

**INJUDICIOUS WAIVER OF
DEMURRAGE CHARGES**

**[ACTION TAKEN ON 33RD REPORT OF
PUBLIC ACCOUNTS COMMITTEE**

(14TH LOK SABHA)]

**MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

**PUBLIC ACCOUNTS
COMMITTEE
2007-2008**

SEVENTY-FOURTH REPORT

FOURTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

SEVENTY-FOURTH REPORT

PUBLIC ACCOUNTS COMMITTEE
(2007-2008)

(FOURTEENTH LOK SABHA)

INJUDICIOUS WAIVER OF DEMURRAGE
CHARGES

*[Action Taken on 33rd Report of Public Accounts Committee
(14th Lok Sabha)]*

MINISTRY OF RAILWAYS
(RAILWAY BOARD)

*Presented to Lok Sabha on 29.4.08
Laid in Rajya Sabha on 29.4.08*



LOK SABHA SECRETARIAT
NEW DELHI

April, 2008/Vaisakha, 1930 (Saka)

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2007-2008)

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

Lok Sabha

2. Shri Kirip Chaliha
3. Shri Khagen Das
4. Shri P.S. Gadhavi
5. Shri R.L. Jalappa
6. Vacant**
7. Shri Bhartruhari Mahtab
8. Dr. Rajesh Mishra
9. Shri Brajesh Pathak
10. Prof. M. Ramadass
11. Dr. K.S. Rao
12. Shri Mohan Singh
13. Shri Rajiv Ranjan 'Lalan' Singh
14. Shri Kharabela Swain
15. Shri Tarit Baran Topdar

Rajya Sabha

16. Vacant**
17. Prof. P.J. Kurien
18. Vacant†
19. Vacant*
20. Vacant#
21. Dr. K. Malaisamy
22. Vacant‡

SECRETARIAT

- | | | |
|---------------------------------|---|-----------------------------|
| 1. Shri S.K. Sharma | — | <i>Additional Secretary</i> |
| 2. Shri A. Mukhopadhyay | — | <i>Joint Secretary</i> |
| 3. Shri Ramkumar Suryanarayanan | — | <i>Under Secretary</i> |

* Shri Suresh Bhardwaj resigned from membership of Rajya Sabha w.e.f. 9th January, 2008.

Shri Prasanta Chatterjee ceased to be a Member on expiry of his term of Rajya Sabha w.e.f. 2nd April, 2008.

** Shri Raghunath Jha and Shri V. Narayanasamy ceased to be Members on their appointment as Ministers w.e.f. 6th April, 2008.

† Shri Janardhana Poojary and Shri Ravula Chandra Sekar Reddy ceased to be Members on expiry of their term of Rajya Sabha w.e.f. 9th April, 2008.

INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorized by the Committee, do present this Seventy-fourth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 33rd Report (14th Lok Sabha) on "Injudicious Waiver of Demurrage Charges".

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 21st April, 2008. Minutes of the sitting form Part II of the Report.

3. For facility of reference and convenience, the Recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix to the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

5. The Committee also place on record their appreciation for the invaluable assistance rendered to them by the officials of Lok Sabha Secretariat attached with the Committee.

NEW DELHI;
22nd April, 2008

2 Vaisakha, 1930 (Saka)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the Action Taken by the Government on the Recommendations/Observations of the Public Accounts Committee contained in their 33rd Report (14th Lok Sabha) on the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2004 (No. 8 of 2005), Union Government (Railways) relating to "**Injudicious Waiver of Demurrage Charges**".

2. The 33rd Report (14th Lok Sabha) was presented to Lok Sabha on 7th December, 2006. The Committee had dealt with various issues arising out of Audit Paragraph concerning injudicious Waiver of Demurrage Charges by Railways in respect of five sidings of Gujarat State Electricity Corporation Limited (GSECL).

3. The Report contained six Recommendations/Observations and the Committee in their recommendations highlighted arbitrariness in the decisions pertaining to demurrage waivers and sought to achieve the desired objectives of these Demurrage Charges *i.e.* to act as deterrent for the consignees so that they refrain from undue wagon detentions. The Action Taken Notes have been received from the Ministry of Railways and GSECL in respect of all Recommendations/Observations and are categorized as follows:—

- (i) Recommendations/Observations, which have been accepted by the Government.

Sl. Nos. 1, 2, 5 and 6 (Para Nos. 62, 63, 66 and 67)

Total: 4
Chapter-II

- (ii) Recommendations/Observations, which the Committee do not desire to pursue in view of the replies received from the Government.

-NIL-

Chapter-III

- (iii) Recommendations/Observations, in respect of which replies of the Government have not been accepted by the Committee and which require reiteration.

Sl. Nos. 3 and 4 (Para Nos. 64 and 65)

Total : 2
Chapter-IV

- (iv) Recommendations/Observations, in respect of which the Government have furnished interim replies.

-NIL-

Chapter-V

A. Gist of Committee's Recommendations/Observations made in 33rd Report

4. The Committee in their 33rd Report on the subject had made the following important Recommendations/Observations.

- The Committee had recommended that the present system of giving broad reasons instead of recording speaking orders with regard to waiver of demurrage charges in respect of Power Houses conceals element of nepotism, favouritism and corruption and should be totally done away with.
- The Railways should lay out well-defined rules in order to avoid injudicious and arbitrary decision on the part of senior officers of the Railway Board/Ministry.
- The Committee did not appreciate Ministry of Railways claim that the cumulative waiver of demurrage charges between 1998-99 to 2003-04 was only 0.43% of total freight earnings of Railways. Noting an abrupt increase in waiver of demurrage charges accrued on account of detention of wagons by Gujarat State Electricity Corporation Limited (GSECL), the Committee had sought a proper response from the concerned Ministry in this connection.
- The guidelines laid down for waiver of demurrage charges in respect of large sidings, powerhouses etc. specify only recording broad reasons. These guidelines need to be reviewed.
- The Committee had expressed its displeasure at the fact that GSECL had not disclosed the hiring of a consultant for effective representation and resolution of disputes with the Railways.
- Railways may consider the feasibility of appointing an Expert Committee comprising experts drawn from various relevant fields to go into the entire gamut of the mechanism of accrual and waiver of demurrage charges and to suggest measures for circumscribing and curtailing the discretionary powers vested with the Railway Officials to the extent possible.
- The Committee had deprecated the casualness shown in taking important policy decision by a senior official of Railways and desired that Ministry of Railways will formulate well defined rules to avoid repetition of such indiscretions at the highest level.

5. The Action Taken Notes furnished by the Ministry of Railways and GSECL in respect of all Recommendations/Observations of the Committee contained in the Report have been reproduced in the relevant Chapters of this Report.

**B. Rationalization of Rules of Waivers
(Recommendation Sl. No. 2, Para No. 63)**

6. The Committee in their earlier Report on the subject were not convinced by the reason given by the Ministry of Railways for increase in waiver of demurrage charges. Responding to the Committee's displeasure at the sharp rise in waiver of demurrage charges in connection with Gujarat State Electricity Corporation Limited (GSECL) wherein the Ministry had found solace in the fact that these charges constituted only 0.43% of the total freight earnings of Railways, the Ministry have, in their respective Action Taken Notes stated as follows:—

"Rule of waiver has been rationalized in October 2004, wherein circumstances leading to accrual of demurrage and the way how to deal such cases is clearly stipulated.

In terms of extant rules, in cases, where reason for detention is within the control of the consignor/consignee, waiver should normally be not done. However, if at all waiver is to be granted on justified and meritorious facts, speaking orders should be recorded in such case.

The cases where reasons for detention is beyond the control of rail users, or where detention results due to act of God, act of War or act of public enemies, waiver can be considered on merits of individual case."

In this regard, the Ministry of Railways have further informed that an Expert Committee has been constituted which is entrusted to go into the entire gamut of the mechanism of accrual and waiver of demurrage.

Gujarat State Electricity Corporation Limited (GSECL) in their Action Taken Note have expressed the hope that Railways may after detailed study, issue specific norms of waiver side-wise.

7. In their 33rd Report, the Committee had observed that the guidelines laid down for waiver of demurrage charges in respect of large sidings, powerhouses etc., required recording of only broad reasons by the concerned officers for their decisions. The Committee had, therefore, recommended that these guidelines be reviewed as non-recording of specific and compelling reasons for waiver of large amounts of demurrage tended to raise suspicion about the bonafides of the decision. The revised/rationalized rules reiterated by the Ministry of Railways in the Action Taken Note have obviously not brought any significant improvement in the procedure or levy and waiver of demurrage charges which have shown sharp-rise during the period 1991-92 to 2001-02. However, constitution of an Expert Committee by the Ministry now for reviewing the guidelines for waiver of demurrage charges, as recommended by the Committee, is no doubt step in the right direction. The Committee desire that the entire gamut of issues concerning waiver of demurrage should be examined by the Expert Committee in a time bound manner. They would like to be apprised of findings of the Expert Committee and the action taken thereon by the Ministry.

**C. Curtailing indiscretions by the Senior Officers
(Recommendation Sl. No. 3, Para No. 64)**

8. The Committee were informed during the course of examination of the subject that the Railway Board have been issuing directives regarding waiver of demurrage

charges. However, these directives notwithstanding, Audit review had revealed that non-observance of this directive by Western Railway resulted in extra waiver of Rs. 41.58 crore in respect of five sidings of GSECL alone for the period from 1995-96 to 2003-04. The Ministry of Railways explained that the directive in question referred by the Audit was issued in March, 1995 by Advisor (Traffic), Railway Board. However, he was not authorized to issue such a directive on commercial matters including policy for waiver of demurrage charges. According to the Ministry, only the policy instructions contained in the Board's letter of 23 April, 1986 were applicable for waiver of demurrage charges. Further, the General Managers of the Zonal Railways have full powers to waive demurrage charges irrespective of amount involved. Taking a stern view in this matter, the Committee had deprecated the casualness with which such important policy decisions were taken at the Railway Board. The Committee had desired to be informed about the follow-up action taken by the Ministry of Railways in the matter.

9. Apprising the Committee about the steps taken with regard to the revelations made by the Audit wherein a Senior Officer of the Railway Board had issued a directive *suo moto* regarding of waiver demurrages, while he was not authorized to do so, the Ministry of Railways in their Action Taken Note have responded as under:—

"With regard to observation of the Committee on the issue of Board's letter dated March, 1995 by Advisor (T), it is submitted that detention of wagons equally concerns Traffic and Commercial Directorates. Adviser (T) might have issued this letter with the intention to curb the detention of wagons and to use the tool of demurrage to avoid the detention of wagons. However, he had maintained that policy instruction of 23.11.1986 will continue to be applicable. Para 5 of Board's letter dated 23.11.1986 which concerns power houses read as under:

'in the case of large sidings, like those of power houses, where demurrage is not waived on wagon to wagon or day-to-day basis where the decisions are taken periodically after going through the statements of wagons detained and broad causes for each detentions, it is not necessary to record speaking orders in respect of each and every consignment or wagon, and it would be sufficient if broad reasons are given in support of such periodical waivers.'

It is submitted that corrective action had been taken with the issue of Board's D.O. letter dated 13.9.1995 by Adviser (C). Since thereafter, there has been no instance where Adviser (T) has issued any letter over Commercial matter. Ministry of Railways are of the opinion that corrective action taken with the issue of D.O. letter dated 13.9.1995 by Adviser (C) was sufficient."

10. The Committee are surprised that the Ministry of Railways have not addressed squarely the concern of the Committee with regard to issuance of proper directives for regulating waiver of demurrage charges. As this is a recurrent problem confronting Railways, it is absolutely necessary that the Ministry should come out with specific and coherent norms/guidelines which can regulate the discretionary powers vested with Zonal Officers.

**D. Hiring of a Consultant and its non disclosure
(Recommendation Sl. No. 4, Para No. 65)**

11. Responding to the Committee's displeasure on the fact that GSECL has not disclosed the hiring of a consultant for effective representation and resolution of disputes with the Railways, GSECL in their Action Taken Note have replied as under:—

"GSECL never acted to cause any kind of loss of revenue to the Railways. In fact, GSECL pays around Rs. 1450 crores per annum to Railways towards freight payment. Due to such large volume and complex business transactions with Railway. GSECL had utilized services of an external consultant to assist/ advice in the matters related to Railways. GSECL appreciates that the Committee are also of the view that there is no harm in the engagement of consultant for effective representation and resolution of disputes."

12. The Committee note that a big Corporation like Gujarat State Electricity Corporation Limited (GSECL) had hired a consultant for effective representation and resolution of disputes with Railways. The Committee had observed that there was nothing wrong *per se* in such an engagement. However, the Committee had taken a serious view of the manner in which the consultant was engaged and this fact kept under the wraps without formalising it with Railways. However, in their Action Taken Note, M/s GSECL have simply skirted the main concern expressed by the Committee on this issue. The Committee's Observation on engagement of a consultant for effective representation and resolution of disputes should have been viewed in proper perspective. The Committee would thus reiterate their viewpoint that Public Sector bodies like GSECL must ensure absolute transparency in their affairs with a view to fostering fair management practices and to avoid negative perceptions about the working of the Organisation.

CHAPTER II
RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN
ACCEPTED BY THE GOVERNMENT

Recommendation No. 62

Section 2(11) of Railway Act 1989, defines demurrage as the charge levied for the detention of any rolling stock after the expiry of free time, if any, allowed for such detention. The main objective of levying demurrage charges is to reduce wagon detentions and thereby improve wagon turn round. According to Railways, demurrage charge is a marketing tool used as a leverage to persuade rail users to make investments for improving their handling system so as to release railway wagons expeditiously. It is not charge for any service rendered. Waiver of demurrages is essentially a business decision in which the impact of full levy on the consignee's business and liberal waiver on wagon detentions will have to be carefully balanced. Consideration of waiver of demurrage takes into account a host of factors including the extent to which such levies work as disincentives for the particular traffic for choosing rail as the preferred mode of transport.

[Para No.62 of 33rd Report of PAC (14th Lok Sabha)]

Action Taken

Factually correct.

Auditing vetting comments dated 23-10-2007

Railway Board has accepted that demurrage is levied to work as a tool for reduction in detention to wagons. Since detention to wagons mean loss of their earning capacity it also implies that demurrage is levied to compensate the Railway for the loss it suffer due to detention in excess of the permissible time for completion of loading/unloading by consignee/consignor. Waiver of demurrage charges is allowed considering various factors such as the levy of demurrage should not work as disincentive to the party. Audit has, however, observed that the existing system of levy and waiver of demurrage is neither effective in arresting the trend of detentions nor encouraging the parties to invest in improving their infrastructure for handling the traffic. This need to be looked into.

Remarks of Ministry of Railways

In order to check the undue detention of Railway's rolling stock and to improve the 'wagon turn round', free time and demurrage rules have been revised in January 2006.

However, Expert Committee has been constituted which is entrusted to go into the entire gamut of the mechanism of accrual and waiver of demurrage.

Audit vetting comments dated 12-02-2008

The revision in the free time and rates of demurrage, wharfage and stacking charges done in January, 2006 had hardly any impact on detention. Moreover, the demurrage charges levied are waived in almost all cases and this has never worked as deterrent factor. Moreover, parties getting the benefit of waiver of demurrage charges at the cost of Railways revenue have hardly used this for bring improvements in their infrastructure to arrest the detention. This needs to be looked into.

Remarks of Ministry of Railways

Expert Committee has been constituted which will go into the entire gamut of the demurrage rules. Appropriate action will be taken on the receipt of the recommendation of Expert Committee.

Audit *vide* their U.O. No. 829-Rly/WR/12-76/2004 Pt. II dated 10th March, 2008 have vetted the Action Taken Note subject to intimating the final action taken on the recommendation of the Expert Committee.

Sd/-

(Smt. P. Babbar)
Adviser (Finance)
Railway Board

Ministry of Railways' case No. 2006-BC-PAC/XIV/33 dated 24-03-2008.

Recommendation No. 63

The Committee note that Gujarat State Electricity Corporation Limited (formerly Gujarat Electricity Board) receives Coal and residual fuel through Railway rakes in their five sidings at Ukai Songarh, Sevaliya, Dhuvaran, Gandhinagar Capital and Sikka. Audit Scrutiny of records of all five sidings of GSECL revealed that waiver of demurrage charges accrued on account of detention of wagons by GSECL which was around 55 per cent in 1991-92 abruptly increased to 71 percent in 1992-93. The increasing trend continued in subsequent years and reached 89 per cent in 2001-02. The position did not improve even in the subsequent years as the percentage of waiver of demurrage charges continued to range between 70% to 90% in some of the Power Houses of GSECL. The Ministry of Railways have attributed the reason for the rising trend in waiver of demurrage charges to the increase in the traffic volumes at the GSECL sidings. It has also been stated that the cumulative waiver of demurrage charges between 1998-99 to 2003-04 was only 0.43% of total freight earnings of Railways during that period. The Committee are not convinced by the reasons given by the Ministry of Railways for increase in waiver of demurrage charges. Far from giving a plausible explanation therefore and in furnishing the details of the measures taken for reducing the waiver of demurrage charges, the Ministry have tried to find solace in the fact that

demurrage charges waived constituted only a small percentage i.e. 0.43% of total freight earnings of Railways, which is nothing but regrettable.

[Para No. 63 of 33rd Report of PAC (14th Lok Sabha)]

Action Taken

The circumstances leading to accrual of demurrage charges in respect of all the power houses are common and unique. The grounds for waiver of demurrage charges are true in respect of other power houses too and Gujarat Electricity Board (GEB) is no exception. Power houses offer substantially large amount of traffic to Railways. The ground for waiver of demurrage in the case of GEB were receipt of diverted rakes, placement of rakes in bunched manner, GEB a Government customer etc. Therefore, there is a different set of rules in regard to waiver of demurrage charge in respect of power houses as prescribed in Board's letter dt. 23.11.1986 which read as under:—

"In the case of large sidings, like those of power-houses, where demurrage is not waived on wagon to wagon or day to day basis where the decisions are taken periodically after going through the statements of wagons detained and broad causes for each detentions, it is not necessary to record speaking orders in respect of each and every consignment or wagon, and it would be sufficient if broad reasons are given in support of such periodical waivers."

In order to reduce the accrual of/waiver of demurrage charge, following steps have been taken:—

- In order to reduce the accrual of demurrage charge, bunching allowance of three hours has been permitted in the case of arrival of rakes in bunched manner, vide Rates Circular No. 106 of 2006 (copy enclosed).
- The circumstances for consideration of waiver of demurrage have been clearly laid down vide Rates Circular No. 39 of 2004 (copy enclosed).

Audit vetting comments dated 23-10-2007

The guidelines laid down for waiver of demurrage charges in respect of large siding, power houses etc. specify only recording broad reasons as such the guidelines needs to be reviewed. Non-recording of specific and compelling reasons for waiver of large amounts tends to conceal an element of corruption. Allowing waiver routinely will also lead to complacency in the working of Railway staff posted in the sidings. Since Railway has allowed bunching allowance of three hours and in most of the cases, the free time fixed after conduction of time and motion studies, it is need of the hour that no waiver is allowed except in the cases where the situation goes entirely beyond the control of consignee/consignor.

Comments of Ministry of Railways

Rule of waiver has been rationalized in October 2004, wherein circumstances leading to accrual of demurrage and the way how to deal such cases is clearly stipulated.

- It terms of extant rules, in cases where reason for detention is within the control of the consignor/consignee, waiver should normally be not done. However, if

at all waiver is to be granted on justified and meritorious facts, speaking orders should be recorded in such cases.

- The cases where reasons for detention is beyond the control of rail user, or where detention results due to act of God, act of War or act of public enemies, waiver can be considered on merits of individual case.

However, Expert Committee has been constituted which is entrusted to go into the entire gamut of the mechanism of accrual and waiver of demurrage.

Audit vetting comments dated 12-02-2008

As explained above, the revised/rationalized rules have not brought any significant improvement in levy and waiver of demurrage charges. While fixing the rates of demurrage charges Railway should keep in view the earning capacity of the wagon and the loss they suffer by excessive detention. By curtailing the detention Railway can earn more with the same fleet of wagons whereas if wagons are detained beyond the permissible limits they not only lose the revenue, but also require more wagons to meet the demands of traffic. These issue needs to be addressed while finalizing the new rules.

Comments of Ministry of Railways

Expert Committee has been constituted which will go into the entire gamut of he demurrage rules. Appropriate action will be taken on the receipt of the recommendation of Expert Committee.

Audit *vide* their U.O. No. 829-Rly/WR/12-76/2004 Pt. II dated 10th March, 2008 have vetted the Action Taken Note subject to intimating the final action on the recommendation of the Expert Committee.

Sd/-

(Smt. P. Babbar)
Adviser (Finance)
Railway Board

Ministry of Railways' case No. 2006-BC-PAC/XIV/33 dated 24-03-2008.

Rates Circular No. 39 of 2004

**Government of India
Ministry of Railways
Railway Board**

No. TC-I/2004/201/9

New Delhi, Dt. 11.10.2004

General Managers (Commercial)

General Managers (Operating)

CR/MUMBAI	NWR/JAIPUR
ER/KOLKATA	SR/CHENNAI
ECOR/BHUBANESWAR	SCR/SECUNDERABAD
ECR/HAJIPUR	SER/KOLKATA
NR/NEW DELHI	SECR/BILASPUR
NCR/ALLAHABAD	SWR/HUBLI
NER/GORAKHPUR	WR/MUMBAI
NFR/GUWAHATI	WCR/JABALPUR

Sub: Rules regarding waiver of demurrage/wharfage charges

Please refer to Board's letter of even number dated 20.7.2004 regarding advance intimation for arrival/placement of rakes-accrual and waiver of demurrage charges. It had been *inter alia* mentioned that the provisions contained in Board's letter No. TC-I/201/72/27 dated 23.4.86 are also under review and the same will be advised in due course.

Ministry of Railways have reviewed previous instructions regarding waiver of demurrage/wharfage charges including Board's letter No. TC-I/201/72/27 dated 23.4.86. In supersession of Board's earlier instructions on the subject of waiver/refund of demurrage/wharfage charges, it has been decided that the guidelines as mentioned in this letter shall be followed while dealing with the cases of waiver/refund of demurrage/wharfage charges:

1. Power of officers to waiver demurrage or wharfage charges

Designation of officer	Maximum amount of demurrage per wagon which can be considered by an officer	Maximum amount of wharfage per consignment which can be considered by an officer
1	2	3
1. GM	Full powers	Full powers
2. CCM (Co-ordinating HOD in Commercial Department)	Rs. 1,00,000/-	Rs. 1,00,000/-
3. DRM	Rs. 25,000/-	Rs. 25,000/-

	1	2	3
4.	CTM/Sr. DCM/ DCM working as Branch Officer	Rs. 6,000/-	Rs. 6,000/-
5.	DCM/DTM/Area Officer in senior Scale	Rs. 600/-	Rs. 1,200/-
6.	ACM/ATM/Area Officer in junior scale	Rs. 300/-	Rs. 300/-

1.2 Where Demurrage cases are being handled by Officers of Operating Department, CCM/Sr. DCM etc. will mean COM/Sr. Dom etc.

1.3 The cases for waiver should not be dealt by an officer below the level of officer competent to deal with the case as per the schedule of powers given in the above table.

1.4 Prior Finance concurrence will be required for waiver of demurrage/wharfage charges above Rs. 25,000/- per wagon/per consignment respectively. Cases submitted to General Manager should be routed through the Co-ordinating HOD of the Commercial Department and FA&CAO of the Zonal Railways.

2. Waiver

2.1 Due care should be taken in preparation of the demurrage/wharfage bills at the first instance to obviate recasting of bills subsequently on representation by the customer or otherwise.

2.2 In case the consignor/consignee feels that demurrage/wharfage was due to reasons beyond his control he could apply for waiver giving all relevant details with documentary evidence wherever necessary.

2.3 First application for waiver of demurrage or wharfage should be submitted to the Station Manager/Goods Supervisor within 10 (ten) days from the date upto which these charges had accrued.

2.4 In case of wharfage, the consignor/consignee should first remove the consignment from the railway premises, deposit the amount of wharfage charges and submit the original proof of such payment along with his application while preferring for waiver at first instance itself.

2.5 The concerned Station Manager/Chief Goods Supervisor will forward the application of waiver of demurrage or wharfage to the Divisional Officer together with the factual position and remarks within 3 (three) days of the receipt of the application.

2.6 In case of large sidings, like those of power houses, steel plants etc., the time limit for preferring the first application for waiver of demurrage charge will be the next month implying that application for waiver of demurrage charges accrued in one month should be submitted latest within the next month.

2.7 The delay beyond 10 days/next month period as mentioned above can be condoned only with the personal approval of the Divisional Railway Manager/Chief Commercial Manager (coordinating HOD) depending upon whether the powers to deal with the case lies at divisional or zonal level and after having ascertained that the reasons for the delay given in the application are satisfactory. Application for condonation of delay in preferring an appeal for waiver of demurrage, however, shall be entertained only after the demurrage charges have been paid in full and the application is supported with proof of such payment.

2.8 The circumstances, which lead to accrual of demurrage/wharfage charges, can be broadly grouped in three categories as under:—

- (i) Reasons within the control of the consignor/consignee.
- (ii) Reasons beyond the control of consignor/consignee like labour strike, transportation strike, general bandhs, agitations, riots, curfew, fire, explosion, heavy rains or other abnormal/unforeseen circumstances.
- (iii) Act of God, act of War and act of public enemies.

2.9 In case of Category (i), waiver should normally be not done. However, if at all waiver is to be granted on justified and meritorious facts, speaking orders should be recorded in all such cases.

As regards case pertaining to Category (ii) or Category (iii), waiver can be considered on merits of individual case.

2.10 The powers for waiver as mentioned above should be exercised judiciously keeping in view the merits of each case as per instructions contained in this letter. The waiver should not be granted in a routine manner.

2.11 Whenever the waiver exceeds 50% of the powers conferred on an officer, reasons for such waiver should be recorded in writing.

2.12 In the case of large sidings, like those of power houses, where demurrage is not waived on wagon to wagon or daily basis, speaking orders need not be recorded for each consignment/wagon. It would be sufficient if broad reasons are given in support of such periodical waiver after analyzing the broad causes of such detentions.

2.13 The causes for accrual of frequent demurrage/wharfage charges from a particular Goods Shed or a siding or a consignor/consignee should be analysed periodically. Remedial steps including provision of infrastructural facilities should be taken to reduce the detention to rolling stock and prompt removal of goods from the Railway premises.

3.0 Appeal against orders of waiver

3.1 A consignor/consignee can prefer an appeal to a higher authority in case he is not satisfied with the decision of the lower authority. The Station Manager/Chief Goods Superintendent should forward the appeal to the Divisional authorities within 3 (three) days of the receipt of the appeal.

3.2 However, before preferring an appeal for waiver of demurrage charges, he is required to deposit the amount of demurrage charges not waived. The original proof of such should be submitted alongwith the appeal.

3.3 An appeal against the order of lower authority should be preferred within 30 (thirty) days of the date when the decision of the lower authority is communicated.

3.4 A maximum of only two appeals can be made against the decision of the lower authorities.

3.5 In all cases where a change is made by the appellate authority against the decision taken earlier, speaking orders should be recorded by the appellate authority.

4.0 The waiver of demurrage/wharfage charge should be dealt as per the instructions contained in this letter. No direct refund of demurrage/wharfage charge should be made unless proper procedure for waiver as laid in this letter has been followed.

5.0 Refund of waived amount of demurrage/wharfage charges should be made expeditiously through pay orders by Commercial Department of the Division.

6.0 If it is felt that the rules for accrual/waiver of demurrage/wharfage charges need review, the same should be recommended by the GM to this office with the observations of the Associate Finance.

This issues with the concurrence of the Finance Directorate of Ministry of Railways.

The receipt of this letter may please be acknowledged.

Sd/-

(Navin Kumar Parsuramka)
Joint Director, Traffic Commercial (Rates)
Railway Board

No. TC-I/2004/201/9

New Delhi, Dt. 11.10.2004

Copy to:

1. Dy. C&AG (Rlys.) New Delhi.

2. FA& CAOs

CR/MUMBAI
ER/KOLKATA
ECOR/BHUBANESWAR
ECR/HAJIPUR
NR/NEW DELHI
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NWR/JAIPUR
SR/CHENNAI
SCR/SECUNDERABAD
SER/KOLKATA
SECR/BILASPUR
SWR/HUBLI
WR/MUMBAI
WCR/JABALPUR

Sd/-

For Financial Commissioner (Rlys.)

No. TC-I/2004/201/9

New Delhi, Dt. 11.10.2004

1. Executive Director, CRIS and the Chief Administrative Officer, FOIS, Northern Railway, Camp: CRIS, Chanakyapuri, New Delhi-21
2. Managing Director, Konkan Railway Corporation, Belapur Bhavan, Sector-11, CBD Belapur, New Mumbai-400614
3. Director General, Railway Staff College, Vadodara
4. General Secretary, IRCA, New Delhi.

Sd/-

(Navin Kumar Parsuramka)
Joint Director, Traffic Commercial (Rates)
Railway Board

Copy for information:

CRB, MT, FC, Railway Board

AM(T), AM(C), Adv. (F), Adv. (Safety), Railway Board

EDF(C&RM), EDTT(M), EDPM, EDTC(R), JDTC(R), DDTC(R), Railway Board

TCFM, F(C), TCR, TCCR Branches, Railway Board

**Government of India
Ministry of Railways
Railway Board**

ADDENDUM TO RATES CIRCULAR NO. 39 OF 2004

No. TC-I/2004/201/9

New Delhi, Dt. 15.12.2004

General Managers (Commercial)

General Managers (Operating)

CR/MUMBAI
ER/KOLKATA
ECOR/BHUBANESWAR
ECR/HAJIPUR
NR/NEW DELHI
NCR/ALLAHABAD
NER/GORAKHPUR
NFR/GUWAHATI

NWR/JAIPUR
SR/CHENNAI
SCR/SECUNDERABAD
SER/KOLKATA
SECR/BILASPUR
SWR/HUBLI
WR/MUMBAI
WCR/JABALPUR

Sub: Rules regarding waiver of demurrage/wharfage charges

Please connect Board's earlier letter of even number dated 11.10.2004 on the above mentioned subject.

Following lines may be inserted below the table of Para No. 1.0 Powers of officers to waive demurrage or wharfage charges:—

"The powers of waiver of wharfage charges indicated in the table above will be on consignment basis except in the case of trainload consignments where it will be applicable on per wagon basis."

Sd/-

(Navin Kumar Parsuramka)
Joint Director, Traffic Commercial (Rates)
Railway Board

No. TC-I/2004/201/9

New Delhi, Dt. 15.12.2004

Copy to:

- 1. Dy. C&AG (Rlys.) New Delhi.**
- 2. FA& CAOs**

CR/MUMBAI
ER/KOLKATA
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SCR/SECUNDERABAD
SER/KOLKATA
SECR/BILASPUR
SWR/HUBLI
WR/MUMBAI
WCR/JABALPUR

Sd/-

For Financial Commissioner (Rlys.)

No. TC-I/2004/201/9

New Delhi, Dt. 15.12.2004

1. Executive Director, CRIS and the Chief Administrative Officer, FOIS, Northern Railway, Camp: CRIS, Chanakyapuri, New Delhi-21
2. Managing Director, Konkan Railway Corporation, Belapur Bhavan, Sector-11, CBD Belapur, New Mumbai-400614
3. Director General, Railway Staff College, Vadodara
4. General Secretary, IRCA, New Delhi
5. Code Revision Cell, Room No. 564 (p), Rail Bhawan, New Delhi. Please issue Correction slip against Chapter-XI of Indian Railway Code for Traffic (Commercial) Department-1993 Edition.

Sd/-

(Navin Kumar Parsuramka)
Joint Director, Traffic Commercial (Rates)
Railway Board

Copy for information:

PPS:

CRB, MT, FC, AM(T), AM(C), Adv. (F), Adv. (Safety), Adv. (PM)

EDF (C&RM), EDTT (M), TC (FM), F (C), TC (R), TC (CR) Branches of Board's Office.

**Government of India
Ministry of Railways
Railway Board**

No. TC-I/2005/201/2

New Delhi, Dt. 5.12.2006

**General Managers (Commercial)
General Managers (Operating)
All Indian Railways**

Sub: Demurrage rules

Ref: Board's letters No. TC-I/2005/201/2 dt. 19.12.2005 (circulating Rates Circular No. 74 of 2005) and No. TC-I/95/201/2 dt. 23.11.1995.

FOIS has sought certain clarification regarding reckoning of free time in Goods Sheds etc.

2.0 The matter has been examined and it has been decided:—

- to do away with the instructions prescribed *vide* Paras 2.2.2 & 2.2.3 of Rates Circular No. 74 of 2005 and Board's letter No. TC-I/95/201/2 dt. 23.11.1995, and
- to incorporate new Paras 2.2.2 & 2.2.3 in Rates Circular No. 74 of 2005 as mentioned below:

"2.2.2 Reckoning of free time in goods sheds, Railway sidings and such private/assisted sidings where placement/release of rake is done through Railway's loco.

(a) If a rake is placed in one spur in one placement:

Free time will be reckoned from the time of placement of the rake. Demurrage will be charged on excess detention which will be calculated as under:—

'Excess detention = (time of release — time of placement) — free time'

(refer Illustration No. 1 at Annexure)

(b) If a rake is placed in one spur in multiple placements:

The free time will start with the placement of 1st part of the rake. However, intervening periods between the time of completion of loading/unloading of the 1st part and time of placement of 2nd part of the same rake for loading/unloading, between the time of completion of loading/unloading of the 2nd part and time of placement of 3rd part of the same rake for loading/unloading and so on, should be treated as *dies non*. Demurrage will be charged on excess detention which will be calculated as under:

'Excess detention = (time of release of the last part — time of placement of first part) — free time — total period of *dies non*'

(refer Illustration No. 2 at Annexure)

(c) *If a rake is placed in more than one spurs:*

Free time for the entire rake will commence from the time of placement of first part of the rake.

Demurrage charges will be calculated on the basis of deemed released time of the rake (after adjustment of *dies non* period). A rake will be deemed to have been released at the time at which the last wagon is released irrespective of the group/spur in which this wagon was placed.

If the time interval between first placement and subsequent placements (*i.e.* between 1st placement & 2nd placement, between 1st placement & 3rd placement, and so on) is more than two hours, then such excess time interval of over two hours shall be treated as *dies non*. This *dies non* period, wherever applicable, will be deducted from the actual release time of the respective placements to arrive at deemed release time.

Demurrage will be charged on excess detention which will be calculated as under:

'Excess detemtopm=(deemed release time of the rake—time of 1st placement) free time'

Deemed release time of a placement will be calculated as under:

'Deemed release time of a placement=actual release time of that placement'—*dies non*, if applicable'

Deemed released time of the rake will be the time at which the last wagon of the rake has been deemed to be released. For example, if the deemed, release time of first placement is 1200 Hours, second placement is 1400 Hours and third placement is 1300 Hours, then 1400 Hours will be the deemed release time of that rake.

(refer Illustration No. 3 at Annexure)

2.2.3 Demurrage rule in case of private/assisted sidings where placement/release of a rake from/to interchange point is done through siding owner's loco.

In addition to permissible free time for loading/unloading of wagons, Bunching Allowance of 3 (three) hours will be permissible as per following conditions:

Bunching allowance will be allowed for both loading as well as unloading stream of traffic (commodity wise). It will be granted to such rakes which have arrived in bunched manner in excess of the handling capacity of the siding. It will be permitted for calendar day only and will not have cumulative effect *i.e.* not extendable beyond odd hours. The allowances should be calculated on actual arrival basis. (refer Illustration No. 4 at Annexure)

Handling capacity of siding will be fixed as under:

- Existing siding: Handling capacity of an existing siding will be the actual handling capacity or deemed handling capacity, whichever is higher. Deemed handling capacity is the average consumption of rakes per day during 1st January to 30th April escalated by 1.5 times & rounded off to the next integer. (refer Illustration No. 5 at Annexure)

- *New siding*: Handling capacity will be fixed provisionally keeping in view the handling system, production capacity, linkage, deemed handling capacity of similar type of siding etc.
- Handling capacity of a siding thus fixed should be reviewed every year in the Month of May & will be notified for the next year starting from July to June, or at the time of change in infrastructure including handling system, consumption pattern or linkage of the siding, whichever is earlier.
- However, for the period from 1.1.2007 to 30.6.2007, handling capacity of sidings should be fixed before 1.1.2007 keeping in view the actual handling capacity and the deemed handling capacity. Deemed handling capacity will be computed on the basis of average consumption per day during 1.1.2006—30.4.2006.

Demurrage on a rake will be charged after allowing the permissible free time for loading/unloading of wagons and bunching allowance, wherever applicable. Grant of free time and levy of demurrage on a rake will be linked with the handling capacity of the siding.":

3.0 These instructions will be effective *w.e.f.* 1.1.2007.

4.0 This issues with the concurrence of the Finance and Traffic Transportation Directorates in the Ministry of Railways.

Sd/-

(Navin Kumar Parsuramka)
Director Traffic Commercial (Rates)
Railway Board

No.TC-I/2005/201/2

New Delhi, Dt. 5.12.2006

Copy to:

1. Dy. C&AG(Rlys) R. No.222, Rail Bhavan, New Delhi.
2. FA&CAOs, All Indian Railways.

Sd/-

For Financial Commissioner (Rlys)

No.TC-I/2005/201/2

New Delhi, Dt. 5.12.2006

Copy to:

1. Managing Director, CRIS, Chankyapuri, New Delhi-21
2. Chief Administrative Officer, FOIS, Northern Railway, Camp: CRIS, Chankyapuri, New Delhi-21
3. Managing Director, Konkan Railway Corporation, Belapur Bhavan, Sector-11, CBD Belapur, New Mumbai-400614
4. Director General, Railway Staff College Vadodara

5. General Secretary, IRCA, New Delhi
6. Director, Indian Railway Institute of Transport Management, campus: Hardoi Bye-pass Road, Village-Kanausi, P.O. Manaknagar, Lucknow-226011.
7. Secretary, Railway Rates Tribunal, 5, Dr. P.V. Cherian Crecent Road, Egmore, Chennai-600105.
8. Director General (Rail Movement), Mil Rail (Railway Board Cell), Addl. Dte. Gen. of Movements, General Staff Branch, Army H.Q. Sena Bhavan, New Delhi-110011.
9. Chief Commissioner of Railway Safety, Lucknow.

Sd/-

(Navin Kumar Parsuramka)
Director Traffic Commercial (Rates)
Railway Board

Copy for information:

CRB, MT, FC, Railway Board

AM (T&C), AM (C&IS), Adv(C), Adv (F), Adv, (T), Adv. (PM) Railway Board

EDTC (R), EDPG, ED (FM), EDT (M), EDTT(S), EDTT(F), EDF(C&RM), EDV(T), ED(Safety) Railway Board

TC(R), TC(CR), F(C), Safety Branches, Railway Board.

Illustration No. 1

Particular of rake	Time of arrival	Time of placement	Time for reckoning of free time	Time of release	Excess detention =(time of release-time of placement)-free time
A BOXN rake is placed in one spur in one placement	1000	1000	1000	2000	(2000-1000)-9 hrs. = 1 hr.
A BOXN rake is placed in one spur in one placements	1155	1200	1200	2300	(2300-1200)-9 hrs. = 2 hrs.

Illustration No. 2

Particular of rake	Time of arrival	Time of placement	Time of release	Period of <i>dies non</i>	Excess detention =(time of release- time of placement of first part) - free time-total period of <i>dies non</i>			
A BCN rake is placed in one spur in three placement at goods shed 'X'	0600	Part	Time	Part	Time	— (2400-0645)-9 hrs.- 40 min=7 hrs. 35 min.		
		1st part	0645	1st part	1215			
		2nd part	1230	2nd part	1700		1230-1215 =15 min.	
		3rd part	1725	3rd part	2400		1725-1700 =25 min.	
Total period of <i>dies non</i>				15 min+25min =40 min.				
A BOXN rake is placed in one spur in two placement at siding 'Y'	1000	1st part	1015	1st part	1715	— (2300=1015) -9 hrs.- 15 min=3 hrs. 30 min.		
		2nd part	1730	2nd part	2300		1730-1715 =15 min.	
		Total period of <i>dies non</i>					15 min.	

Illustration No. 3

Particulars of the rake	Time of arrival	Time of placement	Actual release time	<i>dies non</i> =(time of subsequent placement -time of 1st placement) -2 hrs.	Deemed release time =actual release time- <i>dies non</i>	Excess detention =(deemed release time of the rake - time of placement of 1st part) - free time			
							Spur	Time	Spur
A rake consisting of 58 BOXN wagons is palced in three spurs at goods shed 'A'	0600	1st spur	0630	1st spur	1215	..	1st spur	1215	(1815-0630) - 9 hrs. =2 hrs. 45 min.
		2nd spur	0700	2nd spur	1700	0 <i>as (0700 - 0630) < 2 hrs.</i>	2nd spur	1700-0 =1700	
		3rd spur	1015	3rd spur	2000	1 hr. 45min. <i>as (1015 - 0630) - 2 hrs. = 1 hr. 45 min.</i>	3rd spur	2000-1hr.45 min. =1815	
A rake consisting of 45 BCN wagons is placed in two spurs at goods shed 'B'	0800	1st spur	0830	1st spur	2000	1st spur	2000	(2000-0830) - 9 hrs. =2hrs. 30 min.
		2nd spur	0900	2nd spur	1700	0. <i>as (0900 - 0830), C 2 hrs.</i>	2nd spur	1700-0 =1700	
A rake consisting 45 BCN wagons is placed in three spurs at goods shed 'C'	0615	1st spur	0630	1st spur	1700	1st spur	1700	(1830-0630)- 9 hrs. =3 hrs.
		2nd spur	0900	2nd spur	1900	30 min. <i>as (900- 0630)-2 hrs. = 30 min.</i>	2nd spur	1900-30 min. =1830	
		3rd spur	1000	3rd spur	1800	1 hrs. 30 min. <i>as (1000- 0630) -2 hrs.= 1 hr. 30 min.</i>	3rd spur	1800-1 hr. 30 min. =1630	

Illustration No. 4

(a) In case five rakes have arrived for unloading at siding 'P' whose handling capacity is one rake per day. The made-over time of trains after granting bunching allowance would be as under:—

Number of rakes	Actual arrival time (in Hours)	affecting bunching allowance	Due made-over time
1st	1600	Nil	1600
2nd	1800	1600+3 hrs.=1900	1900
3rd	1900	1800+3 hrs.=2100	2100
4th	2230	1900+3 hrs.=2200	2230
5th	2300	2230+3 hrs.=0130 (next day)	2400

(b) In case six rakes have arrived at siding 'Q' whose handling capacity is two rakes per day, then no bunching allowance will be granted to the 1st two rakes. Subsequent rakes will be distributed among two tippers and bunching allowance will be granted tippler-wise thereafter subject to arrival of rakes in bunched manner as under:—

Rakes No.	Actual arrival time (in Hours)	Rake distribution	affecting bunching allowance	Due made-over time
1st	0600	Tippler No. 1	Nil	0600
2nd	0700	Tippler No. 2	Nil	0700
3rd	0800	Tippler No. 1	0600+3 hrs.=900	0900
4th	0900	Tippler No.2	0700+3 hrs.=1000	1000
5th	1200	Tippler No. 1	0800+3 hrs.=1100	1200
6th	1400	Tippler No. 2	0900+3 hrs. =1200	1400

(c) In case eight rakes have arrived at siding 'R' whose handling capacity is four rakes per day. No bunching allowance will be granted to the 1st four rakes. Subsequent rakes will be distributed among four handling points and bunching allowance will be granted handling points wise thereafter subject to arrival of rakes in bunched manner as under:—

Rake No.	Actual arrival time (in Hours)	Rake distribution	affecting bunching allowance	Due made-over time
1st	0600	Handling point No.1	Nil	0600
2nd	0700	Handling point No.2	Nil	0700
3rd	0800	Handling point No.3	Nil	0800
4th	0900	Handling point No.4	Nil	0900
5th	0930	Handling point No.1	0600+3hrs.=0900	0930
6th	1000	Handling point No.2	0700+3hrs.=1000	1000
7th	1045	Handling point No.3	0800+3hrs.=1100	1100
8th	1100	Handling point No.4	0900+3hrs.=1200	1200

Illustration No. 5

(i) Say, handling capacity of siding "A" is to be fixed in July 2007. Actual handling capacity of the siding is one rake per day.

Consumption details of the siding "A" reveals that 100 rakes (say) were consumed during 1-1-2007-30-4-2007. Then the deemed handling capacity of the siding will be 2 rakes per day as computed below:

Total number of rakes consumed during 1.1.2007-30-4-2007/120 days	(i.e. 100/120)	= 0.83
0.83 multiplied by 1.5	(i.e. 0.83*1.5)	= 1.3
1.3 rounded of to the next integer		= 2
Deemed handling capacity of the siding "A"		= 2

Handling capacity of siding "A" is to be fixed as two rakes per day.

(ii) In case handling capacity of other siding "B" is to be fixed in July 2008. Actual handling capacity of the siding is 5 rakes per day.

Consumption details of the siding "B" reveals that 250 rakes (say) were consumed during 1-1-2008-30-4-2008. Then the deemed handling capacity of the siding will be 4 rakes per day as computed below:

Total number of rakes consumed during 1.1.2008-30-4-2008/121 days	(i.e. 250/121)	=2.07
2.07 multiplied by 1.5	(i.e. 2.07*1.5)	=3.11
3.11 rounded off to the next integer		=4
Deemed handling capacity of the siding "B"		=4

Handling capacity of the siding "B" will be fixed as five rakes per day.

Recommendation No. 66

The Committee note that a complaint regarding injudicious waiver of demurrage charges in respect of M/s GSECL was investigated by Vigilance Directorate of Railway Board. The investigation report was considered and the case was referred to Central Vigilance Commission for advice with Board's recommendation of closure of the case. However, the CVC *vide* their advice dated 5.11.2004 recommended that Board vigilance may constitute a Committee of three officers, which may go through the cases of abnormally high refunds allowed to GSECL and decide whether the decisions were prudent or not. The Committee of three Officers appointed by Railway Board in their Report have observed that in the cases covered, it was found that the trend of waiver had been generally similar by the various authorities at different levels and indifferent Divisions. However, the denial of additional free time for pulling and pushing of rakes from exchange yard etc. has resulted in avoidable and artificial enhancement of the demurrage bills to the obvious disadvantage of the powerhouses. The appropriate course of action, therefore, would be to conduct time and motion studies and prepare the bill taking into account the additional free time admissible to the powerhouses. The case was examined by the Railway Board and sent to CVC with the recommendation of closure of the case. In their advice to Railway Board dated 26th May, 2005 the CVC had recommended for fixing accountability on the concerned officials for not following Board's instructions in the matter of calculating free time and allowing the racket to go on.

The Railway Board while referring the case back to CVC had observed that there is no vigilance angle in this matter and it is at best a case of procedural lapse, which may have been occasioned due to the process of conducting time and motion studies being very time consuming. However, the CVC in their further advice dated 5.9.2005 while commenting that the Committee constituted by Railway Board had evidently wanted discretion to continue in waiver of demurrage charges, when even the Supreme Court wants discretion of the Government to be circumscribed by clear guidelines *viz.* petrol pump case, reiterated its previous advice asking Railways to consider framing guidelines on the range of demurrage which could be allowed in various circumstances and to fix the responsibility of the concerned officials. In their reply to CVC, Railway Board stated that it has not been possible to lay down yardsticks for waiver of demurrage in terms of a clear range of percentage for each circumstances due to the complex nature of operations at the filed level which cannot be comprehensively enumerated. While attempts have been made to account for a wide range of circumstances in order to facilitate judicious waiver decisions, yet there are innumerable varieties of local conditions that cannot even be visualized by a central policy-maker. It is here that some discretion has to be permitted to functionaries at the cutting edge. While some degree of discretion is inescapable and, indeed imperative, the germane point is that this discretion has been circumscribed by concentrating waiver powers mostly at higher, more responsible

levels. The views of Railway Board were communicated to CVC on 17.3.2006, upon which the Commission had made the following observations:—

1. The Committee constituted by Railway Board has concluded that it was difficult to comment whether abnormally high refunds were prudent or not. This is not convincing.
2. Railway Board has intimated that it has not been possible to lay down yardsticks for waiver in terms of clear range of percentage due to complex nature of operation. Further, power of waiver has been curtailed particularly at lower level and discretion has been concentrated mostly at higher levels. However, it has been observed that directions have been exercised arbitrarily in this case because in similar cases, waiver in respect of Sevalia, Gandhi Nagar and Ukai Power Plants have been much higher as compared to Sikka Power Plant.
3. Railway Board has not intimated as to whether any action has been taken to fix the responsibility on officials. They may do so now.

In view of the above the commission also decided to include these cases in its annual Report for the year 2006.

The matter was again examined by Board (MT), who observed that since local conditions vary considerably across regions and time, no two cases are identical and hence it is not feasible to compare cases of waiver of one power plant with another. In the case of GSECL, it needs to be borne in mind that the amount of waiver of demurrage was less than 1 per cent of the freight paid by this concern. In view of this no irregularity had been committed in this case and, hence, no action was warranted against any official. The Committee were informed by the Ministry of Railways that in view above, this case is being treated as closed in the Railway Board's office and CVC has been advised accordingly.

From the foregoing, it is evident that Railway Board has adopted an intransigent and inflexible approach towards the issue of waiver of demurrage charges and had justified vesting of discretionary powers with the higher level of Officials for waiver of demurrage charges from the Railways business point of view. The Committee having considered the facts of the case recommend that Railways may consider the feasibility of appointing an expert Committee comprising experts drawn from the fields of transport sector, Railway users/ utilities associations and apex organizations of industrial houses etc. to go into the entire gamut of the mechanism of accrual and waiver of demurrage charges and to suggest measures for circumscribing and curtailing the discretionary powers vested with the Railway Officials to the extent possible.

In the light of observations made by the Central Vigilance Commission in the matter of waiver of demurrage charges in respect of GSECL, the Committee

also recommend that the Expert Committee may also examine and report on the following issues:—

- (i) To conduct fresh Time and motion studies taking into account the additional free-time admissible to the power houses for shunting operations etc.
- (ii) Framing of guidelines on the range of waiver of demurrage which could be allowed in various circumstances.

Para No. 66 of 33rd Report of PAC
(14th Lok Sabha)

Action Taken

It has been decided to set up an Expert Committee to look into the matter as advised by PAC.

Audit vetting comments dated 23-10-2007

Railway Board should apprise Public Accounts Committee the likely date of constitution of the Expert Committee (EC) to go into the issues of demurrage charge, its terms of reference, the time within which EC will submit its Report and the time required for implementation of the Committee's recommendations.

Comments of Ministry of Railways

Expert Committee has been constituted *vide* Railway Board order No. ERB-1/2007/23/27 dt. 18.12.2007. A copy of the order is enclosed herewith wherein terms of reference, its tenure etc. are indicated.

The recommendation of Expert Committee as and when received will be considered by Ministry of Railways and action as found feasible and justified will be taken.

Audit *vide* their U.O. No. 829-Rly./WR/12-76/2004 Pt. II dated 10th March, 2008 have vetted the Action Taken Note subject to intimating the final action taken on the recommendation of the Expert Committee.

Sd/-

(Smt. P. Babbar)
Adviser (Finance)
Railway Board

Ministry of Railways' case No. 2006-BC-PAC/XIV/33 dated 24-03-2008.

भारत सरकार (GOVERNMENT OF INDIA)
रेल मंत्रालय (MINISTRY OF RAILWAYS)
रेलवे बोर्ड (RAILWAY BOARD)

No. ERB-I/2007/23/27

रेल भवन, नई दिल्ली 110001, तिथि 18-12-2007
Rail Bhavan, New Delhi, 110001.

ORDER

Ministry of Railways (Railway Board) have decided to constitute an Expert Committee to go into the entire gamut of the mechanism of accrual and waiver of demurrage charges and to suggest measures for circumscribing and curtailing the discretionary powers vested with the Railway Officials to the extent possible, consisting of the following:—

S/Shri

- | | | | |
|-------|--|---|----------|
| (i) | Shanti Narain, (Retd. MT), Railway Board | — | Chairman |
| (ii) | Pradeep Bhatnagar, CoM, N.W. Railway | — | Member |
| (iii) | A. Haque, CCM/PM, Northern Railway | — | Member |
| (iv) | G.K.Mohanti, EDRM, Kolkata | — | Member |
| (v) | Vijay, Kumar, FA&CAO (Hqrs.), S.E. Railway | — | Member |

(Other members of the Committee will be co-opted by the Chairman. Such Members will be experts from the fields of Transport Sector, Rail Users/Utilities Associations, Apex Organizations of industrial houses etc. Number of such members may also be decided by the Chairman.)

Shri Sanjay Goyal, Director (FM), Railway Board will be the Secretary to the Committee.

2. The terms of reference of the Expert Committee will be as under:—

- (i) to go into the entire gamut of the mechanism of accrual and waiver of demurrage charges and to suggest measures for circumscribing and curtailing the discretionary powers vested with the Railway Officials to the extent possible. However, there should not be enhancement of free time, which may only encourage extra detention to wagons;
- (ii) to examine and report on the desirability or otherwise of conducting fresh Time and Motion studies taking into account the additional free time admissible to the power houses for shunting operations etc.;
- (iii) to examine and report as regards framing of guidelines on the range of waiver of demurrage which could be allowed in various circumstances;
- (iv) to consider the feasibility of framing guidelines for waiver of demurrage charges in respect of power houses, whereunder specific reasons for waiver should be recorded in writing while exercising the discretionary powers of waiver of demurrage charges; and

- (v) to examine the feasibility of allowing one hour extra free time at few terminals during non-peak period on an experimental basis on the basis of usage of the terminal.

3. The appointment of Shri Shanti Narain, retired MT, Railway Board as Chairman of the Expert Committee will be governed by the following terms and conditions:—

(i) Remuneration

Being full-time Chairman, he will be paid a consolidated fee of Rs. 13,000/p.m. subject to the condition that the fee *plus* pension should not exceed the last pay drawn.

(ii) Travelling facilities and allowances

For journeys in connection with the work of the Committee, 1st Class "A" Duty Card Pass with permission to travel in 1st AC including Rajdhani and Shatabdi Express will be issued to self and wife. He will also be entitled to undertake journeys by air in Executive Class, whenever he considers air travel necessary in the public interest for self-only. He will be paid TA/DA as admissible to serving officers of equivalent status. He will be his own controlling officer for the purpose.

(iii) Secretarial Assistance

Secretarial Assistance in the form of one Private Secretary will be provided to the Chairman and one Peon will be provided in the office of the Committee. The secretarial assistance will be provided from the existing staff strength of PS and Peon.

(iv) Road Transport

He will be entitled to road vehicle facility for undertaking journeys in connection with the work of the Committee. Alternatively, he will be paid conveyance charges @ Rs. 800/- p.m. for actual use of their own car for local journeys. He will be entitled to staff car facility while on tour at outside stations.

(v) Rest House Facility

He will be entitled to Railway Officers Rest House facility while on tour on the same terms and conditions as for serving railway officers of equivalent status.

(vi) Telephone

(a) Office:— He will be provided with Railway/MTNL telephone in his office.

(b) Residence:— He will be provided MTNL telephone with STD facility at his residence or in case he has a P&T telephone, refund of rental and charges as per rules applicable to serving railway officers shall be arranged.

(vii) Medical Facilities

He will be governed by the Railway Medical Attendance Rules.

4. The official members will be eligible to draw TA/DA as per extent rules.
5. The terms and conditions for co-opted Members will be processed in consultation with the Finance Directorate after such Members are co-opted by the Chairman of the Expert Committee.
6. The Committee will submit its report within a period of one year from the date of its constitution.
7. The Headquarter of the Committee will be at New Delhi.
8. The Pay & Accounts Officer, Railway Board will be the Accounts and Disbursing Officer to the Committee.
9. The expenditure is chargeable to Grant No. 2.
10. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

Sd/-

(J.M.S. Rawat)
Under Secretary (Estt.)
Railway Board

The Pay & Accounts Officer,
Railway Board.

No. ERB-1/2007/23/27

New Delhi dated 18.12.2007

Copy to:—

- (i) The Principal Director of Audit, Northern Railway, New Delhi.
- (ii) Deputy Comptroller & Auditor General of India (Railways), Room No. 224, Rail Bhavan.

Sd/-

For Financial Commissioner/Railways

Copy to:—

1. The General Managers, All Indian Railways and Production Units.
2. The Director General, RDSO and Railway Staff College, Vadodara
3. OSD/MR, EDPG/MR, PS/MSR(N), PS/MSR(V), EDPG/MSR(N), JDPG/MR.
4. Sr. PPSs/PPSs/PSs to CRB, FC, MS, ME, MM, MT, ML, Secy., DG/RPF, DG/RHS, All AMs/Advisers, EDTC(R), EDF(M), JS, JS(G), JS(E&P), Dir. (Parl.), DFM,DTC(R), DPIO, JDIP, DS(G), DS(E), US(A), US(Protocol), US(E)/Spl. US (Parl.), Railway Board.
5. The Chief Commissioner of Railway Safety, 16, Ashok Marg, Lucknow.
6. The Chairman, Railway Convention Committee.
7. FACAO, Northern Railway.

8. The Directors, IRIEEN, Nasik Road, Nasik, IRICEN/Pune, IRIMEE/Jamalpur-811234, IRISSET/Secunderabad.
9. The Chairman, Railway Rates Tribunal, Chennai.
10. The General Secretary, AIRF & NFIR.
11. The General Secretary, IRCA, New Delhi.
12. The General Secretary, FROA & IRPOF, All India RPF Association.
13. Cash-I, II, III, G G (Pas), G Acc.), SEE(Power), ERB-II, III, Parl., O&M TC-I, TC(FM), Reception, Library, Telecom and Stationery Branches, Railway Board.
14. Shri Shanti Narain, Retd. MT, Chairman of the Committee.
15. The Members and Secretary of the Committee. It is requested to finalize the report within the prescribed period and to kindly make available a copy of Report of the Committee, when finalized to ERB-I Branch for record.

Recommendation No. 67

The Committee note that under the extant instructions issued by Railway Board in respect of large sidings like those of power houses it is not necessary to record speaking orders in respect of each and every consignment or a wagon and it would be sufficient, if broad reason are given in support of such periodical waivers. The Committee are of the view that the system of giving broad reasons instead of recording speaking orders with regard to waiver of demurrage charges in respect of power houses, conceals elements of nepotism, favoritism and corruption. They therefore, recommend that the present system should be totally done away with. The Committee recommend that Railways should consider the feasibility of framing guidelines for waiver of demurrage charges in respect of power houses, whereunder specific reasons for waiver should be recorded in writing while exercising the discretionary powers of waiver of demurrage charges.

Para No. 67 of 33rd Report of PAC
(14th Lok Sabha)

Action Taken

It has been decided that the issue regarding revision in rules for waiver of demurrage charges in respect of power houses will also be examined by the Expert Committee.

Audit vetting comments dated 23.10.2007

Railway Board should apprise the Public Accounts Committee the likely date of constitution of the Expert Committee (EC) to go into the issues of demurrage charges, its terms of reference and the time within which EC will submit its Report and the time required for implementation of the Committee's recommendations.

Comments of Ministry of Railways

Expert Committee has been constituted *vide* Railway Board order No. ERB-I/2007/23/27 dt. 18.12.2007. A copy of the order is enclosed herewith wherein terms of reference, its tenure etc. are indicated.

The recommendation of Expert Committee as and when received will be considered by Ministry of Railways and action as found feasible and justified will be taken.

Audit *vide* their U.O. No. 829-Rly/WR/ 12-76/2004 Pt. II dated 10th March, 2008 have vetted the Action Taken Note subject to intimating the final action taken on the recommendation of the Expert Committee.

Sd/-

(Smt. P. Babbar)
Adviser (Finance)
Railway Board.

[Ministry of Railways' case No. 2006-BC-PAC/XIV/33 dated 24.03.2008]

भारत सरकार (GOVERNMENT OF INDIA)
रेल मंत्रालय (MINISTRY OF RAILWAYS)
रेलवे बोर्ड (RAILWAY BOARD)

No. ERB-I/2007/23/27

रेल भवन, नई दिल्ली 110001, तिथि 18.12.2007
Rail Bhavan, New Delhi, 110001

ORDER

Ministry of Railways (Railway Board) have decided to constitute an Expert Committee to go into the entire gamut of the mechanism of accrual and waiver of demurrage charges and to suggest measures for circumscribing and curtailing the discretionary powers vested with the Railway Officials to the extent possible, consisting of the following:—

S/Shri

- | | | |
|---|---|----------|
| (i) Shanti Narain, (Retd. MT) Railway Board | — | Chairman |
| (ii) Pradeep Bhatnagar, COM, N.W. Railway | — | Member |
| (iii) A. Haque, CCM/PM, Northern Railway | — | Member |
| (iv) G.K. Mohanti EDRM, Kolkata | — | Member |
| (v) Vijay Kumar, FA & CAO (Hqrs.), S.E. Railway | — | Member |

(Other members of the Committee will be co-opted by the Chairman Such Members will be experts from the fields of Transport Sector, Rail Users/Utilities Associations, Apex Organizations of industrial houses etc. Number of such members may also be decided by the Chairman.)

Shri Sanjay Goyal, Director (FM) Railway Board will be the Secretary to the Committee.

2. The Terms of reference of the Expert Committee will be as under:—

- (i) to go into the entire gamut of the mechanism of accrual and waiver of demurrage charges and to suggest measures for circumscribing and curtailing the discretionary powers vested with the Railway Officials to the extent possible. However, there should not be enhancement of free time, which may only encourage extra detention to wagons;
- (ii) to examine and report on the desirability or otherwise of conducting fresh Time and Motion studies taking into account the additional free time admissible to the power houses for shunting operations etc.;
- (iii) to examine and report as regards framing of guidelines on the range of waiver of demurrage which could be allowed in various circumstances;
- (iv) to consider the feasibility of framing guidelines for waiver of demurrage charges in respect of power houses, whereunder specific reasons for waiver should be recorded in writing while exercising the discretionary powers of waiver of demurrage charges; and

- (v) to examine the feasibility of allowing one hour extra free time at few terminals during non-peak period on an experimental basis on the basis of usage of the terminal.

3. The appointment of Shri Shanti Narain, retired MT, Railway Board as Chairman of the Expert Committee will be governed by the following terms and conditions:—

(i) **Remuneration**

Being full-time Chairman, he will be paid a consolidated fee of Rs. 13,000 p.m. subject to the condition that the fee plus pension should not exceed the last pay drawn.

(ii) **Travelling Facilities/Allowances**

For journeys in connection with the work of the Committee, Ist Class a Duty Card Pass with permission to travel in 1st AC including Rajdhani & Shatabdi Expresses will be issued to self and wife. He will also be entitled to undertake journeys by air in Executive Class, whenever he considers air travel necessary in the public interest for self-only. He will be paid TA/DA as admissible to serving officers of equivalent status. He will be his own controlling officer for the purpose.

(iii) **Secretarial Assistance**

Secretarial Assistance in the form of one Private Secretary will be provided to the Chairman and one Peon will be provided in the office of the Committee. The secretarial assistance will be provided from the existing staff strength of PS and Peon.

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He will be entitled to road vehicle facility for undertaking journeys in connection with the work of the Committee. Alternatively, he will be paid conveyance charges @ Rs. 800 p.m. for actual use of their own car for local journeys. He will be entitled to staff car facility while on tour at outside stations.

(v) **Rest House Facility**

He will be entitled to Railway Officers Rest House facility while on tour on the same terms and conditions as for serving railway officers of equivalent status.

(vi) **Telephone**

(a) **Office**— He will be provided with Railway/MTNL telephone in his office.

(b) **Residence**— He will be provided MTNL telephone with STD facility at his residence or in case he has a P&T telephone refund of rental and charges as per rules applicable to serving railway officers shall be arranged.

(vii) Medical Facilities

He will be governed by the Railway Medical Attendance Rules.

4. The official members will be eligible to draw TA/DA as per extant rules.
5. The Terms and conditions for co-opted Members will be processed in consultation with the Finance Directorate after such Members are co-opted by the Chairman of the Expert Committee.
6. The Committee will submit its report within a period of one year from the date of its constitution.
7. The Headquarter of the Committee will be at New Delhi.
8. The Pay & Accounts Officer, Railway Board will be the Accounts and Disbursing Officer to the Committee.
9. The expenditure is chargeable to Grant No. 2.
10. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

Sd/-

(J.M.S. Rawat)
Under Secretary (Estt.)
Railway Board.

The Pay & Accounts Officer,
Railway Board,

No. ERB/2007/23/27

New Delhi dated 18.12.2007

Copy to:—

- (i) The Principal Director of Audit, Northern Railway, New Delhi.
- (ii) Deputy Comptroller & Auditor General of India (Railways), Room No. 224, Rail Bhavan.

Sd/-

For Financial Commissioner/Railways

Copy to:—

1. The General Managers, All Indian Railways and Production Units.
2. The Director General, RDSO and Railway Staff College, Vadodara.
3. OSD/MR, EDPG/MR, PS/MSR(N), PS/MSR(V), EDPG/MSR(N), JDPG/MR.
4. Sr. PPSs/PPSs/PSs to CRB, FC, MS, ME, MM, MT, ML, Secy, DG/RPF, DG/RHS, All AMs/Advisers, EDTC(R), EDF (M) JS, JS(G), JS(E&P), Dir, (Parl.) DFM, DTC(R) DPIO, JDIP, DS(G), DS(E) US(A) (Protocol), US(E)Spl., US(Parl.), Railway Board.
5. The Chief Commissioner of Railway Safety, 16 Ashok Marg, Lucknow.
6. The Chairman, Railway Convention Committee.
7. FA & CAO, Northern Railway.
8. The Directors, IRIEEN, Nasik Road, Nasik, IRICEN/Pune, IRIMEE/Jamalpur-811234, IRISSET/Secunderabad.

9. The Chairman, Railway Rates Tribunal, Chennai.
10. The General Secretary, AIRF& NFIR.
11. The General Secretary, IRCA, New Delhi.
12. The Secretary General, FROA & IRPOF, All India RPF Association.
13. Cash-I, II, III, GG (Pass), G(Acc.), SEE(Power), ERB-II, III, Parl., O & M, TC-1, TC(FM) Reception, Library, Telecom and Stationery Branches, Railway Board.
14. Shri Shanti Narain, Retd. MT, Chairman of the Committee.
15. The Members and Secretary of the Committee, it is requested to finalize the report within the prescribed period and to kindly make available a copy of Report of the Committee, when finalized to ERB-I Branch for record.

Name of the Ministry/Department: Energy & Petrochemicals, Government of Gujarat.

Observation and recommendations

Section 2 (11) of Railway Act 1989, defines demurrage as the charge levied for the detention of any rolling stock. After the expiry of free time, if any, allowed for such detention. The main objective of levying demurrage charges is to reduce wagon detentions and thereby improve wagon turn round. According to Railways, demurrage charge is a marketing tool used as a leverage to persuade rail users to make investments for improving. Their handling systems so as to release railway wagons expeditiously. It is not a charge for any service rendered. Waiver of demurrage is essentially a business decision in which the impact of full levy on the consignee's business and liberal waiver on wagon detentions will have to be carefully balanced. Consideration of waiver of demurrage takes in to account a host of factors including the extent to which such levies work as disincentives for the particular traffic for choosing rail as the preferred mode of transport.

[(Sl. No. 1 Appendix-II, Para 62 of 33rd Report of PAC (14th Lok Sabha)]

Action taken

GSECL understands the importance of unloading of the wagons within permissible free time and will put all its efforts to effect faster unloading of the wagons so that demurrage may not occur or at least it is minimized. The power utility designs the coal handling plant and makes adequate investments considering its requirements and keeping in view the prevailing norms of railways. After commissioning of the plant, the utility generally maintains the plants. With the availability of the rated capacity and if the plant is properly maintained then with the accepted level of operational efficiency; the demurrage should not occur barring the situations of bunching and simultaneous placement or it should be minimum. However, the utility is forced to make additional investment to augment the capacity when Railway changes the norms abruptly like reducing the free time from 10 hours to 7 hours. However, GSECL is committed to improve operational efficiency and to make necessary investments for augmentation of the plants if so required to minimize demurrage and to unload wagons within the free time limits.

Sd/-

Signature of Executive Director (Gen.)

Name of the Ministry/Department: Energy & Petrochemicals, Government of Gujarat.

Observation and recommendations

The Committee note that Gujarat State Electricity Corporation Limited (formerly Gujarat Electricity Board) receives coal and residual fuel through Railway rakes in their five sidings at Ukai Songadh, Sevalia, Dhuvaran, Gandhinagar Capital and Sikka, Audit Scrutiny of records of all five sidings of GSECL revealed that waiver of demurrage charges accrued on account of detention of wagons by GSECL which was around 55 percent in 1991-92 abruptly increased to 71 per cent 1992-93. The increasing trend continued in subsequent years and reached 89 per cent in 2001-02. The position did not improve even in the subsequent years as the percentage of waiver of demurrage charges continued to range between 70% to 90% in some of the Power House of GSECL. The Ministry of Railways has attributed the reason for the rising trend in waiver of demurrage charges to the increase in the traffic volumes at the GSECL sidings. It has also been stated that the cumulative waiver of demurrage charges between 1998-99 to 2003-04 was only 0.43% of total freight earnings of Railways during that period. The Committee is not convinced by the reason given by the Ministry of Railways for increase in waiver of demurrage charges. Far from giving a plausible explanation therefore and in furnishing the details of the measures taken for reducing the waiver of demurrage charges, the Ministry have tried to find solace in the fact that demurrage charges waived constituted only a small percentage *i.e.* 0.43% of total freight earning of Railways, which is nothing but regrettable.

[Sl. No. 1, Appendix-II Para 63 to 33rd Report of PAC (14th Lok Sabha)]

Action taken

GSECL has taken appropriate measures to improve unloading of wagons and handing over to rakes to Railways within the permissible free time. However, the reasons attributed in longer detention of rakes such as simultaneous placement of rakes, bunching, longer duration in removal of empty rakes etc. should be considered appropriate and should be exempted from the time to count for detention hours. GSECL understands that it may not be permissible for the Railways to generalize such norms. However, Railways may after detailed study, issue specific norms siding wise. Once such norms are approved siding wise, the same may be considered by the Railways officers while calculating the detention hours and charging demurrage. This will give justice to the utility as well as the waiver process can be reduced drastically.

Sd/-

Signature of Executive Director (Gen.)

Name of the Ministry/Department: Energy & Petrochemicals, Government of Gujarat.

Observation and Recommendations

The Committee note that a complaint regarding injudicious waiver of demurrage charges in respect of M/s. GSECL was investigated by Vigilance Directorate of Railway Board. The investigation report was considered and the case was referred to Central Vigilance Commission for advice with Board's recommendation of closure of the case. However, the CVC *vide* their advice dt. 5.11.2004 recommended that Board vigilance may constitute a Committee of three officers, which may go through the cases of abnormally high refunds allowed to GSECL and decide whether the decisions were prudent or not. The Committee of three officers appointed by Railway Board in their report have observed that in the cases covered, it was found that the trend of waiver had been generally similar by the various authorities at different levels and in different Divisions. However, the denial of additional free time for pulling and pushing of rakes from exchange yard etc. has resulted in avoidable and artificial enhancement of the demurrage bills to the obvious disadvantage of the power houses. The case was examined by the Railway Board and sent to CVC with the recommendation of closure of the case. In their advice to Railway Board dtd. 26th May, 2005 the CVC had recommended for fixing accountability on the concerned officials for not following Board's instructions in the matter of calculating free time and allowing the raket to go on.

The Railway Board while referring the case back to CVC had observed that there is no vigilance angle in this matter and it is at best a case of procedural lapse, which may have been occasioned due to the process of conducting time & motion studies being very time consuming. However, the CVC in their further advice dtd. 5.9.05 while commenting that the Committee constituted by Railway Board had evidently wanted discretion to continue in waiver of demurrage charges, when even the Supreme Court wants discretion of the Government to be circumscribed by clear guidelines *viz.* petrol pump case, reiterated its previous advice asking Railways to consider framing guidelines on the range of demurrage which could be allowed in various circumstances and to fix the responsibility of the concerned officials. In their reply to CVC, Railway Board stated that it had not been possible to lay down yardsticks for waiver of demurrage in terms of a clear range of percentages for each circumstances due to the complex nature of operations at the field level which can not be comprehensively enumerated. While attempts have been made to account for a wide range of circumstances in order to facilitate judicious waiver decisions, yet there are innumerable varieties of local conditions that cannot even be visualized by a central policy-maker. It is here that some discretion has to be permitted to functionaries at the cutting edge. While some degree of discretion is inescapable and, indeed imperative, the germane point is that this discretion has been circumscribed by concentrating waiver powers mostly at higher, more responsible levels. The views of Railway Board were communicate to CVC on 17.3.06, upon which the commission had made the following observations:—

1. The Committee constituted by Railway Board has concluded that it was difficult to comment whether abnormally high refunds were prudent or not. This is not convincing.

2. Railway Board has intimated that it has not been possible to lay down yardstick for waiver in terms of clear range of percentage due to complex nature of operation. Further, power of waiver has been curtailed particularly at lower level and discretion has been concentrated mostly at higher levels. However, it has been observed that directions have been exercised arbitrarily in this case because in similar cases, waiver in respect of Sevalia, Gandhinagar and Ukai Power Plants have been much higher as compared to Sikka Power Plant.
3. Railway Board has not intimated as to whether any action has been taken to fix the responsibility on officials. They may do so now.

In view of the above the commission also decided to include these cases in its annual report for the year 2006.

The matter was again examined by Board (MT), who observed that since local conditions vary considerably across regions and time, no two cases are identical and hence it is not feasible to compare cases of waiver of one power plant with another. In the case of GSECL, it needs to be borne in mind that the amount of waiver of demurrage was less than 1 per cent of the freight paid by this concern. In view of this no irregularity had been committed in this case and, hence, no action was warranted against any official. The Committee were informed by the Ministry of Railways that in view above, this case is being treated as closed in the Railway Board's office and CVC has been advised accordingly.

From the foregoing, it is evident that Railway Board has adopted an intransigent and inflexible approach towards the issue of waiver of demurrage charges and had justified vesting of discretionary powers with the higher level of officials for waiver of demurrage charges from the Railways business point of view. The Committee having considered the facts of case recommend that Railways may consider the feasibility of appointing an expert Committee comprising experts drawn from the fields of transport sector, Railway users/utilities associations and apex organizations of industrial houses etc. to go into the entire gamut of the mechanism of accrual and waiver of demurrage charges and to suggest measures for circumscribing and curtailing the discretionary powers vested with the Railway officials to the extent possible.

In the light of observations made by the Central Vigilance Commission in the matter of waiver of demurrage charges in respect of GSECL, the Committee also recommend that the Expert Committee may also examine and report on the following issues:

- (i) To conduct fresh time and Motion studies taking in to account the additional free time admissible to the power houses for shunting operation etc.
- (ii) Framing of guidelines on the range of waiver of demurrage which could be allowed in various circumstances.

[Sl. No. 1, Appendix-II, Para 66 of 33rd Report of PAC (14th Lok Sabha)]

Action taken

GSECL would appreciate if Railways accepts the Committee's recommendation for additional free time on account of the pulling and pushing of rakes from exchange

yard as well as the genuine difficulties which the utility faces in case of simultaneous placement of rakes, bunching of rakes etc., over which the utility has no control. GSECL would co-operate if the time and motion study is undertaken by railways for GSECL's sidings.

Sd/-

Signature of Executive Director (Gen.)

Name of the Ministry/Department: Energy & Petrochemicals, Government of Gujarat.

Observation and Recommendations

The Committee note that under the extant instructions issued by Railway Board in respect of large sidings like those of power houses it is not necessary to record speaking orders in respect of each and every consignment or a wagon and it would be sufficient if broad reasons are given in support of such periodical waivers. The Committee are of the view that the system of giving broad reasons instead of recording speaking orders with regard to waiver of demurrage charges in respect of power houses, conceals elements of nepotism, favoritism and corruption. They therefore, recommend that the present system should be totally done away with. The Committee recommend that Railways should consider the feasibility of framing guidelines for waiver of demurrage charges in respect of power houses, where under specific reasons for waiver should be recorded in writing while exercising the discretionary powers of waiver of demurrage charges.

[Sl. No. 1, Appendix-II, Para 67 of 33rd Report of PAC (14th Lok Sabha)]

Action taken

GSECL appreciates the Committee's recommendation to the Railways for framing guidelines for waiver of demurrage charges in respect of power houses and recording of specific reasons for waiver while exercising the waiver cases and urges Railways to consider the genuine difficulties of power houses while framing such guidelines.

Sd/-

Signature of Executive Director (Gen.)

CHAPTER III

Recommendations/Observations which the Committee do not desire to pursue in view of the replies received from the Government

-NIL-

CHAPTER IV

Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee and which require reiteration

Recommendation No. 64

The Committee are informed that the Railway Board have been issuing directives from time to time regarding waiver of demurrage charges. One such directive was issued in March 1995 in which the Railway Board had stipulated that not more than 25 per cent of accrued amount should be waived and reasons for waiver above 10 per cent should be recorded. However, Audit review has revealed that non-observance of this directive by Western Railway resulted in extra waiver of Rs. 41.58 crore in respect of five sidings of GSECL alone for the period from 1995-96 to 2003-04. The Ministry of Railways have explained that the Railway Board's directive issued in March 1995 was not a rule as the letter was issued by Advisor (Traffic) who was not authorized to issue any letter on the commercial matters including policy for waiver of demurrage charges. According to Railway, only the policy instructions contained in the Board's letter of 23.4.1986 were applicable for waiver of demurrage charges. The Ministry have stated that in terms of para 1102 of Indian Railway Code for Traffic (Commercial), General Managers of the Zonal Railways have full powers to waive demurrage charges irrespective of the amount involved. The Committee are surprised that the Railway Board have not explained the reasons due to which a Senior Officer of the Railway Board issued such a directive *suo motu* regarding waiver of demurrages, while he was not authorized to do so. The Committee deprecate the casualness with which such important policy decision was taken by some of the Railway Officers occupying highest position in the policy making body such as Railway Board without knowing its implications. The Committee have not been intimated whether any instructions were issued subsequently by Railway Board barring its Senior Officers from issuing such unauthorized instructions, thereby causing loss to the Railway in the process. The Committee would like to be informed of the steps taken by the Ministry of Railways (Railway Board) in this regard.

[Para No. 64 of 33rd Report of PAC (14th Lok Sabha)]

Action Taken

With regard to the observation of the Committee on the issue of Board's letter dt. March 1995 by Adviser (T), it is submitted that detention of wagons equally concerns Traffic and Commercial Directorates. Adviser (T) might have issued this letter with the intention to curb the detention of wagons and to use the tool of demurrage to avoid the detention of wagons. However, he had maintained that policy instructions of 23.11.1986 will continue to be applicable. Para 5 of Board's letter dt. 23.11.1986

which concerns power houses read as under:—

'In the case of large sidings, like those of power houses, where demurrage is not waived on wagon to wagon or day to day basis where the decisions are taken periodically after going through the statements of wagons detained and broad causes for each detentions, it is not necessary to record speaking orders in respect of each and every consignment or wagon, and it would be sufficient if broad reasons are given in support of such periodical waivers.'

It is submitted that corrective action had been taken with the issue of Board's D.O. letter dt. 13.9.1995 by Advisor (C). Since thereafter, there has been no instance where Advisor (T) has issued any letter over Commercial matter. Ministry of Railways are of the opinion that corrective action taken with the issue of D.O. letter dt. 13.9.1995 by Advisor (C) was sufficient.

Audit vetting comments dated 23-10-2007

Railway Board's assertion that no instance of issuing orders by an unauthorized Officer has occurred after March 1995 and also that the defective orders were rectified by issuing fresh orders on 13.9.1995, the action already taken is sufficient does not address the concern of the Public Accounts Committee. Since Railway Board had termed the instructions of March 1995 issued by Advisor (T) as "instructions issued by an Officer not authorized to do so", specific instructions needs to be issued to all concerned to avoid issue of orders which are contrary to rules and are unacceptable.

Comments of Ministry of Railways

Corrective action had already been taken with the issue of Advisor (C)'s D.O. letter dt. 13.9.1995.

Since then there has been no such a instance. There seems to be no need for issuing any further instruction.

Audit vetting comments dated 12-02-2008

The instructions contained in the D.O. letter of 13-09-1995 are only for letting the officers apply their powers judiciously. They nowhere restrain the officers from issuing instructions contrary to rules.

Comments of Ministry of Railways

Since such an instance has not observed till date, there is no need to issue any further instruction.

Audit *vide* their U.O. No. 829-Rly./WR/12-76/2004 Pt. II dated 10th March, 2008 have vetted the Action Taken Note.

Sd/-

(Smt. P. Babbar)
Advisor (Finance)
Railway Board.

Ministry of Railways' case No. 2006-BC-PAC/XIV/33 dated 24-03-2008.

Name of the Ministry/Department: Energy & Petrochemicals, Government of Gujarat.

Observation and Recommendations

The Committee are informed that the Railway Board have been issuing directives from time to time regarding waiver of demurrage charges. One such directive was issued in March, 1995 in which the Railway board had stipulated that not more than 25 per cent of accrued amount should be waived and reasons for waiver above 10 per cent should be recorded. However, Audit review has revealed that non-observance of this directive by Western Railway resulted in extra waiver of Rs. 41.58 crores in respect of five sidings of GSECL alone for the period from 1995-96 to 2003-04. The Ministry of Railways have explained that the Railway Board's directive issued in March, 1995 was not a rule as the letter was issued by Advisor (Traffic) who was not authorized to issue any letter on the commercial matters including policy for waiver of demurrage charges according to Railways, only the policy instructions contained in the Board letter of 23.4.1986 were applicable for waiver of demurrage charges. The Ministry have stated that in terms of para 1102 of Indian Railway Code for Traffic (Commercial), General Managers of the Zonal Railways have full powers to waive demurrage charges irrespective of the amount involved. The Committee are surprised that the Railway Board have not explained the reasons due to which a Senior Officer of the Railway Board issued such a directive *suo motu* regarding waiver of demurrages, while he was authorized to do so. The Committee deprecate the casualness with which such important policy decision was taken by some of the Railway Officers occupying highest position in the policy making body such as Railway Board without knowing its implications. The Committee have not been intimated whether any instruction were issued subsequently by Railway Board barring its Senior Officers from issuing such unauthorized instructions, thereby causing loss to the Railway in the process. The Committee would like to be informed of the steps taken by the Ministry of Railways (Railway Board) in this regard.

[Sl. No. 1, Appendix-II, Para 64 of 33rd Report of PAC (14th Lok Sabha)]

Action taken

Railway is to respond the point.

Sd/-

Signature of Executive Director (Gen.)

Name of the Ministry/Department: Energy & Petrochemicals, Government of Gujarat.

Observation and Recommendations

The Committee have been given to understand that the increase in the waiver of demurrage charges in respect of sidings of GSECL during 1991-92 to 2001-02 coincided with the appointment of a middle man by GSECL in April 1992 for pursuing demurrage cases with the Railways, as the remuneration of middle man was directly linked to the amount of demurrage waived. The jump from 55 per cent to 89 per cent in waiver in monetary terms amounting to Rs. 22.50 crore was directly attributed to the involvement of middle man. The unintended beneficiary of the Railways excessive and unjustified use of discretionary powers of waiver was the middle man who received Rs. 5.15 crore from GSECL for his services in affecting of waiver of about Rs. 6169 crore during the period 1991-92 to 2001-02. The Ministry of Railways (Railway Board) have stated that the matter of appointment of middle man by Gujarat State Electricity Corporation Ltd. came to their knowledge in April 2001 informally in May 2001 addressed to Railway Board had categorically stated that they had not appointed any middle man or contractor to get waiver of demurrage charges and they had obtained the services of a consultant only for advising them on Railway matters. At that stage the Ministry of Railways did not find anything wrong in the statement and took the response of GSECL on face value. It was also stated that the fact that GEB had also terminated the services of middle man did not come to their notice at that time. The full details of the case came to their notice only when Audit furnished the documents from the records of GSECL at the draft Audit stage in April, 2004. It was only at this stage that Railways learnt that remuneration of middle man was linked in percentage terms to the amount realized from the Railways. The Ministry of Railways have further informed the Committee that they did not have any direct dealings with the Consultant appointed by GSECL and that GSECL addressed all representation to Western Railways only and the consultant did not address to the Railways. During the course of examination of the subject, the Committee were informed by GSECL that the consultant was not an employee of GSECL and as such there was no concealment of facts on the part of GSECL. However, the Committee note that it is only after Railways came to know about the engagement of a middle man that GSECL chose to reveal the facts to the Railways. Even in their letter dt. 30th August 2001 addressed to Railway Board through GSECL categorically denied having employed a middle man, however, they did not furnish details regarding engagement of the consultant such as terms and conditions of contract etc. It was thus left to the Audit to reveal that GSECL had engaged a consultant for waiver of demurrage charges and the remuneration to the consultant is directly linked to the extent of waiver of demurrage. When the matter came to the notice of Railways and consequent upon investigation by ACB, Gujarat the contract with the consultant was terminated by GSECL in December 2002.

Though the Committee appreciate the difficulties faced by the GSECL in the calculation of demurrage charges for which consultant has been engaged, nevertheless the fact remains why such a decision was not disclosed to the Railways. By not doing so GSECL had tried to hide the facts about the engagement of consultant, thereby

giving an inescapable impression that there was something fishy in the whole affairs. This has given raise to the suspicion in the mind of the Committee that by appointing a Railway contractor as consultant who was given substantial fee (Rs. 5.15 crore) in this case ultimately resulted a loss to the Railways revenue. Given the fact that the rules and regulations and various procedures governing Railway tariff including the Railway act are quite elaborate and complex in nature, the Committee are of the view that there is no harm in engagement of consultant by GSECL for effective representation and resolution of disputes that may arise with the Railways. Nevertheless GSECL ought to have ensured that the consultant which it had engaged did not act as a middle man and cause loss of the Railways Revenue.

[Sl.No.1, Appendix-II, Para 65 of 33rd Report of PAC (14th Lok Sabha)]

Action taken

GSECL never acted to cause any kind of loss of revenue to the Railways. In fact, GSECL pays around Rs. 1450 crores per annum to Railways towards freight payment. Due to such large volume and complex business transactions with Railway, GSECL had utilized the services of an external consultant to assist/advice in the matter related to Railways. GSECL appreciates that the Committee are also of the view that there is no harm in engagement of consultant for effective representation and resolution of disputes.

Sd/-

Signature of Executive Director (Gen.)

CHAPTER V

Recommendations/Observations in respect of which Government
have furnished interim replies/no replies

—NIL—

NEW DELHI;
22nd April, 2008
2 Vaisakha, 1930 (Saka)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

Part-II

MINUTES OF THE TWENTY-FIRST SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2007-2008) HELD ON 21ST APRIL, 2008

The Committee sat from 1600 hrs. to 1645 hrs. on 21st April, 2008 in Room No. "51" (Chairman's Chamber), Parliament House, New Delhi.

PRESENT

Dr. K.S. Rao — *In the Chair*

MEMBERS

Lok Sabha

2. Shri Kirip Chaliha
3. Shri Khagen Das
4. Shri P.S. Gadhavi
5. Shri Bhartruhari Mahtab
6. Shri Barjesh Pathak
7. Prof. M. Ramadass
8. Shri Mohan Singh
9. Shri Rajiv Ranjan 'Lalan' Singh

SECRETARIAT

- | | | |
|---------------------------------|---|-----------------------------|
| 1. Shri S.K. Sharma | — | <i>Additional Secretary</i> |
| 2. Shri Gopal Singh | — | <i>Director</i> |
| 3. Shri M.K. Madhusudhan | — | <i>Deputy Secretary-II</i> |
| 4. Shri Ramkumar Suryanarayanan | — | <i>Under Secretary</i> |

Officers of the office of the Comptroller and Auditor General of India

1. Shri Nand Kishore — Pr. Director (PA)
2. Shri K.R. Sriram — Pr. Director

2. In the absence of Prof. Vijay Kumar Malhotra, Chairman, PAC, Dr. K.S. Rao, M.P. presided over the sitting of the Committee. At the outset, he welcomed the Members to the sitting. Thereafter, the Committee took up for consideration the following draft Reports:—

- (i) Draft Report on C&AG's Report No. 13 of 2006, Union Government (Civil-Performance Audit) relating to "Pradhan Mantri Gram Sadak Yojana";

- (ii) Draft Report on C&AG's Report No. 16 of 2006, Union Government (Civil-Performance Audit) relating to "Management of Foodgrains" and
- (iii) Draft Action Taken Report on 33rd Report of PAC (14th Lok Sabha) relating to "Injudicious Waiver of Demurrage Charges".

3 The acting Chairman invited suggestions of the Members on the Draft Reports. After some deliberations, the Committee adopted the draft Reports with some verbal changes and authorised the Chairman to finalise these Reports in the light of factual verification done by the Audit and present the same to both the Houses.

The Committee then adjourned.

APPENDIX

STATEMENT OF RECOMMENDATIONS/OBSERVATIONS

Sl. No.	Para No.	Ministry/ Department	Recommendations/Observations
1	2	3	4
1.	7	Railways (Railway Board)	In their 33rd Report, the Committee had observed that the guidelines laid down for waiver of demurrage charges in respect of large sidings, powerhouses etc. require recording of only broad reasons by the concerned officers for their decisions. The Committee had, therefore, recommended that these guidelines be reviewed as non-recording of specific and compelling reasons for waiver of large amounts of demurrage tended to raise suspicions about the bonafides of the decision. The revised/rationalized rules reiterated by the Ministry of Railways in the Action Taken Note have obviously not brought any significant improvement in the procedure or levy and waiver of demurrage charges which have shown sharp rise during the period 1991-92 to 2001-02. However, constitution of an Expert Committee by the Ministry now for reviewing the guidelines for waiver of demurrage charges, as recommended by the Committee, is no doubt a step in the right direction. The Committee desire that the entire gamut of issues concerning waiver of demurrage should be examined by the Expert Committee in a time bound manner. They would like to be apprised of findings of the Expert Committee and the action taken thereon by the Ministry.
2.	10	-do-	The Committee are surprised that the Ministry of Railways have not addressed squarely the concern of the Committee with regard to issuance of proper directives for regulating waiver of demurrage charges, As this is a recurrent problem confronting Railways, it is absolutely necessary that the Ministry should come out with specific and coherent norms/ guidelines which can regulate the discretionary powers vested with Zonal Officers.
3.	12	-do-	The Committee note that a big Corporation like Gujarat State Electricity Corporation Limited

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(GSECL) had hired a consultant for effective representation and resolution of disputes with Railways. The Committee observed that there was nothing wrong *per se* in such an engagement. However, the Committee had taken a serious view of the manner in which the consultant was engaged and this fact kept under the wraps without formalising it with Railways. However, in their Action Taken Note, M/s GSECL have simply skirted the main concern expressed by the Committee on this issue. The Committee's Observation on engagement of a consultant for effective representation and resolution of disputes should have been viewed in proper perspective. The Committee would thus reiterate their viewpoint that Public Sector bodies like GSECL must ensure absolute transparency in their affairs with a view to fostering fair management practices and to avoid negative perceptions about the working of the Organisation.
