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**AVOIDABLE EXPENDITURE ON
PROCUREMENT OF CARTRIDGE
TAPERED ROLLER BEARINGS**

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MINISTRY OF RAILWAYS

**PUBLIC ACCOUNTS
COMMITTEE
1992-93**

TENTH LOK SABHA



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

THIRTY-EIGHTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1992-93)

(TENTH LOK SABHA)

AVOIDABLE EXPENDITURE ON PROCUREMENT OF CARTRIDGE TAPERED ROLLER BEARINGS

MINISTRY OF RAILWAYS

[Action taken on 148th Report of Public Accounts Committee
(8th Lok Sabha)]



*Presented in Lok Sabha on 21 Dec., 1992
Laid in Rajya Sabha on 21 Dec., 1992*

LOK SABHA SECRETARIAT
NEW DELHI

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THE COMMITTEE ON PUBLIC ACCOUNTS
(1992-93)

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4. Shri K.C. Shekhar — *Under Secretary*

*Elected w.e.f. 23 July, 1992 Vice Shrimati Krishna Sahi ceased to be a member of the Committee on her appointment as a Minister.

INTRODUCTION

1. The Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Thirty-Eighth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 148th Report (8th Lok Sabha) relating to avoidable expenditure on procurement of cartridge tapered roller bearings.

2. In their earlier Report the Committee had observed that modification of the contract at the instance of M/s. NEI resulting in reimbursement of Rs. 77 lakhs as compensation to them for the payment of Excise Duty on the imported component was an instance of indulgent attitude adopted by the Railways towards this firm. The Committee had, therefore, recommended for re-examination of the issue in consultation with the Ministries of Law and Finance. In the action taken note, the Ministry of Railways have again contended that based on its past experience of handling generally contracts of outright imports not involving levy of excise duty on imported contents forming part of the final product, the Tender Committee was genuinely unaware of this element in the instant case and on consideration of the firm's request the relevant clause in the contract was amended to provide for payment of excise duty on actual basis. The Committee have not been convinced with these arguments. The Committee, have reiterated their earlier recommendation that immediate steps should be taken to re-examine the issue in consultation with both the Ministries of Law and Finance and based on these consultations to take further necessary steps for the recovery of the amount paid with interest.

3. In their earlier Report the Committee had also found that undue benefits were extended to M/s. NEI at the various stages of orders for supply of 31,200 cartridge tapered roller bearings. The Committee had, therefore, recommended that the entire matter be investigated by an independent High Powered Committee with a view to fixing responsibility and taking necessary action against all those found guilty. The Committee have been concerned to note that even after a lapse of more than 3 years since the presentation of their 148th Report (8th Lok Sabha) to the House on 12.4.1989, report of the High Powered Committee which was constituted on 4.6.1990, is still awaited. According to the Committee, inordinate delay in constituting the High Powered Committee clearly indicates that the recommendations of the Committee have been pursued in a most casual and indifferent manner. The Committee have expressed their serious concern that the High Powered Committee have not only failed to submit their report even by their extended tenure upto 19.3.1991 but the Report still remains to be submitted. The Committee have also deplored the inability of the Railways to obtain the Report from the Agency

constituted by themselves. The Committee have emphasised the need for finalisation of the Report of the High Powered Committee without any further loss of time with a view to fixing responsibility for the lapses and taking all the necessary preventive steps to obviate such recurrence in future.

4. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 19 November, 1992. Minutes of the sitting form Part II of the Report.

5. 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 the Appendix to the Report.

6. 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;
2 December, 1992

11 Agrahayana, 1914 (Saka)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee

CHAPTER—I

REPORT

This Report of the Committee deals with the action taken by the Government on Committee's recommendations and observations contained in their Report* on Avoidable expenditure on procurement of cartridge tapered roller bearings.

1.2 The 148th Report which was presented to Lok Sabha on 12 April, 1989 contained 20 recommendations. Action Taken Notes have been received in respect of all the recommendations and these have been categorised as follows:

Recommendations and Observations which have been accepted by Government:

Sl. Nos. 8, 9, 10 and 20

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

Sl. Nos. 1—6, 7, 11, 12, 13, 14, 17 and 18

Recommendations and Observations the replies to which have not been accepted and which require reiteration:

Sl. Nos. 15, 16 and 19

Recommendations and Observations in respect of which Government have furnished interim replies.

NIL

1.3 In the succeeding paragraphs the Committee will deal with action taken on some of their recommendations.

Reimbursement of Excise Duty on imported components (Sl. Nos. 15 & 16 Paras 92 & 93)

1.4 Commenting on the matter relating to reimbursement of Rs. 77 lakhs as Compensation to M/s. NEI for the payment of Excise Duty on imported components, the Committee had in Paras 92 & 93 of their 148th Report observed as follows:

“Modification of the contract at the instance of NEI resulting in reimbursement of Rs. 77 lakhs as compensation to them for the payment of Excise Duty on the imported component is another

* Hundred and Forty Eighth Report (8th Lok Sabha) on Paragraph 4.2 of the Report of Comptroller and Auditor General of India for the year ended 31st March, 1987 Union Government (Railways).

instance of indulgent attitude adopted by the Railways towards this firm. The admission of the claim based on a certificate from the Excise Department indicating that the Excise Duty was chargeable on the imported component of the bearings, without reference of the admissibility of the claim to arbitration as the price in the contract was specified exclusive of the Excise Duty on indigenous component only, is nothing short of financial imprudence shown by Railways in this case.

The Committee cannot accept the contention of the Railways that they were not aware at the time of finalisation of the contract that the imported parts would also attract Excise Duty because this is not the first occasion imports were made by Railways or by NEI. Further the evaluation note of tenders by the Tender Committee clearly indicates that the element of excise duty relating to imported bearings was duly included before determining the price payable. What is more surprising to the Committee is that M/s. NEI themselves gave details as to how 73% of duty on import was arrived at and later they came forward pleading defects in the contractual terms which the Railways agreed with alacrity. Since the issue relating to excise duty was duly considered and evaluated by the Tender Committee and thereafter the contract terms were offered, which were duly accepted by M/s. NEI, the Committee are convinced that there existed no case for alteration of the terms of the contract. In the circumstances, the Committee recommend that steps may be taken to re-examine the issue in consultation with Ministry of Law and Ministry of Finance and to recover the amount paid with interest."

1.5 In their action taken note dated 5-4-90 Government have stated as under:—

"Based on its past experience of handling generally contracts of outright imports not involving levy of excise duty on imported contents forming part of the final product, the Tender Committee was genuinely unaware of this element in the instant case, where the imported components were to be assembled by the supplier along with some indigenous components. In the 1979 contract, assembly of the bearing indigenously was not involved. This position got altered from Phase II onwards of this contract on NEI on account of the firm having to undertake assembly of the bearing. Accordingly, in the Railway Board's counter-offer to the firm, allowance was made only for excise duty on the indigenous component as also Sales Tax. On receipt of counter-offer, the firm specifically drew attention to their offer which was for re-imbusement of excise duty and taxes on actuals and sought suitable modification.

On consideration of the firm's quest the relevant clause in the contract was amended to provide for payment of excise duty on actual basis. However, the initial expression that the price stipulated was inclusive of custom duty on import component but was exclusive of excise duty on indigenous content and Sales Tax was allowed to be retained apparently to ensure that the excise duty on imported components was not made in routine but only after scrutiny regarding admissibility of the claim, if any. It may be mentioned that the excise duty to the firm was in fact released only after the firm's claim was examined at the level of the Board i.e. Member Mechanical & Financial Commissioner (Railways).

It is not correct that the Tender Committee's evaluation had taken into account the element of excise duty relating to imported components in the process of determining final price. What the Tender Committee had actually taken into account, while arriving at the figure of 73% for the import duties, was "counter-vailing duty" leviable on all imported components, irrespective of whether they are later used as a part of an assembly in a manufacturer's works or not.

In view of the foregoing, the firm's claim for reimbursement of the excise duty was fully examined and was correctly decided after taking into account the provisions of Excise Act. It is, therefore, felt that no useful purpose will be served by fresh examination of the matter by the Ministries of Law and Finance."

1.6 In their earlier Report the Committee had observed that modification of the contract at the instance of M/s. NEI resulting in reimbursement of Rs. 77 lakhs as compensation to them for the payment of Excise Duty on the imported component was an instance of indulgent attitude adopted by the Railways towards this firm. The Committee had, therefore, recommended for re-examination of the issue in consultation with the Ministries of Law and Finance. In the action taken note, the Ministry of Railways have again contended that based on its past experience of handling generally contracts of out-right imports not involving levy of excise duty on imported contents forming part of the final product, the Tender Committee was genuinely unaware of this element in the instant case and on consideration of the firm's request the relevant clause in the contract was amended to provide for payment of excise duty on actual basis. The Committee are not convinced with these arguments. The very fact that the evaluation note of tenders by the Tender Committee included the element of excise duty on imported bearings and the figures of 73% for the import duties as arrived at on the basis of the necessary details furnished by M/s. NEI clearly indicate that all the relevant aspects were considered and evaluated by the Tender Committee before finalising the contract terms which were also subsequently accepted by M/s. NEI. In the circumstances, the Committee are convinced that there existed no case for alteration of the terms of the

contract. The Committee, therefore, cannot but reiterate their earlier recommendation that immediate steps should be taken to re-examine the issue in consultation with both the Ministries of Law and Finance and based on these consultations to take further necessary steps for the recovery of the amount paid with interest.

Considerable delay in the finalisation of the Report of the High-Powered Committee

(S. No. 19—Para 107)

1.7 Commenting on the undue benefits extended to M/s. NEI at the various stages of execution of orders for supply of 31,200 tapered roller bearings, the Committee had in Para 107 of their 148th Report observed as under:

“The Committee are led to inescapable conclusion from what has been discussed hithertofore that undue benefits were extended to M/s. NEI at the various stages of execution of orders for supply of 31,200 roller cartridge tapered bearings. Placement of large orders (24000 Nos.) without the firm having any previous experience and without the collaboration agreement having been signed; placement of additional order 7,200 Nos. and refund of Liquidated Damages despite considerable delay in supplies; compensation due to variation in foreign exchange rates; reimbursement of excise duty on imported components against the terms of the contract; release of additional foreign exchange wrong compilation of delay in supply for additional order, etc. are some of the examples thereof. They, therefore, recommend that the entire matter be investigated by an independent high-powered Committee with a view to fixing responsibility and taking necessary action against all those found guilty. No further order on this firm should be placed till the findings of this Committee are known and the quality of the bearings already supplied by it is got evaluated from RDSO and AAR. The Committee would like to be informed of the precise action taken by the Railways in this regard.”

1.8 In their action taken note dated 5-4-90 Government have stated as under:

“As desired by the Committee, it has been decided by the Ministry of Railways to constitute a Committee, headed by an eminent Mechanical Engineer not connected with the Railways and consisting of other members having an expertise in procurement, finance, importation and technical aspects to conduct an in-depth probe in the matter.

As regards the Committee's recommendation for stoppage of further orders on M/s. NEI for roller cartridge tapered bearings till the Committee's findings are known, it is submitted that this

recommendation is not practical of implementation having regard to the urgent requirements of the Railways for its vital components which are in the process of being finalised for the period 1990-91 and M/s. NEI being the largest single indigenous source for this item coupled with (a) time consuming process of procurement through import apart from the acute scarcity of Foreign Exchange, (b) the distinct possibility of DGTD not clearing the Railways' proposal for import of this input, in view of availability of indigenous capacity therefore; (c) uncertainty of time likely to be taken by the proposed expert committee to finalise and submit its findings and thereafter for the Ministry of Railways to take decision thereon. However, as a step to reduce dependence on M/s. NEI for this component, it has been decided by Ministry of Railways to explore the possibility of developing an alternative indigenous source with transfer of technology."

1.9 The Ministry were requested to furnish information on the following points:

- (i) The date on which the Independent Committee was set up;
- (ii) The time limit within which this Committee was required to submit their Report;
- (iii) The reasons if, any for delay in submission of the Report of this Committee.

1.10 In their note furnished on 8-8-91 Ministry of Railways have stated as follows:

"High Powered Committee was constituted on 4-6-90 and it started functioning w.e.f. 15-6-90. The Committee was required to submit its report within a period of 3 months. However, on receipt of request from the Committee, the tenure of the Committee was extended from time to time upto 19-3-91. Despite this the Committee has not submitted its report so far. On 16-7-91, the Chairman of the Committee advised that the Report of the Committee has been completed but the summary of recommendations is under finalisation. The Chairman has also indicated that he is proceeding abroad and would be back by 15-8-91 after which he would submit the Report."

1.11 In their O.M. dated 15-10-1992, the Ministry of Railways have stated as follows:

"..... Report of the High Powered Committee in the matter is still awaited despite repeated reminders and personal chasing. As soon as the Report of the Committee is received it will be furnished to the Public Accounts Committee."

1.12 The Committee in their earlier Report had observed that undue benefits were extended to M/s. NEI at the various stages of orders for

supply of 31,200 cartridge tapered roller bearings and had recommended that the entire matter be investigated by an independent High Powered Committee with a view to fixing responsibility and taking necessary action against all those found guilty. The Committee had also suggested that no further order should be placed on this firm till the findings of the independent committee are known. The Committee are concerned to note that even after a lapse of more than 3 years since the presentation of their 148th Report (8th Lok Sabha) to the House on 12-4-89, report of the High Powered Committee which was constituted on 4-6-1990, is still awaited. In fact, the inordinate delay in constituting the High Powered Committee clearly indicates that the recommendations of the Committee have been pursued in a most casual and indifferent manner. Though the High Powered Committee was originally required to submit their report by 15-9-1990, their tenure was extended from time to time upto 19-3-1991. It is a matter of serious concern that the High Powered Committee have not only failed to submit their report even by their extended tenure upto 19-3-1991 but the Report still remains to be submitted. The Committee also take note of the fact that on 16-7-1991, the Chairman of the High Powered Committee had advised the Railways that their report had been completed but the summary of recommendations was under finalisation. The Chairman had also then indicated that he was proceeding abroad and would be back by 15-8-91 after which he would submit the report. The Committee are deeply concerned to note that in spite of such a categorical assurance by the Chairman of the High Powered Committee that Committee failed to finalise and submit their report. In the opinion of the Committee, such inordinate delay is bound to affect the underlying purpose in conducting such enquiries. The Committee also deplore the inability of the Railways to obtain the report from the Agency, constituted by themselves. The Committee cannot over-emphasise the need for finalisation of the report of the High Powered Committee without further loss of time with a view to fixing responsibility for the lapses and taking all the necessary preventive steps to obviate such recurrence in future.

As regards non-placement of order, the Ministry has submitted that this may not be practical in view of the urgent requirement of this vital component by the Railways and M/s. NEI being the largest single indigenous source for this item. However, they have indicated that they will explore the possibility of developing an alternative indigenous source with transfer of technology. The Committee would like to be apprised of the action taken in expediting the submission of the Report by the High Powered Committee as also the progress made in exploring the possibility of developing alternative indigenous sources for cartridge tapered roller bearings to reduce dependence on M/s. NEI.

CHAPTER II
OBSERVATIONS/RECOMMENDATIONS
WHICH HAVE BEEN ACCEPTED
BY GOVERNMENT

Recommendation

Release of foreign exchange (Rs. 55.28 lakhs) for the procurement of additional 7,200 bearings has been defended by the Railways on the ground that the option clause formed an integral part of the contract and was covered by the same terms and conditions as were applicable to the 3 phases of the contract. However, the Railways have conveniently overlooked the fact that option clause in the contract had specifically mentioned that the purposer reserves the right to increase the order "with fully indigenous contents" thus implying clearly that no foreign exchange was to be sanctioned therefor. The Railways' contention that the phrase "with fully indigenous content" was erroneously included in the contract due to mis-reading of the recommendations of the Tender Committee by one of the staff members in the Finance Directorate is nothing but an after thought which has been advanced to cover up the release of additional foreign exchange. This is also evident from the fact that the necessary amendment in this contract to justify release of foreign exchange to the tune of Rs. 55.28 lakhs was made only in December 1986 whereas the foreign exchange was released as early as 1984. What has surprised the Committee is the assertion of the Railways that the decision regarding this release of foreign exchange was correctly taken at the level of Additional Director (Foreign Exchange) and he need not have taken approval of any superior authority, particularly when outgo of substantial amount of foreign exchange was involved. The Committee deprecate the casual approach of the Railways in this important matter having bearing on the country's scarce foreign exchange. The Committee recommend that Railways should amend their procedure in this regard so that any amendment to such contract involving release of additional funds specially the foreign exchange, is invariably made at the level of competent authority (whosoever finalises the offers) so that any misuse thereof could be prevented in future. The Committee cannot accept the stand taken by the Railways that the option clause would attract the same conditions as for phase III for release of foreign exchange also and recommend that the opinion of Law Ministry may be obtained in this regard even at this late stage. The Committee recommend that the admissibility of foreign exchange and manner of release thereof in this case should be examined by

the foreign exchange wing of the Ministry of Finance who should also recommend measures to be adopted by the Railways to avoid loss of foreign exchange in future.

[S. No. 8, para 55, of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

The supplies against Option Clause are generally on the same terms and conditions of the main contract. The phrase "With fully indigenous content" as incorporated in the order was neither in accordance with the offer of the firm nor the recommendations of the Tender Committee which had envisaged only 3 phases of indigenisation against the subject contract. It is reiterated that the inclusion of the aforesaid expression was suggested initially at a junior level in the Finance Directorate of the Ministry, in the process of vetting the acceptance of the offer and the same was recorded in the Acceptance Advice through oversight in Stores Directorate. This was obviously a misconstrual of the Tender Committee's recommendations. This fact can be verified from the relevant records in this Ministry, i.e., the draft acceptance, as originally proposed and the amendment finally made to option clause after vetting by Finance.

As mentioned earlier, the release of foreign exchange for this additional quantity was in accordance with the Tender Committee recommendations approved by the competent authority.

As recommended by PAC, vide subsequent Para No. 107, it is proposed to refer the entire matter to a high powered committee headed by a non-railway Engineer, to be assisted by senior officers including experts in Procurement, Finance and Foreign Exchange. This recommendation of PAC will also be included in the terms of reference of the proposed committee. Accordingly, a separate reference to Ministry of Finance on the issues raised by the Committee in this para is not considered necessary.

This has been seen by Audit.

[Min. of Railways O.M. No. 89—BC—PAC/VIII/148 dated 5-4-1990]

Recommendation

The Committee are also surprised to note from copy of note at Appendix IV that the decision to release foreign exchange seems to have been taken by the Railways, *suo moto*, at the level of Joint Director (Stores) without even a formal request from NEI. The Committee recommend that the circumstances under which such a decision was taken should be fully investigated and the results of the investigations intimated to the Committee.

[S. No. 9, Para 56 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

In terms of Tender Committee's recommendations approved by competent authority, the optional quantity also required release of foreign exchange. No formal request from the firm was necessary for this purpose.

As recommended by PAC vide subsequent Para No. 107, it is proposed to include this point also in the reference to High Power Committee being set up to investigate the case.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

In spite of the observations made in the completion report of the bearings received from the firm that extreme inconvenience was felt by the Railways due to the delayed supply of bearings by M/s. NEI as also that difficulty was experienced in getting the replacement supply from them against rejection, the action of Railways in returning the Liquidated Damages (Rs. 27.64 lakhs) recovered from the firm (NEI) earlier and levy of only token damages (Rs. 2.7 lakhs) is inexplicable. Even the Finance Directorate of the Railways had pointed out that the timely supply of these bearings would have reduced stabling of wagons for which 90% payment had been made to manufacturers without obtaining any return from those stabled wagons for want of such free items thus causing recurring loss to the Railways. Railways' argument that stabling of wagons was not due to the delayed supply of bearing alone and, thus, loss could not be pin pointed in this case is hardly convincing since it was after all one of the contributing factors for stabling wagons. The refund in the face of extensions granted to the firm subject to charging of Liquidated Damages and receipt of unqualified acceptance from the firm therefor, strengthens the doubts in the mind of the Committee in regard to the undue favour shown to this firm. The Committee do not also approve of the stand that where stabling is due to more than one cause, the financial loss cannot be apportioned. The Committee recommend that in such cases steps should be taken to equitably distribute the loss instead of Railways absorbing the entire loss and the Railways should incorporate appropriate changes in the contract in order to do so, if so, advised by the Law Ministry.

[S. No. 10, Para 68 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

The amount of Rs. 27.64 lakhs was originally withheld provisionally from the firm's dues pending receipt of completion report from consignee agencies indicating the extent of loss, if any. This action did not embody the final decision to levy full LD since the completion report, submitted by user agencies did not bring out any loss due to delay in supply of bearings.

Only a token liquidated damage towards inconvenience was, therefore, finally determined and levied. It is clarified that it was not a case of initial levy of liquidated damage and its refund later.

The settled law in such cases is that liquidated damages are leviable only in a case of direct and/or proven loss suffered by the purchaser on account of breach by the supplier. Remote or indirect loss does not constitute the ground for recovery of full liquidated damages.

The final decision to levy only token liquidated damage in this case was taken in consultation with the Associate Finance, which had initially queried regarding the possibility of levying full liquidated damages.

Based on the opinion obtained from the Legal Adviser, Ministry of Railways, the matter was further considered and the view held that apportionment of loss, which is attributable to more than one factor, is not susceptible to precise determination apart from such a situation being distinctly fraught with legal complications including litigation.

As recommended by PAC *vide* subsequent Para No. 107, it is proposed to include this point also in the reference to High Powered Committee being set up to investigate this case.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

Apart from selecting the best offers it is equally important to ensure that various clauses comprising terms and conditions of the contract are meticulously and unambiguously drafted after taking into consideration all the relevant aspects. In this particular contract with M/s. NEI, the Railways have contended that the phrase "with fully indigenous contents" in clause 7 was inadvertently included necessitating deletion thereof subsequently. Similarly while reimbursing the excise duty to the firm on the value of imported components on the supplier's representation, the relevant clause 6 was amended later on. It has also been contended by the Railways that although clause 11 of the contract stipulated immediate supply of bearings in equal monthly instalments, they do not consider the clause as a legally enforceable one. The Committee suspect that some clauses of the contract were deliberately made ambiguous so as to give the firm undue advantages later on. The Committee desire that Railway Board should ensure that terms and conditions of such major contracts in future are carefully formulated, cleared by the legal wing and are approved at the Board's level. The implications of all the clauses should also be made explicitly clear in the contracts so that firms/parties are unable to derive any undue benefit from any ambiguous clause obviously in collusion with unscrupulous officials.

[S.No. 20 para 108 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

The Committee's observations have been noted. In as much as the general terms and conditions of the contracts finalised by the Railways are based on the guidelines formulated by the Department of Supply of the Union Ministry and the relevant law of the land securing legal vetting, except in cases involving major departures therefrom is considered neither practicable nor necessary.

However, as clarified in replies to the Committee's earlier observations/recommendations, there has been no instance of any wilful ambiguity in finalising and/or modifying the contracts with M/s. NEI to confer any undue benefit on them.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

CHAPTER III

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

Recommendation

Consequent upon the decision of Railway of 1981 to manufacture BOXN Wagons, the need for procurement of roller tapered bearings arose for which Railways floated global tenders in January 1981. Scrutiny of tenders opened in August 1981 revealed that offers were for 7 brands from 14 firms. The offers received against the tender were stated to have been evaluated by Tender Committee based on the criteria recommended by RDSO. According to their criteria, firms with unconditional AAR approval could be given unlimited orders and those with conditional approval could be given order at the most for 8000 Nos. Out of the seven firms called for negotiations, M/s. Sumitomo and M/s. Timken had unconditional approval; M/s. SKF, M/s. Avanti and M/s. Bearing Engineers (FAG) had conditional approval; and M/s. NEI and M/s. PBI had proposed collaboration agreement with BRENCO/USA (Unconditional AAR approved) and FAG (Conditional AAR approved) respectively. Whereas the foreign collaborator, M/s. FAG (having only conditional AAR approval) of M/s. PBI (indigenous firm) was invited for negotiation, it is not clear why that of M/s. NEI viz. BRENCO/USA (having unconditional AAR approval) was not so invited and negotiations were not held with them.

[S.No. 1, Para 31 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action Taken

The reason for calling M/s. FAG to negotiations was not because they were the collaborators of the indigenous firm, M/s. PBI, but because they were one of the participants against the tender and also had the conditional approval of AAR for the bearings manufactured by them. Since M/s. BRENCO had not participated in the tender, the question of calling them for negotiations did not arise.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

Revised offers received from these seven firms in the wake of the negotiations held with them revealed that the lowest offer was from M/s. SKF; next higher offer was from M/s. Sumitomo; then in the order was the firm M/s. NEI; and so on. Out of the requirement of 40,000, orders for 24,000 bearings were placed on M/s. NEI and 8000 bearings on M/s. PBI although both were yet to sign agreements with their foreign collaborators at that time and yet to be granted industrial licence. The Railways have contended that while recommending these orders, the main consideration which weighed with them was to promote indigenisation of the product and to save foreign exchange. The indigenisation angle to the offers of Sumitomo and Timken (both unconditional AAR approved firms) was not given any weightage on the plea that their indigenisation process would be time consuming. It is apparent that the remaining 8000 Nos. had to be ordered on M/s. Sumitomo (Japan) as the placement of 32000 Nos. order on the indigenous firms was the maximum they could supply keeping in view their proposed production capacities upto 1982-83 (24,000 as of NEI and 10,000 as of PBI). The Committee note with surprise that though the Tender Committee had conceded that M/s. Sumitomo had offered the best delivery terms and had the necessary unconditional AAR approval, even the 50% option clause suggested by the Tender Committee and Finance Wing of the Railways to be included in the agreement with M/s. Sumitomo was also eventually deleted. The lowest of M/s. SKF (conditionally AAR approved) was not even considered by the Tender Committee but the firm was given orders for 8000 Nos. of bearings over and above 40,000 bearings when the firm represented to Railways subsequently.

[S.No. 2, Para 32 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

M/s. NEI, on whom bulk of the quantity was planned to be ordered, had obtained industrial licence for manufacture of tapered roller bearings (cartridge bearing under consideration is only a variety of tapered roller bearing) as early as Oct., 79. They had also advised after negotiations with the Tender Committee that M/s. BRENCO, having AAR's unconditional approval for manufacture and supply of cartridge bearings, had agreed to enter into a collaboration agreement with them and to lend their brand name (BRENCO) to NEI's product. Subsequently, this was also confirmed by BRENCO vide their letter dated 21.10.81, in which they also certified that NEI's product will conform to their specification. Besides, an application to the Government of India seeking permission for the above

collaboration had also been received from NEI in this Ministry and was in an advanced stage of processing at the time of relevant consideration by Tender Committee, as recorded in the minutes of the Tender Committee. Firm further advised that approval for collaboration was issued by the Government vide their letter No. FC-II 30(82)/268/81 dated 25.3.82. The collaboration agreement was also signed before placement of order. The other indigenous firm M/s. PBI had applied for the industrial licence in December 1980. M/s. PBI had also entered into a collaboration agreement with M/s. FAG in January 1982 much before placement of order in January 1983. It will thus be seen that the credentials of the indigenous firms were fully established before placement of the order on them.

The question of giving similar weightage of M/s. Sumitomo and M/s. Timken did not arise, because no offer had been received from any indigenous firm against the tender, for supply through collaboration with either of these two firms, nor had they indicated any plans as to when the indigenous manufacture, partial or full, would take off. Besides, the firms with whom the two foreign firms were contemplating collaboration at a later stage were not in the business of bearing manufacture.

While incorporation of the Option clause would not have involved any financial liability as such for the Railways such a course would have been inconsistent with the decision taken at the highest level in this Ministry (Minister for Railways), after taking into account *inter-alia*, the views expressed earlier by the Ministry's Finance Wing, to restrict the import of bearings to 8000 nos. essentially to conserve foreign exchange.

The lowest offer of M/s. SKF was passed over because the firm did not have unconditional AAR approval at that point of time. The subsequent decision to place an order for 8000 Nos. on M/s. SKF was taken after the firm had represented and had also completed the necessary technical requirement of in-service trials of their product.

This has been seen by Audit.

[Min. of Railways O.M. No.89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

The Committee have been given to understand that appointment of larger quantities to indigenous firms at higher rate was recommended on the basis of phased programme submitted by them. The Committee are however, constrained to point out that placement of large orders on indigenous firms was contrary to the recommendation of RDSO which had prescribed a quantity restriction of 3336 bearings on the indigenous suppliers. Even the Adviser (Finance) in the Railways had expressed doubts about the capacity of the indigenous firms to meet the requirements of Railways for 1982-83 and had suggested redistribution of tender quantity and incorporation of optional clause in the contracts with the foreign firms

to safeguard against any slippage by the indigenous firms. The contention of the Railways that the foreign collaborator of M/s. NEI (who had been given the bulk of the order) had indicated that they would be under-writing the quality of bearings manufactured by NEI as of their own and had agreed that components manufactured by the Indian collaborator would be stamped BRENCO is hardly convincing as at that time M/s. NEI had not even signed the collaboration agreement with them. While the Committee appreciate the anxiety of the Railways to see that the imports are not increased at the cost of indigenous development, but it is more important to ensure that the Railways' own manufacturing plans are not delayed in an attempt to procure certain components from indigenous sources. Indigenisation of product is usually slow. This has not been kept in view by the Railways while placing bulk orders for the roller tapered bearings on the indigenous source as a consequence of which supplies by M/s. NEI were delayed by nearly two years affecting the production schedule of BOXN Wagons considerably (as discussed later on in this report) whereas other firms more or less carried out the orders in time. Further, the Committee could not be informed to what extent M/s. NEI, who had promised complete indigenisation after completion of supply in three phases of the contract under reference, has ultimately been able to achieve indigenisation. The Committee are surprised that the high import content (60%) in subsequent contracts handled by the firm has been defended by the Railways on the grounds that those contracts were awarded to the firm against global tenders as per IDA guidelines and offering of indigenous product would have rendered the firm uncompetitive against international bidders. The Committee are inclined to conclude that purposes with which orders were given to indigenous firms, of promoting indigenisation and saving of foreign exchange particularly to M/s. NEI, have not been fully achieved. The Committee would like the Railways to draw appropriate lessons from this case and deal realistically with all future indigenisation programmes and schemes so that its own major production schedules are not unnecessarily hampered as happened in this case.

[S.No. 3, Para 33 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

RDSO had recommended only trial orders initially on the two indigenous firms, M/s. NEI and M/s. PBI. The Tender Committee, however took into account subsequent evidence produced to them by these two indigenous firms according to which the Collaborators, namely M/s. BRENCO and M/s. FAG had confirmed to under-write the quality of the products being manufactured by their indigenous collaborators. Based on this development, the Tender Committee treated the indigenous firms at par with foreign collaborators in the matter of quantity allocations.

It may be mentioned that RDSO is only an advisory body and in the

instant case RDSO's advice was not accepted by the competent authority in the light of the above mentioned facts including the undertaking by M/s. BRESCO and M/s. FAG for under-writing the products of their indigenous collaborators as their own which position was accepted as being on par with AAR's approval.

The Tender Committee had indeed recognized the slowness inherent in the process of indigenisation and had for this reason recommended back-up orders on foreign firms.

The recommendations of the then Adviser (Finance), which was only for marginal reduction in quantity from 24,000 to 22,000 bearings on M/s. NEI and from 8,000 to 6,000 on M/s. PBI as also his suggestion for incorporation of an Option Clause in contracts with the foreign firms were fully taken into account by competent authority while taking the decision on the quantum of the orders placed on indigenous/foreign firms.

M/s. NEI were in the process of finalisation of the collaboration agreement with M/s. BRESCO at the time their offer was considered by Tender Committee, and the collaboration agreement was concluded before the order was placed on them.

There was no delay on the part of M/s. NEI for arranging the contracted supply upto March, 1984 in the context of the Railway Board's decision to extend initial delivery period from 31.3.83 to 31.3.84. There was however a delay of about six months in supplying the full quantity by M/s. NEI, beyond the above period. It is, however, mentioned here that against the targetted production of 5,000 BOXN wagons upto March, 1983 the actual production was only 827 wagons. Cartridge bearings were not a bottle-neck during 82-83.

It is not correct that "the purpose of giving bulk orders to indigenous firms" was not fully attained. M/s. NEI had achieved 63.7% saving of foreign exchange upto third phase as stipulated in the contract, which in itself is a substantial achievement. In the subsequent contracts also the saving in foreign exchange was of the extent of 40%. The reason why the firm could not offer product with higher indigenisation in subsequent contracts was because these later contracts were all placed against IDA credit. As per IDA it is obligatory for the purchaser to:—

- (i) evaluate the Tender on the the basis of c.i.f. prices ignoring customs and other duties and taxes whereas in the normal tenders, evaluation is generally of unit cost including custom duties etc.
- (ii) upto 15% price preference is given to indigenous firm so long as the indigenous content is more than 20%, with no extra consideration for higher indigenisation beyond this limit.

Any firm participating in such a Tender would go in for a mix of indigenous and imported contents considered optimum for being competitive. Accordingly, the firm opted to import the sealed bearing units as

against importation of the sealed bearing unit only and its assembly in India with apart indigenous content as was done in the third phase of the subject contract. This phenomenon contributed to a higher import content in the bearing supplied by this firm against IDA credits.

As has been stated earlier, the main criterion for assessment of initial Tender was maximum saving in foreign exchange consistent with Government Policy to given price preference to indigenous offers, which condition was met by the offer made by M/s. NEI.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

The Committee note in this regard that at the very time when negotiations were being held for procurement of these tapered roller bearings, NEI were not adhering to the prescribed time schedule in another contract for supply of a similar type of roller bearings for which also the collaborators of NEI were BRESCO. The Committee are surprised to note that notwithstanding this position and also the caution expressed by the Finance Wing of the Railways, the Railways for unstated reasons, placed so much faith in the offer of NEI and modified the recommendations in such a way so as to tilt the scale in favour of NEI.

[S.No. 4, Para 34 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

The Tender Committee was fully aware of the slippage of supply which had occurred against earlier order placed on NEI in 1979 and had taken cognizance of the same while making their recommendations and accordingly provided for balancing imports.

Regarding caution expressed by Finance Wing, i.e. Adviser (Finance), the position has already been explained in reply to question 33. The suggestion of Adviser (Finance) was only for marginal reduction from 24,000 to 22,000 for M/s. NEI and from 8,000 to 6,000 on M/s. PBI. However, Board, including Financial Commissioner, decided to retain the originally recommended quantity after due consideration.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

Notwithstanding their rates being high, the basic consideration for placing the faith in NEI, according to Railways, was the reduced outgo by way of foreign exchange. The Committee note in this regard that the foreign exchange components agreed to at the first, second and third phases were to the extent of \$ 173, \$ 135 and \$ 43 per bearing. As, however,

even in subsequent phase the foreign exchange component was reported to be to the extent of 60%, the Committee desire to be informed as to how M/s. NEI met the foreign exchange needs in excess of the admissible level according to terms of agreement and recommend that an investigation be made as to whether excess foreign exchange has been released to the firm and if so, the reason therefor and if not, how the firm met its foreign exchanges requirements.

[S.No. 5, Para 35 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

The quantum of foreign exchanges admissible per bearing @ \$43 in the third phase was erroneously computed. This error was subsequently rectified and the correct quantum of \$ 83.49 was finally released. There is only a difference of about 20% in foreign exchange content, between phase-III and the subsequent contracts placed on the firm. This difference is essentially due to the fact that the latter contracts were all against IDA credit from the World Bank. Because of the obligatory nature, in the purchase guidelines (please see reply to para 32), the firm had opted to import the sealed bearing unit and manufacture the rest of the accessories only indigenously, in comparison to the subject contract, against which the firm was importing some parts of sealed bearing unit only and assembling them indigenously along with part indigenous components. In other words, the cost of the parts of sealed bearing unit manufactured indigenously and the cost of assembling it with the imported parts of the sealed bearing unit indigenously explains the higher indigenous content of the subject contract as compared to the subsequent contracts placed against World Bank.

There has been no instance of excess release of foreign exchange to M/s. NEI in any of the contracts placed on them.

The initial encouragement given to indigenisation resulted in our getting reimbursement in Foreign Exchange of approximately 40% value per bearing.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

As per contract with NEI, 24,000 roller tapered bearings were to be supplied by the firm by March, 1983. However, it could supply only 10,852 bearings by the stipulated date. Despite the delay in supply of the bearings, by the firm, it was given an additional order for 7200 bearings in April 1984 by which time 6000 bearings were still to be supplied by the firm against the initial order. The Railways have defended their action by saying that they needed more bearings and option clause with the firm M/s. NEI providing for the provision for placement of 30% additional order was utilised. According to the Railways, inclusion of the option clause in

the contract with the Italian firm was not thought of because the firm had got only conditional AAR approval and in case of Japanese firm, although having unconditional AAR approval, no option clause was included because there was no intention, abinitio, to order any further quantity on it because of foreign exchange consideration. The Committee are of the opinion that the option clause should have been included in contracts with all the firms especially with foreign firms who eventually carried the orders in time and had the necessary unconditional AAR approval. Even the Railways have conceded that by merely including the option clause in the contracts with the firms no financial liability would have been involved. By doing this any further placement of order could have been well anticipated and executed before expiry of the option clause with any of the firms which could have supplied the bearings in time. As regards the contention of the Railways about the foreign exchange involved the Committee consider that it would not have made much difference because ultimately foreign exchange was also spent though to a lesser extent in getting the additional bearings from NEI and the main consideration which should have been weighed with the Railways was timely supplies and proven quality of bearings.

[S.No. 6, Para 44 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

While conceding that inclusion of Option Clause in the contract with the foreign firms would not have incurred liability for the Railways, the fact remains that the Option Clause would have been of no use on account of:—

(i) actual production level of BOXN wagons in 1982-83 being much less than that planned initially for which free supply components were procured and

(ii) the delivery period of foreign contracts having expired by that time thereby annulling the Option Clause even if included.

The additional order of 7,200 was placed on M/s. NEI much later, viz., against 1984-85 requirements, after a review of stocks based on actual production in 1982-83 and 1983-84. In fact, the total number of BOXN wagons produced upto 31.3.84 was less than 5,000 wagons requiring a total of around 40,000 bearings upto March, 1984 against the initial order of 48,000. The non supply of approximately 6,000 bearings upto 31.3.84 had thus no adverse affect on the wagon production.

It may be mentioned that there was substantial difference in the foreign exchange content between the third phase of the order on M/s. NEI vis-a-vis the order on M/s. Sumitomo and M/s. SKF. The foreign exchange

content equivalent to Indian Rupees in the third phase of M/s. NEI's order was Rs. 768.47 per bearing as against Rs. 1785.67 of M/s. Sumitomo and Rs. 1568.88 of M/s. SKF.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

The Committee find that at the time of the issue of tender notice in January 1981, the quantity required by the Railways was 24,000 bearings. At the time of opening of the tenders in August 1981, the requirement of the Railways increased to 40,000 bearings. While deciding the firms to whom the orders were to be placed by the competent authority in January 1982 the requirement remained at 40,000 level. However, in the wake of the representation submitted by a firm the quantity required was revised to 48,000 bearings a month later i.e. in February 1982. The Committee feel that the Railways kept on increasing the requirement without making proper assessment of the bearings required. The Committee also feel that the actual deliveries by the originally stipulated date March 1983 may have been not more than 24,000 bearings, the same as was originally envisaged and in March 1983, the overall position of bearings was considered satisfactory, despite substantial shortfall in supply by NEI. The Committee would, therefore, recommend that the basis on which the demand was raised to 48,000 should be investigated, particularly because (as later paras would indicate), the Railways have claimed that no quantifiable loss was suffered due to delayed supplies by NEI and no claim for liquidated damages was made against the firm.

[S.No. 7, Para 45 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

The decision to manufacture BOXN wagons was taken in Jan., '81. This was a totally new type of wagon requiring new type of bogies, air brakes, wheelsets and cartridge bearings. It was in this context that Railway Board, in January, 1981, had placed special emphasis on development of these components especially the cartridge bearings.

As it happens, whenever a new type of wagon is planned, there are teething troubles and slippages in the contracts. While initially, only 3,000 BOXN wagons were planned (requiring 24,000 cartridge bearings), the target for production of BOXN wagons was enhanced to 5,000 (requiring 40,000 cartridge bearings) after opening of the tender but before holding negotiations and taking final decision on the tender for these bearings. This resulted in the demand being reviewed as 40,000. Such a review is a normal practice before finalising the tender as the quantities are reviewed afresh at the time of decision.

Procurement, being a long lead activity, the same was organised based

on the targetted production of 5,000 wagons. However, actually it was not possible to allocate sufficient funds, and the firms manufacturing wagons could also not meet the targets thereby only 827 wagons were built in 1982-83 i.e., much below original anticipation. Similarly, in 1983-84 also only about 3,900 wagons were built. Thus, against a planning of 5,000 wagons in 1982-83, even till end of the next financial year, i.e., 1983-84, 5,000 wagons could not be built.

The procurement was arranged for 40,000 Nos. initially based on planning for 5,000 wagons. Additional 8,000 Nos. on M/s. SKF was ordered basically as a development order and the normal practice for developmental orders is to consider them outside the scope of tendered quantity as an investment for future.

As has been explained, earlier, till 31st March, 1984 the number of wagons built was approximately 4,900 whereas approximately 42,000 bearings had been received, thus there was no loss in production on account of delay in supply meriting the levy of full liquidated damages for marginally delayed supply of M/s. NEI.

This has been seen by Audit.

[Min of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

According to the completion certificate, the supplies against the main order of 24,000 bearings were completed in June 1985 and those against the additional orders of 7,200 bearings in February 1985, i.e. four months before the main order was fully executed. By this method, the Committee note that firm is reported to have executed the additional order of 7,200 bearings in time and delay is shown against the original order only. The Committee desire to know the basis on which the Railways decided to allow completion of the additional quantity of 7,200 bearings before completion of supply against the main order. The Committee are of the view that the date of completion of supply against the additional order should have been taken as June 1985 only, and not February 1985 according to which there was a delay in execution of the order by 4 months. The Committee recommend that the circumstances under which the firm was exonerated from liability for delayed supply on additional quantity may be investigated and appropriate action taken.

[S.No. 11, Para 69 of Appendix VIII to 148th Report of PAC (1988-89)
VII Lok Sabha]

Action taken

The firm had supplied all but 116 Nos of cartridge bearings by September, 84, before they took up supplies against the enhanced quantities of 7,200 Nos. As the quantity outstanding against the main order was very insignificant, no objection had been raised to treating the last 116

Nos. as part of the main order, particularly since the firm was not going to get any financial advantage considering that the 116 Nos. would, in any case, be subject to same liquidated damages (full or token).

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

The Committee note that even though there are at least three communications clearly attributing stabling of wagons to delayed supplies of bearings by NEI (i) Chairman, Railway Board's letter to Secretary, Industry Ministry (ii) Railway's letter to NEI and (iii) Official note on stabling of 727 wagons for want of bearing, the completion report indicates that the delayed supplies by NEI caused only "inconvenience" and the Railway accepted this without further investigation. It is also not clear whether the opinion of FA and CAO was received before the Railways decided to refund the damages recovered. The Committee recommend that the whole issue relating to damages suffered in this case may fully be reviewed afresh and the results intimated to the Committee.

[S.N. 12, Para 70 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

It is a fact that some wagons had been stabled in 1984 as mentioned in the three communications referred to. However, the phenomenon of stabling was not attributable in entirety to the delayed supply of bearings; the other factors being inadequate availability of wheelsets due to freezing of port in Poland and port strike in India and shortage of couplers etc. It may also be mentioned that the delay upto 31.3.84 was on account of inability of the administration to arrange timely release of Foreign exchange and thereafter M/s. NEI had supplied all but 116 bearings within 6 months i.e., upto September, 1984. In view of this position the loss to the Railways on account of stabled wagons could not be pinpointed only on the delayed availability of bearings.

The remarks of FA&CAO, Northern Railway on the completion report were received before finalisation of contract.

This has been seen by Audit.

[Min. of Railways O.M. No. 89—BC—PAC/VIII/148 dated 5.4.1990]

Recommendation

The Committee are of the opinion that the firm, M/s. NEI was not entitled to any compensation due to variation in foreign exchange rates beyond Sept., 82 in respect of at least 7,500 bearings (comprising phase-I programme) which should have been supplied by it by then as per clause 11 of the contract. Thus, the claim for payment of Rs. 10.26 lakhs to the firm on this account should have been rejected because delivery of 7,500

bearings was delayed beyond the stipulated period. The Railway's argument that the delivery period was determined by the final date (March, 83) is unacceptable as the aforesaid clause had clearly provided that the firm was to complete the entire supply in equal monthly instalments by March, 1983. The contention of the representative of the Railways during evidence that the contract would have become severable if the supply had been made in phases by different dates has not been corroborated by their departmental legal advice. The Committee feel that monthly schedule was fixed in this case to ensure even flow to Wagon Builders for manufacture of wagons and the difficulties ought to be within the knowledge of the supplier when he accepted the offer. In the circumstances the Committee recommend that the entire case may be placed before Law Ministry and their opinion intimated alongwith action taken thereon.

[S.No. 13, Para 77 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

As specifically desired by the PAC in the course of oral evidence tendered by Railway Board, the issue of the contract being severable one has already been referred to Legal Adviser, Railway Board, who is a Jt. Secretary and Legal Adviser to the Government of India, Ministry of Law and Justice Department of Legal Affairs.

The legal opinion corroborated that the said contract was an indivisible one and not a severable one as supplies of equal monthly instalments have been prescribed for purpose of manufacturing convenience and convenience of the Inspecting Authority.

For a contract to be treated as a severable contract, specific quantities with specific dates are required to be specified.

As no such stipulation was made in the contract under consideration, it was an entire contract and not a severable one.

This has been seen by Audit.

[Min. of Railways O.M. No. 89—BC—PAC/VIII/148 dated 21.11.1990]

Recommendation

The Committee are also not satisfied with the reply of the Railways that there are practical difficulties in providing phase-wise delivery dates in the contracts entered into by the Railways with various firms. They feel that by incorporating such clause in the contract, it would be easier for the Railways to monitor timely delivery of the supplies both in terms of quantity and quality and take remedial action without having to wait for the data of completion of the entire period of supply.

[S.No. 14, Para 78 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

As indicated earlier to the Committee, the execution of severable contracts for each delivery has the same effect as multiplicity of contracts alongwith associated complexities making their implementation impracticable. As regards the monitoring of delivery this is ensured through monthly meetings with the suppliers and this system has worked fairly satisfactorily so far. Even provision of severable contract would not be a practical remedy in case of failure of deliveries because risk purchase at short notice is not practical considering the formalities associable therewith.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 21.11.1990]

Recommendation

Yet another instance where the Railways have shown laxity while dealing with this firm (NEI) is the release of 100% payment without the firm having mounted the bearings on the wheel sets as per the terms and conditions of the contract. The Railway's reply that there was no wilful delay on the part of the firm is hardly any ground on which the payment could have been made to the private party without ensuring whether the desired work had been completed by it. It is inexplicable why the Railways made full payment in this case whereas against the earlier contract of 1977 for the procurement of cartridge bearings involving another party, the payment was released only after successful mounting of the bearings by that party.

[S.No. 17, Para 94 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

Mounting of wheelsets with the bearings is an inter-disciplinary action, in which the Railway Ministry supplies the unmounted wheelsets as a free supply component to the wagon builders. The wagon builders who have not only to prepare the journal surface but also give necessary space and facilities for assembly to the bearing suppliers, who mount the bearing, and the RDSO inspection team who inspect the mounted wheelsets, have to closely co-ordinate. Delay by any one of them can lead to delays in mounting of the wheelsets. Holding only the bearing suppliers responsible for all delays is not correct. It is for this reason that based on the experience of the earlier contract, referred to by the PAC, in which complaints had been received from the bearing suppliers that they were being unnecessarily penalised for no fault of theirs, that the Ministry of Railways considered it fair to hold back only the cost of mounting until actual mounting of the wheelsets, in the subject contract. Hence, the question of holding up the cost of bearings (fully or

partially), barring the cost of mounting, did not arise, as such action would not have been in accordance with contract.

It is reiterated that there was no avoidable delay on the part of the firm during the currency of this contract to warrant any penal action against them on this account.

In the light of the foregoing, the relevant clause, even in the earlier contract had been modified permitting bulk payment on receipt of supply for similar reasons.

However, in the subsequent contracts the relevant clause was modified to provide for withholding 10% payment until completion of mounting.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

Recommendation

As already observed, large orders were placed on a firm - M/s. NEI having no experience of manufacturing Roller Tapered Bearings, in preference to reputed foreign unconditional AAR approved firms and that too at a higher rate to encourage indigenisation and to save scarce foreign exchange to the extent possible. For quality aspect which got back seat in Railways' consideration while finalising the contract, a certificate from the proposed unconditional AAR approved collaborator of the firm that they would be certifying the bearings produced by M/s. NEI as being equal of their standard was considered sufficient. It is, therefore, no surprise that the NEI bearings did not come up to the expectation when put in service. This is evident from the observations of the then Chairman, Railway Board made in June 1985 that "NEI was not measuring up to other manufacturers and their reliability of bearings as function of age is below par". The Railways' pleading that the Chairman's remarks were based on stray complaints and the collated data from all over the field had indicated that NEI bearings were performing well, is unacceptable in view of the large scale failure of NEI bearings within warranty period reported by the Zonal Railways and lack of proper monitoring facilities, as is evident from the minutes of XIX BOX'N' meeting held on 29 and 30 August 1988. Besides, Railways themselves had asked the firm to replace the defective lot in July 1987. Even the failure rate (0.33%) calculated by Railways is based on the total bearings supplied by all the manufacturers and not the NEI alone. Further, in the absence of records of contract-wise failure of bearings within the warranty period the claim of Railways that future contracts were placed on the firm after evaluating its performance and that they had been regularly monitoring the performance of the NEI bearings hardly carries any weight. The Committee feel that the firm should not have been given large orders in the first instance and having done so, a sample on receipt of first instalment should have been despatched to AAR to ascertain the quality thereof and similarly another to RDSO for

necessary testing etc. so that the question of quality could be taken up with the firm in time for any necessary remedial action. What is more surprising is the fact that these measures were not adopted even when the then Chairman, Railway had commented adversely about the quality of the product as early as in June 1985. Lack of adequate emphasis on quality earlier and total inaction subsequently in getting the same evaluated by the appropriate agencies depict the Railway's functioning in regard to procurement of the vital components of the Rolling Stock.

*[S.No. 18, Para 106 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]*

Action Taken

The order on M/s. NEI was placed after the Railway Board had fully satisfied itself that BRENCO, who had unconditional AAR approval and a very long experience in the manufacture of these bearings had entered into collaboration with NEI, and had agreed to their brand name BRENCO, being used for the product to be manufactured by M/s. NEI. There was thus no question of sending the samples of bearing supplied by NEI to RDSO or AAR nor would this exercise have served the purpose because the acid test for quality is the actual performance of the bearing ascertained through long service trials. Incidentally, AAR also accorded their unconditional approval only after long in-service trials.

In the course of last 6 years, over 2,50,000 NEI bearings have been purchased. The number of bearings supplied by other manufacturers including Sumitomo, SKF and PBI, account for only about 30,000 viz about 11% and the rest, or about 90% have been supplied by M/s. NEI. It may be mentioned that the bearings of other makes, particularly, of M/s. Sumitomo and M/s. SKF have also failed during the warranty period. This position, taken together with the overall failure rate of 0.33% analysed by RDSO, after the then CRB's comments, which incidentally referred to a totally different type of bearing used for Passenger Coaches/Wagons, clearly shows that the quality of bearings supplied by M/s. NEI is satisfactory. It is clarified that the remarks made in the BOXN meeting referred to were not based on any large scale collated data.

It is reiterated that no compromise, whatever, has been made in the matter of quality of bearings, including those supplied by M/s. NEI, and the firm's offers have always been deliberated upon and finalised purely on merits without any element of partiality or favouritism.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

CHAPTER IV

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

Recommendation

Modification of the contract at the instance of NEI resulting in reimbursement of Rs. 77 lakhs as compensation to them for the payment of Excise Duty on the imported component is another instance of indulgent attitude adopted by the Railways towards this firm. The admission of the claim based on a certificate from the Excise Department indicating that the Excise Duty was chargeable on the imported component of the bearings, without reference of the admissibility of the claim to arbitration as the price in the contract was specified exclusive of the Excise Duty on indigenous component only, is nothing short of financial imprudence shown by Railways in this case.

93. The Committee cannot accept the contention of the Railways that they were not aware at the time of finalisation of the contract that the imported parts would also attract Excise Duty because this is not the first occasion imports were made by Railways or by NEI. Further the evaluation note of tenders by the Tender Committee clearly indicates that the element of excise duty relating to imported bearings was duly included before determining the price payable. What is more surprising to the Committee is that M/s. NEI themselves gave details as to how 73% of duty on import was arrived at and later they came forward pleading defects in the contractual terms which the Railways agreed with alacrity. Since the issue relating to excise duty was duly considered and evaluated by the tender committee and thereafter the contract terms were offered, which were duly accepted by M/s. NEI, the Committee are convinced that there existed no case for alteration of the terms of the contract. In the circumstances, the Committee recommend that steps may be taken to re-examine the issue in consultation with Ministry of Law and Ministry of Finance and to recover the amount paid with interest.

[S. Nos. 15 & 16, Paras 92 & 93 of Appendix VIII to 148th Report of
PAC (1988-89) VIII Lok Sabha]

Action Taken

Based on its past experience of handling generally contracts of out-right imports not involving levy of excise duty on imported contents forming part of the final product, the Tender Committee was genuinely unaware of this element in the instant case, where the imported components were to

be assembled by the supplier along with some indigenous components. In the 1979 contract, assembly of the bearing indigenously was not involved. This position got altered from Phase II onwards of this contract on NEI on account of the firm having to undertake assembly of the bearing. Accordingly, in the Railway Board's counter-offer to the firm, allowance was made only for excise duty on the indigenous component as also Sales Tax. On receipt of counter-offer, the firm specifically drew attention to their offer which was for re-imbursement of excise duty and taxes on actuals and sought suitable modification.

On consideration of the firm's request the relevant clause in the contract was amended to provide for payment of excise duty on actual basis. However, the initial expression that the price stipulated was inclusive of custom duty on import component but was exclusive of excise duty on indigenous content and Sales Tax was allowed to be retained apparently to ensure that the excise duty on imported components was not made in routine but only after scrutiny regarding admissibility of the claim, if any. It may be mentioned that the excise duty to the firm was in fact released only after the firm's claim was examined at the level of the Board i.e. Member Mechanical & Financial Commissioner (Railways).

It is not correct that the Tender Committee's evaluation had taken into account the element of excise duty relating to imported components in the process of determining final price. What the Tender Committee had actually taken into account, while arriving at the figure of 73% for the import duties, was "counter veiling duty" leviable on all imported components, irrespective of whether they are later used as a part of an assembly in a manufacturer's works or not.

In view of the foregoing, the firm's claim for reimbursement of the excise duty was fully examined and was correctly decided after taking into account the provisions of Excise Act. It is, therefore, felt that no useful purpose will be served by fresh examination of the matter by the Ministries of Law and Finance.

This has been seen by Audit.

[Ministry of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5-4-1990]

Recommendation

The Committee are led to inescapable conclusion from what has been discussed hithertofore that undue benefits were extended to M/s. NEI at the various stages of execution of orders for supply of 31,200 roller cartridge tapered bearings. Placement of large orders (24000 Nos) without the firm having any previous experience and without the collaboration agreement having been signed; placement of additional order (7,200 Nos.) and refund of Liquidated Damages despite considerable delay in supplies; compensation due to variation in foreign exchange rates; reimbursement of excise duty on imported components against the terms of

the contract; release of additional foreign exchange wrong compilation of delay in supply for additional order, etc. are some of the examples thereof. They, therefore, recommend that the entire matter be investigated by an independent highpowered Committee with a view to fixing responsibility and taking necessary action against all those found guilty. No further order on this firm should be placed till the findings of this Committee are known and the quality of the bearings already supplied by it is got evaluated from RDSO and AAR. The Committee would like to be informed of the precise action taken by the Railways in this regard.

[S. No. 19, Para 107 of Appendix VIII to 148th Report of PAC (1988-89)
VIII Lok Sabha]

Action taken

As desired by the Committee, it has been decided by the Ministry of Railways to constitute a Committee, headed by an eminent Mechanical Engineer not connected with the Railways and consisting of other members having an expertise in procurement, finance, importation and technical aspects to conduct an in-depth probe in the matter.

As regards the Committee's recommendation for stoppage of further orders on M/s. NEI for roller cartridge tapered bearings till the Committee's findings are known, it is submitted that this recommendation is not practical of implementation having regard to the urgent requirements of the Railways for its vital components which are in the process of being finalised for the period 1990-91 and M/s. NEI being the largest single indigenous source for this item coupled with (a) time consuming process of procurement through import apart from the acute scarcity of Foreign Exchange, (b) the distinct possibility of DGTD not clearing the Railways' proposal for import of this input, in view of availability of indigenous capacity therefor; (c) uncertainty of time likely to be taken by the proposed expert committee to finalise and submit its findings and thereafter for the Ministry of Railways to take decision thereon. However, as a step to reduce dependence on M/s. NEI for this component, it has been decided by Ministry of Railways to explore the possibility of developing an alternative indigenous source with transfer of technology.

This has been seen by Audit.

[Min. of Railways O.M. No. 89-BC-PAC/VIII/148 dated 5.4.1990]

CHAPTER V

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

—NIL—

NEW DELHI
2 December, 1992

11 Agrahayana, 1914 (Saka)

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee.

APPENDIX

Observations and Recommendations

Sl. No.	Para No.	Ministry/ Deptt. Con- cerned	Observation/Recommendation
1	2	3	4
1	1.6	Railways/ Law/ Finance	In their earlier Report the Committee had observed that modification of the contract at the instance of M/s. NEI resulting in reimbursement of Rs. 77 lakhs as compensation to them for the payment of Excise Duty on the imported component was an instance of indulgent attitude adopted by the Railways towards this firm. The Committee had, therefore, recommended for re-examination of the issue in consultation with the Ministries of Law and Finance. In the action taken note, the Ministry of Railways have again contended that based on its past experience of handling generally contracts of out-right imports not involving Levy of excise duty on imported contents forming part of the final product, the Tender Committee was genuinely unaware of this element in the instant case and on consideration of the firm's request the relevant clause in the contract was amended to provide for payment of excise duty on actual basis. The Committee are not convinced with these arguments. The very fact that the evaluation note of tenders by the Tender Committee included the element of excise duty on imported bearings and the figures of 73% for the import duties as arrived at on the basis of the necessary details furnished by M/s. NEI clearly indicate that all the relevant aspects were considered and evaluated by the Tender Committee before finalising the contract terms were also subsequently accepted by M/s. NEI. In the circumstances, the Committee are

1 2 3

4

convinced that there existed no case for alteration of the terms of the contract. The Committee, therefore, cannot but reiterate their earlier recommendation that immediate steps should be taken to re-examine the issue in consultation with both the Ministries of Law and Finance and based on these consultations to take further necessary steps for the recovery of the amount paid with interest.

2 1.12 Railways

The Committee in their earlier Report had observed that undue benefits were extended to M/s. NEI at the various stages of orders for supply of 31,200 cartridge tapered roller bearings and had recommended that the entire matter be investigated by an independent High Powered Committee with a view to fixing responsibility and taking necessary action against all those found guilty. The Committee had also suggested that no further order should be placed on this firm till the findings of the independent Committee are known. The Committee are concerned to note that even after a lapse of more than 3 years since the presentation of their 148th Report (8th Lok Sabha) to the House on 12.4.89, report of the High Powered Committee which was constituted on 4.6.1990, is still awaited. In fact, the inordinate delay in constituting the High Powered Committee clearly indicates that the recommendations of the Committee have been pursued in a most casual and indifferent manner. Though the High Powered Committee was originally required to submit their report by 15.9.1990, their tenure was extended from time to time upto 19.3.1991. It is a matter of serious concern that the High Powered Committee have not only failed to submit their report even by their extended tenure upto 19.3.1991 but the Report still remains to be submitted. The Committee also take note of the fact that on 16.7.1991, the Chairman of the High Powered Committee had advised the Railways that their report had been completed but the summary of recommendations was under finalisation. The Chairman had also then indicated that he was proceeding abroad and would be back by 15.8.91 after which he would submit the report. The Committee are

1	2	3	4
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deeply concerned to note that in spite of such a categorical assurance by the Chairman of the High Powered Committee that Committee failed to finalise and submit their report. In the opinion of the Committee, such inordinate delay is bound to affect the underlying purpose in conducting such enquiries. The Committee also deplore the inability of the Railways to obtain the report from the Agency, constituted by themselves. The Committee cannot over-emphasise the need for finalisation of the report of the High Powered Committee without further loss of time with a view to fixing responsibility for the lapses and taking all the necessary preventive steps to obviate such recurrence in future.

As regards non-placement of orders, the Ministry has submitted that this may not be practical in view of the urgent requirement of this vital component by the Railways and M/s. NEI being the largest single indigenous source for this item. However, they have indicated that they will explore the possibility of developing an alternative indigenous source with transfer of technology. The Committee would like to be apprised of the action taken in expediting the submission of the Report by the High Powered Committee as also the progress made in exploring the possibility of developing alternative indigenous sources for cartridge tapered roller bearings to reduce dependence on M/s. NEI.

PART II

MINUTES OF THE SITTING OF PAC HELD ON 19 NOVEMBER, 1992

The Committee sat from 1030 hrs. to 1230 hrs. on 19 November, 1992.

PRESENT

CHAIRMAN

Shri Atal Bihari Vajpayee

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri Nirmal Kanti Chatterjee
4. Shri Vilas Muttemwar
5. Shri R. Surender Reddy
6. Shri K.V. Thangka Balu
7. Prof. (Dr.) Sripal Singh Yadav

Rajya Sabha

8. Shri Viren J. Shah

REPRESENTATIVES OF AUDIT

1. Shri P.K. Sarkar — *Dy. C&AG*
2. Shri D.S. Iyer — *Addl. Dy. C&AG*
3. Shri A.K. Banerjee — *Pr. Director (Reports—Central)*
4. Shri K. Muthukumar — *Pr. Director of Audit Economic & Service Ministries*

2. ** ** ** **

3. The Committee then considered the following Draft Action Taken Report.

(i) ** ** ** **

(ii) Avoidable Expenditure on Procurement of Cartridge Tapered Roller Bearings Action taken on 148th Report of the PAC (8th Lok Sabha)

(iii) ** ** ** **

(iv) ** ** ** **

4. The Committee adopted Draft Report at (ii) above subject to modifications/amendments shown in Annexure.

5. The Committee authorised the Chairman to finalise the Draft Action Taken Reports in the light of the suggestions made by some Members and other verbal and consequential changes arising out of factual verification by Audit and present the same to Parliament.

The Committee then adjourned.

Amendments/Modifications Made by the Public Accounts Committee in the Draft Report on Action Taken on their 148th Report (8th Lok Sabha) Relating to Avoidable Expenditure on Procurement of Cartridge Tapered Roller Bearings

Page	Para	Line	Amendments/Modifications
8	1.10	8	<p><i>Add the following after the word 'submitted':</i></p> <p><i>'The Committee also take note of the fact that on 16.7.91, the Chairman of the High Powered Committee had advised the Railways that their report had been completed but the summary of recommendations was under finalisation. The Chairman had also then indicated that he was proceeding abroad and would be back by 15.8.91 after which he would submit the report. The Committee are deeply concerned to note that inspite of such a categorical assurance by the Chairman of the High Powered Committee that Committee failed to finalise and submit their report'.</i></p>

**LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA
SECRETARIAT PUBLICATIONS**

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ANDHRA PRADESH		WEST BENGAL	
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BIHAR		DELHI	
2.	M/s. Crown Book Depot, Upper Bazar, Ranchi (Bihar).	14.	M/s. Jain Book Agency, C-9, Connaught Place, New Delhi. (T. No. 351663 & 350806).
GUJARAT		15.	M/s. J. M. Jaina & Brothers, P. Box 1020, Mori Gate, Delhi- 110006. (T. No. 2915064 & 230936).
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6.	The International Book Service, Deccen Gymkhana, Poona-4.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus New Delhi-110001. (T. No. 344448, 322705, 344478 & 344508).
7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400001.	22.	M/s. Amrit Book Co. N-21, Connaught Circus, New Delhi.
8.	M/s. Usha Book Depot, 'Law Book Seller and Publishers' Agents Govt. Publications 585, Chira Bazar Khan House, Bombay-400002.	23.	M/s. Books India Corporation Publishers, Importers & Expor- ters, L-27, Shastri Nagar, Delhi-110052. (T. No. 269631 & 714465).
9.	M&J Services, Publishers, Repre- sentative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor 68, Jyotiba Fuele Road, Nalgaum-Dadar, Bombay-400014.	24.	M/s. Sangam Book Depot, 4378/4B, Murari Lal Street, Ansari Road, Darya Ganj, New Delhi-110002.
10.	Subscribers Subscription Services India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400001.		
TAMIL NADU			
11.	M/s. M. M. Subscription Agen- cies, 14th Murali Street, (1st floor) Mahalingapuram, Nungam- bakkam, Madras-600034. (T. No. 476558).		
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