

MANAGEMENT OF CONTRACTS
MINISTRY OF URBAN DEVELOPMENT

**PUBLIC ACCOUNTS
COMMITTEE
1994-95**

TENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

EIGHTY-SECOND REPORT
PUBLIC ACCOUNTS COMMITTEE
(1994-95)

(TENTH LOK SABHA)

MANAGEMENT OF CONTRACTS

MINISTRY OF URBAN DEVELOPMENT



*[Action Taken on 50th Report of Public Accounts Committee
(10th Lok Sabha)]*

*Presented to Lok Sabha on 22.12.94
Laid in Rajya Sabha on 22.12.94*

LOK SABHA SECRETARIAT
NEW DELHI

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(1994-95)

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3. Shri P. Sreedharan — *Under Secretary*

INTRODUCTION

1, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Eighty-Second Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 50th Report (10th Lok Sabha) on *Management of Contracts*.

2. In their earlier Report the Committee had expressed their concern over the failure of the Central Public Works Department in observing scrupulously the prescribed procedure in the management of contracts resulting in decision of arbitrators going against the Department or leading to additional avoidable payments to the contractors and thereby incurring sizeable financial losses to the Government. In this Report the Committee have observed that in pursuance of their recommendations the Ministry of Urban Development have initiated certain measures in order to streamline the administration of contracts entered into by Central Public Works Department. These measures included setting up a monitoring system to ensure compliance of the provisions of the laid down instructions, conducting of an analytical study of arbitration cases and preparation of a digest for providing a ready reference to the trends in the past awards for future guidance, creation of a Techno Legal Cell etc. Emphasising the need for an efficient management of the contracts entered into by the CPWD, the Committee have recommended that the Ministry of Urban Development should keep a close and continuous watch, review the effectiveness of these steps in the light of the performance of contracts and the awards given in the arbitration arising therefrom and take further necessary measures so that the financial interest of Government are adequately protected.

3. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 19 December, 1994. Minutes of the sitting form part II of the Report.

4. 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.

5. 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.

NEW DELHI;
20 December, 1994

29 Agrahayana, 1916 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,

Public Accounts Committee.

CHAPTER I REPORT

This Report of the Committee deals with the action taken by the Government on the Committee's recommendations and observations contained in their 50th Report (Tenth Lok Sabha) on Paragraph 14.3 of the Report of Comptroller and Auditor General of India for the year ended 31st March, 1991 (No. 6 of 1992), Union Government (Civil) on Management of Contracts.

2. The 50th Report which was presented to Lok Sabha on 29th April, 1993 contained 11 recommendations. Action Taken Notes have been received in respect of all the recommendations/observations and these have been categorised as follows:

- (i) Recommendations and observations that have been accepted by the Government:

Sl. Nos.: 1, 2, 4, 5, 6 to 9 and 11

- (ii) Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from the Government:

—NIL—

- (iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration:

—NIL—

- (iv) Recommendations and observations in respect of which the Government have furnished interim replies:

Sl. Nos.: 3 and 10

3. The Committee hope that final replies to the recommendations at S.Nos. 3 and 10 to which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.

4. The Committee will now deal with the action taken by Government on some of the recommendations.

Lapses in the Management of Contracts

5. The procedure for administration of contracts in the Central Public Works Department (CPWD) is governed by the provisions contained in the CPWD Manual-II. Instructions have also been issued from time to time reiterating and elaborating the instructions already incorporated in the Manual and also emphasising the need for strict observance of the prescribed procedure. In their 50th Report (10th Lok Sabha) while

examining and analysis of 81 Arbitration awards by Audit the Committee had noted with distress that the Central Public Works Department had failed to scrupulously observe the prescribed procedure in the management of contracts and continued to make serious procedural lapses resulting in decisions of arbitrators going against the Department or leading to additional avoidable payments to the contractors and thereby incurring sizeable financial losses to the Government. The Report of the Committee had *inter alia* revealed:—

- (i) . “In 231 arbitration awards relating to the three Delhi Zones only, for the period 1984-85 to 1990-91, the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of procedural lapses.
- (ii) There is no monitoring mechanism in the Department to ensure the compliance of the existing provisions and the instructions issued from time to time.
- (iii) Inability of the Department to bring out the digest of the important failures pointed out by arbitrators.
- (iv) Complete absence of pointed study from the systems angle with a view to evolving corrective measures.
- (v) Failure to create a special cell as recommended by the Department of Administrative Reforms and Public Grievances.
- (vi) Failure to seriously examine individual cases of commission of serious procedural lapses with a view to fixing responsibility.”

6. Taking a serious view of the lack of concerted approach on the part of the Ministry of Urban Development/CPWD to effectively tackle the dismal situation over the years, the Committee had desired that urgent and effective steps should be taken in pursuance of the various specific recommendations made by them in the Report with a view to avoiding similar lapses in future and streamlining the management of contracts.

7. The Ministry of Urban Development in their Action Taken Notes stated that they have initiated corrective action in compliance of the recommendations of the Committee. In response to the irregularities/lapses summed up in para 5 above, the Ministry in their note *inter alia* stated:—

- (i) “In order to ensure that the instructions are meticulously followed and in order to introduce a monitoring system in this regard a detailed questionnaire has been introduced for points to be checked by Superintending Engineers at the time of their routine inspection of the Divisions and their records. Further, an analysis of arbitration cases has been made and a digest prepared with a view to providing a ready reference to the trends in past awards for future guidance. A Techno Legal Cell

has also been created for providing guidance and assistance to the Field formations in defending the arbitration claims.

- (ii) As indicated at (i) above, a monitoring system has been introduced in the Department to ensure compliance of the existing provisions and the instructions issued from time to time.
- (iii) As indicated in reply to (i) above, a digest has been prepared with a view to providing reference to the trends of past. This digest contains analysis of arbitration awards.
- (iv) An analytical study of arbitration awards was undertaken. . .
- (v) Techno Legal Cell has since been created.
- (vi) Instructions have been issued by the DGW, CPWD on 5.1.93 requiring Chief Engineers to examine all awards (whether by deleting the claims of the contractors or by rejecting the counter claims of the Department) which have gone against the Department with a view to fixing responsibility and taking corrective action.”

8. The Committee note that in pursuance of their recommendations the Ministry of Urban Development have initiated certain measures in order to streamline the administration of contracts entered into by Central Public Works Department. These measures included, setting up a monitoring system to ensure compliance of the provisions of the laid down instructions, conducting of an analytical study of arbitration cases and preparation of a digest for providing a ready reference to the trends in the past awards for future guidance, creation of a Techno Legal Cell, issue of instructions to the Chief Engineers to examine all awards which had gone against the Department with a view to fixing responsibility and taking corrective action etc. The Committee desire that the Ministry of Urban Development should keep a close and continuous watch, review the effectiveness of these steps in the light of the performance of contracts of CPWD and the awards given in the arbitration arising therefrom and take further necessary measures with a view to ensuring that the contracts entered into by the Central Public Works Department are efficiently managed and that the financial interests of Government are adequately protected.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

Procedure for administration of contracts in the Central Public Works Department (CPWD) have been incorporated in the CPWD Manual-II, which is constantly updated. Further, appendices to the Manual contain specimen forms of notices to be issued and covers the various aspects of contract management from tenders to arbitration. Instructions have also been issued from time to time reiterating and elaborating the instructions already incorporated in CPWD Manual II and also emphasising the need for strict observance of the prescribed procedure. The Committee are distressed to find that in spite of all this the Central Public Works Department fail to scrupulously observe the prescribed procedure and continue to make serious procedural lapses which result in decisions of arbitrators going against them. Due to this failure on the part of concerned officers of the CPWD the 81 arbitration cases discussed in the audit paragraph which were decided during the year 1984-85 to 1990-91 had gone against the Government resulting in either setting aside of Government claims or leading to additional avoidable payment to the contractors to the tune of about Rs. 84.46 lakhs. The Committee are further concerned to note that in the 231 number of arbitration cases relating to the three Delhi Zones for the years 1984-85 to 1990-91 the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of procedural lapses. With a view to know the total quantum of loss to the national exchequer, the Committee had called for similar statistics in respect of the other PWD Zones but the same have not been readily available with them. It can, however, be obviously inferred that loss to the national exchequer due to the arbitration awards relating to the management of contracts in respect of all the CPWD Zones is definitely manifold. The Committee take a very serious note of the lack of seriousness on the part of the CPWD in the management of contracts resulting in huge financial loss to the Department.

[Sl. No. 1 (Para 61) of Appendix IV to 50th Report of PAC (10th LS)]

Action Taken

In order to ensure that the instructions are meticulously followed and in order to introduce a monitoring system in this regard a detailed questionnaire has been introduced for points to be checked by the Superintending Engineers at the time of their routine inspections of the Divisions and their records. Further, an analysis of arbitration cases has

been made and a digest prepared with a view to providing a ready reference to the trends in past awards for future guidance. A techno-legal cell has also been created for providing guidance and assistance to field formations in defending the arbitration claims. It is expected that these measures will bring about the desired improvement. All these measures put together will have the required positive and preventive effect in management of contracts in Central Public Works Department.

Comments of Audit

No comments

Further comments of Ministry of Urban Development

NIL

Min. of U.D. No. 12011/27/91-W3 (Vol. III) dt. 1.6.94

Recommendation

The Committee further note that on 14th January, 1982 the Ministry of Works and Housing had issued instructions to all the Chief Engineers *inter-alia* stating therein that audit have adversely been commenting from time to time, on CPWD's officers undertaking planning and designing of works without availability of sites, calling tenders for works without availability of complete drawings etc. The strict compliance of the necessary provisions of the CPWD Manual was also emphasised in these instructions. Para 2.2 of the CPWD Manual was modified in July, 1983, providing that—

“No normal work should be commenced or liability thereon incurred until administrative approval and expenditure sanction have been accorded, a proper detailed estimate based on essential drawings and preliminary structural and service designs sanctioned and allotment of funds made.”

It is a matter of serious concern that in spite of the existing clear provisions and the specific instructions for the strict compliance of those provisions, in 27 of the 81 cases discussed in the audit paragraph, the arbitrators awarded Rs. 40.26 lakhs to the contractors primarily due to failure of the Department in handing over complete site, drawings and designs etc. The Committee have no doubt that this avoidable extra payment of Rs. 40.26 lakhs to the contractors has resulted due to the failure of the Department in undertaking its contractual obligations seriously.

[Sl.No. 1 (Para 62) of Appendix IV to 50th Report of PAC (10th LS)]

Action Taken

The contents of the para are factual. The observations of the PAC have been noted for compliance.

In addition to existing provisions of para 2.2 of CPWD Manual (Vol. II) vide DG(W)'s memorandum No. DG(W)/CON/54 dt. 5.1.93, the Chief Engineers concerned have been asked to go through the award in detail and send recommendations regarding fixing of responsibility and action against the officers who erred. This, it is expected, will go a long way in preventing the incidence of lapses of this kind.

Comments of Audit

No comments.

Further comments of Min. of Urban Development

NIL

Min. of U.D. No. 12011/27/91-W3 (Vol. III) dt. 1.6.94

Recommendation

The Committee further note that in 38 of the 81 cases, payments to the contractors were made without careful assessment of standard of work at rates which were subsequently reduced in the final bills. Failure of CPWD to release the payments and its action in making recoveries in the final bills advancing excess measurements as reasons were disallowed by the arbitrators, which led to avoidable payments of Rs. 16.88 lakhs. According to the Department, the Arbitrators have held that the payments made at the stage of the running bills were final and such as action of the Arbitrator is clearly against the provisions of the contract. The Committee emphasise that any ambiguity in the existing clauses of the contract in this behalf should also be immediately removed in consultation with the Ministry of Law. The Committee are distressed to note that as conceded by the Department there are in fact few cases where there have been discrepancies/errors at the time of measurement and releasing payment of running bills. The Committee take a serious view of these discrepancies/errors leading to avoidable infructuous payments to the contractors—The Department have assured that these aspects have been covered in the guidelines issued in October, 1991. The Committee stress that detection of any discrepancies/errors in measurements in future should invariably be examined with a view to fixing responsibility.

Action Taken

It has been enjoined on all concerned that in such cases of errors in measurement question of fixation of responsibility should be invariably examined. A copy of the circular No. 14/1/93 WI (DG)/Circular No. 1/93 dated 19.11.93 issued by DG(W), CPWD is enclosed (Annexure-A).

[Sl No. 4 (Para 64) of Appendix IV to 50th Report of PAC (10th LS)]

Comments of Audit

No Comments.

Further Comments of the Ministry of Urban Development

NIL.

Min. of U.D.U.O. No. 12011/27/91—W3 dt. 9.3.94

No. 14/1/93-WI(DG)/Circular No. 1/93
Directorate General of Works
Central Public Works Department
Nirman Bhawan
New Delhi, Dated 19.11.93

MEMORANDUM

Sub: Measurement of works and payment therefor.

Recently there was an audit para on the management of contracts by the CPWD. An analysis of 88 Arbitration awards by the Audit had revealed that there were shortcomings in the management of contracts by the CPWD. In one case the Audit had observed that the final measurements taken after the completion of the work were much less than the measurements taken and recorded at the stages of running payments. The amount on account of difference which was disallowed in the Final bill was allowed by the arbitrator and awarded to the contractor.

The Public Account Committee which had gone into the Draft Para took a serious view of such cases.

It is enjoined on all Executive Engineers that while recording measurements, care should be taken to record the actual and correct measurements at each stage of work and that the final measurements do not fall short of measurements taken and recorded at the interim payments stage. Any lapse in this regard will result in severe disciplinary action being initiated against the delinquent official. In this connection earlier instructions on the same subject issued *vide* letter No. 4/7/91-C.P.W.D. dated 11.10.91 are reiterated here for strict compliance.

(K. SRINIVASAN)
DIRECTOR OF WORKS (P&WA)

Copy to all CEs/SEs/EEs.

Recommendation

The Committee note that procedures for administration of contracts have been incorporated in the CPWD Manual—II. Further the Department have in a routine manner been issuing instructions from time to time emphasising the need for strict compliance of the instructions. Unfortunately, the arbitration awards have invariably been given against the Department due to serious procedural lapses which undoubtedly proved that these repeated instructions have yielded little result in improving the management of contracts in CPWD. The Committee take a

serious note of the fact that there is no monitoring mechanism in the Department to ensure strict compliance of all the existing provisions and the instructions issued from time to time. The Committee also note that instead of taking remedial action to plug the loopholes highlighted in the audit paragraph, the Department on receipt of the draft audit paragraph in September, 1991, chose to simply rest content with the issue of a note with regard to proper operation of contracts in CPWD to all the offices of CPWD in October, 1991. The Committee recommend that concrete steps should be taken by the Department to ensure strict compliance of all existing provisions and instructions and serious note taken of any violation thereof.

Action Taken

Para 38 of CPWD Code envisages annual inspection of the Divisions by the Superintending Engineer of the respective circles. It is proposed to incorporate a questionnaire which is to be completed by Superintending Engineer as part of his Inspection Report so that effective monitoring mechanism is established to ensure strict compliance of existing provisions and instructions.

[(Sl No. 5) (Para 65) of Appendix IV to 50th Report of PAC (10th LS)]

Comments of Audit

The Action Taken Note vetted conditionally as the same is in the nature of interim reply.

Further Comments of the Ministry of Urban Development

NIL

Min. of U.D.U.O. No. 12011/27/91—W3 dt. 31.3.94

Recommendation

The Committee are extremely unhappy to note that inspite of the fact that arbitration awards have invariably been going against the Department, these awards have not been examined specifically from the systems angle with a view to evolving corrective measures. Undoubtedly the Department should have undertaken a pointed study of each and every award as soon as it was pronounced to tackle and avoid procedural lapses in future but not doing so the Department have failed to discharge even its basic functions. The committee find that an order has been issued on 5.1.1993 enjoining upon the Chief Engineers to go into the awards in detail and recommend to the Director General (Works) on the issue of fixing responsibility and for taking action against the officers wherever necessary. The Committee recommend that these instructions should be strictly adhered to and any deviation should appropriately be dealt with.

[Sl.No. 6 (Para 66) of Appendix IV to 50th Report of PAC (10th LS)]

Action Taken

In addition to the orders issued on 5.1.93 to the Chief Engineers to go into arbitration awards carefully and send their recommendations regarding fixing responsibility to DG(W), one of the functions of the Techno legal cell created in the CPWD by order dated 29.7.93 is to examine arbitration awards with a view to check.

- (a) whether the award has been properly defended before the arbitration, and
- (b) whether there are any lapses on the part of the concerned officials due to which the award has gone against the Department in terms of the order dated 5.1.93.

With the issue of the orders dt. 5.1.93 and 29.7.93 it is expected that cases of lapses if any of the officials dealing with contracts would be dealt with appropriately. The recommendation of the Committee has been noted of compliance.

Comments of Audit

No comments.

Further Comments of the Ministry of Urban Development

NILL.

Min. of U.D.U.O. No.12011/27/91—W3 dt. 31.3.94

Recommendation

The Committee have been informed that when the commission of procedural lapses in the CPWD were pointed out by audit in the past, audit had also emphasised the need for bringing out a digest of the important failures of CPWD pointed out by the arbitrators. The Committee are of the view that had this suggestion been heeded by the Department, the inadequacies in the existing procedures could have been plugged and this could have acted as a comprehensive guide for the proper administration of contracts and helped in the prevention of claims going against the Government. This would also facilitate elimination of procedural lapses and strengthen the stand of CPWD. The Committee, therefore, recommend that immediate steps to discourage and eliminate the commission of procedural lapses should be taken as soon as the loopholes are detected.

[Sl. No.7 (Para 67) of Appendix II to 50th Report of PAC
(10th LS)]

Action Taken

A Digest has already been prepared and copy sent to Lok Sabha Sectt. vide MUD letter No. 12011/27/91—W3 Vol. II dated 12.8.93. The Digest will be updated and circulated from time to time. This will help in elimination of commission of procedural lapses.

Comments of Audit

Further Comments of the Ministry of Urban Development

NIL

[Min. of U.D.U.O No. 12011/27/91—W3 dt. 31.3.94]

Recommendation

The Committee find that study of a number of arbitration awards made by audit has revealed that in many cases the awards have been given in favour of the contractors on account of either improper defence of the claims made by the contractors during arbitration or due to improper operation of the various clauses of the contracts by the officers incharge of the work. The Committee note that with a view to ensure proper departmental defence assistance in the arbitration cases, the Department of Administrative Reforms and Public Grievances in their Impact Study Report on 'Arbitration Procedure in the CPWD' conducted in January, 1989 had suggested that a separate legal cell should be created in each Zone headed by a Superintending Engineer to exclusively look after the arbitration cases. It was also stated in this Report that no new posts should be created for this Cell which should be manned by redeployment of existing staff. The Committee are constrained to observe that the Special Cell has not been constituted so far inspite of the fact that there is absolutely no mechanism in the Department to look after arbitration cases. The Committee feel that if it was difficult to create such a cell in each Zone manned by suitable adjustments from among the existing staff, such a cell could have atleast been created at the Headquarters to start with. The Committee cannot but express their strong displeasure over the inaction on the part of the Department in improving the dismal situation relating to management of contracts. The Department have however assured the Committee that the Cell will be created within the existing resources. The Committee would like to be apprised of the concrete steps taken in this regard within a period of three months.

[Sl. No. 8 (para 68) of Appendix IV to 50th Report of PAC (10th LS.)]

Action Taken

A Techno Legal Cell has already been created by issue of order dated 29.7.93, in the office of the DG(W), CPWD and the Lok Sabha Secretariat has been apprised of the same on 12.8.93.

Comments of Audit

No comments.

Further Comments of the Ministry of Urban Development

NIL

[Min. of U.D. U.O. No.12011/27/91-W3 dt. 31.3.94]

Recommendation

The Committee's examination has revealed that continuing commission

of serious lapses by the CPWD have invariably been resulting in decision of arbitrators going against them leading to avoidable infructuous expenditure. The Committee would have appreciated if each such case of procedural lapse was seriously examined with a view to fix responsibility but unfortunately that has not been done. The Committee are not convinced with the reply of the Department that whenever any default in respect of procedural lapses in the management of contract comes to their notice, Such cases are referred for necessary action from the Vigilance angle. The laxity of the Department is not seriously examining each of the cases of commission of serious procedural lapses is borne out by the fact that but for one case, the Chief Engineers concerned have been of the opinion that Vigilance investigation in other cases is not called for. The Committee cannot but deprecate this casual approach of the Department as a result of which the Department have failed so far to curb the rampant tendency for commission of procedural lapses. The Committee recommend that in future such lapses should be seriously examined with a view to fix responsibility and taking corrective action.

[Sl. No. 9 (Para 69) of Appendix IV to 50th Report of PAC (10th L.S.)]

Action taken

In Memorandum No. DG(W)/Con/54, dated 5.1.93 issued by DG(W), Chief Engineers have been instructed to examine all the awards (Whether by upholding the claims of the contractors or by rejecting the counter claims of the Department) which have gone against the Department with a view to fixing responsibility and taking corrective action.

Comments of Audit

No comments.

Further Comments of the Ministry of Urban Development

NIL

[Min. of U.D.U.O No. 12011/2791-W/3 dt. 31.3.94]

Recommendation

The preceding paragraphs clearly establish lack of concern and seriousness on the part of Ministry of Urban Development/CPWD to curb the rampant tendency in the CPWD to commit serious procedural lapses resulting in decisions of the arbitrators going against them. The miserable failure of the Ministry/CPWD is clearly borne out by the following:—

- (i) In 231 arbitration awards relating to the three Delhi Zones, for the period 1984-85 to 1991-92, the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of procedural lapses.
- (ii) There is no monitoring mechanism in the Department to ensure the compliance of the existing provisions and the instructions issued from time-to-time.

- (iii) Inability of the Department to bring out a digest of the important failures pointed out by arbitrators.
- (iv) Complete absence of pointed study from the systems angle with a view to evolving corrective measures.
- (v) Failure to create a Special Cell as recommended by the Department of Administrative Reforms and Public Grievances.
- (vi) Failure to seriously examine individual cases of commission of serious procedural lapses with a view to fixing responsibility.

The Committee take a very serious view of the lack of concerted approach on the part of the Ministry/CPWD to effectively tackle the dismal situation over so many years. This calls for an indepth probe about the situation obtaining in the Department.

The Committee recommend that urgent and effective steps should be taken in pursuance of the various recommendations made in the preceding paragraphs.

[Sl. No. 11 (Para 71) of Appendix IV to 50th Report of PAC
(10th L.S.)]

Action taken

The Department has taken note of the failures and lapses pointed out in the Report and initiated corrective action in compliance of the observations/recommendations of the PAC. The specific action taken on individual lapses is as under:—

- (i) In order to ensure that the instructions are meticulously followed and in order to introduce a monitoring system in this regard a detailed questionnaire has been introduced for points to be checked by Superintending Engineers at the time of their routine inspection of the Divisions and their records. Further, an analysis of arbitration cases has been made and a digest prepared with a view to providing a ready reference to the trends in the past awards for future guidance. A techno-legal cell has also been created for providing guidance and assistance to the Field formations in defending the arbitration claims.
- (ii) As indicated at (i) above, a monitoring system has been introduced in the Department to ensure compliance of the existing provisions and the instructions issued from time to time.
- (iii) As indicated in reply to (i) above, a digest has been prepared with a view to providing reference to the trends of past awards for future guidance and forwarded to Lok Sabha Secretariat with O.M. dt. 12.8.93. This digest contains analysis of arbitration awards.
- (iv) An analytical study of arbitration awards was undertaken and the same was forwarded to the Lok Sabha Secretariat vide this Ministry's O.M. No. 12011/27/91-W3-Vol. II dated 12.8.93.

- (v) Techno Legal Cell has since been created *vide* DG(W)'s O.M., dated 29.7.93, copy of which has been forwarded with the Action Taken Note on para No. 68.
- (vi) Instructions have been issued by the DGW, CPWD on 5.1.93 requiring Chief Engineers to examine all awards (whether by deleting the claims of the contractors or by rejecting the counter claims of the Department) which have gone against the Department with a view to fixing responsibility and taking corrective action.

As stated above, the Department has taken the observations of the PAC in right earnest and initiated corrective action to avoid the lapses pointed out which will ensure better and more effective administration of contracts in the CPWD.

Comments of Audit

No comments.

Further comments of Ministry of Urban Development

NIL

[Min. of U.D. U.O. No. 12011/27/91-W3 dt. 31-8-94]

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM THE GOVERNMENT

— NIL —

CHAPTER IV

**RECOMMENDATIONS OBSERVATIONS REPLIES TO WHICH
HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH
REQUIRE REITERATION**

— NIL —

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

The Audit para further reveals that recovery and extra expenditure by the Department from contractors amounting to Rs. 20.60 lakhs under provisions of clauses 2 and 3 of the contracts were set aside by the arbitrators in 19 cases due to the non-issue of timely and proper notices by the Department to the contractor, time being not made the essence of the contract and failure on the part of the Department to communicate their decision to the contractor for levying compensation for delayed execution of work. The Committee cannot but deprecate these failures on the part of the Department. However, according to the Department, except in three cases, in the remaining cases notices had been issued either under clause 2 or clause 3 or both. The Department have further stated that even in cases where notices have been issued, Arbitrator has taken the stand that the Government has not suffered any loss due to delay in execution of works. Further, according to the Department, except in a few cases the awards have gone against the Government due to arbitrators interpreting clauses in a way which is not strictly in accordance with the terms and conditions of the agreement. It has been stated that the relevant clauses of the contract form have since been reviewed to eliminate areas of doubt and ambiguity and to place the relationship between the contractor and the Government on a basis that is just and equitable from the point of view of both Government and the contractor. The Committee emphasise that necessary action to redefine the clauses of the contract to remove ambiguity should be taken up immediately in consultation with the Ministry of Law.

[Sl. No. 3 (Para 63) of Appendix IV to 50th Report of PAC (10th LS)]

Action Taken

The CPWD contract form is under revision in consultation with the Ministry of Law and Justice and the C&AG. However, concurrence of the Ministry of Law and Justice and the C&AG will be obtained separately for revision of clauses 2 and 3.

Comments of Audit

✓ The Action Taken Note vetted conditionally as the same is in the nature of interim reply.

Comments of the Ministry of Urban Development

NIL

[Min. of U.D.U.O. No. 12011/27/91-W3 dt. 31.3.94].

Recommendation

The Committee note that examination of the award in one case has revealed lapses on that part of the official for recording wrong measurements resulting in overpayment of Rs. 1,48,816. The overpayment had occurred because certain items of work were measured more than once and paid for in the running bills. The case was referred to Vigilance on 13.2.1989 and a Junior Engineer has been held responsible to have recorded measurements wrongly. The Committee are distressed to find that even after four years of referring the case to Vigilance the role of the Assistant Engineer is still being ascertained. The Committee are of the considered opinion that such inordinate delays in finalising the Vigilance cases apart from vitiating the administration of timely justice has a demoralising effect on administration. While the Committee would like to know the specific punishment awarded to the Junior Engineer. They would also urge that the investigations into the role of the Assistant Engineer in this case should be expeditiously completed so as to take further action in the matter. The Committee would like to know the concrete action taken in this regard.

[Sl. No. 10 (Para 70) of Appendix IV to 50th Report of PAC (10th LS)]

Action Taken

Charge-sheet has been served in the case of Junior Engineer and inquiry will be instituted by appointing an Inquiry Officer and presenting Officer shortly. The investigation by the Chief Engineer (Vigilance) into the role of Assistant Engineer has been completed. The case is being put up to the disciplinary Authority, for decision whether recommendations for penalty proceedings against them should be sent to CVC for their advice.

Comments of Audit

An assurance may please be added in the Action Taken Note that final outcome in the case results of enquiry will be communicated to the Public Accounts Committee (PAC) in due course.

Further Comments of the Ministry of Urban Development

The final outcome in the case pending against the Junior Engineer and the investigation being conducted into the role of the Assistant Engineer will be communicated to the Public Accounts Committee in due course.

[Min. of U.D.U.O. No. 12011/27/91-W3 dt. 31.3.94]

NEW DELHI;
20 December, 1994

29 Agrahayana, 1916 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions and Recommendations

Sl. No.	Para No.	Ministry/ Deptt.	Conclusions/Recommendations
1	2	3	4
1.	3	M/o Urban Development	The Committee hope that final replies to the recommendations at Sl. Nos. 3 and 10 to which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.
2.	8	-do-	The Committee note that in pursuance of their recommendations the Ministry of Urban Development have initiated certain measures in order to streamline the administration of contracts entered into by Central Public Works Department. These measures included, setting up a monitoring system to ensure compliance of the provisions of the laid down instructions, conducting of an analytical study of arbitration cases and preparation of a digest for providing a ready reference to the trends in the past awards for future guidance, creation of a Techno Legal Cell, issue of instructions to the Chief Engineers to examine all awards which had gone against the Department with a view to fixing responsibility and taking corrective action etc. The Committee desire that the Ministry of Urban Development should keep a close and continuous watch, review the effectiveness of these steps in the light of the performance of contracts of CPWD and the awards given in the arbitration arising therefrom and take further necessary measures with a view to ensuring that the contracts entered into by the Central Public Works Department are efficiently managed and that the financial interests of Government are adequately protected.

PART-II

MINUTES OF THE 18TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD on 19 DECEMBER, 1994

The Committee sat from 1500 hrs. to 1530 hrs. on 19 December, 1994
in Committee Room No. 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhagwan Shankar Rawat — *Chairman*

MEMBERS

2. Sqn. Ldr. Kamal Chaudhry
3. Dr. K.V.R. Chowdary
4. Shri Jagat Veer Singh Drona
5. Smt. Geeta Mukherjee
6. Shri Mohan Singh
7. Smt. Krishnendra Kaur
8. Shri S.B. Thorat

SECRETARIAT

1. Smt. P.K. Sandhu — *Director*
2. Shri P. Sreedharan — *Under Secretary*

REPRESENTATIVES OF AUDIT

1. Sh. Vikram Chandra - *Director, Pr. Reports (Cen.)*
2. Sh. B.C. Mahey Pr. - *Director of Audit, Eco. & Service
Ministries*
3. Sh. A. Satyavardhana *Principal Director (Ind. Taxes)*
4. Smt. Anita Pattanayak - *Director (Railways)*
5. Smt. Suman Saxena - *Director, Reports (Autonomous
Bodies)*

The Committee considered and adopted the following draft Reports:

- | | | | |
|-----|---|----|----|
| (a) | xx | xx | xx |
| (b) | Management of Contracts [AT] 50th Report (10th LS)] | | |
| (c) | xx | xx | xx |
| (d) | xx | xx | xx |

2. The Committee authorised the Chairman to finalise these draft Reports in the light of the verbal changes suggested by Audit arising out of factual verification and present the same to Parliament.

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|----|----|----|----|
| 3. | xx | xx | xx |
| 4. | xx | xx | xx |

The Committee then adjourned.