee note that on 4.9.2001 the Municipal Corporation of Delhi (MCD) intimated the Ministry of Home Affairs (MHA) that the name of Shri G.S. Matharoo was under consideration in MCD for appointment to the post of Additional Deputy Commissioner/Joint Assessor and Collector (Rs. 12000-16500) on deputation basis. The MHA were requested to forward the name of Shri Matharoo through proper channel alongwith necessary cadre clearance/NOC. It was also requested that his Annual Confidential Reports (ACPs) for the last five years, vigilance clearance report and integrity certificate might also be forwarded. The Committee note that Shri Matharoo submitted an application on 4.9.2001 to MHA for the post of ADC/Joint Assessor & Collector in MCD and requested that this application might be forwarded to the MCD. He also intimated that he had already given an advance copy of this application to the MCD. The MHA forwarded the application of Shri Matharoo to the MCD alongwith photocopies of his ACRs, integrity certificate and vigilance clearance on 6.9.2001. The MCD intimated that after considering the assessment of ACRs of Shri Matharoo as "Outstanding" for the last five years and vigilance clearance, he was appointed as ADC in MCD on deputation basis in the pay scale of Rs. 12000-16500, with the approval of the then Commissioner, MCD, the competent authority for the purpose. Consequent upon his appointment to the post of ADC, the MHA placed the services of Shri Matharoo at the disposal of MCD w.e.f. 25.9.2001. Shri Matharoo joined MCD on 26.9.2001 and was posted as ADC (HQ).

1.49 The Committee note that as per the then prevalent Recruitment rules (RRs) the post of ADC in MCD as notified by the Government of NCT of Delhi (then Delhi Administration) *vide* its Notification dated 7.1.1983, officer belonging to the IAS, Central Services Group-'A' and State Civil Service Class-I drawing a minimum Rs. 1200/- per month were eligible appointment to the post of ADC in the pre-revised scale of Rs. 1200-2000/- (revised as Rs. 12000-18000). The Committee observed that Shri Matharoo joined MCD on 16.1.2001 and as per the then RRs he was not eligible for even for consideration for appointment to the post of ADC as he was not holding Group-'A' service in the Central Service as required under the rules. In fact, he was holding the post of Section Officer which is a Group-B category post. Even as per the RRs as approved by UPSC *vide* letter dated 10.10.2002 for filling up the vacant post of ADC/Joint Assessor and Collector, as a one time measure pending finalisation of RRs, Shri Matharoo was also not eligible as per the requirements prescribed for the post of ADC in MCD. At the time of the selection as ADC in MCD Shri Matharoo did not put in the requisite 5 years regular services in the cadre in the scale of Rs. 10000-15200. On the date of his appointment as ADC in MCD, he had put in just about two years service in the scale of pay of Rs. 10000-15200 as Under Secretary (*in situ*) which was granted to him w.e.f. 20.8.1999. The incumbent of the *in situ* post continue to perform the same duties and responsibilities which he performed as Section Officer, even while holding the post of Under Secretary (*in situ*). The *in situ* promotion is personal to the incumbent against the upgraded post and is not against any regular vacancy in Under Secretary. Thus it would be evident from the requirements prescribed for the post of ADC in MCD that Shri Matharoo was not eligible for the same as he was not holding any regular post in the scale of Rs. 10000-15200/- in MHA.

1.50 The Committee were surprised to note that the MHA did not even bother to examine as to whether Shri Matharoo was eligible for consideration for the post of ADC in MCD on deputation basis and acted like a silent spectator to a gross irregularity. The Committee note that though MCD follows service rules, regulations and instructions of the Central Government issued from time to time, they inexplicably ignored the prescribed procedure as laid down for filling up the posts on deputation basis without any justifiable reason. Further, the MCD did not issue any vacancy circular while requisitioning names for consideration for recruitment to the post of ADC and continued the practice being followed by them over the years to fill up vacant posts in their organisation without circulation, ostensibly on the grounds that the MCD, being a field agency had to perform various obligatory functions for which a post cannot be allowed to be kept vacant as the filling up of the same through circulation takes considerable time. The Committee strongly feel that it was a wrong practice which was being followed for many years in MCD, to fill up post without notification or circulation of vacancy. Even after knowing it fully that it was a wrong practice, no action has been taken by them to rectify the past mistakes and to follow the right procedure as laid down in the relevant orders of the Government of India issued from time to time. In the context of Shri Matharoo, the prescribed procedures were overlooked even while he did not fulfil the requisite qualifications for proceeding on deputation to the MCD. The Committee feel that it was the responsibility of the lending (MHA) as well as the borrowing (MCD) departments to go by rule books and necessary

steps would have been taken to rectify the mistake even if it was found at later stage. However, the Committee regret that both the departments chose to ignore their responsibility and in the process Shri Matharoo was appointed in MCD on deputation basis irregularly flouting the rules and norms in the matter. Moreover, undue haste was shown both by the lending and borrowing organisations to process the case of Shri Matharoo in the least possible time overlooking the requisite procedure to be followed and the qualifications of the incumbent. While deposing before the Committee, the MCD had accepted the mistake and the manner in which the case of Shri Matharoo was processed in haste. MCD also failed to give any plausible and convincing reasons for requisitioning the services of Shri Matharoo only for the post of ADC in their department on deputation basis.

1.51 Another irregularity observed by the Committee in the instant case relates to the appointment of Shri Matharoo in the post of the Secretary to the Commissioner, MCD. The Committee note that one post of ADC was segregated from deputationist quota especially for its utilisation as the Secretary to the Commissioner. As per the RRs for the post of Secretary to the Commissioner, the post carries the pay scale of Rs. 12000-16500 which is equivalent of the post of ADC/Joint Assessor and Collector. As per the draft RRs the said post was to be filled up by deputation/absorption of officers under Central/State Governments/UTs Administration holding analogous post on regular basis in the parent cadre of the Department or with 5 years service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs. 10000-15200 or equivalent in the parent cadre or department. The said RRs for the post of Secretary to the Commissioner were approved by the Corporation and the UPSC. However, the same were yet to be notified when Shri Matharoo had applied for absorption to the post of Secretary to the Commissioner. The competent authority accorded approval for such absorption and the MHA blatantly disregarded the extant rules and orders conveyed with undue haste to MCD that they had no objection to the absorption of Shri Matharoo as Secretary to the Commissioner subject to his tendering technical resignation under Rule 26(2) of CCS (Pension) rules, 1972, from the post of Under Secretary in MHA from the date of his absorption in MCD. The Commissioner, MCD in exercise of powers vested in him under section 92 of the DMC Act, 1957 absorbed Shri Matharoo in MCD as Secretary to the Commissioner with immediate effect *vide* office order dated 3.11.2003. The MCD forwarded technical resignation dated 3.11.2003 of Shri Matharoo effective from the date of his absorption in the MCD, consequent upon his permanent absorption as Secretary to the Commissioner, which was accepted with effect from the same date.

1.52 The Committee are constrained to note that the MCD absorbed Shri Matharoo in so much haste that they did not wait for the notification of the RRs for the post of Secretary to the Commissioner. The MHA also responded with as much haste as possible to give its no objection to the cadre clearance and absorption of Shri Matharoo in MCD without examining or reviewing the case with reference to the relevant RRs and procedure. Shri Matharoo was holding a permanent post of Section Officer of the CCS cadre of MHA and appointed to the post of Under Secretary (*in situ*) in 1999. The post of Under Secretary (*in situ*) did not carry higher duties and responsibilities attached to the post of Under Secretary and he continued to perform the functions of Section Officer while holding the post of Under Secretary (*in situ*). It was observed

that in terms of the RRs which was not even notified, Shri Matharoo was not eligible for consideration for the post of Secretary to Commissioner. If Shri Matharoo were to return to join his parent cadre, he would have been accommodated not higher than the post of Under Secretary (*in situ*) which he left while proceeding on deputation to the MCD. In the light of the above facts, the Committee fail to understand as to how Shri Matharoo was found suitable for the post of Secretary to the Commissioner. The Committee are distressed that Shri Matharoo was unduly benefited in the process by the negligence or mistakes, whether deliberate or inadvertent, committed by the MCD and the MHA, ignoring thereby the relevant rules and the prescribed procedure, which resulted in the irregular appointment of Shri Matharoo in MCD on deputation basis and his subsequent shifting to the post of Secretary to the Commissioner.

The DOPT had also expressed doubt as to whether it was legally correct not to take approval/opinion of the UPSC in the matter. The Committee were informed that the batchmates of Shri Matharoo would have to wait for atleast another 3-4 years before they attain the post which Shri Matharoo is presently holding in MCD.

1.53 Further, the Committee were informed that the scale of pay attached to the post of Secretary to the Commissioner had been upgraded from Rs. 12000-16500 to Rs. 14300-18300 but this scale had not been given to the Secretary to the Commissioner so far. The Committee are anguished that as yet another measure of favouritism, the pay scale of the post of Secretary to the Commissioner was upgraded, though not implemented as yet, in order to give yet another benefit to Shri Matharoo who was the incumbent to the post of Secretary to the Commissioner.

1.54 During examination, the Committee were informed that the Central Bureau of Investigation (CBI) had registered a case against Shri Matharoo under Prevention of Corruption Act, 1988, for investigation into the allegations of possessing assets disproportionate to his known sources of income the investigation was under progress. It was revealed during the course of evidence that while three officers of MCD were suspended on the charge of disproportionate assets, no action was taken against Shri Matharoo on the basis of the same charge. This only goes to show that Shri Matharoo received undue favour and protection by the concerned authorities.

1.55 To sum up the events and the facts enumerated above, it is abundantly clear that Shri Matharoo had been given undue benefit or favour. He was taken initially on deputation and deputed on higher post overlooking the prescribed procedure and requisite rules. One post of Secretary to the Commissioner, MCD was specifically created to accommodate him and the scale of pay attached to the post of Secretary to Commissioner was upgraded, although yet to be implemented. Advice/approval of UPSC was also not taken as and where necessary under the relevant rules while appointing him in MCD on deputation basis. While others were suspended for charges of possessing disproportionate assets, Shri Matharoo was not suspended for the same charge. During evidence, the Committee asked the witness, if the matter could be examined by CBI or by an independent agency for giving priority and undue advantage and protection to a person. The Special Secretary, MHA deposed before the Committee, 'Sir, if we look at the whole episode, it required to be examined'. On a further query as to whether CBI is a competent agency for this examination, the Special Secretary,

MHA responded affirmatively. After careful examination of the issues raised, the Committee are convinced that there were irregularities in the process of appointment of Shri Matharoo in MCD on deputation basis and his subsequent appointment as Secretary to the Commissioner, MCD. He was given undue favour and protection against corruption charges levelled against him. The Committee, therefore, strongly recommended that the entire matter may be referred to a high level independent agency for a detailed inquiry and be reported within a period of six months. The Committee would like to be apprised of the findings of the said agency and the conclusive action taken in the matter expeditiously.

CHAPTER II

PETITION REQUESTING TO CONSIDER ALL TRANSFERRED EMPLOYEES OF CHANDIGARH ADMINISTRATION TO MUNICIPAL CORPORATION OF CHANDIGARH ON DEEMED DEPUTATION

2.1 On 15th March, 2005, Shri Basudeb Acharia, MP presented to Lok Sabha a petition signed by Shri Rakesh Kumar, Convener, Co-ordination Committee of Government and Municipal Corporation (MC) Employees & Workers, Union Territory (UT) Chandigarh and others requesting to consider all employees transferred to Municipal Corporation in U.T. Chandigarh as on deputation.

2.2 In the petition, the petitioner stated that on creation of Municipal Corporation in U.T. Chandigarh about 6,000 employees of the U.T. Administration were transferred to the M.C. in May, 1996 and the Punjab Municipal Corporation Act, 1976 as extended to UT Chandigarh was made applicable. All the affected employees unions, associations of Chandigarh protested against the arbitrary change of their employer. The employees agreed to work in the Municipal Corporation provided they are considered to be on deputation so that their service conditions are not changed. The Government of India took a decision to allow the transferred employees of Chandigarh Administration to MC to be on "deemed deputation" *vide* their letter dated 7th December, 1998. It was also admitted, in response to an unstarred question on 15th December, 1998 that the employees of Chandigarh Administration transferred to the Municipal Corporation of Chandigarh shall be treated as on deputation without deputation allowance. It was also informed on 13th November, 1999 by the Administration that the "Draft Bill" for the Amendment of the Punjab M.C. Act, 1976 has been sent to the Government of India. The Chandigarh Administration further went to filing an application before the Central Administrative Tribunal, requesting therein to allow them to continue the services of the applicants with the Municipal Corporation Chandigarh by treating them on deputation. It was also admitted before the Central Administrative Tribunal that the "Draft Bill" for amendment in clauses (h) of sub-rule 2 of section 428A of the Punjab Municipal Corporation Act, 1976 as extended to the U.T. Chandigarh has been sent to the Government of India for the purpose. Subsequently, the Chief Engineer, Chandigarh Administration *vide* its letter dated 26th June, 2004 circulated fresh decision of the Administration seeking option of the employees working directly under the Administration and Municipal Corporation. Those who opt to become MC employees shall be absorbed and the rest will have to loose their jobs. According to the petitioner, the employees have been betrayed and those who do not submit to the will of the Administration shall have to face retrenchment.

2.3 The petitioner, therefore, requested that the Draft Amendment Bill to amend the Punjab Municipal Corporation Act, 1976 as extended to UT Chandigarh might be passed so that all employees transferred to the Municipal Corporation of Chandigarh might be treated as on deputation and service of all the employees be protected with their original service conditions.

2.4 A Private Member Bill (No. 50 of 2004) on the Punjab Municipal Corporation Law (Extension to Chandigarh) Amendment Bill, 2004 by Shri Pawan Kumar Bansal, MP was introduced in Lok Sabha on 3rd December, 2004. Accordingly, the Committee decided to circulate the petition *in extenso* to the Members of Lok Sabha. The said Bill was listed for consideration in Lok Sabha on 24th March, 2005. A copy of the petition was circulated to all the Members of Lok Sabha on 21st March, 2005 for their information and use during the discussion on the Bill in the House under the provisions of Directions 94 of the Directions by the Speaker, Lok Sabha. However, the Bill could not be taken up for discussion due to adjournment of the sitting of the House on 24th March, 2005. Thereafter, the Bill was not listed again for discussion in the House and therefore, the petition was referred to the Ministry of Home Affairs for furnishing their comments on the points raised therein on 6th June, 2005, as per Note VII under Rule 307 of the Manual on Business and Procedure which stipulates as under:—

"When there is sufficient time available to a Bill for its being taken up in the House, Committee may call for facts/hear oral evidence in respect of petitions relating to such Bills."

2.5 In their response, the Ministry *vide* communication dated 29th June, 2005 stated as under:—

"The Municipal Corporation of Chandigarh was set in 1994 in pursuance of the provision contained in "the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994". In terms of clause (h) of sub-section (2) of Section 428A of the said Act, it has been provided that:

- (h) every officer and other employee serving under the administration immediately before such commencement in connection with the transferred functions shall be transferred to and become an officer or other employee of the Corporation with such designation as the Corporation may determine and hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have held the same if the Corporation had not been established and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Corporation:

Provided that the tenure, remuneration and terms and conditions of service of any such officer employee shall not be altered to his disadvantage without the previous sanction of the Administrator:

Provided further that the Corporation may employ any such officer or employee in the discharge of such functions as it may think proper and every such officer or other employee shall discharge those functions accordingly."

2. It was in pursuance of the aforesaid statutory provision that the employees of the Chandigarh Administration who were performing functions transferred to Chandigarh Municipal Corporation were transferred to that Corporation. There has, however, been a persistent demand from these "transferred" employees that they should be treated on "deemed deputation" with the Corporation and not forced to be

permanently absorbed in the Corporation. The main reason because of which this demand has been raised is the apprehension in a section of these "transferred" employees that it might be difficult for the Corporation to bear expenditure on account of their pensionary and other retirement benefits in view of its weak financial conditions.

3. The matter was examined and it was considered expedient to accept the said demand of the transferred employees and treat them to be on "deemed deputation" with the Corporation subject to the condition that they shall not be entitled to draw any deputation allowance. It has, however, not been possible to enforce this decision as it has been pointed out by the Ministry of Law and Justice (Department of Legal Affairs) that it is imperative to suitably amend the aforesaid section 428A(2)(h) of "the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994" to specifically provide that the employees transferred to the Corporation would be treated to be on "deemed deputation" with the Corporation.

4. A number of such "transferred" employees filed applications before the Central Administrative Tribunal (Chandigarh Bench) for setting aside the order of their transfer to the Corporation. These applications were disposed of by the Tribunal *vide* its order dated 9th November, 2001, with the direction that the employees "transferred" to the Corporation should be given a reasonable opportunity to exercise their option as to whether they were willing to be transferred to the Corporation or to continue to function under the Chandigarh Administration. The said judgement was challenged by the Chandigarh Administration before the High Court of Punjab and Haryana, but the Writ Petition filed in this connection was dismissed by the Hon'ble Court. The Chandigarh Administration has accordingly been advised to implement the directions passed by the Tribunal and give an opportunity to the transferred employees to exercise their option.

5. The Chandigarh Administration in compliance with the order of the CAT/High Court issued notifications seeking options of the employees for transfer to the Municipal Corporation, Chandigarh on permanent basis. So far options have been sought in respect of certain categories of field staff. Similar course of action is proposed to be taken by the Administration in respect of remaining categories of employees.

6. The demand of the transferred employees of the Chandigarh Administration to treat them as if they are on 'deemed deputation' with the Municipal Corporation of Chandigarh has been under consideration in the Ministry of Home Affairs. On 1st February, 2000, the Chandigarh Administration forwarded a draft Bill for amendment of clause (h) of sub-section (2) of Section 428A of "The Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994" to provide for 'deemed deputation' status to the transferred employees without any deputation allowance along with the condition that the maximum period of deputation would not be applicable in this case and that the employees shall have no right

for repatriation to the parent cadre except in case of their promotion in the parent cadre. This proposal was considered in consultation with the Department of Personnel and Training, Department of Pension and Pensioners' Welfare and Department of Legal Affairs. In this connection, an Inter-Departmental Meeting was also held on 6.6.2003 in MHA to discuss the matter. The Department of Personnel and Training was of the view that continuation of a Government servant on deputation for an indefinite period of time was not in conformity with the instructions regulating the deputation of Government servants to other organizations. That Department further observed that CCS Pension Rules, 1972 had been amended to enable the Government to bear the financial liability on account of payment of pensionary benefits in the case of conversion of Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Ltd.

7. On the analogy of amendment made in the CCS (Pension) Rules and in order to enable the Chandigarh Administration to bear the expenditure on payment of pensionary and retirement benefits, a proposal to amend the Rules governing the service conditions of employees of Chandigarh Administration is being pursued by the Ministry with the Department of Pension and Pensioners' Welfare.

8. The Department of Pension and Pensioners' Welfare sought certain clarifications and details in the matter. The UT Administration of Chandigarh collected the necessary information and provided the requisite clarification on the points raised by the Department of Pension and Pensioners' Welfare. After examining the information received from Chandigarh Administration, the Department of Pension and Pensioners' Welfare has been requested on 14.6.2005 by MHA for their concurrence to the amendment of Rule 2 of the Conditions of Service of the Union Territory of Chandigarh Employees Rules, 1992 enabling Administration of Chandigarh to bear all charges on account of retirement benefits, pension, gratuity, provident fund etc. in respect of transferred employees. The matter is accordingly being pursued with the Department of Pension and Pensioners' Welfare."

2.6 Subsequently, the Ministry of Home Affairs *vide* thier communication dated 22nd December, 2005, stated as under:—

"....concurrence of Department of Pension & Pensioners' Welfare, to the amendment of Rule 2 of the Conditions of Service of the Union Territory of Chandigarh Employees Rules, 1992 enabling Administration of Chandigarh to bear all charges on account of retirement benefits, pension, gratuity, provident fund etc. in respect of employees of the Chandigarh Administration transferred to the Municipal Corporation of Chandigarh has been received. Accordingly the aforesaid Rule 2 of the Conditions of Service of the Union Territory of Chandigarh Employees Rules, 1992 has been amended as per notification dated 10.11.2005...."

2.7 As per the aforesaid notification dated 10th November, 2005, the amended rules have been given retrospective effect and the same deemed to have come into force on 24th May, 1994.

Observations/Recommendations

2.8 The Committee note that the Municipal Corporation in Chandigarh came into being with effect from 24th May, 1994. The municipal functions which were being performed by the Union Territory Administration were transferred to the Municipal Corporation along with the employees. These employees were apprehensive that the Municipal Corporation may not be in a position to pay their pension and other benefits due to their weak financial position. Therefore, they demanded that they should be treated on 'deemed deputation' in the Corporation and they are not forced to be permanently absorbed in the Corporation. It was considered expedient by the Government of India to accept their demand and treat them to be 'deemed deputation' with the Corporation subject to the condition that they shall not be entitled to draw any deputation allowance. However, the decision could not be enforced unless Section 428A, (2) (h) of 'The Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 was amended accordingly.

2.9 A number of such 'transferred' employees filed applications before the Central Administrative Tribunal (CAT) (Chandigarh Bench) for setting aside the order of their transfer to the Corporation. The Tribunal *vide* its order dated 9th November, 2001 directed that such employees should be given a reasonable opportunity to exercise their option as to whether they were willing to be transferred to the Corporation or to continue to function under the Chandigarh Administration. Subsequently, the said judgement was also confirmed by the High Court of Punjab and Haryana and the Chandigarh Administration was advised to implement the Directions passed by the Tribunal. In compliance with the order of CAT/High Court, the Chandigarh Administration issued notifications seeking options of the employees for transfer to the Municipal Corporation. From the facts enumerated in the preceding paragraph, it is evident that while transferring the employees from the Chandigarh Administration Corporation the interest of the transferred employees were not kept in view. In fact, the Government acted in an arbitrary manner and ignored the persistent demand of the employees for grant of status of 'deemed deputation' in the Corporation. Understandably, this attitude of Administration forced these employees to approach CAT/Court and ultimately to this Committee for redressal of their grievances. The Committee cannot but express their unhappiness over this attitude of the Administration. In fact, the further action taken by the Administration, dealt with in the subsequent paragraph, reinforces the Committee's observations about the neglectful attitude of the Administration shown initially towards its employees.

2.10 From the facts made available to them, the Committee find that a draft bill was forwarded by the Chandigarh Administration for amendment of 428 (A) (2) (h) of the aforesaid Act providing 'deemed deputation' status to the transferred employees without any deputation allowance and ceiling of maximum period of deputation. However, the Department of Personnel and Training opined that the continuation of a Government servant on deputation for an indefinite period of time was not in conformity with the instructions regulating such deputation. Subsequently, the Government proposed to amend Rule 2 of the Conditions of Service of the Union Territory of Chandigarh Employees Rule, 1972 This amendment sought to enable the Administration of Chandigarh to bear all charges on account of retirement benefits,

pensions, gratuity, provident fund etc. in respect of employees of the Chandigarh Administration transferred to the Municipal Corporation of Chandigarh. The Committee have been informed that these amendments have been given effect to *vide* a notification issued on 10th November, 2005 with the concurrence of the Department of Pension and Pensioner Welfare. These rules have been given effect retrospectively from 24th May, 1994.

2.11 Thus, the issue concerning the service condition of the employees of Chandigarh Administration transferred to the Municipal Corporation of Chandigarh, now appears to have been settled. By these amendments, all charges on account of retirement benefits such as pension, gratuity and provident fund etc. to the employees transferred from the Administration of Chandigarh to the Municipal Corporation of Chandigarh for the period they served in the Corporation will be borne by the Administration of Chandigarh. The Committee are satisfied that the apprehension of the transferred employees on the issue has thus been addressed to the Government and to this extent would meet the demand of the petitioner. However, the fact that within a period of seven months from the presentation of the petition to the House and consequential intervention by this Committee, Government were able to resolve the issue clearly shows the scant attention paid by the authorities to the matter in the past. The Committee deplore this and trust that such attitudes will not persist. They also hope that the Government will take necessary steps to ensure expeditious implementation of settlement of retirement benefits etc. of the transferred employees and will not give them any cause of grievance on the issue in future.

NEW DELHI;
19 May, 2006

29 Vaisakha, 1928 (Saka)

PRABHUNATH SINGH,
Chairman,
Committee on Petitions.

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON
PETITIONS (FOURTEENTH LOK SABHA)

The Committee on Petitions sat on Wednesday, 15th June, 2005 from 1500 hrs. to 1605 hrs. in Committee Room No. 63, First Floor, Parliament House, New Delhi.

PRESENT

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri Suresh Kurup
3. Mohd. Muqueem
4. Shri Vijoy Krishna

SECRETARIAT

Shri Brahm Dutt — *Director*

WITNESSES

Representatives of the Ministry of Home Affairs

1. Shri V.K. Duggal — *Home Secretary*
2. Shri K.S. Sugathan — *Joint Secretary (U.T.)*
3. Shri Yashwant Raj — *Joint Secretary (Admn.)*
4. Shri J.B. Sinha — *Director (Admn.)*

Representatives of the Government of NCT of Delhi

5. Shri O.P. Kelkar — *Principal Secretary,*
6. Shri R.D. Gupta — *Urban Development
Consultant*

Representative of the Municipal Corporation of Delhi (MCD)

7. Shri Rakesh Mehta — *Commissioner (MCD)*

2. At the outset, the Chairman welcomed the representatives of the Ministry of Home Affairs and drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

3. Thereafter, the Committee took evidence of the representatives of the Ministry of Home Affairs on the representation requesting to enquire into the alleged irregular appointment of an officer of the Ministry of Home Affairs/Government of India in Municipal Corporation of Delhi (MCD).

4. The Committee sought clarifications about the eligibility of one particular officer of the Ministry of Home Affairs for appointment in MCD, clearance from UPSC, his seniority as Under Secretary, Vigilance/CBI cases registered against him, his absorption in MCD, etc. The witnesses promised to furnish written information on some of the points raised by the Committee.

5. A copy of the verbatim proceedings of the sitting of the Committee was kept on record.

The witness then withdrew.

The Committee then adjourned to meet again on 27.6.2005.

MINUTES OF THE THIRTIETH SITTING OF THE COMMITTEE ON PETITIONS
(FOURTEENTH LOK SABHA)

The Committee on Petitions sat on Friday, 27th January, 2006 from 1400 hrs. to 1545 hrs. in Committee Room No. 53, First Floor, Parliament House, New Delhi.

PRESENT

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri Baliram Kashyap
3. Shri Suresh Kurup
4. Mohd. Muqueem
5. Shri Jyotiraditya Madhavrao Scindia

SECRETARIAT

1. Shri P. Sreedharan — *Joint Secretary*
2. Shri U.B.S. Negi — *Under Secretary*
3. Shri M. S. Jaspal — *Assistant Director*

WITNESSES

MINISTRY OF HOME AFFAIRS

1. Shri A.K. Mitra — *Special Secretary*
2. Dr. K. S. Sugathan — *Joint Secretary (UT)*
3. Shri Yashwant Rai — *Joint Secretary (Admn.)*
4. Shri B.A. Coutinho — *Joint Secretary (HR)*
5. Shri Dinesh Singh — *Joint Secretary (FFR)*
6. Shri I. B. Karn — *Director (Delhi)*
7. Shri Pravir Pandey — *Deputy Secretary*
8. Shri S.K. Bhatnagar — *Deputy Secretary*
9. Shri Jagram — *Director*
10. Shri M.M. Kutty — *Addl. Commissioner (MCD)*
11. Shri Pradeep Srivastava — *CVO (MCD)*
12. Shri O.P. Kelkar — *Principal Secretary (UD)*
13. Ms. Renu Jagdev — *Director (Personnel), MCD*
14. Shri H.P.S. Saran — *Director (Vig.) MCD*
15. Shri Anil Agnihotri — *Administrative Officer (MCD)*

Ministry of Personnel, P.G. and Pensions
(*Department of Personnel & Training*)

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|----|---------------------|---|------------------|
| 1. | Shri P.I. Suvrathan | — | Addl. Secretary |
| 2. | Shri R. Ramanujam | — | Joint Secretary |
| 3. | Shri S.K. Lohani | — | Director |
| 4. | Shri D.N. Gupta | — | Deputy Secretary |

2. At the outset, Chairman welcomed the representatives of the Ministries of Home Affairs, Finance (Department of Economic Affairs-Banking Division) and Personnel, P.G. and Pensions (Department of Personnel & Training) and drew their attention to Direction 55(1) of the Directions by the Speaker, Lok Sabha regarding confidentiality of the proceedings. The Chairman also drew attention to Direction 95 which clearly stipulates that the Committee shall also meet as often as necessary to consider representations, letters, telegrams from various individuals, associations etc. which are not covered by the rules relating to petitions and give directions for their disposal.

6. The Committee then took oral evidence of the representatives of Ministry of Home Affairs and Ministry of Personnel, P.G. & Pensions (Department of Personnel & Training) on the following representations:—

- (i) Representation from Shri V.K. Singh regarding enquiry about absorption of Shri G.S. Matharoo in MCD.

I. Case of Shri G. S. Matharoo

Initiating the discussion on the issue, Hon'ble Chairman recalled certain observations expressed by the Ministry/MCD during the course of oral evidence taken on the last occasion on 15.06.2005 and their acceptance for certain mistakes on the issue.

In the process, the following points/issues were discussed by the Committee:—

- (i) Action taken by the Government/MCD to rectify the mistakes committed on the issue involving appointment of Shri G.S. Matharoo in M.C.D.
- (ii) Procedure followed while forwarding application of Shri G.S. Matharoo for the post in M.C.D. and the responsibility of the Department concerned in this regard.
- (iii) Seniority position of Shri G.S. Matharoo in the list of Section Officers for in situ promotion as Under Secretary.
- (iv) Need for circulation of vacancy by MCD as per rule.
- (v) Procedure followed while absorbing or granting promotion by the borrowing department and the details of scale of pay and the post held by Shri G.S. Matharoo in the Ministry and in M.C.D.
- (vi) Notifications regarding recruitment rules for the posts of Additional Deputy Commissioner and Secretary to the Commissioner and urgency to absorb Shri G.S. Matharoo in M.C.D.

- (vii) Mandatory consultation with UPSC for appointment to the post of Additional Deputy Commissioner in M.C.D.
- (viii) Comparative position/rank of Shri G.S. Matharoo vis-a-vis others of his batch in the Ministry.
- (ix) Upgradation of the post of Secretary to Commissioner from Rs. 12000-16500 to Rs. 14300—18300.
- (x) Action taken against the Officers of M.C.D. in pursuance of CBI raids/cases.
- (xi) Need for independent investigation by CBI on the entire issue concerning Shri G.S. Matharoo.

7. A copy of the verbatim proceedings of the sitting of the Committee was kept on record.

The Committee then adjourned.

MINUTES OF THE THIRTY-SEVENTH SITTING OF THE COMMITTEE ON
PETITIONS (FOURTEENTH LOK SABHA)

The Committee on Petitions sat on Friday, 19th May, 2006 from 1000 hrs. to 1040 hrs.
in Chairman's Room No. 45(II) Ground Floor, Parliament House, New Delhi.

PRESENT

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri N.S.V. Chitthan
3. Adv. Suresh Kurup
4. Smt. Nivedita Mane
5. Mohd. Muqueem
6. Shri Jyotiraditya Madhavrao Scindia
7. Shri Vijoy Krishna

SECRETARIAT

1. Shri P. Sreedharan — *Joint Secretary*
2. Shri A.K. Singh — *Director*
3. Shri U.B.S. Negi — *Under Secretary*

2. The Committee considered the draft Eleventh, Twelfth and Thirteenth Reports and adopted the same with minor modifications.

3. The Committee also authorised the Chairman to make consequential changes, if any, arising out of the factual verification of the Reports by the Ministries/Departments concerned and present the same to the House.

The Committee then adjourned.