

# COMMITTEE ON PETITIONS



LOK SABHA SECRETARIAT  
NEW DELHI  
May, 2005/Jyaistha, 1927 (Saka)

# EIGHTH REPORT

## COMMITTEE ON PETITIONS

(FOURTEENTH LOK SABHA)

*(Presented to Lok Sabha on 29.07.2005)*



LOK SABHA SECRETARIAT  
NEW DELHI

*May, 2005 / Jyaistha, 1927 (Saka)*

**CB-I.No. 335 Vol. VIII**

*Price: Rs. 15.00*

© 2005 BY LOK SABHA SECRETARIAT

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.

## CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE ON PETITIONS .....	(iii)
I.    INTRODUCTION .....	(v)
II.   REPORT	
CHAPTER-I    Petition requesting for issue of orders for payment of pension and pensionary benefits <i>w.e.f.</i> 1.1.1997 to the Directorate of Food transferee employees retired from Food Corporation of India (FCI) .....	1
CHAPTER-II    Petition requesting to amend Section 12A-4A of the Food Corporation Act, 1964 enabling Food transferee employees of FCI, to opt for liberalized pension scheme of Central Government .....	10
III. APPENDICES	
(i)    Petition No. 1 requesting for issue of orders for payment of pension and pensionary benefits <i>w.e.f.</i> 1.1.1997 to the Directorate of Food transferee employees retired from Food Corporation of India (FCI). .....	22
(ii)   Representation dated 25 November, 2004 .....	24
(iii)  Petition No. 2 requesting to amend Section 12A-4A of the Food Corporation Act, 1964 enabling food transferee employees of FCI to opt for liberalized pension scheme of Central Government .....	27
IV. MINUTES	
(i)    Minutes of the Seventh sitting of the Committee held on 8.11.2004. ....	30
(ii)   Minutes of Tenth sitting of the Committee held on 21.12.2004. ....	32
(iii)  Minutes of Sixteenth sitting of the Committee held on 25.5.2005. ....	34

COMPOSITION OF THE COMMITTEE ON PETITIONS

(2004-2005)

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri Raj Babbar
3. Shri Nandkumar Singh Chauhan
4. Shri N.S.V. Chitthan
5. Dr. M. Jagannath
6. Shri Jitin Prasad
7. Shri Baliram Kashyap
8. Shri Suresh Kurup
9. Mrs. Nivedita Mane
10. Mohd. Muqueem
11. Shri Dharmendra Pradhan
12. Shri Jyotiraditya Madhavrao Scindia
13. Shri Damodar Barku Shingada
14. Shri Mansukhbhai D. Vasava
15. Shri Vijoy Krishna

SECRETARIAT

1. Shri John Joseph — *Additional Secretary*
2. Shri S. Bal Shekar — *Joint Secretary*
3. Shri Brahm Dutt — *Director*
4. Shri R.K. Bajaj — *Deputy Secretary*

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

INTRODUCTION

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

- (i) Petition requesting for issue of orders for payment of pension and pensionary benefits *w.e.f.* 1.1.1997 to the Directorate of Food transferee employees retired from Food Corporation of India (FCI).
- (ii) Petition requesting to amend Section 12A-4A of the Food Corporation Act, 1964 enabling Food transferee employees of FCI, to opt for liberalized pension scheme of Central Government.

2. The Committee considered and adopted the draft Eighth Report at their sitting held on 25 May, 2005.

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

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

NEW DELHI;  
25 May, 2005  

---

4 Jyaishta, 1927 (Saka)

PRABHUNATH SINGH  
*Chairman,*  
*Committee on Petitions.*

## CHAPTER I

### PETITION REQUESTING FOR ISSUE OF ORDERS FOR PAYMENT OF PENSION AND PENSIONARY BENEFITS W.E.F. 1.1.1997 TO THE DIRECTORATE OF FOOD TRANSFEREE EMPLOYEES RETIRED FROM FOOD CORPORATION OF INDIA (FCI)

On 20 July, 2004, Shri Basudeb Acharia, MP presented to Lok Sabha a petition signed by Shri P.K. Chaki, Secretary, FCI Pensioners' Association, Acharaya Jagdish Ch. Bose Road, Kolkata-14 and others regarding issue of orders for payment of pension and pensionary benefits w.e.f. 1.1.1997 to the Directorate of Food transferee employees retired from Food Corporation of India (FCI) (See Appendix-I).

1.2 The petitioners in their petition *inter-alia* stated that the Government of India set up Food Corporation of India (FCI) by an Act in the year of 1964 and transferred the then employees of the Directorate of Food, under the Ministry of Food & Agriculture, Government of India, on as is where is basis, to FCI, protecting their service continuity and retirement benefits, as admissible to the Central Government employees under the C.C.S. (Pension) Rules. Accordingly, the Government amended the FCI Act in 1968 and inserted a new Clause 12A with sub-clauses 4(4a), 4(b), 4(c) etc. under section 12 of the Act. In terms of the statutory provisions of clause 12A of the FCI Act, 1964, options exercised by the Food transferees at the time of their transfer to FCI, they were absolutely governed by the Leave, Provident Fund, Retirement Benefits, as admissible to the Central Government Employees, under the CCS(P) Rules as amended from time to time. Accordingly, Directorate of Food transferees on retirement from FCI have been drawing pension and other retirement benefits on the last pay drawn in FCI pay scales which they opted under the CCS (Pension) Rules, 1972 as guaranteed under clause 12A of FCI Act, 1964.

1.3 The Petitioners further stated that the FCI introduced Industrial Dearness Allowance (IDA) pattern pay scale for its employees and revised the scales three times viz. on 01.08.1983, 01.08.1987 and 01.02.1992 and on each occasion the concerned authorities of the Food/Pension Ministry issued separate orders for payment of pension/family pension and other pensionary benefits on the last pay drawn in such revised FCI pay scales (IDA) under the CCS (Pension) rules and the pensioners continued to draw pension on the revised scales. On the recommendation of Justice Mohan Committee, FCI authority made another wage revision for its category I & II Executives and class III & IV employees w.e.f. 01.01.1997 vide its letter no. WRC/1/5/1999 dated 12.06.2000 and WRC 1/5/2001 dated 19.02.2001 respectively with the approval of the Government of India. However, the Government has issued no specific orders so far for payment of pension and other pensionary benefits in the revised scales of pay causing the pensioners to draw less pension on lower pay scales, although the Ministry of Consumer Affairs, Food and Public Distribution (Department of Public Distribution) in its Order No. 16-1/99FCI dated 1st June, 2000 laid down a general guideline as

under:—"the Executives on IDA pattern who have opted under clause 12A of Food Corporation Act, 1964 for retirement benefits as admissible to the Central Government employees shall continue to be regulated as per instruction of the Central Government from time to time."

The Government has in the meantime stopped payment of Dearness Relief (IDA) to all pensioners *w.e.f.* 01.07.2003 onwards putting the pensioners further to extreme financial hardships.

1.4 The petitioners, therefore, requested the Committee to prevail upon the concerned authority of the Ministry of Consumer Affairs, Food & Public Distribution/ the Ministry of Personnel, Public Grievances and Pensions (Department of Pension & Pensioners' Welfare), so that the authorities issue orders for:—

- (i) Payment of pension, Family pension, Gratuity and other pensionary benefits to the Directorate of food transferee pensioners on the last pay drawn in revised scales of pay *w.e.f.* 01.01.1997, as per the CCS (Pen.) Rules, 1972 as guaranteed under clause 12A of FCI Act, 1964.
- (ii) Extend the benefits of the 1997 wage revision to the pre-1997 Pensioners/ Family Pensioners as well as in the same manner as done earlier as per policy of the Government.
- (iii) Release the enhanced Dearness Relief (IDA) withheld from 01.07.2003.

1.5 The Ministries of Consumers Affairs, Food and Public Distribution (Department of Food & Public Distribution) and Personnel, Public Grievances & Pensions (Department and Pension and Pensioners' Welfare) were requested to furnish their comments on the issues raised in the petition.

1.6 In response, the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) *vide* their communication dated 9 August, 2004 have stated as follows:—

"This Department had forwarded the draft instructions proposed to be issued regarding revision of pension and other attendant benefits of Central Government employees retired/retiring on IDA pay scales and opting for pensionary benefits of combined service in the Government and Public Sector Undertakings to the Department of Pension and Pensioners' Welfare and also sought certain clarifications/advice in this regard.

The Department of Pension & Pensioners' Welfare had informed that the High Court of Kerala at Ernakulam *vide* its judgement dated 14.3.2000 in O.P. No. 22648/1997 had directed the respondents to disburse pension as is admissible to Central Government employees *i.e.* as per Central Dearness (CDA) scales. The High Court of Judicature at Madras *vide* its judgement dated 29.11.2002 in W.P. No. 17278 and 25116/2000 had given contradictory judgement saying that the petitioner cannot claim CDA relief as he is only an IDA pensioner. Both the judgements are now subject matter of an SLP filed in the Hon'ble Supreme Court of India. The Department of Pension &



Pensioners' Welfare had, therefore, informed that it would not be advisable to workout modalities pending receipt of judgement of the Supreme Court of India, as the matter including point of sanction of Dearness Relief is *sub-judice*.

In view of the position stated above, the Department of Pension & Pensioners' Welfare had also advised that the concern of the pensioners on delay of finalisation of modalities and payment of pension/family pension to them can be addressed by pursuing the matter in the Hon'ble Supreme Court of India, on priority basis, for early judgement. The matter has already been referred to the Central Agency Section of the Department of Legal Affairs. Concerted efforts are being made to follow up this matter with the Department of Legal Affairs to facilitate early hearing of the SLP."

1.7 In this context, the Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare) *vide* their communication dated 20 August, 2004 informed the Committee as follows:—

"The issue under consideration is revision/rationalization/consolidation of pension/family pension in respect of employees (popularly known as Food Transferees) of the erstwhile Directorate of Food under the Department of Food & Public Distribution, transferred to the Food Corporation of India.

Pensionary benefits of the Food Transferee are required to be calculated in accordance with the provisions of the CCS (Pension) Rules, as per their option, in accordance with Section 12-A of the Food Corporation Act, 1964. There was no difficulty in the calculation and payment of pensionary benefits so long as the FCI was following CDA pattern of pay scales (Government Pay scales based on recommendations of Central Pay Commissions).

FCI introduced Industrial Dearness Allowance scales of pay (hitherto referred as IDA pattern) on the basis of recommendations of the High Powered Pay Committee constituted under the Department of Public Enterprises on the directions of the Supreme Court of India in respect of Category-III and IV employees *w.e.f.* 1.8.1983 and Category I & II employees *w.e.f.* 1.1.1989. On 8.2.1996, Department of Food & Public Distribution issued instructions to the FCI for calculation of pensionary benefits in respect of Food Transferees in the Category III & IV *inter-alia* stipulating that emoluments for calculation of pension would be on IDA pattern and Dearness Relief would be on the basis of Industrial DA (IDA).

When an employee is still in employment, he/she draws his/her pay in accordance with the pay structure obtaining in the organization in which they are working. If for instance, an organization has adopted pay structure on the basis of Industrial Dearness Allowance (IDA), then the allowances, particularly Dearness Allowance is granted on IDA pattern. If however, on the other hand the organization follows Central Dearness Allowance (CDA) pay structure, then the Dearness Allowance is granted on CDA pattern. It is not possible to have IDA pattern for pay structure and CDA pattern for allowances.

There is a Memorandum of Settlement between the employees of FCI and the Management and, according to this Memorandum; terminal benefits are to be calculated based on Industrial DA applicable to the employees of the Corporation and not on the basis of Central DA. The employees having accepted the revisions of pay over a period of time under the Industrial DA pattern, they should not be claiming the benefit of CDA pattern when they retire for pensionary benefit purposes.

Two Food transferees, namely Shri Moideenkutty and Shri C. Ramadoss filed an OP, No. 22648 of 1997, in Kerala High Court challenging instructions dated 8.2.1996. Their contentions were that they were entitled to pension based on the IDA pay scales drawn by them and Dearness Relief on CDA pattern. The High Court, in its order dated 14.3.2000 observed that the petitioners had opted under Section 12-A (4) (b) for terminal benefits and hence they are entitled to the benefits admissible to the employees of the Central Government i.e. CDA pattern, as there is no amendment to the Food Corporation of India Act, 1964, or the Rules made thereunder.

Another Food transferee Shri G. Renganathan filed a Writ Petition, No. 17378 of 2000 and WMP No. 255116 of 2000, in the High Court of Tamil Nadu at Madras. The High Court of Tamil Nadu in its order dated 29th November, 2002, dismissed the petition with the remark that the petitioner cannot claim CDA relief as he is only an IDA pensioner and dearness allowance is calculated basing on the amount of pension. The petitioner's pension would have been rightly fixed on CDA pattern but for his opting for IDA pattern.

Since there are two differing judgements from two High Courts in the country on the issue, the Department of Food & Public Distribution has filed an SLP in the Hon'ble Supreme Court of India and, hence, the matter is sub-judice."

1.8 The Committee, thereafter, took oral evidence of the representatives of both the Ministries of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) and Personnel Public Grievances & Pensioners (Department of Pension and Pensioners Welfare) on 8th November, 2004.

1.9 During the course of oral evidence the Secretary, Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) elaborating the difference between CDA and IDA pattern of scales submitted before the Committee that, when Food Corporation of India (FCI) was formed, some officers and workers from the Ministry of Food and Agriculture were transferred to FCI. These officers were then given a chance to opt for either CDA pattern of scale or IDA pattern. The FCIs D.A. i.e. IDA is revised quarterly after every three months and Government employees DA i.e. CDA is revised after every six months. Thus, one third of the transferees opted for CDA pattern and two third had opted for IDA pattern. For pension, the Government later on took a decision to pay pension to those who were on CDA pattern and thus framed certain Rules for the same. The employees were asked to give their option. Those, who had opted for CDA pattern, got the benefit of pension after V Pay Commission. Those, who had opted for IDA pattern are now of the opinion that the persons, getting CDA are better and their system is more liberal. That's why they have given this petition and now they want one more chance to opt for CDA

pattern. But, this grievance is not only for FCI employees, it is for 230 Public Undertakings. Also, the Pension Department has issued Directions and Policy guidelines as per which, those who have once opted for IDA pattern of scales will not get another chance to opt. This is also provided in Food Corporation Act. The Department of Expenditure has also ruled out the possibility of giving second option. Thus, if this Direction will be changed then it will be applicable to all such undertakings.

1.10 When asked about the total number of people who are requesting to opt for CDA, the witness replied that out of a total of 455 people who were transferred and are at present working excluding people from North-East, 201 are working on CDA pattern and 254 are on CPF on IDA scale.

1.11 As regards the total financial burden which the Corporation will have to bear if the demand of the petitioners is accepted, the executive Director (Personnel), FCI stated that if all 254 employees opt for CDA pattern then one officer would get Rs. 6 to 6.5 lakh approx.

1.12 The Secretary, Ministry of Consumer Affairs, Food and Public Distribution further added that if the Government takes a decision it would be better, because the directions issued earlier in this regard by the Department of Pension the Cabinet decision. If the Government changes its decision, that will be applicable to all the departments, FCI alone cannot change their system.

1.13 He further stated that at the time of constitution of a Corporation or a new Ministry or a new office, an option is given to the people to join the new office. They can continue in their parent cadre. There is no problem in that.

1.14 When pointed out that three chances were given to FCI employees to change their options, whereas the transferees were given only one chance, the Secretary, Ministry of Consumer Affairs, Food and Public Distribution replied that:—

"They were given two options to choose whether they wanted to continue with their CDA scales or they wanted to move over to the IDA scales. That option was certainly given but as far as these pensionary benefits are concerned, that is, whether they wanted to choose CPF or they wanted to choose the pension fund, that option was given to them and it was mentioned that this option once given will not be changed for any body and it has not been changed."

1.15 The Committee pointed out that the pensionary benefits are worked out on the basis of pay scales and the transferees were discriminated at the pay scale level only as more chances were given to FCI people to give their options as compared to the transferees. Had, they be given more chance then this discrimination would not have been there. To this, the Executive Director (Personnel), FCI stated:

"Similar situation persisted on other PSUs also. The Government decided that PSUs will adopt industrial DA and scales. Therefore, on a number of occasions when IDA scales were revised, the food transferees who had opted to retain their scales of CDA, were given the option to change to IDA scale, if that suited them. This option was not *vice-versa*. That means,

the second alternative was not available to those who opted for IDA to come back to CDA. This is the situation and this is also the Government policy".

1.16 When pointed out that people who had opted for IDA could not opt for CDA, because they were deprived of this opportunity, the Executive Director (Personnel), FCI, clarified that:-

"When Government wanted all PSUs to adopt IDA scales, many associations and officers had filed various writ petitions and ultimately, as you have stated, the Supreme Court of India had to intervene and directed the Government to constitute a High Powered Committee. The Department of Public Enterprises constituted a High Powered Committee and based on the recommendations of the Committee, options were afforded to the employees. The guidelines were issued by the DPE which was applicable to all PSUs including the FCI. The option was re-taken.

Some of those who had initially opted for CDA did opt for IDA scale and the Government also permitted those who had opted for IDA scale to also get additional pension on CDA pattern. But that pension is due for revision from 1997 onwards. Those who are in IDA scale now are not entitled for this pension. I am talking about the original employees and the employees who joined later on other than the food transferees. The intention is to come back to the pension regime. But this option was never allowed by the Government to any PSU including the FCI. The other option was available opting from central scale to IDA scale because those who are getting pension in the IDA scale get much higher pay than even the higher officers in the CDA scale."

1.17 When asked if the Co-ordination Committee consisting of 16 members which had negotiated with the High Powered Committee in the matter had any representative from the transferees side, the Executive Director (Personnel), FCI stated that the recommendations of the High Powered Committee was never made available to the FCI. The FCI and the Food Ministry were not formally associated with it, they were given the guidelines issued by the Department of Public Enterprises (DPE) *vide* their O.M. No. 2(43)/90-DPE(WC) dated 12.6.1990 based on the recommendations of the High Powered Committee.

1.18 On being asked when the SLP was filed in Supreme Court and the status of the same, the witness stated that the SLP was filed in 2003 and the same has been admitted by the Supreme Court and it will come up on its own.

1.19 The Ministry in its post evidence reply, further informed that the SLP (Civil) CC No. 555105557 of 2003 was filed by the Department of Food and Public Distribution and FCI in 2003 and the Hon'ble Supreme Court stayed the contempt proceedings pending in the Kerala High Court, *vide* orders dated 12.06.2003. The Hon'ble Supreme Court granted leave on the SLP and continuation of stay *vide* orders dated 12.01.2004.

1.20 The Ministry has further added that the SLP now pending before the Hon'ble Supreme Court as Civil Appeal Nos. 238-244 of 2004 was heard on 11.10.2004. Since the respondents are unserved in the matter, the Hon'ble Court have directed to furnish

fresh addresses of all the respondents. Further necessary action is being taken in this regard.

1.21 When asked about the contradictory judgements given by the Kerala High Court and the Tamil Nadu High Court, the Executive Director (Personnel) FCI stated that:—

"There are two varying judgements. The Kerala High Court permitted that the pay of the people in the IDA scale may notionally fixed into CDA scale as we were doing in a certain period of time as per the decision of the Government and the pay may be fixed nationally in the Central Government scale and they may be allowed pension accordingly. Now the pension has become more attractive with 50 per cent DA being merged in the basic pay including those who are getting pension."

1.22 On being asked about the efforts made by the Ministry so that the SLP is taken up at the earliest by the Supreme Court, the Secretary, Ministry of Consumer Affairs, Food and Public Distribution stated that they have requested the Law Ministry, which is the standing council to dispose of the matter at the earliest.

1.23 The petitioner in their subsequent representation dated 25 November, 2004 also draw the attention of the Committee on certain issues on the subject which are appended at Annexure-II.

#### **Observations/Recommendations**

**1.24 In the foregoing paragraphs the Committee are informed that:—**

- (i) The Food Corporation of India (FCI) was set up by an Act of Parliament, viz. Food Corporation Act, 1964, and the employees of Directorate of Food under the Ministry of Food and Agriculture were transferred on as is where is basis, to FCI, protecting their service continuity and retirement benefits, as admissible to the Central Government employees under the CCS(P) Rules.**
- (ii) Under CCS Pension Rules and also section 12A of the Food Corporation Act, 1964 amended in 1976-77, the Pension and other terminal benefits are to be worked out and paid taking into account the emoluments last drawn in FCI pay scales by an official immediately before retirement.**
- (iii) The pay scales of the executives of FCI, as well as the category III and IV employees were revised by the FCI, with the approval of the Government of India including the Department of Food & Public Distribution, Department of Public Enterprises, Department of Pension and Pensioners' Welfare and the Department of Expenditure w.e.f. 1.1.1997 and the retirees have drawn their salaries in the revised scales while in service before retirement but they have been denied payment of pension on the last pay drawn for want of issue of a formal order from the Ministry of Food and Consumer Affairs to the Controller of Accounts which has not been issued for the last 3½ years.**

- (iv) As per the Ministry of Personnel, Public Grievances & Pension (Department of Pension) O.M. No. 4/61/99-P&PW(D) dated 20th December, 2002 addressed to all the Ministries/Departments of GOI, the calculation of pensionary benefits under sub-Rules (9) of Rule 37-A of CCS (Pension) Rules, average emoluments will be calculated on the basis of pay drawn by the absorbed employee during the last 10 months in the PSU prior to retirement and wherever the absorbed employee is drawing pay in IDA scale during this period, his pay in IDA scale will be taken into account for calculation of average emoluments. In addition to the pension or family pension, as the case may be such absorbed employee shall also be eligible to receive dearness relief as per Industrial DA pattern as per the provisions of sub-rule 9(10) rule 37A.
- (v) The Department of Pension and Pensioners' Welfare issued another order NO. 4/14/2001-P&PW(D) dated 19 September, 2003 framing general guidelines for revising the pension of PSU absorbees drawing pension in IDA pay scales who were permanently absorbed in the PSUs as a result of conversion of a Government Department and had opted to retain Central Government pensionary benefits.
- (vi) There are two different judgements from two High Courts in the country on the issue. The High Court of Kerala *vide* its judgement dated 14.3.2000 had directed the respondents to disburse pension as is admissible to Central Government employees i.e. as per CDA scales whereas the High Court of judicature at Madras *vide* its judgement dated 29.11.2002 gave contradictory judgement saying that the petitioner cannot claim CDA relief as he is only an IDA pensioner. Both the judgements are now subject matter of an SLP filed by the Department of Food & Public Distribution in the Hon'ble Supreme Court of India.

1.25 The Committee express its displeasure over the fact that despite repeated issuance of various orders and clarifications by the Department of Pension and Pensioners Welfare regarding revision of pension/family pension, the Ministry of Consumer Affairs, Food & Public distribution (Department of Food & Public Distribution), did not issue specific orders for payment of pension and other pensionary benefits in the revised scales of pay *w.e.f.* 1.1.1997 in order to mitigate the problems of the employees. On account of varying judgements by two High Courts in the matter, the Government has filed an SLP in the Supreme Court and the matter is still pending in the Supreme Court of India.

1.26 Keeping in view that SLP is now pending before the Hon'ble Supreme Court, the Committee strongly recommend that vigorous efforts should be made by the Government for an early hearing of the case in order to dispose of the matter at the earliest, so as to give relief to the pensioners. The Committee also desire that they should be apprised of the progress made in the case periodically.

1.27 The Committee note that revision of pay scales/pension is not under dispute and it is only the payment of Dearness Relief (DR) in the revised scale, which is

**pending for judgement in the Supreme Court. The Committee accordingly recommend that till the matter is disposed of by the Hon'ble Supreme Court, the petitioners may be provisionally paid the pension in the revised scales so as to overcome their extreme financial hardship. Besides, the Committee also desire that the Government should release the payment of quarterly Dearness Relief to the retirees of IDA pattern immediately which has been withheld since April, 2003 subject to decision by the Court.**

## CHAPTER II

### PETITION REQUESTING TO AMEND SECTION 12A-4A OF THE FOOD CORPORATION ACT, 1964, ENABLING FOOD TRANSFEREE EMPLOYEES OF FCI, TO OPT FOR LIBERALIZED PENSION SCHEME OF THE CENTRAL GOVERNMENT

2.1 On 19<sup>th</sup> August, 2004, Shri Basudeb Acharia, M.P. presented to Lok Sabha a Petition signed by Shri Ramkrishna S. Keni, Secretary, All Indian Food Corporation of India Retired Employees' Welfare Association, 8, Tara Temple Lane, Dr. Bhadkamkar Marg, Mumbai and others requesting to amend section 12A-4A of the Food Corporation Act, 1964, enabling Food Transferees of F.C.I., to opt for liberalised pension scheme of Central Government. (**See Appendix-III**).

2.2 The petitioners in their petition *inter-alia* stated that:—

- (i) The Food Corporation of India was set up by an Act of the Parliament called Food Corporation Act, 1964.
- (ii) Regional Directorate of Food under the Ministry of Food, Government of India were transferred to Food Corporation of India. There were 20,000 employees working in the Regional Directorate and all were transferred to the Food Corporation of India.
- (iii) In order to safeguard the interest of employees engaged in the Department of Food, the Government moved an amendment to Food Corporation Act, 1964. The amendment was discussed in the Lok Sabha on 9<sup>th</sup> and 10<sup>th</sup> December, 1968. During the debate the Hon'ble Minister of State for Food gave the following assurances on the floor of the House:—
  - (a) That the service condition of the workers transferred to FCI will in no way be less favourable than, what they were in the Central Government Department.
  - (b) Their service conditions are not going to be affected and they were not likely to lose on this score. Even in regard to permanency and other benefits, naturally those will be available to them because it is only on paper that the transfer would take place.
- (iv) The Government of India in consonance with the above assurances issued an executive order *vide* letter No. 5/1/66-RE-1 dated 30<sup>th</sup> September, 1971.

2.3 The petitioners further stated that under Section 12-A of FCI Act, 1964, the transferred employees were given an option to either opt for the retirement benefits of the Central Government or of the FCI. Accordingly, some employees had opted for CPF scheme of the FCI since the Pension Rules of the Central Government were not much attractive at that time.



However, in the year 1979, the Government of India liberalized the terminal benefits for its employees and gave them another chance to opt for the liberalized terminal benefit *vide* O.M. No. F. 19(37)EV/79 dated 25th May, 1979. Taking benefits of this liberalization, the Central Government employees governed by CPF scheme had opted to the Pension Scheme. The transferred employees of FCI were deprived of this opportunity on the plea that option once exercised was final.

Subsequently, the Government of India issued one more Memorandum No. F-3(9)/Pension Unit/85 dated 6th June, 1985, whereby one more option was given to the Central Government employees governed by CPF to come over to pension scheme. Many Central Government employees governed by CPF even then did not opt for pension.

2.4 The petitioners further informed the Committee that the IV Central Pay Commission had recommended that all CPF beneficiaries in service as on 1st January, 1986 should be deemed to have come over to the pension scheme on that date unless they specifically opt out to continue under CPF scheme on that date. The Government of India accepted the recommendation and issued the order to that effect *vide* Department of Pension and Pensioners Welfare O.M. No. 4/1/87-EICI dated 1st May, 1987. Even the Life Insurance Corporation of India, Reserve Bank of India, Mumbai Port Trust followed suit.

The employees of the erstwhile Food Department, who were purely Government servants and whose services were transferred to FCI and who opted to CPF benefits in FCI, were kept out of these benefits of liberalized Pension Scheme. The hitch is the provision of 12A-4A of Food Corporation Act, 1964. This provision, in fact, could have been amended, *suo-moto* by the Government of India, whenever the terminal benefits became superior to that of FCI-CPF Scheme in consonance with the assurance given in the House while passing amendments to Food Corporation Act, 1964, in the year 1968.

The Hon'ble Delhi High Court in Writ Petition No. 252/88 in its order dated 25th August, 1998 had also indicated that the matter may be persuaded with the authorities in the Government of making the provision in the Act for providing fresh option. The Food Corporation of India has already recommended for grant of re-option by amending the Food Corporation of India Act, 1964 by Letter No. D.O.E.P. 20(1) 2000 dated 7th August, 2000.

2.5. The petitioners, therefore, requested that in view of the assurances given on the floor of the House while passing the Bills and in view of the fact that other Corporate Bodies established by the Act of Parliament have given an option to opt for the liberalized Pension Scheme, Section 12A-4A of the Food Corporation Act should be amended so that liberalized Pension Scheme as introduced by the Government on 25th May, 1979 and 6th June, 1985 is made applicable to the Food transferee employees.

2.6 The Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) were requested to furnish their comments on the issues raised in the petition.

2.7 In response, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) *vide* their communication dated 20th September, 2004 have stated that the Food Corporation of India (FCI) was established on 1st January, 1965 under the Food Corporation Act, 1964 (37 of 1964) for the purpose of trading in foodgrains and other food stuffs. With the establishment of the Food Corporation of India, these functions performed by the Food Department of the Government of India were transferred to the FCI, in a phased manner. With the transfer of the above functions to the FCI, the majority of the staff employed in the Food Department as well as in the four regions at Bombay, Madras, Calcutta and Delhi became surplus to the requirement of the Food Department. The FCI gave its consent to take over the surplus staff, alongwith the sections of work transferred to them.

2.8 Elaborating the procedure of transfer of Food employees, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) in their note submitted:

"The Food Corporation Act, 1964, as it was originally enacted, did not envisage the transfer of such Government staff to the Food Corporation of India. The transfer of this staff was proposed to be regulated by the issue of executive orders safeguarding their conditions of services etc. The staff involved were agitated on the proposed transfer by way of executive orders and demanded that their transfer to the FCI should be regulated by a statutory provision to be made in the Food Corporations' Act, 1964, which should *inter-alia* guarantee all the existing rights and other conditions of service as available to Central Government servants. To meet their demand, a new Section 12A, was inserted in the Act by the Food Corporations' (Amendment) Act, 1968 (57 of 1968).

With the introduction of the amendment, the process of issue of formal transfer orders in terms of this new section of the Act was done in phases, spreading almost over a period of 3 years beginning from October, 1972. The delay in transfer was due to administrative reasons as well as non-receipt of the requisite options from the employees, as envisaged in the proviso to section 12A(1) of the Act, and their detailed service particulars from the FCI on the basis of which only formal transfer orders could be issued by the Department of Food. In order to have uniformity in the matter, the date of formal transfer in the case of all those whose services were placed at the disposal of the FCI by then, from time to time, was fixed as 1.3.1969 corresponding with the date when the process of transfer of functions from the Department of Food of the Central Government to the FCI was completed.

By making the orders of transfer effective retrospectively, the right afforded to the transferred employees to exercise the second option envisaged under section 12A(4) of the Act regarding retirement benefits etc., to which they could prefer to opt, within six months from the date of transfer was, from a strictly legal stand point, taken away from such employees inasmuch as no option could be validity exercised by those employees within six

months of the date of transfer which was to take effect from 1.3.1969. It was, therefore, decided that the right to exercise option afresh would have to be extended to all such employees including those who had exercised conditional option. Section 12A of the Act was, therefore, further amended by promulgation of an ordinance, the Food Corporations' Act Ordinance, 1976 (No. 16 of 1976) on 31.12.1976. The Ordinance was later passed as an Act (No. 120 of 1977) by Parliament to provide that all the present employees in respect of whom formal orders of transfer have been made, will exercise an option within a period of six months from the date of commencement of the proposed amending ordinance irrespective of whether they had exercised the option or not and that in respect of the employees for whom formal orders of transfer will be made in future, such option will be exercised within a period of six months from the date of such orders. This was done to ensure that the transferred employees (popularly known as food transferees) were enabled to opt for Central Government retirement benefits like pension and Death-cum-Retirement Gratuity (DCRG) as at that point of time these benefits were considered to be more favourable, due to liberalisation of pension rules on the recommendations of 3rd Pay Commission, when compared to the retirement or terminal benefits in the form of Contributory Provident Fund (CPF) and Gratuity as obtaining in the FCI.

After their transfer to the FCI, the employees ceased to be Central Government employees *vide* Section 12-A(3) of the Food Corporations Act, 1964 and became employees of the FCI."

2.9 The Ministry further added:

"The assurance given by the Hon'ble Minister at that time, therefore, was with respect to the comparable service conditions obtaining at that time for Government servants *vis-a-vis* FCI employees and not for all the time to come. The food transferees should not and cannot expect to sail in two boats for all times to come. They had to make a choice at that time as they had been given an option to choose between the benefits available under the Government Rules and those of FCI Rules. The option exercised once was treated *as final* as per provisions in Section 12-A (4-A) of the Food Corporation's Act, 1964."

2.10 The Committee were further apprised that:

"In 1990, the FCI employees had agitated this matter before the Supreme Court, seeking directions from the Court to give further option to the employees for switching over to a pension scheme instead of the earlier option for CPF Scheme. The Hon'ble Supreme Court, however, did not find any merit in the petition and had observed that 'the petitioners are not entitled to the benefits of pension, since they had already exercised their option for CPF Scheme. There is no merit in the Writ Petition, it is accordingly dismissed'.

The FCI had earlier intimated that there are about 5,000 Food Transferees, who had opted for CPF as against 12,000 employees who adopted for pensionary benefits. Once the revised option is allowed, it is expected that most of the 5,000 Food Transferees would now switch over to pensionary benefits. It is very difficult to assess the financial implication of such decision because it will have to be calculated individual-wise but roughly the pensionary benefits, which are presently allowed for the Government servants on retirement, are almost equivalent to two times of the normal return on the employees' on superannuation.

On examination of this proposal, earlier, the FCI had also pointed out certain genuine administrative difficulties to be faced by them in case it is decided to give re-option to the CPF optees to opt for pension scheme of the Central Government. Since the retired employees have already been paid their CPF dues alongwith gratuity as admissible, the employees will have to refund the said amount to the Government in a single lumpsum. A decision would have to be taken regarding the interest on the amount drawn by the retired employees towards terminal benefits. On receipt of the said amount, the service book of the retired employees will have to be re-constructed on the pattern required for pensionary benefits of the Government. After reconstruction of the personal files, if necessary, with declarations of the retired employees wherever deficiency is noticed, the sanction for pensionary benefits as well as gratuity as per Government rules will have to be issued in each case. It will be necessary to obtain the declaration for nomination etc. This exercise would definitely be time consuming and cumbersome specially in view of the fact that many of the retired employees may have expired and that family pension might be due to the dependent families. In the absence of valid nominations, regulating the successor for such pensionary payments would be difficult. From the disciplinary angle, a general decision will have to be taken that no separate vigilance clearance would be called for while settling the pensionary payments.

This matter was examined several times in the past with reference to the representation received from the Food Corporation of India Retired Employees' Welfare Association (West Zone) and the National Federation of Retired Employees and Pensioners of the Food Corporation of India, New Delhi, directly, and through several MPs/VIPs. After examination of this matter, recently, in consultation with the Ministry of Finance, a reply was sent on 27.2.2004, in this regard to the General Secretary, National Federation of Retired Employees and Pensioners of Food Corporation of India, New Delhi, informing the Federation that the proposal for amendment of the Food Corporations Act, 1964 in order to make a provision for giving another option to the employees of the erstwhile Department of Food transferred to the FCI to opt for the pension scheme of the Government has not been accepted by the Government of India. A reply was also sent in

the matter by the MOCAF&PD to Shri Narayan Hate, Secretary, F.C.I. Retired Employees Welfare Association (West Zone) on 13.7.2004."

2.11 While concluding their views, the Ministry stated:—

"It may, thus, be seen that the employees, after their transfer to the FCI, ceased to be Central Government employees. They did not use the opportunity extended to them twice for switching over to the pension scheme of the Central Government and, in their best judgement, chose to continue with the CPF scheme. The option exercised by them was final as per provisions of Section 12-A(4A) of the Food Corporations Act, 1964. The Supreme Court did not find any merit in their petition and dismissed the same in 1991.

In view of the position stated above, the proposal received from the petitioners to amend Section 12-A of the Food Corporations Act, 1964 for allowing re-option to the employees of the erstwhile Department of Food transferred to the Food Corporation of India to opt for pensionary benefits of the Central Government cannot be acceded to."

2.12 The Committee, thereafter, took oral evidence of the representatives of the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) on 21.12.2004.

2.13 During the course of oral evidence, the Secretary, Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) submitted before the Committee that the issue of giving another option to the Food transferees was referred to the Ministry of Finance and the Finance Ministry declined to it by saying that the Finance Department and Pension Department are of the opinion that Food transferees may not be given second option because the issue is not of just one corporation, instead this would affect all the Public Sector Companies. The Department of Food has no objection, but the Cabinet will have to take a decision as it would affect 240 Public Sectors. This decision will have to be implemented on all these companies. Thus, the Pension Department can help in taking a decision in this matter.

2.14. When the Committee desired to know whether any communication was sent to the Finance Ministry, referring about the assurances given by the Government in 1968 on the Floor of the House that the service conditions of the employees transferred to the FCI will in no way be less favourable than, to those of the Central Government employees, to this, the Secretary, Ministry of Consumer Affairs, Food & Public Distribution informed that twice the matter was taken up by the Finance Ministry and Pension Department and both have objected to it.

2.15 When asked about the total number of employees (Food transferees) who had opted for CPF scheme and of these who are still in service, the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food & Public Distribution) in its subsequent written reply informed the Committee that there are about 11,500 employees who opted for GPF/Pension and 5500 for CPF scheme. Most of the Food transferee employees have since retired and only about 500 employees are still in service.

2.16 The Committee pointed out that the IVth Central Pay Commission had recommended that all CPF beneficiaries in services as on 1st January, 1986 should be deemed to come over to the pension scheme unless they specifically opt out to continue under CPF scheme and enquired as to why the Food transferees were not given chance to opt for pension scheme. To this, the Ministry in its post evidence reply stated that as per section 12A (4A), options once exercised by Food Transferee shall be final. As per section 12A (3), a Food Transferee ceases to be an employee of Central Government, on and from the date of transfer to the FCI.

2.17 To a query that the Act was amended in 1977 by passing the Food Corporation's Act Ordinance, 1976 to ensure that the Food transferees were enable to opt for Central Government retirement benefits as at that point of time these benefits were considered to be more favourable due to liberalization of pension rules by the recommendations of the IIIrd Pay Commission, when compared to the retirement of terminal benefits in the form of CPF and Gratuity as obtaining in the FCI, the Ministry *vide* their written reply dated 5th November, 2004, had informed that the Food Corporation Act, 1964 was amended in 1976/77 to provide for fresh options as the employees of the erstwhile Regional Directorates of Food were formally transferred to the FCI with retrospective effect and, therefore, could not exercise their option within six months' period from the date of transfer, as per the provisions of the pre-amended Act.

2.18 The matter was also referred to the Ministry of Finance (Department of Expenditure) for their views. The Ministry of Finance (Department of Expenditure) *vide* their reply dated 22nd March, 2005 have stated that the Department of Food had sent the proposal to the Ministry on 6th February, 2004 on the subject and the Ministry of Finance had responded as under:—

"In view of the reasons given by the administrative Ministry as well as the fact (i) any such move would have large repercussions with similar benefits having to be extended to pensioners who had earlier chosen to be governed by CPF/SRPF scheme and whose number exceeds one lakh and (ii) the Government has already disbanded the GPF cum pension scheme for all new entrants w.e.f. 1.1.2004 and substituted it by the New Pension Scheme—being a contributory pension scheme based on defined contributions, this Department agrees with the view of administrative department that it may not be feasible to give another option to the retired employees of FCI to switch over to GPF cum pension scheme of the Government.

2.19 As regards the reasons for rejecting the proposal of giving one more option to Food transferees, the Ministry of Finance have stated that:—

- "(i) Fourth CPC had recommended that CPF beneficiaries who were in service as on 1.1.1986 should be deemed to have switched over to pension scheme on that date unless they specifically opt to continue under the CPF Scheme. After acceptance of the recommendations of the Fourth CPC, Department of Pension had issued an O.M. dated 1st May, 1987 requesting the employees to exercise option to switch over by 30th September, 1987. Administrative employees of DOS/ISRO were covered

by the provisions of this O.M. and were also fully aware that option once exercised in final.

- (ii) The issue was specifically considered by Fifth CPC which did not favour another option for switching over to GPF to the existing CPF optees.
- (iii) Grant of another option to employees governed by CPF/SPF will have repercussions elsewhere with such an option having to be extended to all other CPF beneficiaries as well whose number is quite substantial."

2.20 The Ministry of Finance further added that:—

"It is also noteworthy that all Central Government employees governed by CPF scheme were allowed one option to switch over to the pension scheme and were deemed to have come over to the pension scheme unless they specifically opted to continue under the CPF scheme *vide* DOP&PW's O.M. No. 4/1/87-PIC-I dated 1.5.1987. The CPF scheme was thereafter discontinued for general category of Central Government employees. The OM specifically provided that the option once exercised shall be final. Relaxation, if any, would have to be extended to all the CPF beneficiaries whose number can be quite substantial and as per an assessment made by Ministry of Railways some time ago, the number of such beneficiaries was 60,000 in that Ministry alone. Apart from Central Government, a large number of autonomous bodies exist under various Ministries/Departments. As per the CAG's audit report of 2000, 496 such autonomous institutions were in existence. The actual number of the institutions is likely to be much more. Since 1987, the Ministry of Finance has, as a matter of policy, not been allowing Central Government pension scheme in these organisations. Granting another option to the Central Government CPF optees to switch over to pension scheme will have repercussions in these organisations as well.

It may also have to be noted that the issue of affording more opportunities to SRPF/CPF retirees for switching over to pension scheme was considered by the Supreme Court's which *vide* their judgement dated July, 1990[ (1990) 4 SCC 207] held that those who did not opt for the pension scheme had ample opportunity to choose between this scheme and the SRPF (CPF) Scheme. The Apex Court also held that the Government's legal obligation under the CPF ended on the retirement of an employee whereas it began on retirement under the pension scheme. Thus, no legal grounds also exist to accept this proposal. The financial implications of the proposal had earlier been projected by the Department of Space at Rs. 38.88 crores which has now been revised to Rs. 2.2 crores per annum. These implications, however, are in respect of 382 employees working in DOS/ISRO only. In case this dispensation is needed to be extended to all CPF/SRPF retirees (whose number exceeds 60,000) the financial implication on payment of pension alone would be Rs. 350 crores approx. per annum. The expenditure on payment of family pension to the eligible family members of deceased

CPF/SRPF retirees would be another Rs. 175 crores approx. per annum. The implications could go up still higher if employees of autonomous bodies/PSUs, presently governed by the CPF scheme, also have to be brought under the pension scheme. The financial implications of this proposal are therefore staggering and the same cannot be accepted on this ground also."

2.21 When pointed out that, had all the food transferees opted for GPF on given earlier opportunities, the financial liability would have been on Government in any case, therefore, if one more option is given, the additional liability to the Government is only notional, the Ministry of Finance stated as follows:—

- "(i) the additional financial liability likely to accrue on this account is not notional and may actually amount to an annual recurring liability of nearly Rs. 1000 crores;
- (ii) the concerned employees had made a conscious decision to be governed by CPF scheme and as such they cannot be allowed to turn the clock back just because the pension scheme has, for the time being, become more lucrative; and
- (iii) the Central Government is consciously moving away from the GPF pension scheme and w.e.f. 1.1.2004, all new entrants to the Central Government would be governed by the new pension scheme which is a defined contribution scheme in the nature of CPF.

In such a scenario, it may not be justified to extend the existing pension scheme to more persons by affording them another option to switch over."

#### **Observations/Recommendations**

**2.22 From the foregoing paragraphs the Committee note that:—**

- (i) **The Food Corporation of India was set up by an Act of the Parliament called Food Corporation Act, 1964. There were about 20,000 employees working in the Regional Directorate of Food, under the Ministry of Food and all were transferred to the Food Corporation of India (FCI). The transfer of this staff was proposed to be regulated by the issue of Executive Orders safeguarding their conditions of services, etc.**
- (ii) **The staff agitated on the proposed transfer by way of Executive Orders and demanded that, their transfer to the FCI should be regulated by a statutory provision to be made in the Food Corporation Act, 1964 which should *inter-alia* guarantee all the existing rights and other conditions of service as available to Central Government servants. Thus, to meet their demand, a new Section 12A, was inserted in the Act by the Food Corporation (Amendment) Act, 1968 (57 of 1968).**



- (iii) The amendment in the Food Corporation Act, 1964 was discussed in Lok Sabha on 9th & 10th December, 1968 and during discussion, the Hon'ble Minister of State for Food gave the following assurances:—
- (a) That the service conditions of the workers transferred to FCI will in no way be less favourable than, what they were in the Central Government Department.
  - (b) Their service conditions are not going to be affected and they were not likely to lose on this score. Even in regard to permanency and other benefits, naturally those will be available to them because it is only on paper that the transfer would take place.
- (iv) The Government of India in consonance with the above assurances issued an executive order *vide* letter No. 5/1/66-RE-1 dated 30th September, 1971.
- (v) The Section 12A of the Food Corporation Act was further amended by promulgation of an ordinance on 31.12.1976 and the ordinance was later passed as an Act (No. 12 of 1977) by Parliament. This was done to ensure that the transferred employees (popularly known as Food transferees) were enabled to opt for Central Government retirement benefits like pension and Death-cum-Retirement Gratuity (DCRG) as at that point of time these benefits were considered to be more favourable, due to liberalisation of pension rules by the 3rd Pay Commission.
- (vi) The IVth Central Pay Commission had recommended that CPF beneficiaries who were in service as on 1.1.1986 should be deemed to have switched over to pension scheme on that date unless they specifically opt to continue under the CPF Scheme. After acceptance of these recommendations, the Department of Pension had issued an O.M. dated 1.5.1987 requesting the employees to exercise option to switch over by 30th September, 1987. Administrative employees of Department of Space/ ISRO were covered by the provisions of this O.M.

2.23 The Committee also note the reasons given by the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) for declining the request of the petitioners to allow them to opt one more time for the liberalised pension scheme, on the grounds that, after the transfer of these employees to FCI, they ceased to be Central Government employees *vide* section 12-A(3) of the Food Corporation Act, 1964 and became employees of the FCI. Also, the option exercised once was treated as final as per provisions in Section 12-A (4-A) of the Food Corporation Act, 1964.

The Ministry of Finance (Department of Expenditure) have also submitted that:—

- (i) any such move would cause repercussions with similar benefits having to be extended to pensioners who had earlier chosen to be governed by CPF/ SRPF scheme and whose number exceeds one lakh, and

- (ii) the Government has already disbanded the GPF cum pension scheme for all new entrants w.e.f. 1.1.2004 and substituted it by the New Pension Scheme—being a contributory pension scheme based on defined contributions, this Department agrees with the view of administrative department that it may not be feasible to give another option to the retired employees of FCI to switch over to GPF cum pension scheme of the Government.

2.24 The Committee would, however, like to stress upon the fact that the petitioners (Food transferee employees) were initially Central Government servants whose services were transferred to FCI and prior to their transfer an assurance was also given by the Hon'ble Minister that the service conditions of these employees will in no way be less than, what they were in the Central Government Department. Also, to guarantee all the existing rights and other conditions of service as available to Central Government servants, a new section 12A, was inserted in the Act by the Food Corporations' (Amendment) Act, 1968 (57 of 1968). The section 12A of the Act, was further amended by promulgation of an Ordinance, the Food Corporations' Act Ordinance, 1976 (No. 16 of 1976) on 31.12.1976. The ordinance was later passed as an Act (No. 12 of 1977) by Parliament. This was done to ensure that the Food transferees were enabled to opt for Central Government retirement benefits like pension and Death-cum-Retirement Gratuity as at that point of time these benefits were considered to be more favourable, due to liberalisation of Pension rules on the recommendations of 3rd Pay Commission.

2.25 The Committee do not agree with the reasons given by the Ministry for declining the request of the petitioners for giving one more option to Food transferee employees to avail liberalised pension scheme based on recommendations of 4th Pay Commission. The Ministry's contention that it would open a flood gate of similar requests from other organisations is not based on facts in view of the following position:

- (i) The Case of Food transferee employees is totally unique and different from others as these employees were earlier Central Government employees.
- (ii) At the time of amendment in Food Corporation Act, 1964 in 1968, the Minister had assured the House that service conditions of the Food transferees will not be less favourable than to those of Central Government employees.
- (iii) Food Corporation Act, 1964 was amended in 1976/77 to protect Food transferees interests and to enable them to exercise pension option.
- (iv) The liberalised pension scheme 1987 based on 4th Pay Commission was extended to several organisations formed through Acts of Parliament and the same should have been extended to Food transferees by amending the Food Corporation Act 1964, as was done in 1976/77.
- (v) Administrative reasons assigned like calculations, return of CPF, etc. cannot override the principles of justice and fair play.

**2.26 The Committee would, therefore, strongly recommend that the case of the Food transferees (erstwhile employees of the Central Government) should be treated as an exceptional case and initiate action to amend Section 12A-4A of the Food Corporation Act, 1964, as was done in 1976/77 so as to enable the Food transferee employees to opt for liberalised pension scheme as introduced by the Government of India for the Central Government employees based on recommendations of IVth Pay Commission. The Committee desire the Government to appreciate the fact that the statutory provisions guaranteeing a certain set of service conditions in an Act passed by the Parliament cannot be ignored totally and the Executive Orders issued concerning pay and pension cannot be interpreted in a manner that violates the letter and spirit of an Act passed by the Parliament.**

NEW DELHI;  
25 May, 2005  
4 Jyaistha, 1927 (Saka)

PRABHUNATH SINGH,  
*Chairman,*  
*Committee on Petitions.*

## **APPENDIX I**

(See para 1.1 of the Report)

**LOK SABHA**

**PETITION NO. 1**

*(Presented to Lok Sabha on 20.7.2004)*

To

Lok Sabha,  
New Delhi.

The humble petition of Shri P.K. Chaki, Secretary, FCI Pensioners' Association, 2B, 2nd Floor, Acharaya Jagdish CH Bose Road, Kolkata-14.

**SHEWETH**

We the petitioners, of FCI Pensioners' Association, Kolkata, want to submit that the Government of India set up Food Corporation of India (FCI) by an Act in the year of 1964 and transferred the then employees of the Directorate of Food, under Ministry of Food & Agriculture, Government of India, as is where is basis, to FCI, protecting their service continuity and retirement benefits, as admissible to the Central Government employees under the CCS(P) Rules. Accordingly, Government amended the FCI Act in 1968 and inserted a new Clause 12A with sub-clauses 4(4a), 4(b), 4(c) etc. under section 12 of the Act. In terms of the statutory provisions of Clause 12A of the FCI Act 1964 and in terms of options exercised by Directorate of Food transferees at the time of their transfer to FCI, they are absolutely governed by the Leave, Provident Fund, Retirement benefits, as admissible to the Central Government Employees, under the CCS(P) Rules as amended from time to time. Accordingly, Directorate of Food transferees on retirement from FCI have been drawing pension and other retirement benefits on the last pay drawn in FCI pay scales which they opted under the CCS (Pension) Rules 1972 as guaranteed under clause 12A of FCI Act 1964.

The FCI introduced IDA pattern pay scale for its employees and revised the scales three times on 01.08.1983, 01.08.1987 and 01.02.1992 and on each occasion the concerned authorities of the FOOD/Pension Ministry issued separate orders for payment of pension/family pension and other pensionary benefits on the last pay drawn in such revised FCI pay scales (IDA) under the CCS (Pension) Rules, and the pensioners continued to draw pension on the revised scales. On the recommendations of Justice Mohan Committee. FCI authority made another wage revision for its category I & II Executives and class III & IV employees w.e.f. 01.01.1997 *vide* its letter no. WRC/1/5/1999 dated 12.06.2000 and WRC 1/5/2001 dated 19.02.2001 respectively with the approval of the Government of India, but so far the Government has issued no specific orders for payment of pension and other pensionary benefits in the revised scales of pay,

causing the pensioners to draw less pension on lower pay scales, although the Ministry of Consumer Affairs, Food and Public Distribution, Department of Public Distribution in its Order No. 16-1/99-FCI dated 1st June, 2000 laid down a general guideline under Heading PENSIONARY BENEFITS— “the Executives on IDA pattern who have opted under clause 12A of Food Corporation Act, 1964 for retirement benefits as admissible to the Central Government employees shall continue to be regulated as per instruction of the Central Government from time time.” The Government has in the meantime stopped payment of Dearness Relief (IDA) to all pensioners w.e.f. 01.07.2003 onwards putting the pensioners further to extreme financial hardships.

We, therefore, humbly request your goodself to prevail upon the concerned authority of the Ministry of Consumer Affairs, Food & Public Distribution/the Ministry of Personnel, Public Grievances and Pensions (Department of Pension & Pensioners' Welfare), so that the authorities issue orders for:—

- (i) Payment of pension, Family pension, Gratuity and other pensionary benefits to the Directorate of Food transferee pensioners on the last pay drawn in revised scales of pay w.e.f. 01.01.1997 as per the CCS (Pen.) Rules 1972 as guaranteed under clause 12A of FCI Act 1964.
- (ii) Extend the benefits of the 1997 wage revision to the pre-1997 Pensioners/ Family Pensioners as well in the same manner as done earlier as per policy of the Government.
- (iii) Release the enhanced Dearness Relief (IDA) withheld from 01.07.2003.

And your petitioner as in duty bound shall every pray.

Name of the Petitioner	Address	Signature
Shri P. K. Chaki	2B, 2nd Floor, Acharya Jagdish Ch. Bose Road. Kolkata—14	Sd/-

Countersigned by Shri Basudeb Achariya, MP

## APPENDIX II

(See para 1.23 of the Report)

The petitioners in their subsequent representation dated 25 November, 2004 have submitted that:—

- (a) The employees of the erstwhile Department of Food absorbed in FCI, having opted for Pensionary benefits under the I.D.A. Pattern of Pay Scales are governed by C.C.S. Pension rules of the Government of India as per decision taken jointly by integrated Finance Division of the Ministry of Food and Consumer Affairs, Department of Public Enterprises, Department of Pension and Pensioner's Welfare and Department of Expenditure (Ministry of Finance) as circulated *vide* Ministry of Food and Consumer Affairs Order No. 38020/1/93-FC-3 dated 8.2.96 and No. 38020/2/97 dated 26th February 1998.
- (b) Under CCS Pension rules and also section 12A of the Food Corporation Act, 1964 amended in 1976-77, the Pension & other retirement benefits are to be worked out and paid taking into account the emoluments last drawn by an official immediately before retirement.
- (c) The pay scales of the executive of FCI, as well as the category III & IV employees were revised by the FCI, with the approval of Government of India including the Ministry of Food, Department of Public Enterprises, Department of Pension & Pensioner's Welfare and the Deptt. of Expenditure *w.e.f.* 1.1.1997 and the retirees have drawn their salaries in the revised scales while in service before retirement but they have been denied payment of pension on the last pay drawn for want of issue of a formal order from the Ministry of Food and Consumer Affairs to the Controller of Accounts which has not been issued for the last 3-1/2 years.
- (d) The Ministry of Food & Consumer Affairs had sought approval from the Department of Public Grievances & Pension and despite the approval/clarification issued by the Department of Pension *vide* a D.O. Letter No. 4/17/2002-P&PW (D) dated 23rd May, 2002. The Department of Food and Public Distribution clarifying that:— “as per rules pension is to be calculated on the basis of average emoluments drawn in the PSU immediately before his retirement, by applying the formula prevalent in the Government at the time which stands at 50% at present. If the pay scale drawn by him in PSU is a IDA Scale, he would be eligible for DR on IDA scale also. If an absorbee retires after 1.1.1997 and this pay has been revised as per rules of the PSU, before retirement such revised pay shall be reckoned for calculation of average emoluments". The Ministry of Food & Public Distribution still not satisfied with this clarification again referred the matter to the Department of Expenditure & Department of Pension.

- (e) The Department of Pension of the Ministry of Personnel, Public Grievances & Pension again issued an O.M. No. 4/61/99-P&PW(D) dated 20th December, 2002 addressed to all the Ministries/Department of Government of India, clarifying that for the calculation of Pensionary benefits under sub-Rules (9) of Rule 37-A average emoluments will be calculated on the basis of pay drawn by the absorbed employee during the last 10 months in the PSU prior to retirement and wherever the absorbed employee is drawing pay in IDA scale during this period, his pay in IDA scale will be taken into account for calculation of average emoluments. In addition to the pension or family pension, as the case may be, such absorbed employee shall also be eligible to receive dearness relief as per Industrial DA pattern as per the provisions of sub-rule 9(10) Rule 37A.
- (f) The Ministry of Food & Consumer Affairs circulated the above order *vide* its letter No. 17-1/2003-AC dated 22nd January, 2003 which was further circulated by the Food Corporation of India to its subordinate offices but to our utter surprise the order was not endorsed to the Controller of Accounts as has been the case in the past with the result that the pension cases of the retirees revised by FCI & submitted to the Controller of Accounts have been returned for want of instructions.
- (g) The Department of Pension & Pensioner's Welfare issued another Order No. 4/14/2001-P&PW(D) dated 19th September, 2003 framing general guidelines for revising the pension of PSU absorbees drawing pension in IDA pay scales who were permanently absorbed in the PSU as a result of conversion of a Government Department and had opted to retain Central Government pensionary benefits. On receipt of these instructions we were told that this will take care of revision of pension of pre-1986 retirees as well as post 1.1.1997 retirees and these instructions were passed on to FCI instead of issuing formal orders to the Controller of Accounts. In the meantime the FC-3 branch has made another reference to the Department of Pension seeking more clarifications in December, 2003 and so far no clarification has been received from them. In the mean time the Food Ministry has stopped the payment of quarterly Dearness relief and no DA relief has been paid to the retirees of IDA pattern since April, 2003.
- (h) More than 1000 retirees have been put to an unnecessary financial hardship and denied revised pension/arrears of pension in the garb of judgement of Kerala High Court for the last one year. The judgement of Kerala High court itself speaks for payment of pension to the IDA Pensioners under the provision of Food Corporation Act, 1964 as amended from time-to-time.
- (i) The Kerala High Court has also passed orders for payment of pensionary benefits on the the basis of last pay drawn by them in the I.D.A. Scales. It is only that the Court has passed order for payment of Dearness relief under CDA instead of IDA. As such payment of pension in the revised IDA Scales is not in dispute which can be revised and the pensioners can be given relief. We understand that proposal was mooted to provisionally

pay the pension in the revised scales pending decision of Supreme Court and it was accepted by the Counsels contesting the case in Supreme Court, the Department of Pension & Pensioners Welfare, but did not find favour from Law Ministry."



### **APPENDIX III**

(See para 2.1 of the Report)

LOK SABHA

PETITION NO. 2

(Presented to Lok Sabha on 19.8.2004)

To

Lok Sabha,  
New Delhi.

The humble petition of Shri Ramkrishna S. Keni, Secretary, All India Food Corporation of India Retired Employees' Welfare Association, 8, Tara Temple Lane, Dr. Bhadkamkar Marg, Mumbai and others.

**SHEWETH**

We the undersigned petitioners want to draw your attention to the following facts:

- (A) That the Food Corporation of India was set up by an Act of the Parliament called Food Corporation Act, 1964.
- (B) Regional Directorate of Food under the Ministry of Food, Government of India were transferred to Food Corporation of India. There were 20,000 employees working in the Regional Directorate and all were transferred to the Food Corporation of India.
- (C) In order to safeguard the interest of employees engaged in the Department of Food, the Government moved an Amendment to Food Corporation Act, 1964. The amendment was discussed in the Lok Sabha on 9th and 10th December, 1968. During the debate the Hon'ble Minister of State for Food gave the following assurances on the floor of the House.
  - (1) That the service condition of the workers transferred to FCI will in no way be less favourable than, what they were in the Central Government Department.
  - (2) Their service conditions are not going to be affected and they were not likely to lose on this score. Even in regard to permanency and other benefits, naturally those will be available to them because it is only on paper that the transfer would take place.
- (D) The Government of India inconsonance with the above assurances issued an executive order *vide* letter No. 5/1/66-RE-1 dated 30.9.1971.

Under Section 12-A of FCI Act, 1964, the transferred employees were given an option to either opt for the retirement benefits of the Central Government or of the FCI. Accordingly, some employees had opted for CPF scheme of the FCI since the pension rules of the Central Government were not much attractive at that time.

However, in the year 1979, the Government of India liberalized the terminal benefits for its employees and gave them another chance to opt for the liberalized terminal benefit *vide* O.M. No. F. 19(37)EV/79 dated 25th May, 1979. Taking benefits of this liberalization, the Central Government employees governed by CPF scheme had opted to the Pension Scheme. The transferred employees of FCI were deprived of this opportunity on the plea that option once exercised was final.

Subsequently, the Government of India issued one more Memorandum No. F-3(9)/Pension Unit/85 dated 06.06.1985, whereby one more option was given to Central Government employees governed by CPF to come over to pension scheme. Many Central Government employees governed by CPF even then did not opt for pension.

The IVth Central Pay commission had recommended that all CPF beneficiaries inservice as on 1st January, 1986 should be deemed to have come over to the pension scheme on that date unless they specifically opt out to continue under CPF scheme. The Government of India accepted the recommendation and issued the order to the effect *vide* Department of Pension and Pensioners Welfare G.M. No. 4/1/87-EICI dated 01.05.1987. Even the Life Insurance Corporation of India, Reserve Bank of India, Mumbai Port Trust followed suit.

The most pathetic part of the whole case is that the employees of the erstwhile Food Department, who were purely Government servants and whose services were transferred to FCI and who opted to CPF benefits in FCI, were kept out of these benefits of liberalized Pension Scheme. The hitch is the provision of 12A-4A of Food Corporation Act, 1964. This provision, infact, could have been amended, *suo moto* by Government of India, whenever the terminal benefits became superior to that of FCI-CPF Scheme in consonance with the assurance given in the House while passing amendments to Food Corporation Act, 1964, in the year 1968.

The Hon'ble Delhi High court in Writ Petition No. 252/88 in its order dated 25.08.1998 had also indicated that the matter may be persuaded with the authorities in the Government for making the provision in the Act for providing fresh option.

The Food Corporation of India has already recommended for grant of re-option by amending Food Corporation of India Act, 1964 by Letter No, D.O.E.P. 20(1) 2000 dated 7th August, 2000.

That in view of the assurance given on the floor of the House while passing the Bills and inview of the fact that other Corporate Bodies established by the Acts of Parliament have been given an option to opt for the liberalized Pension scheme, we pray that:—

1. This House amend Section 12A-4A of the Act.

2. The liberalized pension Scheme as introduced by the Government on 25th May, 1979 and 6th June, 1985 be made applicable to the food transferred employees.

And your petitioner as in duty bound shall ever pray.

Name of the Petitioner	Address	Signature
1. Shri Ramkrishna S. Keni	8, Tara Temple Lane, Dr. Bhadkamkar Marg, Mumbai-400 007.	Sd/-
2. Shri Anant Atamaram Savant and others	47/12, Archana, Dahanukarwadi, Kandivili (W), Mumbai-400 067.	Sd/-

Countersigned by Shri Basudeb Acharia, MP

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

The Committee on Petitions sat on Monday, 8th November, 2004 from 1500 to 1545 hrs. in Committee Room No. 53, First Floor, Parliament House, New Delhi.

PRESENT

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri N.S.V. Chitthan
3. Dr. M. Jagannath
4. Shri Baliram Kashyap
5. Shri Suresh Kurup
6. Shri Dharmendra Pradhan
7. Shri Vijoy Krishna

SECRETARIAT

1. Shri Brahm Dutt — *Director*
2. Shri R.K. Bajaj — *Under Secretary*

WITNESSES

*Representatives of the Ministry of Consumer Affairs, Food and Public Distribution  
(Department of Food and Public Distribution)*

1. Shri S.K. Tuteja — *Secretary (F&PD)*
2. Shri D.N. Padhi — *Addl. Secretary & Financial Advisor*
3. Shri Sanjay Kaul — *Joint Secretary (F&FCI)*

*Representatives of Food Corporation of India*

1. Shri V.K. Malhotra — *Managing Director*
2. Shri Shailendra Nigam — *Executive Director (P)*

*Representatives of the Ministry of Personnel, Public Grievances and Pensions  
(Department of Pension and Pensioners Welfare)*

1. Shri Bhaskar Khulbe — *Joint Secretary*
2. Shri Geeta Ram — *Director (PW)*
3. Shri R. Ravi — *Under Secretary*

2. At the outset, the Chairman welcomed the representatives of the Ministries of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) and Personnel, Public Grievances and Pensions (Department of Pension and Pensioners Welfare) and drew their attention to direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

3. Thereafter, the Chairman and Members of the Committee asked questions and sought clarifications on the following two Petitions:—

- (i) Petitions requesting for issue of orders for payment of pension and pensionary benefits w.e.f. 1.1.1997 to the Central Food Transferee Employees retired from FCI; and
- (ii) Petitions requesting to amend Section 12A-4A of the Food Corporation Act, 1964 enabling Food Transferees of FCI to opt for liberalized Pension Scheme of Central Government.

4. The following important points were also discussed by the Committee:—

- (i) the criteria followed for (i) revision of the FCI scales (ii) calculation of pension of FCI pensioners who are not food transferees.
- (ii) the difference between the Central Dearness Allowance (CDA) pattern of scales and Industrial Dearness Allowance (IDA) scales and the benefits given to FCI employees by introducing IDA pattern as compared to CDA pattern.
- (iii) the main recommendations given by the High Powered Pay Committee.
- (iv) The SLP filed in Supreme Court on the subject.

5. The Committee directed the witnesses to send written replies to some of the points on which replies were not readily available with them during the evidence.

6. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

*(The witnesses then withdrew.)*

7. The Committee then decided to hold their next sitting on 25th November, 2004.

*The Committee then adjourned.*

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

The Committee on Petitions sat on Tuesday, 21<sup>st</sup> December, 2004 from 1500 to 1600 hrs. in Committee Room 'D' , Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri N.S.V. Chitthan
3. Dr. M. Jagannath
4. Shri Suresh Kurup
5. Mohd. Muqueem
6. Shri Dharmendra Pradhan

SECRETARIAT

1. Shri Brahm Dutt — *Director*
2. Shri R.K. Bajaj — *Under Secretary*

WITNESSES

*Representatives of the Ministry of Consumer Affairs, Food and Public Distribution  
(Department of Food and Public Distribution)*

1. Shri S.K. Tuteja — *Secretary (F&PD)*
2. Shri Sanjay Kaul — *Joint Secretary (P&FCI)*

*Representatives of Food Corporation of India*

1. Shri V.K. Malhotra — *Chairman*
2. Shri Shailendra Nigam — *Executive Director (P)*
3. Shri Javed Yusufzai — *Executive Director (C)*

2. At the outset, the Chairman welcomed the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) and Food Corporation of India (FCI) and drew their attention to Direction 55 (1) of the Directions by the Speaker regarding confidentiality of the proceedings.

3. Thereafter, the Chairman and Members of the Committee asked questions and sought clarifications on the following two subjects:—

- (i) Petition requesting to amend section 12A-4A of the Food Corporation Act, 1964 enabling Food Transferees of FCI to opt for liberalized Pension Scheme of the Central Government.

- (ii) Representation requesting to take action against irregularities in Food Corporation of India.

4. The following important points were also discussed by the Committee:—

- (i) Action taken by the Government on the assurance given on the floor of the House regarding service conditions of the employees transferred to the FCI.
- (ii) FCI's Board's recommendation to the Government regarding giving second option to the Food transferees and the Government reaction thereon.

\*\*                      \*\*                      \*\*                      \*\*                      \*\*                      \*\*

5. The Committee directed the representatives of the Ministry/FCI to send written replies to some of the points on which replies were not readily available with them during the evidence.

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

*The Committee then adjourned.*

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

The Committee on Petitions sat on Wednesday, 25th May, 2005 from 1500 hrs. to 1530 hrs. in Committee Room No. 53, First Floor, Parliament House, New Delhi.

PRESENT

Dr. M. Jagannath — *In the Chair*

MEMBERS

2. Shri Nandkumar Singh Chauhan
3. Shri N.S.V. Chitthan
4. Shri Suresh Kurup
5. Shri Shingada Damodar Barku
6. Shri Vijoy Krishna

SECRETARIAT

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Shri S. Bal Shekar | — | <i>Joint Secretary</i>  |
| 2. Shri Brahm Dutt    | — | <i>Director</i>         |
| 3. Shri R.K. Bajaj    | — | <i>Deputy Secretary</i> |

2. In the absence of Chairman, the Committee chose, Dr. M. Jagannath, to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Committee condoled the sudden demise of Shri Sunil Dutt, M.P. and Minister of Youth Affairs and Sports and adopted the following resolutions:—

"The Committee on Petitions (Lok Sabha) place on record their deep sense of sorrow and sadness on the sudden demise of Shri Sunil Dutt, a Member of 14th Lok Sabha and Minister of Youth Affairs and Sports. This was his 5th term in Lok Sabha. Shri Sunil Dutt was associated with films and social work. Shri Dutt has been a very active Member of Parliament and has contributed immensely to the debates of the House and has in the working of the Parliamentary Committees."

The Committee then stood in silence for a short while to pay homage to the departed soul.

4. The Committee, thereafter, considered and adopted Draft Eighth Report.

*The Committee then adjourned.*