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COMMITTEE ON PETITIONS

(EIGHTH LOK SABHA)

FOURTH REPORT

[Presented to Lok Sabha on 8 May, 1987]

LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF THE COMMITTEE ON PETITIONS

(1986-87)

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

I

INTRODUCTION

1.1 I, the Chairman of the Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Fourth Report of the Committee to the House on the following matters :—

(i) Petition No. 5 regarding amendment of Article 311 of the Constitution of India with a view to ensure security of service to Government servants.

(ii) Petition No. 7 regarding increase in margin of profit to authorised ration shops on levy sugar.

(iii) Representation from Shri Amba Prasad, Hony. Secretary, Keymes Cooperative Group Housing Society, regarding allotment of land by Delhi Development Authority.

(iv) Representation from Shri T.K. Raghavan, Tamil Nadu, regarding revival of Central Freedom Fighters Pension.

(v) Representation regarding regular appointment in Railways.

(vi) Representation regarding modification/repeal of Section 7 of the Limitation Act 36 of 1963.

(vii) Representation from Shri A.S. Ramakrishnan, Telephone Operator, Kerala, regarding fixation of pay.

(viii) (a) Action taken by Government on the recommendations of the Committee on Petitions contained in their Eighteenth Report (7 LS) on the representation regarding withdrawal of liquidation proceedings of Containers and Closures Limited and revival of the unit by providing necessary funds.

(b) Action taken by Government on the recommendations of the Committee on Petitions contained in their Eighteenth Report (Seventh Lok Sabha) on the representation regarding withdrawal of denotification order and liquidation proceedings of M/s. Indian Rubber Manufacturers Limited, Calcutta and resumption of production activities.

1.2 The Committee considered the above matters at their sittings held on 4, 30 October and 9 December, 1985 and 8 April, 27 June, 8 and 9 September, 8 and 17 December, 1986 and 21 and 22 January, 1987.

1.3 The Committee considered their draft Report at their sitting held on 7 May, 1987 and adopted it.

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

NEW DELHI;
Dated 7 May, 1987.

ABIDA AHMED,
Chairman,
Committee on Petitions.

II

PETITION NO. 5, REGARDING AMENDMENT OF ARTICLE 311 OF THE CONSTITUTION OF INDIA WITH A VIEW TO ENSURE SECURITY OF SERVICE TO GOVERNMENT SERVANTS

2.1 Petition No. 5, signed by Shri Om Prakash Maken, Patron, National Confederation of Central Government Employees and Workers, New Delhi and others regarding amendment of article 311 of the Constitution of India with a view to ensure security of service to Government Servants, was presented to Lok Sabha on 17 March, 1986 by Shri P.R. Kumaramangalam, M.P.

A. Petitioners' grievances, demands and prayer

2.2 In their petition (*See* Appendix I), the petitioners have *inter alia* stated as follows :—

> "As a consequence of recent judgements delivered by the Supreme Court in Union of India *vs.* Tulsi Ram Patel and Satya Vir Singh and others, the position of a civil servant serving either under Government, State Government or any local body has been reduced to a situation where his services can be terminated without being given any reason or opportunity.
>
> The Supreme Court in earlier judgement in regard to article 311 especially in "Chellapan's case" had categorically laid down that even while exercising the power under sub-clause (a) of the 2nd proviso of clause 2 of article 311, the disciplinary authority must give charges and offer a reasonable opportunity to the employee before action is taken on the basis of or principles of natural justice, and safeguards provided under article 14 that no man should be condemned without being heard.
>
> The Government of India has issued guidelines on 11th November,

1985, stating therein that the officers must not exercise the power arbitrarily and must evaluate the case in great details. These guidelines are only directory and not mandatory. This changed situation of law in respect of civil servant has caused a crisis.

The Supreme Court has given the bureaucrats the magic sword, and a civil servant will be a poor victim.

The need of the day is to save the Government Servants from going to dogs by bringing suitable amendments to article 311 (2) of the Constitution or reversal by Supreme Court itself.

It is submitted that article 311 (2) may be amended suitably to remove the apprehension of insecurity that has gripped the minds of Government servants."

B. Directions by the Committee on Petitions

2.3 The Committee on Petitions considered the petition at their sitting held on 8 April, 1986 and directed that the petition be circulated to members of Lok Sabha *in extenso* and to obtain comments of the Government in regard to petition. The petition was accordingly circulated to members of Lok Sabha on 10 April, 1986 and also referred to the Ministry of Personnel, Public Grievances and Pensions on 9 April, 1986 for their comments.

C. Comments of the Deptt. of Personnel & Training

2.4 In their note dated May, 1986 (*See* Appendix II). The Department of Personnel & Training have given a brief background of the judgement of the Supreme Court delivered on 11 July, 1985 disposing of a number of Civil Appeals etc. in all of which the interpretation of the second proviso to article 311 (2) of the Constitution was involved.

2.5 They have *inter alia* stated as follows :—

"In the light of the provisions of article 311 (2) of the Constitution as amended by the Constitution (Fifteenth Amendment) Act, 1963 referred to above, the Supreme Court in its judgement

delivered on 15 September, 1975 in Divisional Personnel officer, Southern Railway and other Vs. T.R. Challappan pointed out that there were three stages in a departmental enquiry under article 311 (2), the third stage being the stage before actually imposing the penalty in which a final notice to the charged employee should be given to show cause why the penalty proposed against him be not imposed on him and that such a stage should be provided even in a case where the first two stages were dispensed with while invoking clause (a) of the then proviso to article 311 (2).

* * * *

Consequent on the amendment of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 referred to above the ratio laid down in Challappan's case came up for review in the Supreme Court in a batch of writ petitions, civil appeals, etc. In its judgement delivered on 11 July, 1985 the Supreme Court over ruled its own earlier decision in Challappan's case and came to the conclusion that in a case covered by any of the clauses of second proviso to article 311 (2), the entire inquiry as contemplated in the main clause (2) was dispensed with and as such, there was no question of giving any opportunity to represent against the penalty proposed to be imposed on the Government servant. The Supreme Court have also observed that the principle of natural justice does not get attracted and that the provision of article 14 in the Chapter of Fundamental Rights cannot be deemed to be infringed by the second proviso to article 311 (2).

* * * *

In the light of the position explained above the position in regard to the four specific issues raised in the Petition of Shri Om Prakash Maken is indicated below :—

Article 311 of the Constitution covers only holders of civil posts under the Central or State Government. The Supreme Court judgement delivered on 11 July, 1985 has not laid down any new principle of law but has only clarified the provision in the Constitution itself. The

second proviso to article 311 (2) has been in the Constitution even since its adoption. The specific provisions contained in the second proviso to article 311 (2) are invoked only in the special circumstances indicated therein and as such, they do not come into operation in the generality of disciplinary cases against Government servants which are regulated by the main provisions of the main clause (2) of article 311. Even in cases where the provisions of the second proviso to article 311 (2) are invoked, the Supreme Court has spelt out clearly the safeguards available to Government servants.

It will be thus clear that the Supreme Court had not only given an authoritative interpretation to the second proviso to article 311 (2) but have also clarified the correct parameters for invoking the special provisions of the second proviso as also the various remedies available to the Government servants against whom any one of the clauses of the second proviso to article 311 (2) is invoked. Thus, in a sense, the Supreme Court judgement by clarifying certain grey areas has afforded greater security to Cantral Government employees.

With a view to allay the apprehensions arising out of an inadequate appreciation of the judgement of the Supreme Court, detailed guidelines based on the judgement have been issued for the guidelines and compliance of all subordinate authorities exercising disciplinary powers.

The authorities concerned are, therefore, expected to follow these guidelines scrupulously in dealing with cases. In the circumstances, no amendment to article 311 (2) of the Constitution appears to be necessary."

D. Evidence before the Committee

2.6 The Committee on Petitions again considered the matter on 8 September, 1986 and felt that the replies furnished by the Ministry of Personnel, Public Grievances and Pension on certain points were inconvinciable and unsatisfactory. The Committee decided to call

petitioners before the Committee to fully understand their problems and also take oral evidence of the representatives of the Ministry of Personnel, Public Grievances and Pension.

(a) *Evidence of the petitioners—the representatives of National Confederation of Central Government Employees and Workers, New Delhi.*

2.7 The Committee at their sitting held on 18 December, 1986, examined the petitioners—the representatives of National Confederation of Central Government Employees and Workers, New Delhi, on Petition No. 5 signed by Shri Om Prakash Maken, Patron and others regarding amendment of article 311 of the Constitution of India with a view to ensure security of service to Government servants.

2.8 When the Committee pointed out the observation of the Supreme Court that the principle of natural justice did not get attracted and that the provision of article 14 in the Chapter on Fundamental Rights could not be deemed to be infringed by the second proviso to article 311 (2), the representative of the Confederation stated that in the past Supreme Court gave an interpretation dealing with article 14 (in Challappan's case) that even in cases where criminal conviction had taken place *i.e.* 311 (2) (a), an opportunity should be given to the employee for defending himself. The Supreme Court had analysed it. But factually in judgement of the Supreme Court in Tulsi Ram Patel case, they had empowered by interpretation that the services of a civil servant could be terminated without even giving him any notice as to what the misconduct was and whether he had at all any explanation about it.

2.9 When asked what amendment they would like to suggest in the Constitution, the representative stated that it was essentially under article 311 (2) (b). In so far as 311 (2) (c) *i.e.* in the interest of the security of State was concerned, they were not asking for show cause notice even. But where it was held that it was not resonable practi-a cable to hold an enquiry, in such cases at least the show cause notice and explanation procedure should be adopted. A charge-sheet—must be given telling him the charges levelled against him and asking him what he had to say in reply. According to the witness, a written explanation did not come in the way of a detailed enquiry. Enquiry

as had been interpreted by the Supreme Court had started from the moment when a charge sheet was given to him. There were stages of enquiry—first to give charge sheet and then ask for an explanation. If the explanation given by him was not found to be satisfactory then a detailed enquiry was held.

The petitioners emphasized—"we are only saying that at least the employee had a right to know the charges levelled against him and had got the right to present his case to the disciplinery authority because that would at least ensure that total misuse of the power did not take place. Once the person's services were terminated, he was out of service. He had to go through the procedure of appeal. After he goes through the appeal, he had to go to the Tribuual and then he had to go to the Supreme Court—as per the legal procedurc. The time taken is such that one in hundred or one in thousand only would have the courage to take up the fight. Invariably, they would not have the financial capability to take it up and there are many cases where it is possible after the show-cause was made available. the disciplinary authority might have changed his mind." According to the article 311 (3) of the Constitution, once a decision was taken that it was not reasonably practicable to hold an enqulry, it became final.

2.10 In regard to the issuance of guidelines by Government after the judgement was delivered by the Supreme Court, the petitioner explained that whatever rules Government might make, whatever statute Parliament might pass, whatever guidelines were issued were only directory and not mandatory. The Constitution stands above all. Whatever be the guidclines, the disciplinary authority had under the Constitution absolute power, to terminate the services of an employee subject to certain conditions.

As such, the guidelines issued by Government were not satisfactory.

2.11 The representative of the Confederation added that civil officer could say that he was empowered under the Constitution as interpreted by the Supreme Court in Tulsi Ram Patel case to terminate the services of an employee without holding an enquiry. Any guidelines issued by Government wera subordinate to the Constitution. A statute might be a proper legislation because rules were made under

article 309. But those definitely stood one step below the Constitution. He further stated that the effect of the judgement of the Supreme Court was that they had empowered the Senior Civil servants and other civil servants who had authority under the rules to take disciplinary action in absolute terms.

2.12 Attention of the Witness-was drawn to the statement made by the Minister of Personnel, Public Grievances and Pensions on 7-11-1986, while replying to debate on Private Members Bill relating to amendment of the Constitution wherein he had stated that "the Government would not abuse it and the Government will not abuse it in future. In fact, the *bona fide* of earnestness of the Government has been made manifestly clear by issuing two instructions in Novembar, 1985 and in 1986". The Committee desired to know whethe r there had been any case where these guidelines had not been followed by any department and whether this fact had been brought to their notice. The witness quoted an instance of a case which had been filed very recently *i.e.*, December, 1986, after the issuance of guidelines by Government. It was in the case of SZ Meshram *versus* the Union of India and others. The said appellete was a Railway servant. His services were terminated under article 311 2) (b). The reasons for termination were given as follows :—

> "If the normal procedure of removal from service is followed it is likely that the evidence may be destroyed and members of the Mahila Samiti being lady-folk may not come up to adduce evidence for fear of threat and harassment. Further, it has also been proved beyond doubt that Sri Meshram has wilfully lost the Bill Register which is the vital document to bring about the actual amount of misappropriation. I am, therefore, satisfied this particular case, it is not reasonably practicable to hold an enquiry in which he can be informed of charges against him and given a reasonable opportunity of being heard in respect of these charges.
>
> The grounds mentioned in paragraph 6 of the order are altogether irrelevant and *ex facie* inadequate for dispensing with the enquiry. We are satisfied that this is not a matter where a departmental enquiry on the charges levelled against the petitioner is not reasonably practicable. We, therefore,

allow the writ petition and set aside the impunged orders of removal from service. The petitioner will be deemed to have continued in service and will be entitled to payment of salary and allowances due to him in accordance with rules. It will be open to the competent authority to institute a proper enquiry and to proceed against the petitioner in accordance with the relevant rules by following the normal procedure for departmental enquiry. Rule is made absolute to this extent.

The writ petition is disposed of accordingly with costs."

2.13 He further informed the Committee—"Thls was the case where an appeal was disposed of ultimately by the President of India. There are over hundred cases which we can show in this regard. Now. a junior railway officer, had the adacity to flout the directives of the Government of India, and his flouting was upheld by the same Government of Iddia, by all the civil servants right up to the top who have appellate authority in their hands. Ultimately, this employee went to the Supreme Court. For a year, he was without any financial assistance. All he said was that he wanted a chance to reply to the accusations. This is how the abuse of power can take place. Apart from this, in Andhra Pradesh, the authorities of the State Government had been using that power. They had terminated the services of 300 employees who had been on *'dharna'* at a public place on earned leave, on the ground that their agitation was a threat to the security of the State. But the fact was that that the civil servants in position were of the opinion that because of the judgement of the Supreme Court, they did not have to look into the guidelines from the Department of Personnel. But just because no enquiry need to be held, no charge need to be framed. no explanation need to be called for. The power had been used that way. It was liable to be used more and more with the passage of time.

2.14 Reacting to the Law Minister's statement advocating amendment to article 311 (2) (a) of the Constitution relating to dismissal of Government servants convicted of criminal charges, without any inquiry, the petitioner replied that article 311 (2) (b) of the Constitution was the clause on which the real complaint was to be considered.

He further pointed out that even if the Government of Andhra Pradesh had demanded an amendment of article 311 of the Constitution, yet they had terminated the services of 300 employees, saying that while the power was there on the statute, they would use it. He said "I am quoting this only to say that the atmosphere today is that. use this power to crush the voice of grievances of complainant, that may come up from the Government servants. We are afraid mainly from that point of view that it might reach a stage where corrupt officials would cover up their corruption by ensuring that nobody complains against them by showing the threat or stick of this power that is available in their hands against their junior officers.

I may end by saying this. The reason for providing articles 309, 310 and 311 in the Constitution is that we are required to have in this Government, in our system a civil service that can be free, that can be honest, that can be courageous and not be subjected to any sort of threat or intimidation. That is why, security of service is one of the most important things."

2.15 The witness added that all this had created a climate where civil service would move away from doing an honest work and rather move to satisfy their immediate superiors at any cost in order to remain in service. That would cause a vicious situation whereby Government, who depend on their employees for implementation of various schemes and measures, would find themselves in a situation where Government was not going to be run by the people's representatives and would slowly be run only by top civil servants. According to the witness such a situation would be dangerous and explosive for Government.

(b) *Evidence of the representative of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training).*

2.16 The Committee at their sitting held on 21 January, 1987 examined the representatives of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) on Petition No. 5, signed by Shri Om Prakash Maken, National Confederation of Central Government Employees Patron and Workers, New Delhi and others regarding amendment of article 311 of the Constitution

of India with a view to ensure security of service to Government servants.

2.17. Asked to state in brief the safeguards spelt out by the Supreme Court, the representative of the Ministry while mentioning those safeguards with reference to each of the clause stated that in accordance with the Supreme Court decision, they had issued very detailed guidelines on 11 November, 1985 which incorporate all the safeguards, regarding clause (a) of the second proviso to article 311 (2), the first safeguard is that the decision of the competent authority had to take all facts into consideration and having taken those facts into consideration, there were two safeguards there *viz.* (1) that the normal authority for appeal, review or revision of all decisions were subjected to that. The second was that the opportunity is available for judicial review.

Regarding clause (b), the competent authority had to record reasons in writing. Then the opinion had to be of a reasonable person taking a reasonable view of the prevailing situation. That was a matter on which the competent authority could always go into as to whether it was reasonable or not. Again in that case he could go in for appeal or revision to the competent administrative authority and also go in for judicial review.

Regarding clause (c), the decision was of course, taken by the President or the Governor, as the case might be. And then, it took into consideration various serious factors such security of the country etc. If there was any *mala fide* action, they could still, go in for appeal before the court which had already been incorporated in the Ministry's circular dated 11-11-1985.

When asked whether the safeguards mentioned by the Supreme Court and examined by the Government were considered to be adequate, the representatives of the Ministry stated that those had been examined by the Government and had been incorporated in the circular dated 11 November, 1985. After the issue of that Circular the complaint of the disciplinary authority was that they could virtually take no action.

2.18 The representative of the Ministry informed the Committee that the Supreme Court had not only given authoritive interpretation

of the second proviso to article 311, but had also clarified parameters for invoking special provisions and also various remedies available to the Government servants against whom it had been invoked. The Supreme Court judgement had also clarified certain grey areas. The circular issued by them not only took into consideration the issues raised by Government servants but also what had appeared in the press and the various points raised in various forums.

To educate Government servants and to clarify the position, the contents of the circular were also released to the press and its copies were given to members of JCM (Staff side). They had not received any complaint about that.

2.19 Asked to comment on the statement of the petitioners that the Supreme Court had given the magic sword to the bureaucrats with the result that Government services would be ruled and run by sycophants and corrupt officers would cover up their corruption, the representative of the Ministry stated that the Supreme Court had not laid down any new principle of law. The constitutional provisions were already there. They had just clarified the position as obtained from the Constitution. Those clarifications had been enshrined in the guidelines to enable the competent authority to use those guidelines and the powers which were vested in them taking into view the fact that the decision which they took or the reason which they recorded was open to scrutiny and could be questioned in the court so that the competent authority did not go beyond their powers. Thereby, they had infused confidence among the Government employees.

2.20 When asked what was the difficulty in following the procedure of letting the official know the charges that were against him and also giving him an opportunity to protect himself, the representative of the Ministry stated :—

> "There was a Private Member's Bill introduced by Shri C. Janga Reddy on this very subject. Shri P. Chidambaram (Minister of State in the Ministry of Personnel, Public Grievances and Pensions) has answered this question. He said that as per clause (b), dispensing with the charge-sheet is not envisaged. Charge-sheet is to be made and then only the competent authority will realise that it is not possible to hold an inquiry,

where it is possible to issue a charge-sheet, then the charge-sheet is given. But if circumstances are such that enquiry cannot be held due to intimidation and all that, then Competent Authority can take the view that no enquiry can be held."

2.21 Further when asked why that kind of action was resorted to, the representative of the Ministry stated that clause 311 (2) (b) was resorted to in a very exceptional cases and during her 35 years of service she had only seen one case in Assam Meghalaya side. It was not really resorted to except in some exceptional cases and they had no specific complaint of any misuse of that.

2.22 To a question as to what were the various reasons for amending Article 311 (2) of the Constitution in 1976 (after Supreme Court's judgement in T.R. Challappa's case) and whether the present political conditions in the country warranted need to amend the Constitution, the representative of the Ministry stated :—

"At the time when the cases were piling up, the Government was thinking of setting up administrative tribunals. The amendment was made. It was decided to impose a penalty. It took long time to take action. Proceedings were delayed, sometimes deliberately, and Government was thinking of setting up of administrative tribunals. A Committee was formed. That was the background for amending the Constitution. Even if a punishment is to be awarded in case of murder, a person has to be hanged or is to be hanged or is to be given life imprisonment, another show cause even in criminal proceedings is not given whether such punishment should be awardcd or not. Even on that perallel, it is quite reasonable that second opportunity regarding punishment need not be given."

The representative further added that this was reviewed in 1979 and Government felt this was reasonable amendment.

2.23 In regard to the issuance of guidelines by Government on 11.11.1985 and 4.4.1986, the representative of the Ministry stated that those guidelines were directory and not mandatory. It clarified the Government's policy in that regard and also gave the detailed procedure. In case any difficulty was experienced by the staff that that was not being followed or any such issue was raised. They would look into them. But if all the authorities were really following them in letter and

spirit, then there was no reason for having any apprehension. The representative further added—I have to submit that any competent authority will think twice before taking any action under these guidelines. If they do not follow the guidelines, they are also liable to be proceeded against. So, they will think twice before they take any action.

2.24 When asked whether Government had issued any instructions for collecting any information about cases where those guidelines had not been followed, the representative of the Ministry stated that no information had been collected and no further review considered necessary for the main reason that Departmental Councils and the JCM Machinery were very active. They had copies of those circulars with them. They were holding regular meetings in each Department. They also came to our Standing Committee of the JCM regularly. They spent hours together with them, almost every month. Further, there was a National Council of JCM with the Cabinet Secretary as Chairman and in that Council meeting they had not raised even a single case where the guidelines had not been followed and where some injustice had been done. They had also checked from their officers and they had no such case before them.

2.25 Regarding the group action under the article 311 (2), the representative of the Ministry stated that clause did not permit group action. In each case, the concerned authority had to record the reasons why the enquiry could not be held under the circumstances. It was not that easy to surreptitiously add a few names and dispense with their services. Moreover, the Staff Council was so active that it was not that easy to get pass any name of individuals in the list.

2.26 When an instance of a case *i e.* S.Z. Meshram *vs.* the Union of India and others mentioned by Shri P.R. Kumaramangalam who had appeared before the Committee to give evidence was brought to the notice of the representatives of the Ministry, the representative stated that they were not aware of that particular case and they promised to send a note on that case.

2.27 When asked whether Government had any proposal under their consideration to amend article 311 (2) of the Constitution, the representative of the Ministry replied in negative.

2.28 The Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) have forwarded a note regarding the case of Shri S.Z. Meshram *vs.* Union of India and others which was pointed out by the petitioners during evidence alleging that the guidelines issued by Government have not been followed in this case. The note reads as under :—

" the case of Shri S.Z. Meshram, which was mentioned during the oral evidence of representatives of this Ministry before the Committee on Petitions, has been looked into in consultation with the Ministry of Railways, who have informed that the order of the disciplinary authority dispensing with the inquiry had been passed on 5.2.1986, while the detailed guidelines for invoking the exceptional provisions of the second proviso to Article 311 (2) of the Constitution, as contained in this Department's O.M. No. 11012/11/85-Ests (A), dated 11.11.1985, were circulated to the General Managers of the Zonal Railways only on 6.2.1986- It was for this reason that the Divisional Railway Manager, Nagpur, did not follow the guidelines laid down for dispensing with the inquiry before imposition of a penalty. A copy of the order dated 5.2.1986 by the Divisional Railway Manager, while arriving at a decision to dispense with the inquiry, is enclosed (Appendix III). It will be observed therefrom that the charges against the accused railway servant were quite serious and would have normally attracted the penalty of removal, if these were found to be proved after holding of an inquiry. The decision to dispense with the inquiry was, however, arrived at on the presumption that the witnesses in the case may not come forward to give evidence, if an oral inquiry was held. The Supreme Court have set aside the order of penalty of removal from service only on the ground that the reasons for dispensing with the inquiry were inadequate. The Court has held that it would be open to the competent authority to institute a proper inquiry and to proceed against the accused employee in accordance with the relevant rules by following the normal procedure for departmental enquiry. Shri Meshram has accordingly been reinstated in service and the disciplinary

proceedings are being instituted against him as per directions of the Supreme Court.

In the circumstances, it cannot be said that the removal of Shri Meshram from service as a measure of penalty by invoking the exceptional provisions of rule 14 of the Railway Servants (D & A) Rules, was a case of misuse of powers, with *mala fide* intentions, by the disciplinary authority.

The clarificatory instructions issued by this Department vide O.M. No. 11012/11/85-Estt (A), dated 4.4.1986 in further elaboration of the guidelines contained in the earlier O.M. of 11.11.1985, adequately take care of such cases of dispensing with the inquiry by the disciplinary authority merely on the presumption that circumstances could arise at a later stage which may render holding of an inquiry not reasonably practicable. It has been clearly brought out in the O.M. dated 4.4. 1986 that the circumstances which make the disciplinary authority to conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time, when this conclusion is arrived at. The guidelines contained in the O.M. dated 11.11.1985 and 4.4.1986 have again been circulated by the Ministry of Railways to all Zonal Managers bringing to their notice the view taken by the Supreme Court in the case of Shri Meshram."

(*c*) *Observations/Recommendations*

2.29 The Committee note that consequent on the judgement delivered by the Supreme Court on 11.7.85, in the case of Union of India Vs. Tulsi Ram Patel and others, the petitioners' view is that the position of civil servants serving either under the Central Government, State Government or any local body has been reduced to a situation where the services can be terminated without being given any reason or opportunity. According to the petitioners, the apprehension of insecurity as such has gripped the minds of Government servants and a climate has been created where civil servants will move away from doing honest work and rather move to satisfy their superiors whose integrity may even be doubtful, at any cost to remain in service. According to them this will be dangerous and explosive for Government.

2.30 The Committee also note that Government with a view to allay the apprehensions of the civil servants have issued detailed guidelines on 11.11.1985 and 4.4.1986 for the guidance and compliance of all Ministries/Departments exercising disciplinary powers. During evidence before the Committee, the representative of the Ministry of Personnel, Public Grievances and Pensions stated—"I have to submit that any competent authority will think twice before taking any action under these guidelines. If they do not follow the guidelines, they are also liable to be proceeded against. So, they will think twice before they take any action."

2.31 Further the Minister of State in the Ministry of Personnel, Public Grievances and Pensions had assured in Lok Sabha on 7.11.86 "Government will not abuse it; this Government has not abused it in the past; this Government will not abuse it in the future. In fact, the bonafides and earnestness in this Government has been made manifestly clear by two instructions issued after Tulsi Ram Patel's case on 11.11.1985 and 4.4.1986. These instructions have been widely distributed and even communicated to every office, every Department, every Ministry."

2.32 The Petitioners however, consider these guidelines to be unsatisfactory, as the same are directory and not mandatory. They say the Constitution stands above all and it is for this reason that they want the Constitution to be amended During evidence they have informed the Committee that these guidelines are not being followed and there are a number of cases which they can show. A particular case of Shri S.Z. Meshram Vs. Union of India and others (The appellete was a Railway servant) was brought to the notice of the Committee. The Committee note from the information furnished by the Ministry that in the case of Shri Meshram the decision to dispense with the inquiry was arrived at on the presumption that witnesses may not come forward to give evidence and the Supreme Court have set aside the order of penalty of removal from service as the reasons for dispensing with the enquiry were inadequate. Accordingly, Shri Meshram has been reinstated in services and disciplinary proceeding are being instituted against him.

2.33 The Committee are satisfied with the action taken by the Railways to circulate once again the guidelines and also bring to the notice of Zonal Managers the views of the Supreme Court in Shri

Meshram's case. The Committee would like that the judgement of the Supreme Court in this case may also be brought to the notice of all other authorities exercising disciplinary powers for their guidance in dealing with such cases.

2.34 In the opinion of the Committee the petitioners' plea that at least the employee has a right to know the charges levelled against him and present his case to the disciplinary authority because it will at least ensure that total misuse of power does not take place is justified. During evidence, they have emphasised that when it is held that it is not reasonable and practicable to hold an enquiry, in such cases at least the show cause notice and explanation procedure should be adopted. The Committee desire that this aspect may be gone into and suitable guideline laid down accordingly.

2.35. The Committee desired to know whether Government have issued any instructions for collecting information about cases where guidelines have been violated. The representative of the Ministry has informed the Committee that no information has been collected and no review has also been considered necessary as Departmental Councils and Joint Consultative Machinery are very active. They have also stated that at these meetings not even a single case where some injustice has been done; where the guidelines have not been followed; was pointed out.

2.36 The Committee would like Government to collect information about such cases where guidelines have been violated by disciplinary authorities during the period January, 1986 to December, 1987, and then have a review as to whether it is necessary to amend the Constitution so as to repose confidence in the civil servant that the emphasis on justice to weaker sections of society laid in the Constitution was being followed in the letter and spirit in which the makers of our Constitution had desired it to be. In the opinion of the Committee, it is the bounden duty of Government to create such climate in the services where the apprehension of the employees are allayed and they are able to work with zeal and honestly, fearlessly and in the best interest of the country. The Committee are of the definite opinion that Government servants have an important role to play in the implementation of Government social programme and for the purpose they would like that the employees representatives should also be associated with the review suggested above so as to satisfy them and enable them to contribute maximum for the development of the country.

III

PETITION NO. 7 REGARDING INCREASE IN MARGIN OF PROFIT TO AUTHORISED RATION SHOPS ON LEVY SUGAR

3.1 Petition No. 7 signed by Shri Chimanlal Damji Gala, Hony. Secretary, Retail Grain Dealers' Federation, Bombay and others regarding increase in margin of profit to authorised ration shops on levy sugar was presented to Lok Sabha on 2 December, 1986 by Shri Anoopchand Shah, M.P.

A. Petitioners' grievances, demands and prayers

3.2 In their petition (*See* Appendix IV) the petitioners have *inter alia*, stated as follows :—

"The owners of authorised ration shops are issuing various commodities including levy sugar supplied by the Government to the ration card holders at a price and quantum fixed by the Government.

The gross margin of profit allowed by the Central Government to the authorised ration shops on levy sugar has remained static at Rs. 5/- per quintal since 1970.

A number of representations were sent to the State Government (Maharashtra) and the Central Government with a request to raise the gross margin of profit allowed to the authorised ration shops on levy sugar from Rs. 5/- to five per cent. The State Government recommended to the Central Government on 9 March, 1984 that the gross margin of profit on levy sugar allowed to the authorised ration shops should be raised.

3.4 The petitioners have given the following reasons to raise gross margin on levy sugar from Rs. 5/- per quintal to five per cent :—

(1) The gross margin of Rs. 5/- plus empty gunny bag was fixed in 1970, the wholesale price of levy sugar was Rs. 150/- per quintal. Today the wholesale price is 475/- per quintal. Thus, it will be observed that even though the Central Government has raised the wholesale price of levy sugar by 220%, the gross margin of profit allowed to the ration shops has remained static at Rs. 5/- per quintal only.

(2) The gross margin of profit of Rs. 5/- per quintal allowed to ration shops in 1970, worked out to 3.33%, whereas in 1986, it comes to 1.04% only. Thus, on the one side, capital required has increased by 220%, the gross margin is reduced from 3.33% to 1.04%.

(3) The cost of transporting one bag of 100 kgs. of levy sugar from the godown of the levy sugar nominees to the ration shops, in 1970 was only 80 paise. This transport cost has gone up considerably."

The petitioners have further stated that the gross margin of Rs. 5/- per quintal takes cars of only transport charges and the resale value of empty gunny bag takes care of loss in transit and loss in retail sale. To conduct a ration shop, the shopkeeper has to incur the following expenses :—

"The quantum of levy sugar to be issued to the card holders is 425 grams per person per month. This quantum is to be issued in two fortnightly instalments. Hence, in order to issue 100 kgs. of levy sugar, the ration shops have to prepare about 100 cash memos. The cost of printing 100 cash memos comes to Rs. 3/-.

Over and above cash memos, the ration shops have to maintain Sales Register, Stock Register, Card Reference Register. They also need indent books, fortnightly stock return books, bill books ete. When compared to the cost in 1970, the cost of stationery in 1986 has gone up considerably.

The Municipal Corporation of Bombay is regularly increasing the licence fees and the State Government is similarly increasing the electricity charges.

Rate of interest which was about 10% in 1970 is now 18%."

3.4 The petitioners have requested that the Committee may direct Government of India to reconsider the issue and increase the ration shops' margin to five per cent on levy sugar which has remained static at Rs. 5/- per quintal for the past 17 years.

B. Comments of the Ministry of Food and Civil Supplies (Departmen tof Food).

3.5 The comments of the Ministry of Food and Civil Supplies (Department of Food) on the points raised in the petition were obtained at the time of determining the admissibility of the petition for presentation to the House. In their note dated 21 November, 1936, the Ministry of Food and Civil Supplies (Department of Food) had stated as follows :—

"The factual position is that at present, the margin of profit being allowed to the retailers of levy sugar in Maharashtra is Rs. 5/- per quintal of sugar in addition to the empty gunny bag retained by them.

The Retail Grain Dealers' Federation, Bombay, has been representing to the Government directly as well as through the Members of Parliament for enhancement of this margin to five per cent of the cost of sugar.

The matter was last considered by Government in September, 1985, on receipt of proposals from the Government of Maharashtra for raising the retailers margin on levy sugar from Rs. 5/- to Rs. 7/- per quintal. After thorough consideration of this matter in consultation with the State Government, the Central Government came to the conclusion that the existing margin of Rs. 5/- per quintal plus empty gunny bag valued at about Rs. 8/- was reasonable and there was no scope for increasing this margin. The State Government was informed accordingly on 1-11-1985. The Hon'ble member, Shri Anoopchand Shah, who has forwarded this petition, had also written to the Union Minister of Food and Civil Supplies on the subject in January, 1986 and he was apprised of the above

position by the then Minister of Planning and Food and Civil Supplies on 14-3-1986. Subsequently, the Hon'ble member had also given notice of a question on this subject during the Budget Session 1986 of Lok Sabha, and on receipt of a reference from the Lok Sabha Secretariat the facts were communicated to tuem *vide* this Ministry's U.O. No. 5-33/86-SPY (D. II) dated 18-3-1986. The question was, however, not admitted for answer.

In this connection, it may be mentioned that since the introduction in October, 1972 of the scheme to maintain a uniform retail price of levy sugar throughout the country, the State Governments/Union Territory Administrations, which handle the distribution of the levy sugar through their own Corporations/Agencies, have been lifting their quotas of levy sugar directly from the sugar factories at the controlled ex-factory prices and transporting the same to their wholesale points/consuming centres. While the transportation cost upto the wholesale stage is reimbursed to the State Governments, on actuals, the reasonable expenses incurred by the wholesalers and retailers on levy sugar distribution are also reimbursed. This is being done through a self balancing Fund called the 'Sugar Price Equalisation Fund (Non-statutory) being operated by the Food Corporation of India on behalf of the Department of Food. The surpluses generated in low cost zones are credited and the deficits arising in high cost zones are debited to the aforesaid Fund. The wholesalers and retailers margins to be allowed in different States/Union Territories on distribution on levy sugar, are determined with reference to the various items of expenditure which they have to incur in handling the distribution work. On receipt of proposals for fixation/revision of margins, the same are examined by a Committee called the 'Margins Committee' set up in the Department of Food. The concerned State Governments and the representatives of the Food Corporation of India are invited to participate in the discussions of the said Committee. On the recommendations of the Committee, the margins are determined by the Government normally for a period of three years and the claims of the State Governments

for reimbursement from the Sugar Price Equalisation Fund (Non-statutory) are settled accordingly by the Food Corporation of India."

C. Evidence before the Committee

3.6 At their sitting held on 23 January, 1987, the Committee examined the representatives of the Ministry of Food and Civil Supplies (Department of Food) on the aforesaid Petition.

3.7 When asked to state since when the Retail Grain Dealers' Federation, Bombay, had been representing to Government for enhancement of the margin of profit on levy sugar, the representative of the Ministry informed that the earliest representations from the Federation in Maharashtra were received in November 1982 and January 1983. Those were referred to the State Government of Maharashtra for their views as the retailers were appointed by the State Government and they intended to get their comments on the points raised by them. They stated—"the Federation reminded us in November again and again, an interim reply was sent. Ultimately on 9-3-1984 the State Government sent their proposals for enhancement of profit margin for the retailers from Rs. 5 to Rs. 7 per quintal. This Margin Committee is in the Department of Food and a Joint Secretary is now the Chairman ; and the State Government were requested on 16-3-1984 to send their representatives to attend the meeting, and also to furnish a break-up of the distribution of the margin. Since the requested break up was not furnished, then we again, reminded. Ultimately on the 7th August, 1984 the break-up was received from the State Government but the State Government representative failed to attend the meeting. In the meantime the retail-dealers federation was reminding us. Ultimately a registered letter was sent to Maharashtra Government for furnishing the information. But even then the State Government did not send a reply. Ultimately they sent their proposals on 8-7-85."

The break-up of the margin *i.e.* the retailers' margin included transport charges, interest on investment, bank charges and commission, loading and unloading charges, administrative expenses, telephone and telegram charges, etc. For all those items they had to give credit in arriving at the figures for the retail margin. The State Government of Maharashtra had come to the conclusion that the margin might be

increased from Rs. 5/- to Rs. 7/- and for that margin they had given the following break-up :—

Transport charges	—	Rs. 3/-
Interest on investment	—	50 paise
Bank charges and commission	—	10 paise
Loading and unloading charges	—	Rs. 1.00
Other administrative expenses, such as printing, stationery, salaries, telephones, telegrams, etc.	—	Rs. 2.40
		Rs. 7.00 per quintal

They had considered that proposal in 1979 and the margin was fixed Rs. 5/- plus empty gunny bag price. The cost of the empty gunny bag was considered to be Rs. 3/- and those were A-Twil gunnies. At present, the market price of empty gunny had gone up to around Rs. 8/-.

3.8 The representative of the Ministry added that the margin was without limit, ultimately it was the consumer who had to suffer. Margin Committee had asked for the analysis as to what would be the net impact. The Federation had asked for a margin of 5% on cost of sugar. The present issue price of levy sugar was Rs. 4.85 per kg. In that way the retailers' margin was 5 paise. If it was calculated at 5% on the cost for every kg., it would come to 4 paise. Then the levy price of sugar would be Rs. 5.04 per kg. It was for the State Governments to recommend the margin of profit. They could not give more than what the State Governments recommend. It was the State Governments' responsibility to see that sugar reached the beneficiaries at reasonable price. So, they had generally been going by what the State Governments suggest if supported by facts. Any unjustified increase would effect the consumers' interests because they would have to pass on the increase to the consumers. So, we had to fix the price keeping a balance between the consumers' interests and the sellers' interests. Those were the conflicts which they would have to resolve and arrive at some conclusions.

3.9 They had also informed that during the years 1984 to 1986 the margins were revised for the following States on the requests received from the State Governments :—

Name of the State	Revised Rate	Date from which effected
1. Arunachal Pradesh	Rs. 5/-	1-10-1984
2. Madhya Pradesh	Rs. 4.66 (urban areas) Rs. 9.56 (rural areas)	—
3. Haryana	Rs. 4.42	1-10-1984
4. Karnataka	Rs. 3.50	1-10-1985
5. Tamil Nadu	Rs. 4.30	1-10-1984

Apart from those, proposals for upward revision of retailers' margins had also been received from Kerala, Rajasthan, Delhi, Lakshadweep, Gujarat and Andhra Pradesh. The meeting of the Margin Committee had already been held for Kerala, Delhi and Rajasthan, but final decision was awaited because it had asked for certain particulars from State Governments.

3.10 Regarding the uniformity of margin of profit to the retailers, the representative of the Ministry stated that it was a fact that the margin of profit to the retailers was not uniform but the difference of margin among States was not much except in rural areas of Madhya Pradesh.

They had further informed that the open market price of sugar was only marginally higher than the levy price, *i.e.* about Rs. 1.50 or so. The levy price was Rs. 4.85 whereas the open market price was Rs. 6.50 to Rs. 7.00 per kg.

3.11 In regard to suggestion for fixing the margin of profit on percentage basis, the representative of the Ministry stated that it could not be done as the upper movement of the price in sugar was caused by factors different from the transport cost, bank interest and other things. By that way, the retailer would get an unjustified increase in the margin.

3.12 When asked to state whether any scientific study had been made regarding the adequacy or otherwise of those margins, the representative of the Ministry stated that they were dependent on the State Governments to study that aspect.

3.13 When the petitioners' view was brought to the notice of the representatives of the Ministry that the Margin Committee was under wrong impression that the re-sale value of the empty gunny bag was Rs. 15/- and according to them possibly that was responsible for the rejection of their just and reasonable demands, the representative of the Ministry stated that the statement of the petitioners was not correct. The Margin Committee as well as Government had taken the value of gunny bag at Rs. 8/-.

3.14 Explaining the status and composition of the Margin Committee, the representative of the Ministry stated that the composition of the Margin Committee was as follows :—

Joint Secretary ....Chairnman (earlier the Chairman was a Deputy Secretary. It has been upgraded).

Deputy Secretary (Sugar)

Director in the Department of Food

Representative of the Food Corporation of India

Representatives of the concerned State Governments.

and their recommendations were recommendatory in nature.

3.15 The Committee desired to know when and to what extent the increase in the margin of profit in respect of foodgrains had been last allowed to the ration shopkeepers by the Maharashtra Government and further when and to what extent the increase in the margin of profit had been last allowed to the levy sugar nominees by the Central Government taking into consideration the increased expenses. Comparing this, the Committee considered how the case of the levy sugar dealer stood on different footing and why they did not deserve to be allowed increased margin of profit. The representative of the Ministry informed that regarding retailers' margin of foodgrains, the Central Government did not come into the picture. It was

the State Government who had to decide the retailers margins on foodgrains. As such they did not have information regarding the margin allowed by the State Government for rice and wheat. But thery had promised to send the requisite information later.

However, they had been requesting them not to have excessive margins. Rice and wheat commodities were highly subsidised by the Central Government. So margin between Central issue price and consumer price should not exceed 15 to 20 paise per kg.

3.16 When the Committee enquired whether the issue price of rice and wheat was sometimes altered by the Central Government directly, the representative of the Ministry stated that in the case of rice and wheat, the Food Corporation of India gave Rs. 190 for wheat and Rs. 239/- for common rice to the growers but the State Government sold wheat even at Rs. 200/- per quintal. For sugar it was Rs. 4.85 per kg. throughout the country and thercfore, they were in the picture.

3.17 To a query how the Parliamentary Committee could know about the assessed value of the used gunny bags, the representative of the Ministry informed 'The State Government will be there as marketing agency. In the abroad aspect, it is assessed at Rs. 8/-. But for 'B' Twil gunny bags, they will fetch about Rs. 6.50.'

3.18 As desired by the Committee, the Ministry of Food and Civil Supplies (Department of Food) have furnished a statement showing the present retailers margins on foodgrains in different states which may be seen at Appendix V.

D. Observations/Recommendations of the Committee

3.19 The Committee note that the gross margin of profit allowed to authorised ration shopkeepers on levy sugar at Rs. 5 per quintal plus empty gunny bag fixed in 1970 has remained static since then. In 1970, the wholesale price of levy sugar was Rs. 150 per quintal, but in 1986, it was Rs. 475 per quintal, which shows a rise of 220 per cent. The margin of profit allowed to ration shops in 1970 worked out to 3.33 per cent whereas in 1986, it came down to 1.04 per cent only.

3.20 The Committee also note the petitioners' contention that the

gross margin of Rs. 5 per quintal takes care of only transport charges and the resale value of empty gunny bag takes care of loss in transit and loss in retail sale. In addition the shop-keepers have to incur expenses on certain other items like stationery, (including printing of cash memos, maintenance of registers, etc.), interest charges, licence fee, electricity charges, payment of salaries and allowances to employees, etc. which since 1970 have increased considerably.

3.21 With respect to fixing of margin on percentage basis, as suggested by the petitioners, the representative of the Ministry stated that it could not be done as the upper movement of the price in sugar was caused by factors different from the transport cost, bank interest and other things This way the retailers will get an unjustified increase in margin.

3.22 On receipt of propasals from Maharashtra Government, this matter was last considered by Government in September, 1985 and they came to the conclusion that the existing margin of Rs 5/- per quintal plus gunny bag valued at about Rs. 8/- was reasonable and there was no scope for increasing this margin. During evidence the Committee were informed that the assessed value of the used gunny bag was Rs. 8/-, but 'B' Twill gunny bag would fetch about Rs. 6.50.

3.23 The Committee are not convinced of petitioners' plea that margin of Rs. 5 per quintal takes care of transport charges and the value of empty gunny bags takes care of loss in transit and loss in retail sale. The Committee also agree with Government that fixing of margin on percentage basis will result in unjustified increase in margin to retailers.

3.24 The Committee, however, feel that the proposals sent by the Maharashtra Government to the Ministry in March, 1984, recommending enhancement of margin of profit for retailers from Rs. 5 to Rs. 7 per quintal taking into consideration the break-up—transport charges Rs. 3, interest on investment—50 paise, bank charges and commission—10 paise. loading and unloading charges Rs. 1 and other expenses, such as printing of stationery, salaries to employees, telephones etc.—have basis and appear to be convincing.

3.25 The Committee would, therefore, like Government to have an

early fresh review of the demand of the petitioners (*not* in 1988 as it is usually done after three years) taking into account the present increase in cost in respect of items on which a shopkeeper has to incur expenses on running the ration shop and allow them reasonable margin of profit so as to eliminate malpractices prevalent in the trade for which low margin of profit is stated to be one of the factor responsible. The Committee would also like Government to review the position for the country as a whole, so that in all cases where the margin is low, reasonable margin of profit is allowed to the shopkeepers.

REPRESENTATION FROM SHRI AMBA PRASAD, HONY. SECRETARY, KAYMES COOPERATIVE GROUP HOUSING SOCIETY REGARDING ALLOTMENT OF LAND BY DELHI DEVELOPMENT AUTHORITY

4.1 Shri Amba Prasad Hony. Secretary, Kaymes Cooperative Group Housing Society Limited, Sucheta Bhawan, 11-A, Vishnu Digamber Marg, Rouse Avenue Lane, New Delhi, has addressed a representation dated 6 March, 1986, regarding allotment of land by Delhi Development Authority.

A. Petitioner's grievances and prayer

2. In his representation; the petitioner has stated as follows :—

"We are victim of high-handedness and casual attitude of the DDA which can be vouchsafed from the facts given hereunder.

(1) We have a Cooperative Group Housing Society which was registered in the year 1972 (R. No. H-124).

(2) The Registrar Cooperative Society and the DDA were immediately approached to allot land as per policy of the Government.

(3) The Society was allotted land in 1977 but the letter was sent to our previous address at Theatre Communication Building, which had been demolised by the DDA. There was no reply to our various letters.

(4) With great difficulty, we could revive the society and make DDA agree to allot land in 1980.

(5) Ultimately the DDA offered land in Geeta Colony, East

Delhi, on 29.6.1982 and we deposited Rs. 9,08,450.40 in March, 1982 within the time prescribed by DDA.

(6) After depositing full amount, we waited for several months and the actual allotment of 4.1 acres land came on 7.7.1983. This piece of land allotted to several societies was under dispute and case pending with the Estate Officer, DDA. The cultivators got stay from the court, which was not contested by the DDA and therefore, possession could not be given to the Society.

(7) We approached DDA again and again but they could not do anything. With great difficulty we could get alternative land inside Geeta Colony on 27.12.1984. This piece of land also had several deficiencies and the DDA knowingly passed on the possession.

(i) There is notified quabristan (burial ground) on the land to the best of the knowledge of the DDA. Inspite of this, land was allotted.

(ii) There is one public toilet block without any septic tank and outlet and total sullage is discharged on the land. One Dhalao (filth collecting) also exist.

(8) The D.D.A. was forced by the L.G. to surrender quabristan portion to Waqf Board and therefore 3.3 acres land was re-allotted on 6.9.1985.

(9) Inspite of all these deficiencies, we went ahead and prepared site plants which were submitted to DDA on 9th October, 1985 for approval.

(10) The latest blow has now come that this piece of land is not acceptable to Delhi Urban Arts Commission and the structure plans cannot be approved. There is dispute between DDA and DUAC and the stalemate is not being solved.

(11) The DDA is keeping hard earned money of the members of the society without paying any interest and does not

bother to expedite matters to enable society to take up construction.

The costs of the construction are rising continuously and it is becoming heigh impossible to own a house for a middle class person.

Inspite of our repeated requests, personal meetings and representations, the DDA does not move and take interest in solving the problems. The society has spent more than Rs. two lakhs on boundry wall, tube-well and horticulture and is at a loss to know when plans will be cleared by the DDA.

We, under the circumstances, have no remedy but approach you that you may kindly use your good offices and get us justice from the DDA. Eight hundred members belonging to six group housing cooperative societies allotted land in Geeta Colony, are suffering and we look to you for redressal."

B. Comments of the Ministry of Urban Development

4.3 The representation was forwarded to the Ministry of Urban Development on 11 March, 1986 for furnishing their factual comments thereon. In their factual note, dated 19 May, 1986, the Ministry have stated as follows :—

(i) It has been reported by the DDA that the Kaymes Cooperative Group Housing Society was allotted land measuring 4.1 acres in Geeta Colony against total cost of Rs. 9,08,450/-. The Society has 246 members. Possession of the land originally offered to the Society near Geeta Colony could not be given as the unauthorised cultivators brought a stay order against the DDA. Thereafter, an alternative site was proposed in the same vicinity and possession of the land measuring 3.3 acres as against the original allotment of 4.1 acre was handed over to the society on 6.9.1985. The remaining land measuring about 0.8 acre has not been handed over to the Society due to encroachment at the site.

(ii) The Society had submitted the building plans to the DDA for approval. Plans have not so far been approved by the DDA because the DUAC did not entertain the structural plan submitted by the Society on the ground that the detailed survey plans of the area have not so far been approved.

(iii) The Society has also requested for allotment of the remaining land measuring 0.8 acres and has suggested that if it is not possible for the DDA to allot the land in the same vicinity, alternative land may be allotted in the nearby area. The DDA has already taken a decision to allote and in Patparganj near D.T.C., Depot to two other Societies. The Authority is exploring the possibility of alloting land measuring 4.1 acres to the Kaymes Cooperative Group Housing Society also in Patparganj.

(iv) In addition to Kaymes Cooperative Group Housing Society, land has been allotted by the DDA to a few other Group Housing Societies in Geeta Colony area. The DUAC has considered the layout-cum-development plan for Geeta Colony complex for Group Housing Societies and advised the DDA to formulate the comprehensive proposal for the area giving complete details of the existing pattern of development, road net work, open spaces, tot-lots, parks and locations of community facilities etc. for proper evaluation. This Ministry have also advised the DDA to finalise the structural plan of the area in consultation with the DUAC within a specified time schedule followed by quick approval of the layout/site plans submitted by the individual societies."

C. Evidence before the Committee

4.4 The Committee on Petitions considered the matter at their sitting held on 27 June, 1986. The Committee were not satisfied with the replies furnished by the Ministry of Urban Development and decided to take oral evidence of the petitioners and representatives of the Ministry of Urban Development, DDA and D.U.A.C.

(*a*) *Evidence of the petitioners—the representatives of the Kaymes Group Housing Society*

4.5 The Committee heard the oral evidence of the petitioners on

the points raised in their representation regarding allotment of land by Delhi Development Authority to their Society *i.e.* Kaymes Cooperative Group Housing Society, at their sitting held on 9 September, 1986.

4.6 At the outset, the representatives of the Society stated that their Society was registered in 1972. At the time of registration of the Society, its strength was 158 but the membership as on 31.5.1981, when it was forzen, was 246.

4.7 The Society approached the DDA and the Registrar, Cooperative Societies for allotment of land in 1973. Certain land was allotted in Pitampura. It was in 1976 that DDA had sent an offer of allotment of land in Pitampura, but the letter of allotment was sent at their old address in Theatre Communication Building in Connaught Place, inspite of the fact that they had intimated DDA about their changed address. When asked whether change in address was communicated to DDA by registered post, the petitioners informed the Committee that it was sent by ordinary post but the letter was in DDA's file, which they had seen. They also stated that the Theatre Communication Building was demolished by DDA itself and that the letter of allotment should have been sent to the Registrar, Cooperative Societies.

4.8 It was represented to the Committee that with great difficulty, they made DDA agree to allot land in 1980. Under Cooperative Societies Act, 1970, the Registrar issued notification to DDA and to all those Societies which had not started any activity that they could be put under liquidation. According to him 56 or 58 Societies were put under liquidation as those were not interested in getting land. Their Society had approached the Registrar in this regard and letter was written to the Registrar that they were interested in getting the land. As such, their Society was not put under liquidation. On the basis of the letter issued by Registrar, DDA agreed to give 4.1 acres of land to the Society in 1980 in trans Jamuna area.

4.9 The representatives of the Society informed the Committee that they had given first-preference for allotment of land in CBD Shahdara, second for Geeta Colony and the third for Patparganj area. They further stated :—

"Our society was registered in 1972 and CBD, Shahdara was our

first preference. But inspite of that, even though we had deposited the money within two months—the time given to us by the DDA—we were not given the land in CBD, Shahdara."

DDA had accommodated 7-8 societies in CBD, Shahdara, but their Society registered in 1972 was not allotted that land.

4.10 Giving details about the allotment of land to the Society. the petitioners informed the Committee that allotment of land in Geeta Colony was made in 1983. The witness stated that this land was on lease basis with the Milk Producers' Society and the case was pending in the court of DDA itself. But in spite of that they allotted this land to us. When we went for taking the possession of the land, on the same day the case went to the sub-Judge and the land was stayed. After this, the land in Geeta Colony came under dispute. They allotted us another piece of land in 1983. It was inside Geeta Colony but it was a notified *'Kabristan'*. Without bothering that communal tension will be created, this land was allotted to us. We again went to LG and in good faith we said we surrender this land. Again we were offered 3.3 acres of land in Geeta Colony. This land was reallotted on 6.9.1985.

The witnesses further informed the Committee that the ultimate problem they were facing was that the Delhi Urban Arts Commission was not allowing any construction activities on this land. A meeting between DDA and DUAC was held in January, 1986 when the structural plans of the area were considered, but nothing fruitful came out. Then Vice-Chairman DDA, had a meeting with officers and offered land in Patparganj, which the petitioners had accepted, though they did not give it in writing. Later on DDA stated that it was not possible to allot any land to any Group Housing Society in Patparganj.

4.11 Explaining their hardships to the Committee, the witness added that they had deposited Rs. 10 lakhs in March, 1982, as asked for by DDA. The Society had spent Rs. two and a half lakhs on constructing boundary-wall, tube-well and horticulture.

4.12 In reply to a question whether they had taken prior approval for construction boundary-wall, the witness informed the Committee

that in order to prevent encroachments on land boundary-wall was constructed. DDA through a letter had asked them to protect the land and submit a plan to them which was submitted but was not approved by them.

4.13 To a query whether DDA was paying any interest on the amount deposited by them and whether the Society had reminded DDA in this regard, the petitioners explained that no interest had been paid to them. They had requested them that it should be paid to them at bank rate and had issued 2 or 3 reminders also. When asked what do they say, the witnesses informed the Committee that "they did not give any reply. They do not say anything. Whenever we go to any officer, he says we are looking into the matter. The Vice-Chairman does not give the interview."

Further elucidating their hardships, the Chairman of the Society told the Committee that "I have withdrawn Rs. 25,000 from my provident fund about four years back. This amount would have doubled if it was there in my provident fund account."

4.14 About four years back when they had deposited the amount with DDA, the cost of construction was Rs 50/- at that time, which was now Rs. 250/-. The cost of construction was rising continuously. The members of their Society were retiring but the houses had not been constructed so far.

4.15 When asked what actually did they want now, the petitioners proposed two alternatives for their problem. One was that DDA and DUAC should sit together and try to adjust the deficiencies pointed out by the DUAC, try to develop community services and approve the plan submitted already.

About 6 Societies and 800 families were involved. The other alternative was to give some land somewhere and also compensation. If they would provide land in Patparganj area, the same would be acceptable to the Society. They should have the prior approval of the DUAC. The petitioners pointed out that according to the instructions of the Ministry of Housing, the community services in that area should be examined by DUAC. Another land near Patparganj with compensation should be allotted to the Society and for that there should be time-bound programme.

(*b*) *Evidence of the representatives of the Ministry of Urban Development, DDA and D.U.A.C.*

4.16 The Committee also examined the representatives of the Ministry of Urban Development alongwith those of the Delhi Development Authority and Delhi Urban Arts Commission on the points arising out of the representation regarding allotment of land by DDA to Kaymes Cooperative Group Housing Society at their sitting held on 9 September, 1986.

4.17 Stating the policy followed by DDA in allotting land at CBD Shahdara, the representative of DDA stated that allotment of land to Group Housing Societies started from 1972. From 1972 to 1979, land measuring 80 hectares was allotted to 79 Societies. Between 1980 and 1986, there were 424 Societies out of which 225 had been allotted land in trans-Yamuna areas and remaining in areas other than trans-Yamuna area. In the trans-Yamuna area there were five or six locations like CBD, Shahdara, Mayur Vihar-Phase I, Mayur Vihar Phase II, Dallupura, Geeta Colony, Kondle and Mandavali Phazalpur. Allotments to 225 Societies were being made in CBD Shahdara to six Societies, in Mayur Vihar Phase II to 22 Societies; in Dallupura to 50 Societies; in Geeta Colony to six Societies and Mandavali Phazalpur to 111 Societies.

4.18 When asked to state the criteria adopted for the allotment fo land to the Societies, the representatives stated that in 1980-81, applications were invited and on the basis of seniority, allotments were made. The best pockets were supposed to be CBD Shahdara and Geeta Colony because of location.

4.19 The Committee desired to know from the witnesses what were the grounds for declaring the Kaymes Cooperative Group Housing Society as liquidated by DDA, while the Registrar of Cooperative Societies had given a certificate to the Society that it was never in liquidation, the representative of DDA, while elucidating the reasons, stated that at one point of time the Registrar had ordered liquidation but subsequently on an application made by the Society, that order for liquidation was withdrawn. When the application was made to the DDA for allotment, the Society was not in liquidation. At a later stage

the position in this regard was clarified to the Committee by the representative of DDA as follows :—

> "I would like to clarify as far as liquidation aspect is concerned, I find from the record that a show-cause notice was issued by the Registrar to the Society as to why the Society be not brought under liquidation. This show-cause notice was issued in 1978 by the Deputy Registrar to which reply had been given by the Society. Since the show-cause notice had been issued to the Society the Registrar had informed us not to allot the land to the Society. It was towards the end of 1979 that they requested us that we should further process their case for allotment of land."

4.20 It was pointed out to the witnesses that the Society had incurred an expenditure of Rs. two lakhs on boundary wall and other development items, as societies were expected to protect land allotted to them. Asked whether DDA will compensate the Society for the loss as that particular land could not be used by them for reasons beyond their control and on account of the fault of DDA in making allotment of land to them, the representative stated that they would try and see whether they could be allotted land at the same place. There was a bit of conflict in that area as 0.8 acres of land claimed by Wakf Board. In view of the sensitiveness of the matter, it could not be pushed through. The dispute was about 0.8 acres. They would see that the balance of 3.3 acres was allotted there itself. There was also a problem as the site had not been approved yet by the Delhi Urban Arts Commission. They were in the process of sorting out. There were other land. These were given to Jheel Kuranja Milk Producers' Cooperative Society on licence fee basis. When the licensed tenure was over, they were asked to vacate. They got a restraint order on 8 July, 1983 and the stay was still in operation. Due to this problem it could not be handed over. Alternative sites were sought but the DUAC thought that they should not be made use of as otherwise the sites meant for community facilities would be taken away.

4.21 To a query whether DDA would pay interest on the amount of Rs. 9 lakhs deposited by the Society in March, 1982, the representatives stated that there was no provision for giving interest on it. When

pointed out that DDA was charging heavy interest on delayed payment of instalments, they pointed out that it was in respect of flats constructed by DDA.

4.22 When asked to state the reasons for allotment of *Kabristan* land to the Society in the initial stage, the representative of the Ministry stated that the entire chunk of 4.1 acres was alloted to them. When it was found that 0.8 acre was being claimed by the *Wakf* Board, they put 3.3 acres for the Society. It was further stated that it was a *nazul* land transferred to them. At the time they had planned to allot it to the Society, they were unaware of its being a *Kabristan*. That fact came to their knowledge later on, when certain objections were raised. That matter was placed before the DUAC. That entire area was initially encroached and there were quite a few colonies, including the Geeta Colony which were, what we call irregular colonies which subsequently, were being regularised on purely humanitarian grounds. These areas did not have facilities like roads, parks, schools, community halls and shopping centres So, it was the anxiety of DUAC that to the extent possible there should be development of these facilities. They wanted the DDA to give them a total plan for the area. That had taken a little time and they were at it. They had, as a matter of fact, prepared a plan and they were going to place it before DUAC again.

4.23 To a question whether the Society had intimated about the change in their address and the date of intimation; and justification for sending of allotment letter at the Society's previous address at Theatre Communication Building in Connaught Place when the building was demolished by DDA themselves, the representative of the Ministry, stated :—

"The facts will be fully verified as to when the orders were issued, whether in the issue of the orders there was any failure of communications etc. As the Members and the Hon'ble Madam Chairman would be aware, in Delhi the date of registration of the society is no index in regard to its getting the land. There is a time lag between the registration of the society and the availability of land. In between, there may be changes like societies going into liquidation, some of their members leaving and all that. So, before the land allotment becomes ripe, it is the duty of the Registrar to check up

whether the Society is actually functional, whether all its members are there and whether there has been any change in the status of the society. After that the Registrar sends a certificate to the DDA saying that such and such a society is eligible and according to his opinion it is functional and it is in a position to take over the allotment of land."

It was later on stated by the representative of DDA that the records had been checked and the letter was sent by the then Deputy Housing Commissioner to the then President of the Society (Shri J.S. Dara). The letter was daied 3 February, 1975 and the next letter was of 27 February, 1979 from DDA to the Secretary of the Society. There was no lapse on the part of the DDA. They had sent the allotment letter taking the latest address of the Society from the Registrar. They were informed that the Society had been wound up and their case was treated as closed. When the case of revival of the Society came up, they made the allotment in the Geeta Colony. They got their letter on 26 October, 1978 stating that the letter was sent to Theatre Communication Building which had been demolished in Emergency and they gave their new address somewhere in Naiware, Delhi.

4.24 When asked to state the present position about the allotment of land to the Society, the representatives stated that they would get land either in Geeta Colony or about two and a half Kms. away *i.e.*, Mandavali, Phazalpur area. If the DUAC approved that Geeta Colony area then they would get that land or they would be given in Mandavali—Phazalpur area. The matter would be finalised shortly. The Secretary, DUAC, informed the Committee "since it is a question of change of land use the case will be put up before the Delhi Urban Arts Commission. I will put it up within a fortnight."

4.25 In reply to a question about the time taken for change of land, the representatives stated that it could easily take a year or so. The decision to allot land to 225 Societies was taken in 1980-81. In 1981-82 sites were selected in trans-Yamuna areas for 225 Societies. They prepared the plan for 6—7 locations and then the question of approval of the structural plan came. It was considered that structural plan should be prepared and green linkages decided so that persons

would go from one point to the other as that would be better. From 1983-84 plans were being submitted to DUAC.

4.26 When the Committee pointed out to the witnesses that the Ministry of Urban Development had advised DDA to finalise the structural plan of the area in consultation with DUAC within a specified time schedule followed by quick approval of the lay out site plans, the representative of the DDA assured the Committee that it would be done in three or four months time, subject to clearance by DUAC.

4.27 The representative of the Ministry, however, stated "So, I think the procedures can be undergone within three months, but when there are supervening/intervening factors over which neither the Ministry nor the Department nor the DDA has control, things have dragged on So, these factors have to be taken care of. I think this assurance of a decision being taken—a final decision being arrived at within four months—that assurance stands".

4.28 Secretary, Kaymes Cooperative Group Housing Society Ltd., in his letter (Appendix VI) dated 27-3-1987, addressed to the Chairman, Committee on Petitions, enclosed a copy of the following resolution, expressing their gratefulness to the Committee, passed by the General Body of the Society at their meeting held on 8-3-1987 :—

> "This meeting of the General Body of Kaymes Cooperative Group Housing Society Ltd. expresses its sincere gratitude to Begum Abida Ahmed and Hon. Members of Committee on Petitions, Lok Sabha, for giving us an hearing and listening to our grievances relating to allotment of land in Geeta Colony by DDA. It was but with their intervention that structural plans were cleared by Urban Arts Commission. We thank them for their magnanimity and help given to the Society."

4 29 In their note (Appendix VII dated 16-4-1987, the Ministry of Urban Development informed the Committee that 3.3 acres of land was being provided to the Society in Geeta Colony and the balance area of 0.8 acres had been proposed in Mandawali-Fazalpur extended area.

D. Observations/Recommendations of the Committee

4.30 The Committee, note that the Kaymes Cooperative Group Housing Society Ltd., which was registered in 1972, approached Regis-

trar Cooperative Societies for allotment of land in 1973 and having failed to get land from the Delhi Development Authority represented to the Committee on Petitions on 6-3-1986. The Society was allotted land several times but it could not be put to use by the petitioner on one ground or the other *viz.* allotment letter sent on wrong address to the Society, making available disputed land, land allotted on which there was notified burial ground and finally the allotment of land was made at a place the structural plans of the area in respect of which had not the approval of the Delhi Urban Arts Commission.

4.31 The Committee also note that non-allotment of land by DDA for more than 12 years or so has resulted in great hardships to the members of the Society in the form of rise in cost of construction, which according to petitioner has risen five times and non-payment of interest on rupees ten lakhs deposited by the Society with the DDA in March, 1982. Among the members of the Society, there are Government employees also who have taken money from their Provident Funds which on accrual of interest thereon, according to the petitioner would have been doubled.

4.32 The Committee strongly feel that public dealing organisations need to function in a most efficient and sympathetic manner for the benefit of the people and DDA in the Matter of allotment of land to this Society have taken unduly long time, and exhibited their true style of lethargic and careless functioning which the Committee are sorry to deprecate. The problems like allotment of disputed land or land having burial ground, approval of structural plan of the area by DUAC etc. are not those which cannot be foreseen if due care is taken at various levels and these should have been identified and settled well in advance of the allotment of land. This typically depricable style of functioning of DDA, has not only caused unnecessary harassment to the members of the Society but also resulted in financial loss to them. Complaints of this nature are not uncommon with DDA to say the least. The Committee recommend that Government should review the procedure followed by DDA in the matter of allotment of land to the Societies in all its ramifications so that the delays and the problems faced as in the present case are not repeated any more.

4.33 The Committee are surprised to note that the Society which deposited Rs. 10 lakhs in March, 1982, will not be paid any interest by

DDA. The Committee were told that with respect to flats, DDA charge heavy interest from the defaulters who do not pay instalments in time. Further, DDA also pay interest to allottees on flats on the deposits made by them at the time of registration and also in such cases where the handing over of flats by DDA, within the prescribed limit, is delayed. In such cases the interest is paid on the delayed period only. In the interest of justice and the fact that payment of interest by DDA may lead to an efficient management and early solution to problems discussed above, the Committee would like Government to examine the question of payment of interest to Societies depositing money with DDA to whom land is not properly allotted or delayed by DDA and let the Committee know the result of their examination and action taken in the matter.

4.34 The Committee are happy to note that the assurance given to the Committee by the representatives of the Ministry of Urban Development, DDA and DUAC, during official evidence in September, 1986, for allotment of land to the petitioner has been fulfilled by them and 3.3 acres of land is being provided to the Society. The balance area 0.8 acres to the Society is proposed in another area, in which case the change of land use from 'industrial' to 'residential' is being processed.

V

REPRESENTATION FROM SHRI T.K. RAGHAVAN, TAMIL NADU REGARDING REVIVAL OF CENTRAL FREEDOM FIGHTERS PENSION

5.1 Shri T.K. Raghavan FF/SO, Kuppuramyer, Sunder Nagar, Ramanathapuram District, Tamil Nadu, had addressed a representation regarding grant of freedom fighters pension from the Central Revenues.

A. Petitioner's grievances, demands and prayer

5.2 In his representation, dated 14 January, 1986, the petitioner had given names of three persons who were getting the freedom fighters pensions on the recommendations of Tamil Nadu Government but his name had not been recommended by Tamil Nadu Government for revival of the pension inspite of his repeated requests for the last 11 years.

5.3 The petitioner had requested for help in getting revival of freedom fighters pension of Central Government.

B. Comments of the Ministry of Home Affairs (Freedom Fighters Division)

5.4 The representation was forwarded to the Ministry of Home Affairs on 1 May, 1986, for furnishing their factual comments thereon. The Ministry of Home Affairs (Freedom Fighters Division), while furnishing their comments on 8 July, 1986, stated as follows :—

> "Shri T.K. Raghavan S/o Shri Kuppusamy Iyyer, had applied for grant of freedom fighters pension from the Central Revenues under the Pension Scheme, 1972, claiming jail suffering for more than six months in the 1942 freedom movement. He had produced co-prisoner Certificates of Shri V. Muthu, and Shri P.S. Chinnadurai, Ex-MLAs in support of his claimed jail suffering in Alipuram Camp Jail, Bellary. The pension was

sanctioned provisionally to Shri Raghavan on the basis of these co-prisoner certificates pending State Government's verification report. However State Government's verification report was received thereafter wherein State Government of Tamil Nadu had initially recommended the case of Shri Raghavan for grant of freedom fighter's pension.

It may be stated that neither the certifiers nor the applicant had mentioned any specific period of imprisonment suffered by him. It is seen from the applicant's affidavit dated 1.8.1973 that he was sentenced to 6 months imprisonment and suffered the same in Alipuram Bellary Jail and returned home in July, 1943. It means that he entered Bellary Jail sometime in January, 1943 as a convicted prisoner. According to the information of this Ministry Alipuram Camp Jail record in respect of convicted prisoners for January, 1943 is available. According to the State Government's inquiry report, jail admission register kept at Bellary Central Jail, which is administratively in charge of Alipuram Camp Jail, now defunct, Shri Raghavan was not in Bellary Central Jail at the relevant time.

Thus the applicant's pension was cancelled because his claimed jail suffering did not have any record in the Alipuram Camp Jail. Bellary. Moreover, the pension has already been suspended/cancelled in all cases which have come to the notice of this Ministry where co-prisoner certificates of Shri V Muthu, Ex-MLA has been furnished as evidence of jail suffering, as he was found to have given certificates indiscriminately."

C. Observation of the Committee

5.5 The Committee note from the reply furnished by the Ministry of Home Affairs that the applicant's pension was cancelled because his claim that he had undergone jail suffering was not supported by the record in the Alipuram Camp Jail. Bellary. Moreover, the pension has been suspended/cacnelled in all cases where it has come to the notice of the Ministry that co-prisoner certificate of Shri V. Muthu, ex-MLA, has been furnished as evidence of jail suffering, as he is found to have given certificates indiscriminately.

The Committee feel that in view of the position stated by the Ministry of Home Affairs, there is no cause for their intervention.

VI

REPRESENTATION REGARDING REGULAR APPOINTMENT IN RAILWAYS

6.1 Shri Bimal Saha, Nutan Bazar, P.O. Naihati, Distt. 24-Parganas, West Bengal, and others have addressed a representation regarding regular appointment in Railways.

A. Petitioners grievances, demands and prayer

6.2 In their representation, (*See* Appendix VIII) the petitioners *inter alia* stated as follows :—

"That we all the signatories of the Joint application have also rendered our valuable service in connection with passing of Goods Trains from Naihati Yard and other Yards and helped the Railway Administration in the serious difficult period of All India Railway Strike commeneing from 8.5.1974.

XXX XXX XXX

That during the above All India strike period, the Hon'ble authorities of Railways Administration gave us various assurances that our names will be recognised recorded as loyal Government servants and they will certainly provide us in Railway Administration by way of regular appointment as a special case on "Top Priority" basis.

XXX XXX XXX

That we repeatedly requested the authorities of Sealdah Division, Eastern Railway, Calcutta, to regularise our service matter by way of allowing us to resume normal duties as usual and issue of regular appointment letter/office order in our names as promised by the Railway Authorities earlier.

We, therefore, request your kindself to consider our pitiable distressed pecunary condition and your honour will be

pleased to see that our service matters are settled as a special case on Top Priority basis."

B. Comments of the Ministry of Transport (Department of Railways)

6.3 The representation was forwarded to the Ministry of Transport (Department of Railways) on 10 December, 1985 for furnishing their factual comments thereon. The Ministry of Transport (Department of Railways) while furnishing their comments on 24 January, 1986 and 11 April, 1986 have, *inter alia*, stated as follows :—

"On scrutiny by the Eastern Railway Administration of the records relating to May, 1974 strike, it could not be substantiated that Shri Bimal Saha and other representationists rendered voluntary service during the strike period.

The position is that from the photocopy of the certificate it appears that the certificate was issued by a Divisional Engineer, Eastern Railway, who has retired long back. No documents are available with the Sealdah Divisional Authority at this distant date to verify the certificate. Also there are no instructions/policy in regard to regularisation of services of volunteers who had to be engaged to cope with the emergent situation prevalent at the relevant time. Further, the instructions regarding employment of wards of Railways employees, who remained at their posts during May, 1974 Railway strike, ceased to be in force almost a decade ago and during this period, this Department has had to turn down several such requests.

XXX XXX XXX

In the circumstances, it will be appreciated that even if the candidates had actually rendered voluntary service during May, 1974 strike, it will not be possible to offer them appointment in Railway service."

C. Observations of the Committee

6.4 The Committee note from the comments furnished by the then

Ministry of Transport (Department of Railways) that no documents are available with the Sealdah Divisional Authority at this distant date to verify the certificates issued by a Divisional Engineer, Eastern Railway, who has retired long back. There are also no instructions/policy in regard to regularisation of services of volunteers, who are engaged to cope with the emergent situation prevalent at the relevant time.

The Committee, in view of the position stated by Railways, have decided not to pursue the matter further.

VII

REPRESENTATION REGARDING MODIFICATION/REPEAL OF SECTION 7 OF THE LIMITATION ACT 36 OF 1963

7.1 Shri Kantilal T. Doshi, Siroli, Submitted a representation dated 8 May, 1986 regarding modification/repeal of Section 7 of the Limitation Act 36 of 1963.

A. Petitioner's grievances and prayer

7.2 In his representation, the petitioner had stated as follows :—

"Some rigid sections in the Limitation Act, 1908 were not modified at the time of enactment of new Limitation Act No. 36 of 1963 as per verdict of the Supreme Court of India (AIR 1974 S.C. on page 338).

As per Section 112 of the Limitation Act 36 of 1963, a period of 30 years has been provided in this Act for recovery against citizens of India including Government personnel by the Government while in contrast 3 years has been provided as per Section 7 of the Limitation Act No. 36 of 1963 for recovery against Government. It is unjusticiable as well as against Indian Constitution Articles 14, 16, 19 (1) (f) and 311 as well as Section 240 (2) of the Government of India Act, 1935.

Millions of the Government personnel's cases (services cases) in respect of due salaries, pension and gratuity are still hanging on tree in the Civil Courts, High Courts and Supreme Court of India which takes from D.J. Court to S.C. 15 to 20 years only on the point of limitation because the Government advocate is having no plea except period of limitation.

Due to such, Section 7 of the Limitation Act 36 of 1963, the liability never ceases as per sub-section 3 of the Section 7 of the Limitation Act 36 of 1963.

The limitation is inside the court and not outside. If the master would have paid due salaries, pension, gratuity to his servant in time, no question arises to seek jurisdiction of the Court.

Hence Section 7 of the Limitation Act 36 of 1963 should be modified from retrospective effect or should be repealed.

Further the citizens of India should be allowed 12% interest per year to be compounded annually on the sums due in respect of salaries, pension and gratuity from date of accrual till payment as per N.S.C. interest of Postal Department, Income-tax refund practice (AIR 1966 S.C. on page 81).

I think there is no period of limitation of Ministers, MLAs MLCs and MPs of both Houses so there should be equal justice."

B. Comments of the Ministry of Law and Justice (Department of Legal Affairs)

7.3 The representation was referred to the Ministry of Law and Justice (Department of Legal Affairs) on 27 May, 1986, for furnishing their factual comments thereon. In their note dated 12 June, 1986, the Ministry stated as follows :—

"It has been repeatedly held by the Supreme Court that claims for arrears of salary falls within the purview of Article 102 of the Schedule to Limitation Act 1908 and not under the residuary Article —No. 120 of that Act. The Limitation Act of 1908 has been repealed by the Limitation Act, 1963. Articles 7 and 137 in the Schedule to the latter Act are verbatim the same as Articles 102 and 120 respectively in the repealed Act of 1908.

Supreme Court had earlier held in *Shri Madhav Laxman Vaikunthe* vs. *State of Mysore* AIR 1962 page 8 following the ruling in Tarachand's case (AIR 1947 FC page 23) that Article 102 of the 1908 Act applied to a suit for arrears of salary and limitation of three years would start running for such case

in respect of salary which *became due for payment*. The contention that limitation in a case for arrears of salary should start running only when the right to claim salary was established by the Court in respect of all the past arrears had been repealed. The same point was agitated in *Sakal Deep Sahai Srivastava* vs. *UOI*, (AIR 1974. SC page 338) and the Court relying upon its earlier judgement held that since the Parliament did not choose to modify language of Article 102 of the earlier Act while enacting 1963 Act, it had accepted the decision of the Court as correct although an argument to the contrary was also possible. (Reference to various Article in the Schedule to the Limitation Act is wrongly termed as reference to "Sections" in the representation). Thus, the question of limitation applicable to a suit for arrears of salary is fully settled by the judicial decisions referred to above.

Article 112 in the Schedule to the 1963 Act provides a limitation of 30 years for a suit to be filed by or on behalf of the Central Government or State Government irrespective of any different period provided for like suits if the suits are filed by or on behalf of the citizens. This longer period of limitation has been provided in respect of such suits keeping in view the needs and procedural delays in the matter of Government working. In fact, under 1908 Act the period of limitation for such suit was 60 years which has been brought down to 30 years under the latter Act. It cannot be said that a different period of limitation in respect of suits by the Government is discriminatory in nature and as such violative of Articles 14, 16, 19 (1) (f) of Article 311 of the Constitution as contended in the petition.

The fact that a large number of cases are pending in the various civil courts right up to the Supreme Court in respect of arrears of salary, pension etc., is no ground to pose any legal or otherwise justifiably challenge to the provisions made in the Schedule to 1963 Act. In fact, the establishment of Central Administrative Tribunals to deal exclusively with service matters by or against the Government servants will go a long way in reducing the arrears of such cases and also bring

down the time normally taken for disposal of such cases. There is a wrong surmise in the petition that "there is no period of limitation for Ministers, MLAs, MLCs and MPs of both Houses .....". In fact period of limitation is the same in respect of these functionaires as available to ordinary citizens and there is absolutely no discrimination in this behalf.

There is also a suggestion that interest should be allowed at 12% per annum in respect of arrears of salary for delayed payment of such arrears. Normally, there is no delay in the payment of salary which is due. In case, there is any dispute on the question whether at all any payment is due, the matter is taken to the Court, now the Administrative Tribunals set up under 1985 Act and the same is decided by the Court. No law is required to be made in this behalf. The reference to the ruling (AIR 1966 SC page 81) in this behalf does not appear to be relevant."

C. Observations of the Committee

7.4 The Committee note from the factual note furnished by the Ministry of Law and Justice (Department of Legal Affairs) that claim for arrears of salary falls within the purview of article 102 of the Schedule to Limitation Act, 1908 and not under the residuary article No. 120 of that Act. The Limitation Act of 1908 has been repealed by Limitation Act, 1963. Articles 7 and 137 in the Schedule to the latter Act were verbatim the same as Articles 102 and 120 respectively in the repealed Act of 1908.

The Committee also note that article 112 in the Schedule to the 1963 Act provided a limitation of 30 years for a suit to be filed by or on behalf of the Central Government or State Government irrespective of any different period provided for like suits filed by or on behalf of the citizens.

Further, with regard to petitioner's suggestion that interest should be allowed at 12% per annum in respect of arrears of salary for delayed payment of such arrears, the Committee note that normally, there is no delay in the payment of salary which is due. In case, there is any dispute on the question whether at all any payment is due, the matter can be taken up with the Administrative Tribunals set up under 1985 Act.

The Committee in view of the position stated by the Ministry are of the opinion that no intervention in the matter is called for on their part.

VIII

REPRESENTATION FROM SHRI A. S. RAMAKRISHNAN, TELEPHONE OPERATOR, KERALA REGARDING FIXATION OF PAY

8.1 Shri A. S. Ramakrishnan, Retired Telephone Operator, Narangaparampil House, P.O. Kavalappara, Kerala, addressed a representation dated 10 February, 1986, regarding fixation of pay on re-employment in P&T.

A. Petitioner's Grievances, Demands and Prayer

8.2 In his representation (*See* Appendix IX), the Petitioner, *inter alia*, stated as follows :—

"I am an Ex-serviceman (JC-26459 EME) re-employed as a Telephone Operator with effect from 22-10-74 and retired from that service on 31-5-84 (AN). On my re-employment in the P&T Deptt., I was paid the minimum of the scale of pay of Rs. 260/- p.m. In the year 1980 my pay was fixed taking into account my Army Service of 28 years and the pay last drawn in the Army. Unfortunately, when the fixation was done based on rules and regulations and its interpretation, my pay was fixed at Rs. 221/- p.m. as against Rs. 260/- (Minimum of the scale) drawn by me and the over payment was recovered.

** ** **

It is a pity that I have gained in my 28 years of Army Service, a basic pension of Rs. 170/- p.m. should be a cause for fixation of my pay at a lower level. What I have drawn in the re-employed service, Rs. 260/- (minimum of the scale) plus pension of Rs. 170/- total Rs. 430/- whereas I would have been eligible for Rs. 480/- (maximum of scale) if my

Army Service is taken into account. If there are rules which stand in the way of doing justice, those should be amended.

** ** **

In this connection I am enclosing a copy of Ministry of Defence O.M. No. F. 5 (14)—E—III (B)/77 dated 19 July, 78 and O.M. No. 2 (I)/83 D(Civ-I) dated 8 Feb. 83. Your particular attention is drawn to the sentence under-lined. The Government has declared a benefit to the re-employed Ex-servicemen that the pension upto Rs. 125/- entire pension be ignored at the time of fixation of pay. In order to undo its effect they have added the setence that those who opt for these benefits would be considered as new entrants, thereby denying the increments already earned to the re-employed persons. I have lost 8 increments of Rs. 8/- and a total of Rs. 64/- p.m. plus DA and other allowances.

My humble prayer before you is that some thing be done urgently to do justice to the unfortunate ex-serviceman like me by ordering refund of the overpayment already made and by deleting the offending sentences from the Government letters referred to above, so that those already in service may not be considered as new entrants for the purpose of fixation of pay."

** ** **

B. Comments of the Ministry of Communications

(Department of Telecommunications)

8.3 The representation was forwarded to the Ministry of Communications, Deptt. of Telecommunications on 25-3-1986 for furnishing their factual comments thereon. The Ministry of Communications, Deptt. of Telecommunications, while furnishing their comments (*See* Appendix X) on 24-4-1986, *inter alia* stated as follows :—

"The fixation of initial pay of ex-servicemen on their re-employment in this Department is normally dealt with under the provisions contained in the Ministry of Finance Office

Memorandum No. 8(34)—EST. III/57 dated 25-11-1958, as amended from time to time. Under these orders, the initial pay of a re-employed official could be fixed at a higher stage than the minimum of the time scale by allowing one increment for each year of service, which the official has rendered before retirement in the defence services in a post, not lower than that in which the official is re-employed. For this purpose, only such service in the defence service, wherein the pay drawn was equal to or more than the minimum of the re-employed time scale of pay is taken into account. However, the pay proposed to be fixed in such cases in the civil post plus pensionary benefits, admissible, should not exceed the last pay drawn. While circulating the pensionary benefits, it was stipulated that an amount of Rs. 15/- would be ignored. This limit was enhanced from time to time and at present in the case of ex-servicemen (personnel below commissioned officer rank), the entire pension could be ignored, as per the Ministry of Defence Office Memorandum No. 2-1/83-D (Civil-I) dated 8-2-1983.

Shri A. S. Ramakrishnan had served in the army from 9-5-1944 to 26-6-1972, before his appointment as Telephone Operator in this Department, on 22-10-1974. The pre-retirement pay of the official was Rs. 373/-. His pension and pension equivalent of gratuity was Rs. 170/- and Rs. 31.94 respectively. At that time the ignorable limit of pension for the purpose of pay fixation was Rs. 50/-. Thus his pay in the civil post plus pensionary benefits of Rs. 151.94 (i.e. Rs. 170+31.94—50), should not exceed Rs. 373/-. Thus his pay was fixed at the stage of Rs. 221/- with effect from 22-10-1974 with date of next increment on 1-10-1975.

** ** **

The ignorable limit of pension has been further liberalised. According to the Ministry of Defence Office Memorandum No. 2(1)/83/D(Civil-I) dated 8-2-1983, in the case of personnel below commissioned officer rank, the entire pension might be ignored for the purpose of fixation of pay. The official has opted for fixation of pay under the above

Office Memorandum and his case has been kept pending for the present. It will be examined after information regarding enhancement of pension is received from the EME Record Office, Secunderabad.

× × × × × ×

It is not the policy of the Government to give retrospective effect to its orders except under exceptional circumstances. However, the Government, as a special case, allowed those, who have been re-employed prior to the issue of the above orders, to exercise option, to take advantage of the above orders. The stipulation, that pay in such cases would be determined afresh as if they have been re-employed for the first time from the date of issue of orders, is justified in view of the fact that the orders regarding liberalisation is effective only from the date of issue. In view of this, the complaint of Shri Ramakrishnan is unfounded and without basis."

8.4 In their communication dated 9 July, 1986, the Ministry of Communications further stated as follows :—

"According to established conventions, it is the duty of the Divisional Office, under whose administrative control the official is working, to obtain the information required from the Defence Record Office and supply the same to the circle office, who, in turn, supply the same to this office for examining the proposal for fixation of pay and issue sanction. This office does not correspond directly with Record Office or CDA (P), Allahabad. Therefore, it might take 2 or 3 months to ascertain the latest position regarding enhancement of pension.

Moreover, it is doubtful if Shri Ramakrishnan will be able to derive any benefit if pay fixation is done under the orders dated 8-2-83, as the Department of Personnel and Training have now advised that one will be entitled for advance increment only if the minimum of the scale plus pensionary benefits is less than the last pay drawn."

8.5 On 18 October, 1986, the Department of Telecommunica-

tions furnishing additional information stated as follows :—

"The question regarding fixation of pay of Shri A.S. Ramakrishnan under O.M. dated 8-2-1983 was examined in consultation with the Department of Personnel and Training. They have clarified that the concept of grant of advance increments to mitigate hardship is laid down in the basic orders dated 25-11-58, which *inter-alia* provide that the minimum of the scale plus the gross pension and pension equivalent of gratuity would be compared to the pre-retirement pay and only when there is a shortfall in the former, advance increments might be considered. Thus in the basic orders dated 25-11-58, the entire pension was taken into account for pay fixation. In the subsequent orders, which introduced the system of ignoring a fraction of pension, the remaining portion or pension was taken into account for pay fixation. Thus in terms of these orders the ceiling of the pre-retirement pay was still observed for pay fixation w.r.t. the minimum plus the reckonable amount of pension. However, Ministry of Defence orders dated 8-2-1983 and Ministry of Finance O.M. dated 14-12-1983 provided for ignoring the entire pension for pay fixation thus doing away with the relevance of pension and pre-retirement pay. In these cases, pay is thus required to be fixed at the minimum as in the case of Direct Recruits. In case of Shri Ramakrishnan, the Department of Personnel and Training allowed the withdrawal of option, if he is suffering hardship due to his option under O.M. dated 8-2-1983.

In view of this, the enhancement of pension will have no bearing on fixation of pay as in any case, he is eligible for fixation of pay only at the minimum of the pay scale.

The decision of Department of Personnel and Training had already been communicated to Shri Ramakrishnan, *vide* letter No. 45-12/84—PAT dated 1-10-86."

C. Observations of the Committee

8.6 The Committee note from the reply furnished by the Ministry of Defence that there is a provision in the rules for ignoring the entire

pension for any fixation thus doing away with the relevance of pension and pre-retirement pay. In such cases, pay is required to be fixed at the minimum as in the case of direct recruits. In the case of the petitioner, the Department of Personnel and Training have allowed the withdrawal of option, if he is cxperiencing in conveniences due to his option under O.M. No. 2-1/83-D (Civ.-I) dated 8-2-83.

8.7 The Committee hope that with the implementation of the recommendations of the Fourth Pay Commission on pensionary benefits to retired Central Government employees, the petitioner will get enhanced pension and they, therefore, feel that no further action is called for on their part.

IX

A. Action taken by Government on the recommendatians of the Committee on Petitions contained in their Eighteenth Report (Seventh Lok Sabha) on the representation regarding withdrawal of liquidation proceedings of containers and closures Ltd. and revival of the unit by Providing necessary funds.

9.1 In their Eighteenth Report, presented to Lok Sabha on 9 May, 1984, the Committee on Petitions considered a representation regarding withdrawal of liquidation proceedings of Containers and Closures Ltd. and revival of the Unit by providing necessary funds and made the following observations/recommendations :—

"The Committee note the position stated by the Ministry of Industry (Department of Industrial Development) that the management of the Industrial Undertaking-Containers and Closures Limited, Calcutta, was taken over by Government in 1972 under Section 18A of the Industries (Development and Regulation) Act, 1951. The Containers and Closures Limited incurred cash losses in each of post-take over years except for the year 1974 The accumulated losses till December, 1982 added upto Rs. 577.5 lakhs as compared to the share capital of Rs. 25.5 lakhs giving negative net worth of 552 lakhs.

The Ministry have further stated that according to policy guidelines on sick industries announced by the Government in October, 1981, future of the Industrial undertakings being managed under the provisions of the Industries (Development and Regulation) Act, 1951 was to be decided immediately. An important criterion for nationalisation was that the unit could be revived in a reasonable period of time. Taking into account the track record of the operations of the undertaking during the last ten years, it was felt that there was hardly any prospects of the Unit becoming viable.

After examination of various alternatives such as sale, merger or nationalisation, the Government had discontinued the management of the undertaking. The creditors were also allowed to file winding up petitions in the Calcutta High Court in order to protect their interest.

In view of the position explained by the Ministry, the Committee feel that no intervention is required in the matter on their part. The Committee, however, recommend to the Government that on humanitarian grounds special efforts should be made for providing suitable alternative employment to the workers who had been rendered unemployed as a result of the closure of the undertaking."

9.2 The Ministry of Industry (Department of Industrial Development), with whom the matter was taken up for implementation, have in their action taken reply stated as follows :—

"The existing recruitment policy of the public enterprises provides preferential treatment in respect of employment of persons who have been or are to be retrenched from public enterprises (*See* Annexure). It may be seen that recruitments in the public enterprises at lower levels are mostly to be made through the employment exchanges. It would, therefore, be necessary for the workers concerned to get their names registered with employment exchanges. Accordingly, the IRCI who were the authorised persons in respect of Containers and Closures Ltd. have been requested to advise or bring to the notice of the workers of the said company the instruction issued by BPE as mentioned above and to get their names registered with the employment exchange."

B. *Action taken by Government on the Recommendations of the Committee on Petitions contained in their Eighteenth Report (Seventh Lok Sabha) on the Representation Regarding Withdrawal of Denotification Order and Liquidation Proceedings of M/s Indian Rubber Manufacturers Limited, Cacultta and Resumption of Production Activities.*

9.3 In their Eighteenth Report, the Committee also considered

a representation regarding withdrawal of denotification order and liquidation proceedings of M/s Indian Rubber Manufacturers Limited, Calcutta and resumption of production activities and made the following observation/recommendations :—

"The Committee note the position stated by the Ministry of Industry (Department of Industrial Development) that the Industrial undertaking—M/s Indian Rubber Manufacturers Limited, Calcutta being managed by Government under provisions of the Industries (Development and Regulation) Act, 1951, incurred cash losses in each of the post take over years and losses increased from year to year. The accumulated losses till September, 1982 were Rs. 560 lakhs as against the equity capital of Rs. 27 lakhs giving negative net worth of Rs. 533 lakhs.

Further, according to policy guidelines on sick industries announced by the Government in October, 1981, future of the industrial undertakings being managed under the provisions of the Industries (Development and Regulation) Act, 1951 was to be decided immediately. The guidelines also laid down various alternatives to be examined. These included nationalisation, restructuring, sale and merger. After examination of all the alternatives, the Government discontinued the management of the industrial undertaking. The creditors have already filed winding up petitions in the Calcutta High Court in order to protect their interest.

In view of the position explained by the Ministry, the Committee feel that no intervention is required, in the matter on their part. The Committee, however, recommend that on humanitarian grounds special efforts should be made by Government for providing suitable alternative employment to the workers who have been rendered unemployed as a result of the closure of the undertaking."

9.4 The Ministry of Industry (Department of Industrial Development), with whom the matter was taken up for implementation, have

in their action taken reply dated 21-8-1984 stated as follows :—

"The existing recruitment policy of the public enterprises provides preferential treatment in respect of employment of persons who have been or are to be retrenched from public enterprises (See Annexure). It may be seen that recruitments in the public enterprises at lower levels are mostly to be made through the employment exchanges. It would, therefore, be necessary for the workers concerned to get their names registered with employment exchanges. Accordingly, the IRCI who were the authorised persons in respect of Indian Rubber Manufacturers Limited have been requested to advise or bring to the notice of the workers of the company the instruction issued by BPE as mentioned above and to get their names registered with the employment exchanges."

C. *Evidence before the Committee*

9.5 The Committee considered the action taken replies furnished by the Minstry of Industry (Department of Industrial Development) at their sitting held on 4 October, 1985. The Committee were not satisfied with the reply furnished by the Ministry and decided to take oral evidence of Shri M. Ismail, an ex-M.P., who had forwarded the representation of the workers of M/s. Containers and Closures Ltd. with one or two representative of the workers, and also the representatives of the workers of M/s. Indian Rubber Manufacturers Limited, Calcutta. The Committee also decided to hear the representatives of the Ministry of Industry (Department of Industrial Development) and Bureau of Public Enterprises.

(a) *Evidence of the representatives of the Ministry of Industry (Department of Industrial Development) and Bureau of Public Enterprises.*

9.6 At their sitting held on 30th October, 1985, the Committee examined the representatives of the Ministry of Industry (Department of Industrial Development) and Bureau of Public Enterprises on the action taken by Government on the recommendations contained in Paras 4.7 and 5.6 of the Eighteenth Report of the Committee on Petitions (Seventh Lok Sabha) regarding workers of M/s. Containers and Closures Limited and Indian Rubber Manufacturers Limited, Calcutta.

9.7 While explaining action taken by Government on the recommendations of the Committee, the representative of the Ministry of Industry (Department of Industrial Development) stated that after the receipt of the Report of the Committee they had taken up the matter with the BPE and they were advised that in the matter of recruitment to all public sector enterprises the workers had to go through the employment exchanges. The Industrial Reconstruction Corporation of India, which had been the authorised body in both these undertakings before de-notification, were advised to ask the workers to register themselves with the employment exchanges for preferential consideration for recruitment in public sector enterprises as and when vacancies occurred.

9.8 Regarding the procedure followed for advising/bringing to the notice of the workers for getting their names registered, the representative informed that the normal procedure would be to put it up on the Notice Board and put an advertisement. What procedure was followed in the present case would be ascertained. He further informed the Committee that as in respect of other undertakings they had been receiving some representations that these two units should be nationalised but that was not being considered.

9.9 When asked in what way preferential treatment was assured to the retrenched employees, the representative of the Ministry informed the Committee that the policy of the Government was that where workers had been retrenched from the public sector undertakings, they ought to be given preferential treatment in recruitment to other undertakings provided they went through the procedure of employment exchanges.

The representative of the Bureau of Public Enterprises explained further that in 1961, the recruitment policy of the public sector projects was laid down by the Government and placed before the Lok Sabha. According to that, the first preference was for those whose lands had been acquired for the project; second preference for Scheduled Castes and Scheduled Tribes and the third preference was for those who had either been actually retrenched or were likely to be retrenched from the public sector undertakings shortly. This policy was reiterated in 1983.

9.10 When asked to state the special efforts made in pursuance of Committee's recommendation for providing suitable alternative employment to the workers rendered unemployed on humanitarian grounds, the representative of the Ministry stated that they could only act within the frame work of the policy and not outside that. Particularly, in Calcutta, there were a number of undertakings which had been taken over and there were a number of other undertakings, both of the Central Government and of the State Government, where there were already some surplus labour. He stated that in this case they got the recommendation one year after denotification, and under those circumstances they could only advise IRCI to proceed in the manner laid down under the framework of that policy.

9.11 In this regard the representative of Bureau of Public Enterprises informed the Committee that the Public Sector enterprises were autonomous and subject to the guidelines and instructions issued by the Government from time to time, recruitment was made by them.

Recruitment to posts carrying pay beyond Rs. 1250/- (Recently raised from Rs. 800 to Rs. 1250) was made through advertisement, whereas others were required to register themselves with Employment Exchanges. Order of priority was also applicable in case of those employees whose salary was beyond Rs. 1250/-.

9.12 When asked to state the reasons for the discrimination, the representative informed that for posts carrying higher pay, perhaps, better expertise was necessary. The policy was to recruit persons to the lower category locally. Only the local persons would register themselves in the employment exchanges. They did not have the capacity to apply through advertisements. He stated that this policy was laid down by Government to help the local people and persons belonging to Scheduled Castes and Scheduled Tribes.

9.13 When asked whether the directions given by the Bureau of Public Enterprises had been implemented earnestly, the representative of the Ministry stated that they believed that those guidelines had been followed. The representative of the Bureau also informed the Committee that it was mandatory. A writ petition had been lodged in the High Court of Hyderabad against recruitment through the employment exchanges. A petition had also been lodged against the violation of

article 14 of the Constitution. According to him from that it appeared that they were following the instructions issued in this regard. The representative further stated that the matter was before the Supreme Court. Unless the Supreme Court said that there was no need of going through the employment exchanges, they would go through the employment exchanges.

9.14 When it was enquired whether the guidlines could be changed/ modified giving the first priority for employment to the retrenched employees of public undertakings or industrial undertakings managed by the Government, the representative the Ministry stated that they were not proposing to modify those guidelines. He thought there would be enormous trouble if those guidelines were to be modified in the case of specific companies. This would become a precedent and cause a lot of difficulty.

9.15 During the course of evidence, the Committee desired to have the following information : –

(a) Whether the factory worked during the liquidation proceedings;

(b) the break-up of the number of employees who have been rendered jobless i.e. giving details of top posts, middle level and senior middle level, executive cadres and lower grade employees ;

(c) the number of retrenched employees, who have got the employment and the number who are still unemployed ; and

(d) written information on the list of points, which formed the basis of discussion with the witnesses.

The above information mostly being not readily available with the witnesses, they promised to supply the same in writing to this Secretariat after ascertaining the facts from the concerned Departments.

(*b*) *Evidence of representatives of workers of M/s. Containers and Closures Limited*

9.16 The Committee at their sitting held on 9 December, 1985, examined the representatives of the Workers of M/s. Containers and Closures Ltd. At the outset, a representative of the workers handed

over a letter (Appendix XI) from Shri M. Ismail, ex-MP, who could not appear before Committee.

9.17 While explaining the grievances and demands of workers of M/s. Containers and Closures Limited, the representative of the workers stated that factory had been closed on 28.10.1983 but the workers were not given any notice for its closure. So, they continued to work and they got the first notice on 25.11.1983 that the company had gone into liquidation. The workers continued working for one month but they were not paid even the wages for that period but finally it was closed on 16.12.1983. About 25 workers had died of starvation due to closure. Their families were left with no means of livelihood. No alternative jobs had been provided to those workers. Some persons had even sold their utencils etc. and some of them were no more in this world. Due to starvation several workers were forced to begging. The Company was in the hands of a liquidator but he had also not done anything in that regard. There were 800 workers in all in that factory. None of them had got any employment so far. Under the forced circumstances, some were pulling rickshaws and some were working on daily wages, but they were not able to meet their both ends. They had not got any benefit inspite of the recommendations made on their representation by the Committee on Petitions in their Eighteenth Report (Seventh Lok Sabha).

9.18 The attention of the representatives of the Company was drawn to the following guidelines issued by the Bureau of Public Enterprises about providing jobs to retrenched workers :—

(i) the employees, who were getting a salary of not exceeding Rs. 800/- per month, were required to register their names with the employment exchange;

(ii) persons displaced and rendered jobless from areas acquired for a new project, would be given overriding priority for employment; and

(iii) those workers who had been retrenched due to the closure of a company or a factory should also be given employment.

Referring to those guidelines, the representative stated that the

workers were not at all going to be benefited by those guideline because there was no recruitment. Secondly. the employment exchange were not authorised to register the names of persons who were mor than 35 years of age and 40 years of age in the case of Schedule Castes and Scheduled Tribes workers. Only 69 persons (out o 800) who were less than 35 years of age, had got registered thei names with the Employment Exchange. Even then they had not got jobs so far. There might be two or three persons who had got jobs with their own efforts. The top officers might had also got employment but nothing had been done for the workers at the lower level. After giving priority to other categories their category which was the last priority had no chance of getting employment. As such, they were not going to be benefited in any way by that policy. Moreover, there was no other factory nearby and if there was at all a factory, there was a ban on the recruitment.

9.19 The representatives suggested that the company should be managed by the Government by nationalising it or through any other method and also informed that some investigation in this regard had been made by M/s. Balmer Lawrie and Company Limited. M/s. Balmer Lawrie & Co. Ltd., could run the company in collaboration with Hindustan Petroleum or Indian Oil Company. That company could also be merged with the Indian Drugs and Pharmaceuticals Limited. It was a company of its own kind in the eastern zone and for that purpose it was a very important company. Factories at Delhi or Hyderabad manufacturing metal boxes were meeting the requirements of that zone due to closure of that company. That factory could be run satisfactorily there, and something should be done to run the factory.

9.20 The representatives of the workers further stated that the State Government was prepared to run that factory but they had no finance. State Government was convinced that factory could be run if some finance was provided to them by Central Government.

When suggested by the Committee to run the factory on the cooperative basis, the representatives stated that they had also thought about that but was not found feasible.

9.21 After the witnesses withdrew, the Committee then called the other party *i e.* representatives of M/s. Indian Rubber Manufacturers

Limited and examined them on the subject matter of their representation regarding withdrawal of denotification order and liquidation proceedings of M/s. Rubber manufacturers Ltd., Calcutta and resumption of production activities and in connection with action taken by Government on the recommendations contained in the Eighteenth Report of the Committee on Petitions (Seventh Lok Sabha). One of the representatives while explaining their grievances stated that 600 labourers worked in the Indian Rubber Manufacturing Factory Limited. That factory was closed on 1 October, 1983. That factory used to manufacture many items specially the items used in Railways as also jute and cotton items. Tennis balls were mainly manufactured in that factory. That factory was taken over by Government of India on 18 September, 1982. After the take over, that factory was running well. After being declared a sick industry, it was investigated and found that industry was viable because in 1981 its production was at a high level. But in 1983 that factory was denotified and was closed down due to liquidation. When the factory was closed down due to liquidation some of the labourers who were near retirement, had received retirement notices but were not paid their dues. The unit could become viable if that unit was amalgamated with M/s. Tyre Corporation of India and by that way lives of 500-600 labourers could be saved.

9.22 When attention of the representatives was drawn to the guidelines issued by Government for providing employment to retrenched workers through employment exchanges, the reply was the same that they were overage *i.e.* about 35 years of age. On an enquiry, the representatives of the workers stated that there were 11 top officers who were working some where else. There would be 24 officers in the supervisory grade and 480 labourers who were not employed anywhere.

9.23 About the suggestion for giving preferential treatment in the matter of recruitment in public undertakings to the retrenched employes, the representatives stated that they only wanted that their factory should run and all retrenched workers should get employment. Their suggestion was only that factory should be run in the public sector or otherwise. They had also discussed with the State Government who were prepared to run the factory if they got financial assistance from the Centre.

The workers were even ready to accept employment anywhere else.

9.24 On an enquiry it was stated that the liquidation proceedings of factory were still going on, as the assessment had not been made so far.

9.25 In their O.M. dated 31 January, 1986, the Ministry of Industry (Department of Industrial Development) have informed the Committee as follows :—

"About the employment of the erstwhile employees of CCL and IRM, IRBI wrote to the Official Liquidator, High Court, Calcutta, regarding the recommendation of the Committee on Petitions contained in their 18th Report (Seventh Lok Sabha). IRBI requested the O.L. that as both the companies had gone into liquidation suitable notice should be given by O.L. in the main gates of Head Office and the factory premises so that the employees of the two units could get their names registered with employment exchange. Besides. IRBI suggested suitable advertisement be inserted by the O.L. in English, Hindi and local vernacular Newspapers so that the matter of registration with employment exchange would get wide publicity. The O.L. *vide* his letter No. O.L. 862/1/3560/G, dated the 5th September, 1984 informed that in the normal course unemployed persons get their names registered with the local employment exchange and for such purpose, no wide publicity is necessary. The O.L. also mentioned that he could not spend the funds of the company for such purpose without the specific sanction of the High Court. He further advised that the decison of the Government regarding the employment of the erstwhile employees of the companies may be communicated to the recognised Unions/Associations who were representing the workmen in the respective companies. Accordingly, the recognised Unions were also informed of the decisions of the Government of India (Ministry of Industry, Department of Industrial Development) as per letter No. 1 (109)/83-CUS, dated 21st August, 1984.

Similarly, IRBI wrote to the employment exchange, Mayuk Bhavan, Salt Lake. Sector—I, Calcutta—700064 with

the request to register the names of the employees of the above two companies as and when they go for registration and accord preference as laid down in Bureau of Public Enterprise's Circular No. 4 (1)/83—GM, dated 5.8.1985".

They have further stated that "the scope for security employment for the employees of CCL and IRM in other assisted units of IRBI being very limited, IRBI could only request employment exchange."

9.26 The Ministry have further informed the Committee *vide* their O.M. dated 22 May, 1986 that the task of providing alternate employment to the workers of the two companies is not only difficult but practically impossible, praticularly in the State of West Bengal where sickness in industry is widespread and alternative employment opportunities are severely limited. They are unable to ascertain as to how many workers of these companies have been successful in getting alternate employment.

C. Observations/Recommendations of the Committee

9.27 The Committee on Petitions in its Eighteenth Report (Seventh Lok Sabha) presented to Lok Sabha on 9.5.84, had recommended that on humanitarian grounds special efforts should be made for providing suitable alternative employment to the workers who had been rendered unemployed as a result of the closure of Containers and Closures Ltd., and Indian Rubber Manufacturers Ltd. At the time of closure, 1322 workers were working in these undertakings.

9.28 The Committee are greatly distressed to point out that from the evidence tendered before the Committee by the represntatives of the Ministry of Industry and Bureau of Public Enterprises and the information supplied to the Committee, they have gathered a definite impression that what to talk of special efforts as recommended by the Committee, no effort whatsoever appears to have been made by the Government and, in fact, callous attitude (contrary to providing employment on humanitarian grounds, as recommended by the Committee) has been adopted in the matter. The Committee deprecate this.

The representatives of the workers had informed the Committee during evidence that due to closure of these units about 25 workers had died of starvation, some of them had sold their utencils even, there have been cases where workers were forced to begging and some of them were no more in this world.

9.29 The Committee note that recruitment policy of the public enterprises provides preferential treatment in respect of employment of persons who have been or are to be retrenched from public enterprises. During evidence when asked whether the role of the Ministry as employer in simply advising the workers to register with employment exchanges was sufficient and satisfactory, the representative of the Ministry replied in the affirmative and said that 'in public sector enterprises we should not force them or compel them to recruit any particular individual or category of people. The whole point in having public sector enterprises is that they should have a measure of freedom in these policies'.

9.30 The Committee further note that the Ministry and the Bureau have not cared to enquire about the implementation of guidelines issued in the matter of recruitment of retrenched employees. They informed the Committee that they have no reason to believe that the guidelines have not been followed by the employment exchanges and at the same time also informed the Committee that it was difficult to monitor whether those guidelines were followed or not. The Committee were told that upto 1979, the Bureau had issued two volumes of guidelines. About the number of workers who have been provided employment, it was stated that such data was not kept and it was difficult to maintain it. They, however, assured to collect this information, but later on they informed the Committee—"the task of providing alternate employment to the workers of the two companies is not only difficult but practically impossible, particularly in the State of West Bengal where sickness in industry is widespread and alternative employment opportunities are severely limited. They are unable to ascertain as to how many workers of these companies have been successful in getting alternative employment".

9.31 In the opinion of the Committee, the plea of autonomy of public enterprises put forth and the difficulties faced in the matter, as stated by Government, are not at all convincing, especially when the Committee has specifically recommeded of making special efforts on humanitarian grounds for providing suitable alternative employment to workers, whose condition was pitiable on account of closure of units. The Committee, therefore, reiterate their earlier recommendation and would like Government to take immediate and special concerted action in the matter so as to provide relief to the retrenched workers, whose condition in these hard days, deserves sympathetic consideration.

APPENDIX I

(*See* para 2.2 of the Report)

[*Petition No. 5 regarding amendment of article 311 of the Constitution of India with a view to ensure security of service to Government servants.*]

LOK SABHA

PETITION NO. 5

(Presented to Lok Sabha on 17.3.1986)

[*Considered by the Committee on Petitions, Lok Sabha, at their sitting held on 8 April, 1986 and circulated in pursuance of the Committee's direction under rule 307 (1) of the Rules of Procedure and Conduct of Business in Lok Sabha.*]

To

LOK SABHA

NEW DELHI.

The humble petition of Shri Om Prakash Maken, Patron, National Confederation of Central Government Employees and Workers, New Delhi and other 50 million citizens of India.

SHEWETH :

As a consequence of recent judgement delivered by the Supreme Court in Union of India *vs.* Tulsi Ram Patel and Satya Vir Singh and others, the position of a civil servant serving either under Union Government, State Government or any local body has been reduced to a situation where his services can be terminated without being given any reason or opportunity.

The Supreme Court in earlier judgement in regard to article 311 especially in "Chellapan's case" had categorically laid down that even while exercising the power under sub-clause (a) of the 2nd proviso of clause 2 of article 311, the disciplinary authority must give charges

and offer a reasonable opportunity to the employee before action is taken on the basis of or principles of natural justice, and safeguards provided under article 14 that no man should be condemned without being heard.

The statutory provision of holding an enquiry of giving an opportunity to an employee before he could be removed from service existed since public service enquiry Act, 1850 was enacted. It was further incorporated in Government of India Act, 1935 and further enshrined in article 311 (2) of the Constitution of India.

The Government of India has issued guidelines on 11th November, 1985, stating therein that the officers must not exercise the power arbitrary and must evaluate the case in great detail. These guidelines are only directory and not mandatory. This changed situation of law in respect of civil servant has caused a crisis.

The Supreme Court has given the bureaucrats the magic sword, and a civil servant will be a poor victim. Slowly he will become sycophant as he has no other options. This will reduce the Government services to be ruled and run by sycophants.

The need of the day is to save the Government servants from going to dogs by bringing suitable amendments to article 311 (2) of the Constitution or reversal by Supreme Court itself.

As a citizen of India. I feel that the Civil servants in the country deserve better deal than that of worst criminal and offenders of law.

It is submitted that article 311 (2) may be amended suitably to remove the apprehensions of insecurity that has gripped the minds of Government servants.

And your petitioners as in duty bound will ever pray.

Name of the Petitionerers	Address	Signature or Thumb impression
Shri Om Prakash Maken, Patron, National Confederation of Central Government Employees and Workers and others.	C—15, Bhai Mahavir Singh Marg, Gole Market, New Delhi	Sd/-

Countersigned by Shri P.R. Kumarmangalam, M.P.
Division No. 328.

APPENDIX II

(*See* para 2.4 of the Report)

[*Comments furnished by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) on Petition No. 5 regarding amendment of article 311 of the Constitution of India with a view to ensure security of service of Government servants.*]

Shri Om Prakash Maken has submitted a Petition, countersigned by Shri P.R. Kumaramangalam, M.P., to the Committee on Petitions in Lok Sabha, requesting amendment to Article 311 (2) of the Constitution. In his petition, Shri Maken has made the following points :—

(a) As a consequence of recent judgement delivered by the Supreme Court in Union of India Vs. Tulsi Ram Patel and Satyavir Singh and others, the position of a civil servant serving either under Union Government, State Government or any local body has been reduced to a situation where his services can be terminated without being given any reason or opportunity.

(b) The Supreme Court in earlier judgement in regard to article 311 especially in "Chellappan's case had categorically laid down that even while exercising the power under sub-clause (a) of the 2nd proviso of clause 2 of article 311 the disciplinary authority must give charges and offer a reasonable opportunity to the employee before action is taken on the basis of principles of natural justice, and safeguards provided under article 14 that no man should be condemned without being heard.

(c) The guidelines issued by Government on 11.11.1985 are only directory and not mandatory.

(d) Article 311 (2) may be amended suitably to remove the apprehensions of insecurity that has gripped the minds of Government servants.

2. Before the above points raised in the petition are commented upon, it will be desirable to give a brief background of the judgement of the Supreme Court delivered on the 11th July, 1985 disposing of a number of Civil Appeals, etc. in all of which the interpretation of the second proviso to article 311 (2) of the constitution was involved.

2.1. Article 311 of the Constitution as originally enacted was in the following form :—

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:—

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply :—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by the authority in writing, it is not reasonable practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause(2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

2.2 By the Constitution (Fifteenth Amendment) Act, 1963, clauses (2) and (3) of the article 311 were substituted by the following clauses :

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and give a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until, he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :

Provided that this clause shall not apply :—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonable practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid a question arises whether it is reasonable practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or reduce him in rank shall be final."

In the light of the provisions of article 311 (2) of the Constitution as amended by the Constitution (Fifteenth Amendment) Act, 1963,

referred to above, the Supreme Court in its judgement delivered on 15th September, 1975 in Divisional Personnel Officer, Southern Railway and another Vs. T.R. Challappan pointed out that there were three stages in a departmental enquiry under article 311 (2), the third stage being the stage before actually imposing the penalty in which a final notice to the charged employee should be given to show cause why the penalty proposed against him be not imposed on him and that such a stage should be provided even in a case where the first two stages were dispensed with while invoking clause (a) of the then proviso to article 311 (2).

2.4 After the judgement of the Supreme Court in T.R. Challappan's case, there had been a significant amendment to article 311 (2) of the Constitution through the Constitution (Forty-second Amendment) Act, 1976 which came into effect from 3rd January, 1977. Article 311 as amended by the Forty-second Amendment Act reads as follows :—

"311, Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State :

(1) No person who is a member of a civil service of the Union or an all-India services or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity or making representation in the penalty proposed :

Provided further that this clause shall not apply—

(a) where person is dismissed or removed or reduced in rank

on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonable practicable to hold such inquiry; or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

It will be observed from the above amendment that the third stage of the inquiry referred to in Challappan's case by the Supreme Court *viz.* show cause notice before the imposition of penalty was taken away and it was also expressly provided that it shall not be necessary to give the charged employee any opportunity of making representation on the penalty proposed.

2.5 Consequent on the amendment of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 referred to above, the ratio laid down in Challappan's case came up for review in the Supreme Court in a batch of writ petitions, civil appeals, etc. In its judgement delivered on 11 July, 1985, the Supreme Court overruled its own earlier decision in Challappan's case and came to the conclusion that in a case covered by any of the clauses of the second proviso to article 311 (2), the entire inquiry as contemplated in the main clause (2) was dispensed with and as such, there was no question of giving opportunity to represent against the penalty proposed to be imposed on the Government servant. The Supreme Court have also observed that the principle of natural justice does not get attracted and that the provision of article 14 in the chapter on Fundamental Rights cannot be deemed to be infringed by the second proviso to article 311 (2).

2.6 While giving its pronouncement, the Supreme Court has taken pains to give a detailed analysis of each of the clauses in the second proviso to article 311 (2) and specified the nature of action or consideration and that will be necessary on the part of the authority concerned. Based on the observations of the Supreme Court, detailed guidelines were issued on 11 November, 1985 to all the Administrative Ministries etc. for their guidance while dealing with cases falling within the purview of clauses (a) to (c) of the second proviso to Article 311 (2). These guidelines were further supplemented by instructions issued on the 4th April, 1986. A copy each of the instructions dated 11th November, 1985 and 4th April, 1986 is at Annexures I and II.

3. In the light of the position explained above, the position in regard to the four specific issues raised in the Petition of Shri Om Prakash Maken is indicated below.

3.1 Article 311 of the Constitution covers only holders of civil posts under the Central or State Government. The Supreme Court judgement delivered on the 11th July, 1985 has not laid down any new principles of law but has only clarified the provision in the Constitution itself. The second proviso to article 311 (2) has been in the Constitution ever since its adoption. The specific provisions contained in the second proviso to article 311 (2) are invoked only in the special circumstances indicated therein and as such, they do not come into operation in the generality of disciplinary cases against Government servants which are regulated by the main provisions of the main clause (2) of article 311. Even in cases where the provisions of the second proviso to article 311 (2) are invoked, the Supreme Court has spelt out clearly the safeguards available to Government servants.

3.1.1 If action, for example, is taken in the circumstances specified under clause (a) of second proviso to Article 311 (2), the competent authority has first to take all relevant facts into consideration, after becoming aware of the conviction of the Government servant by a Court to decide whether a punishment of dismissal, removal or reduction in rank will be warranted. This decision will have to be taken by the competent authority. The order recorded by the competent authority is subject to appeal, review or revision, according to the provisions contained in the relevant service rules. It is thus possible for the appellate authority to hold the view that the punishment of dismis-

sal, removal or reduction in rank was excessive after having regard to the circumstances of the case. Even if the order of the Competent authority is sustained on appeal, review or revision, there is still an opportunity available to the Government servant, to seek redress in a competent court, which has the power of judicial review. The court is competent to decide whether in the circumstances of the case, the decision was rightly taken by the competent authority that the punishment of dismissal, removal or reduction in rank was justified.

3.1.2 In so far as clause (b) of the second provision to Article 311 (2) is concerned, it has been held by the Supreme Court that the competent authority will have to record reasons in writing for arriving at the conclusion that it is not reasonably practicable to hold an inquiry. It has been observed that, in the opinion of a reasonable man taking a reasonable view of the prevailing situation, the conclusion should emerge that holding of an inquiry is not practicable. Whether such a reasonable view has been taken can always be examined by a court in the course of judicial review. The Supreme Court has also held that a Government servant, who has been dismissed or removed from service or reduced in rank by applying to this case clause (b) of the second proviso to Article 311 (2) or an analogous service rule can urge in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second proviso is prevailing at the time of hearing of the appeal or revision application. Even in such a case, the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal. It is important to note that the circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or a general indiscipline and insubordination, for example, should be subsisting at the time when the disciplinary authority arrives at this conclusion. It has, therefore, been clarified that it will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis, dispense with serving a charge sheet on the Government servant.

3.1.3 In so far as action under clause (c) of the second proviso to Article 311 (2) is concerned, the decision to be arrived at by the President or the Governor that it is not expedient, in the interest of the security of the State, to hold an inquiry, will be a subjective decision and will not be subject to judicial review. But even there, if it is alleged that the action was *mala fide* or based on extraneous consideration or no material, the courts can interfere, since, in the eye of law, there would have been an absence of the necessary subjective satisfaction of the President or the Governor. However, if the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by a disciplinary authority subordinate to the President or the Governor, a departmental appeal or revision will still lie. In such an appeal or revision, the government employee can urge for an inquiry to be held into his alleged conduct unless at the time of consideration of the appeal or revision, a situation envisaged by the second proviso to Article 311 (2) is prevailing. Even in such a situation, the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal.

3.1.4 It will be thus clear that the Supreme Court had not only given an authoritative interpretation to the second proviso to article 311 (2) but have also clarified the correct parameters for invoking the special provisions of the second proviso as also the various remedies available to the Government servant against whom any one of the clauses of the second proviso to article 311 (2) is invoked. Thus, in a sense, the Supreme Court judgement by clarifying certain grey areas has afforded greater security to Central Government employees.

3.2 As earlier pointed out, the Supreme Court judgement in Challappan's case was delivered before the Constitution (Forty-second Amendment) Act came into force. By the amendment to the Constitution, the opportunity to show case against the penalty proposed after the conclusion of the departmental inquiry has been taken away. With this change in the constitutional provision, the ratio adopted in Challappan's Case could no longer hold good. As clarified by the Supreme Court, the principle of natural justice does not get attracted and the provision of Article 14 in Chapter on fundamental rights can not be deemed to be infringed by the second prouiso to article 311 (2).

3.3 The guidelines issued by Government on 11.11.1985 have been supplemented by issue of further guidelines on 4.4.1986. As these guidelines have been issued strictly based on the judgement of the Supreme Court itself, the guidelines cannot be considered as merely directory. Any infringement of these guidelines can be agitated both before the departmental and judicial authorities. In the former case the departmental authorities besides giving the necessary relief to the affected Government servant can also take appropriate action against the disciplinary authorities if there had been any violation of the principles laid down in the guidelines while dealing with any particular case.

3.4 With a view to allay the apprehensions arising out of an inadequate appreciation of the judgement of the Supreme Court, detailed guidelines based on the judgement have been issued for the guidance and compliance of all subordinate authorities exercising disciplinary powers. The authorities concerned are, therefore, expected to follow these guidelines scrupulously in dealing with cases. In the circumstances, no amendment to article 311 (2) of the Constitution appears to be necessary.

ANNEXURE—I

COPY

No. 11012/11/85—Extt (A)

Government of India/Bharat Sarkar

Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension

(DEPARTMENT OF PERSONNEL AND TRAINING)

New Delhi-110001
dt. 11 November, 1985

OFFICE MEMORANDUM

SUBJECT : *Judgement of Supreme Court in Civil Appeal No. 6814 of 1983, Civil Appeal No. 3484 of 1982 etc. delivered on 11-7-1985 regarding the scope of second proviso to Article 311 (2) of the Constitution.*

The Judgement delivered by the Supreme Court on 11-7-1985 in the case of *Tulsi Ram Patel and others* has been the cause of much controversy. The apprehension caused by the Judgement is mainly due to an inadequate appreciation of the points clarified in this judgement and in the subsequent judgement of the Supreme Court delivered on September 12, 1985 in the case of *Satyavir Singh and others* (Civil Appeal No. 242 of 1982 and Civil Appeal No. 576 of 1982), It is, therefor, imperative to clarify the issue for the benefit and guidance of all concerned.

2. In the first place it may be understood that the Supreme Court in its judgement has not established any new principle of law. It has only clarified the constitutional provisions, as embodied in Art. 311 (2) of the Constitution. In other words, the judgement does not take away the constitutional protection granted to Government employees by the said Article, under which no Government employee can be dismissed, removed or reduced in rank without an inquiry in which he

has been informed of the charges against him and given a reasonable opportunity to defend himself. It is only in three exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Art. 311 (2) that the requirement of holding such an inquiry may be dispensed with.

3. Even under these three exceptional circumstances, the judgement does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Art. 311 (2) of the Constitution or any service rule corresponding to it. The competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind. The principles to be kept in view by the competent authority while taking action under the second proviso to Art. 311 (2) or corresponding service rules have been defined by the Supreme Court itself. These are reproduced in the succeding paragraphs for the information, guidance and compliance of all concerned.

4. When action is taken under clause (a) of the second proviso to Art. 311 (2) of the Constitution or rule 19 (i) of the CCS (CC&A) Rules, 1965 or any other service rule similar to it, the first prerequisite is that disciplinary authority should be aware that a government servant has been convicted on a criminal charge But this awareness alone will not suffice. Having come to know of the conviction of a government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose, it will have to peruse the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This, however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was blame worthy and punishable, it must decide upon the penalty that should be imposed on the government servant. This too has to be done by the disciplinary authority by itself. The principle, however to be kept in mind is that the

penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

5. After the competent authority passes the requisite orders as indicated in the preceding paragraphs, a government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal. revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter he can seek judicial review. The court (which term will include a Tribunal having the powers of a Court) will go into the question whether the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or nor warranted by the facts and circumstances of the case or the requirements of the particular service to which the government servant belongs.

6. Coming to clause (b) of the second proviso to Art. 311(2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are :—

(i) There must exist a situation which makes the holding of an inquiry contemplated by Art. 311 (2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be—

(a) Where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses, who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so ; or

(b) Where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so

that the officer is afraid to hold the inquiry or direct it to be held ; or

(c) Where an atmosphere of violence or of general indiscipline and insuberdination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

(ii) Another important condition precedent to the application of clause (b) of the second proviso to Art. 311 (2), or rule 19(ii) of the CCS (CC&A) Rules, 1985 or any other similar rule is that the disciplinary authority should record in writing the reasons or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art. 311 (2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. Inspite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order of penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

7. It is true that the Art. 311 (2) of the Constitution provides that the decision of the competent authority under clause (b) of the second proviso to Art. 311 (2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal,

revision or review. This is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action be considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.

8. Another important guideline with regard to this clause which needs to be kept in mind is that a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Art. 311 (2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal.

9. As regards action under clause (c) of the second proviso to Art. 311 (2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is *not expedient* to hold an inquiry as contemplated by Art. 311 (2). This satisfaction is of the President or the Governor as a *constitutional* authority arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded in order of dismissal, removal or reduction in rank, nor can it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311(2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of

time for the situation to become narmal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is alleged that the satisfaction of the President or Governor, as the case may be, had been reached *mala fide* or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judial review because, in such a case there would be no satisfaction in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at *mala fide* or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

10. The preceding paragraphs clarify the scope of clauses (a), (b) and (c) of the second proviso to Art. 311 (2) of the Constitution, rule 19 of CCS (CC&A) Rules, 1965 and other service rules similar to it, in the light of the judgements of the Supreme Court delivered on 11-7-1985 and 12-9-1985. It is, therefor, imperative that these clarifications are not lost sight of while invoking the previsions of the second proviso to Art. 311 (2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or *mala fide*. So far as clauses (a) and (c), and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking clause (b) of the second proviso to Art. 311 (2) or any similarly worded service rule absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable.

11. Ministry of Finance etc. are requested to bring the above clarifications to the notice of all the authorities serving under their control for their information, guidance and compliance.

Sd/-
(A. JAYARAMAN)
DIRECTOR

To All Ministries/Departments to the Govt. of India
(with usual number of spare copies)

ANNEXURE II

(MOST IMMEDIATE)

No. 11012/11/85-Estt (A)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi, the 4 April, 1986.

OFFICE MEMORANDUM

SUBJECT : *Judgement of the Supreme Court in Civil Appeal No. 6814 of 1983, Civil Appeal No, 3484 of 1982 etc. delivered on 11.7.1985 regarding the scope of second proviso to Article 311 (2) of the Constitution.*

The undersigned is directed to refer to paras 6 to 8 of this Department's O M. of even number dated 11th November, 1985, wherein instructions are contained relating to factors that are relevant where action is taken under Clause (b) of the second proviso to Article 311 (2) of the Constitution.

2. A question has been raised whether, in a case where clause (b) of the second proviso to Article 311 (2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memolisting the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, "that it is not reasonably practicable to hold such an inquiry." The circumstances leading to such a conclusion may existing either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under :—

> "It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently

during the course of an inquiry, for instance, after the service of a charge sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the work "inquiry" in that clause includes part of an inquiry."

3. Article 311 (2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank. which comes in the category of major punishment under the service rules providing the procedure for disciplinary action against Government servants. The first step in that procedure is the service of a memorandum of charges or a charge sheet, as popularly known, on the Government servant, listing the charges against him and calling upon him, by a specified date, to furnish a reply either denying or accepting all or any of the charges. An inquiry hence commences under the service rules with the service of the charge sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the disciplinary authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge sheet would already have been served on the Government servant concerned.

4. In para 6 (i) of this Department's O.M. dated 11th November, 1985, certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, *should actually subsist at the time when the conclusion is arrived at.* The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that those are likely to arise possibly later in time, as grounds for holding that it is not reasonably practicable to

hold the inquiry and, on that basis, dispense with serving a charge sheet on the Government servant.

5 Ministry of Finance etc. are requested to bring the above clarifications to the notice of all the authorities serving under their control for their information, guidance and compliance.

6 Hindi version will follow.

Sd/—
(A. JAYARAMAN)
DIRECTOR

APPENDIX III

(*See* para 2.28 of the Report)

[*Order dated 5.2.1986 issued by Divisional Railway Manager, S.E. Railway, Nagpur removing Shri S.Z. Meshram, Senior Welfare Inspector from service under rule 14 (ii) of Railway Servant (D&A) Rules 1968.*]

Shri S.Z. Meshram, Sr. Welfare Inspector in-charge of Handicraft Centre/Motibagh has committed serious irregularities in as much as, he has been found responsible for improper issue of garments and also accountal of stitching charges. During the year 1985, he distributed terricot cut up garments directly to the SMs/ASMs and Guards for stitching instead of having them stitched through the agency of Mahila Samiti violating the extant procedure and instructions. He had also violated the rules and supplied the stitched garments to the staff directly which should have been done through the agency of DCS. Further having done so, he had included these unstitched cut-up garments supplied to the employees in the bills preferred showing them as stitched and thus misappropriated large amount of such irregular bil'ing, the only source was the Bill Register, where he had made payment to the members. Although he was the custodian of the Bill Register indicating the payment made, he had wilfully and intentionally lost the same and thus misappropriated the amount having been paid.

2. It has also been complained by the members of the Mahila Samiti that many of them received less payment than billed for against their names. Since he has intentionally lost the Bill Register, the exact amount of misappropriation could not be assessed.

3. He had shown undue favours in distributing the cut up garments for stitching to some of the members including the Tailor, Shri Riaz Mohammed directly without any authority. It was also established that the wife of Shri Riaz Mohammed who was not well conversant with the tailoring of ordinary clothes was issued with terricot cut-ups and Shri Riaz Mohammed was paid of Rs. 3,376/- in October 1985 alone, although the Bill was preferred on his wife's name. He had thereby

acted beyond his authority and deprived the legitimate earnings of members of the Mahila Samiti showing undue favour to Shri Raiz Mohammed, Tailor.

4. He had also paid Rs. 2,000/- from the Railway revenues as advance to the Secretary, Mahila Samiti before completion of stitching which was highly irregular and not covered by extant orders.

5. Shri Meshram, Sr. Welfare Inspector, is, therefore, not a trustworthy person and his integrity is doubtful. Holding a responsible post of Sr. Welfare Inspector, he had indulged in malpractice inasmuch as he had misappropriated the amounts having been paid to the members by wilfully camouflaging that the original Bill Register has been lost.

6. If the normal procedure of removal from service is followed, it is likely that the evidence may be destroyed and members of the Mahila Samiti being lady-folk may not come up to adduce evidence for fear of threat and harassment. Further, it has also been proved beyond doubt that Shri Meshram has wilfully lost the Bill Register which is the vital document to bring out the actual amount of misappropriation. I am, therefore, satisfied in this particular case, it is not reasonably practicable to hold an enquiry in which he can be informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

7 Therefore, in exercise of the powers conferred upon me under Article 311 (2) (b) of the Constitution of India and under powers of sub para (ii) of para 14 of the Railway Servants (D&A) Rules—1968, I, Hasan Iqbal, the Divisional Railway Manager, S.E. Railway, Nagpur, have decided that Shri S.Z. Meshram, Welfare Inspector, Nagpur should be removed from service forthwith.

Sd/- (HASAN IQBAL)
Divisional Railway Manager,
S.E. Railway, Nagpur.

APPENDIX IV

(*See* para 3.2 of the Report)

[*Petition No. 7 regarding increase in margin of profit to authorised ration shops on levy sugar*].

PETITION NO. 7

(Presented to Lok Sabha on 2-12-1986)

To

LOK SABHA
NEW DELHI.

The humble petition of Shri Chimanlal Damji Gala, Hony. Secretary, Retail Grain Dealers' Federation, Bombay and others.

SHEWETH :

The owners of authorised ration shops issuing various commodities including levy sugar supplied by the Government to the ration card holders at a price and quantum fixed by the Government.

Your petitioners very humbly submit that the gross margin of profit allowed by the Central Government to the authorised ration shops on levy sugar has since 1970 remained static at Rs. 5/- per quintal.

Your petitioners had submitted a number of representations to the State Government and the Central Government with a request to raise the gross margin of profit allowed to the authorised ration shops on levy sugar from Rs. 5/- to 5%. The State Government on 9 March, 1984 recommended to the Central Government that the gross margin of profit on levy sugar allowed to the authorised ration shops should be raised

In response to our representation to the Central Government we

were informed *vide* letter No. 18-2/83-SPY (D. 11), dated 3 June, 1985—by the Deputy Secretary to the Government of India, that on receipt of the views of the State Government recommendation of the Margin Committee will be obtained, to enable the Central Government to take decision. The Central Government vide letter No. 18-2/83—SPY (D. II), dated 30 July, 1985 informed us that the question regarding revision of wholesalers and retailers margin on levy sugar in Maharashtra, is likely to be considered in a Meeting of the Margin Committee, to be held shortly. When our-the-Retail Grain Dealers' Federation requested the Central Government to allow the representative of the Federation to appear before the Margin Committee, to explain the case of the ration shopkeepers, our request was turned down. Thus, we were not given an opportunity to explain in person the case of the ration shopkeepers. We were advised on 23 August, 1985 to place our views before the State Government.

We have learned that Central Government has rejected our very just, fair and reasonable demand, which was supported by the State Government also.

Your humble petitioners submit that they have no other alternative left, but to approach the Petitions Committee of the Lok Sabha to get justice which is denied to them since last 17 years.

Your humble petitioners give below the reason why their demand to raise the authorised ration shopkeepers gross margin on levy sugar from Rs. 5/- per quintal to 5% is justified :—

(1) When the gross margin of Rs. 5/- plus empty gunny bag was fixed in 1970, the wholesale price of levy sugar was Rs. 150/- per quintal. Today the wholesale price is Rs. 475/- per quintal. Thus, it will be observed that even though the Central Government has raised the wholesale price of levy sugar by 220%, the gross margin of profit allowed to the ration shops has remained static at Rs. 5/- per quintal only.

(2) The gross margin of profit of Rs. 5/- per quintal allowed to ration shops in 1970, worked out to 3.33%, whereas in 1986, it comes to 1.04% only. Thus, on the one side, capital required has increased by 220%, the gross margin is reduced from 3.33% to 1.04%.

(3) The cost of transporting one bag of 100 kgs. of levy sugar from the godown of the levy sugar nominees to the ration shops, 1970 was only 80 paise. This transport cost has gone up considerably as follows :—

		For City Ration shops	For Suburbs ration shops
(i)	Loading charges (at the nominee's godown)	Rs. 1.45	Rs. 1.45
(ii)	Transport & unloading charges at ration shops	Rs. 2.63	Rs. 3.09
	Total :	Rs. 4.08	Rs. 4.54

When imported sugar bags of 50 kgs. pack are issued the expenditure per quintal is more than mentioned above :—

		For City ration shops	For Suburbs ration shops
(i)	Loading (2 bags of 50 kgs.) at the nominee's godown.	Rs. 2.10	Rs. 2.10
(ii)	Transport and unloading charges at ration shops (for 2 bags of 50 kgs. each).	Rs. 2.63	Rs. 3.09
	Total :	Rs. 4.73	Rs. 5.19

From the details of the transport expenses, it will be observed that the gross margin of profit of Rs. 5/- per quintal is almost consumed by loading and transport charges. When imported sugar of 50 kgs. bags are supplied, so far as ration shops of suburbs are concerned the trans-

port charges is more than the gross margin of profit of Rs. 5/-. Thus, it will be observed that the Authorised Ration shops gross margin of profit is only the empty gunny bag.

The resale value of empty gunny bag was Rs. 5/- to Rs. 6/- in the year 1983 as confirmed by the State Govt. vide their letter No. SUG. 3483/3033/XIX (CR 3029) dated 6th June, 1983.

At present the resale value of the empty gunny bag varies from Rs. 6/- to Rs. 8/-.

Unfortunately, the Margin Committee was under wrong impression that the resale value of the empty gunny bag is Rs. 15/-. It appears that this wrong impression was responsible for the rejection of a very just and reasonable demand.

As against the resale value of about Rs. 8/- the authorised ration shops suffer loss on account of transit loss i.e. loss incurred whilst transporting one bag of levy sugar from the godown of the levy sugar nominees to the ration shops premises which comes to 1/2%. The loss in retail sale i.e. the loss incurred whilst issuing levy sugar to the card holders in small quantities of less than one kg. comes to 1%. In monetary terms, the loss is as follows :—

Transit Loss 1/2%	Rs. 2.40
Retail sale loss 1%	Rs. 4.80
Total loss 1½%	Rs. 7.20

It will thus be seen that the amount received by the ration shops by way of sale of empty gunny bag is set off by transit loss and retail sale loss.

Thus, it will be seen that the gross margin of Rs. 5/- per quintal takes care of only transport charges and the resale value of empty gunny bag takes care of loss in transit and loss in retail sale.

However, to conduct a ration shop, the shopkeeper has to incur other expenses which are as follows :—

The quantum of levy sugar to be issued to the card holder is 425

grams per person per month. This quantum is to be issued in two fortnightly instalments. Hence in order to issue 100 kgs. of levy sugar, the ration shops have to prepare about 100 cash memos. The cost of printing 100 cash memos comes to Rs. 3/-.

Over and above cash memos, the ration shops have to maintain Sales Register, Stock Register, Card Register, Card Reference Register. They also need indent book's fortnightly stock return book, bill books, etc. When compared to the cost in 1970, the cost of stationery in 1986 has gone up considerbly.

The Municipal Corporation of Bombay is regularly increasing the licence fees and the State Govt. is similarly increasing the electricity charges.

Rate of interest which was about 10% in 1970 is now 18%.

The State Government, every six months, increases the dearness allowance to be paid to the employees of the shops. At present an employee is to be paid minimum Rs. 665/-. To give an example the figures of special allowance, fixed by the State Govt. are as follows :—

Period	Special allowance to be paid every month
January to June, 1984	Rs. 354.60
July to December, 1984	Rs. 365.40
January to June 1985	Rs. 387.90
July to December 1985	Rs. 393.30
January to June 1986	Rs. 415.80

The ration shops have to pay the above referred amount as special allowance, over and above the minimum wages of Rs. 250/-. This is the minimum that the ration shops have to pay to their employees.

The consumer price index number for the working class in Bombay on the basis of 1960=200, in July 1986 is 668. The increase in consumer price index affect the authorised ration shops also.

Your Petitioners take the liberty of referring to the 11th Report

of the Estimate Committee (1981-82). 6th Maharashtra Legislative Assembly, on Food and Civil Supplies Deptt. presented to the Legislative Assembly on 18th December, 1981. The Estimate Committee vide its report—para 4.16 (Page 15) recommended that the margin of the ration shopkeepers should be raised immediately. Accordingly, the State Govt. increased the margin allowed on the foodgrains but as the margin on levy sugar is fixed by the Central Govt. nothing has taken place.

Your petitioners would also like to state that the Central Govt. has taken into consideration the increase in expenses incurred by the levy sugar nominees and raised their margin, we desire that the Govt. should also look into the matter and raise the ration shops margin on levy sugar which has remained static at Rs. 5/- per quintal gross, since last 17 years.

The ration shopkeepers have to sell levy sugar in grams to a number of cardholders and have also to spend about Rs. 5/- for transporting the levy sugar bag from the godown of nominee to the ration shop. As such the gross margin of Rs. 5/- per quintal is most inadequate and needs to be raised immediately.

In view of the facts referred above your Petitioners pray that the Lok Sabha might direct the Govt. of India to reconsider the issue and increase the ration shops margin on levy sugar which has remained Static at Rs. 5/- per quintal, since last 17 years to 5% and for this act of kindness your petitioners as in duty bound shall ever pray.

Name of the petitioners	Address	Signature or thumb impression
1	2	3
1. Shri Chimanlal Damji Gala	M/s Damji Lalji & Co. A.R.S. No. 23 D. 22 Bhomaji Shivajiwadi, Nehru Road, Vakola Santa Cruz (East) Bombay.	Sd/-

1	2	3
2. Shri Manilal Premji Shah	M/s Premji Karubhai & Co. A.R.S. 25 D. 21, 6, Nilkanth Cottage Jay Prakash Road, Andheri (West) Bombay	Sd/-
3. Shri Harkhchand Jethabhai Savla	M/s Harakhchand Jethabhai & Co. A.R.S. No. 16 C. 43 Shop No. 2, Biradar Manzil S.M. Wagh Marg, Dadar Naigaum, Bombay.	Sd/-
4. Shri Mangal Prasad Shobhnath Singh	Shri Mangal Prasad Shobhnath Singh. A.R.S. No. 44, E. 65 12T/8—9 Municipal Hutment Colony, Baiganwadi Govandi Bombay.	Sd/-

Countersigned by Shri Anoopchand Shah, M.P. Division No 85.

APPENDIX V

(*See* para 3.18 of the Report)

Statement Showing the Present Retailers Margins on Foodgrains in Different States

(Figures in Rs. per quintal)

	State	Retailers margin on foodgrains	
		Wheat	Rice
1.	Andhra Pradesh	4.60	7.38
2.	Arunachal Pradesh	13.00 @	13.00@
3.	Andamans	1.71	1.71
4.	Bihar	5.70 (3% of issue price)	5.70 (3% of issue price)
5.	Dadar & Nagar Haveli	5.00	5.00
6.	Chandigarh (UT)	4.00 (wheat atta)	3.00
7.	Kerala	7.21 to 8.71	7.21 to 8.71
8.	Maharashtra	3.75 to 4.50% of ex-godown issue rates	3.75 to 4.50% of ex-godown issue rates
9.	Mizoram	7.00	7.00
10.	Orissa	7.00	7.00
11.	Punjab	4.00	5.00
12.	Pondicherry	5.00	6.20
13.	Rajasthan	1.25£	1.25£
14.	Tripura	4.50	4.50
15.	West Bengal	8.85 (one tier system in SR)	10.75 (one tier system in SR)
		6.27 (two tier system both MR and SR)	7.55 (two tier system both MR and SR)

NOTE—Empty gunny is allowed free to the retailers in addition to the margin fixed.

@ Under specially subsidised scheme in Tribal Areas.

£ Transport charges extra.

APPENDIX VI

(*See* para 4.28 of the Report)

Letter dated 27.3.1987 from Secretary, Kaymes Cooperative Group Housing Society Ltd,, Delhi.

Begum Abida Ahmed,
Chairperson,
Committee on Petitions,
Lok Sabha,
New Delhi.
Madam,

We take great pleasure in enclosing herewith a copy of the resolution unanimously adopted by the general body meeting of the Kaymes Cooperative Group Housing Society Ltd. held on March 8, 1987. The members are highly grateful that the Committee on Petitions under your leadership has tried to secure justice for the society from DDA. Structural plans for Geeta Colony have been cleared with your kind intervention.

We are sorry to bring to your notice that the DDA has not yet allotted balance 8 acre land in lieu of burial ground and encroachment by way toilet block & dhalao by DDA has also not been cleared. As per undertaking given to committee on Petitions, the DDA was bound to do this by 9th January 1987 but it has failed to do this. We shall feel highly obliged if you kindly prevail upon DDA to expedite action and remove our other grievances also.

Thanking you,

Yours sincerely,
Sd/-
(AMBA PRASAD)
Secretary

Encl. as above.

RESOLUTION

"This meeting of the General Body of Kaymes Cooperative Group Housing Society Ltd. expresses its sincere gratitude to Begum Abida Ahmed and Hon. Members of Committee on Petitions, Lok Sabha for giving us an hearing and listening to our grievances relating to allotment of land in Geeta Colony by DDA. It was but with their intervention that structural plans were cleared by Urban Arts Commission. We thank them for their magnanimity and help given to the society."

APPENDIX VII

(*See* para 4.29 of the Report)

[Letter No. H-11013/2/86-DDIIA, dated 16.4.1987 from the Ministry of Urban Development (Delhi Division)]

SUBJECT : *Representation from Shri Amba Prasad regarding allotment of land by DDA to Kaymes Co-operative Group Housing Society.*

Will the Lok Sabha Secretariat please refer to their U.O. No. 53/CI/86/R-38 dated 18 March, 1987 on the subject noted above.

According to the information received from the DDA, the Delhi Urban Art Commission has approved the Structure Plan of Geeta Colony area, retaining Taj-Sartaj, Kaymes, Sanmanya and North Zone Physically Handicapped Railway Employees Co-operative Group Housing Societies in this area. The Kaymes Co-operative Group Housing Society is being provided 3.3 acres of land in this area. The detailed lay-out plans submitted by the Societies are being processed by DDA.

The balance area of 0.8 acres for Kaymes Society has been poposed in Mandawali-Fazalpur extended area. The case for change of land use of this area from 'Industrial' to 'Residential' is being processed.

This issues with the approval of Joint Secretary (UD).

Sd/-
HARJIT SINGH
Director (DD)

Lok Sabha Secretariat (Committee Branch—I)
Shri O.P. Chopra—Senior Legislative Committee Officer

M/o. UD U.O. No. H-11013/2/86-DDIIA, dated 16 April, 1987.

APPENDIX VIII

(*See* Para 6.2 of the Report)

[Representation from Shri Bimal Saha and others regarding regular appointment in Railways]

AN APPEAL — REGD. WITH A/D

Hon'ble Speaker of Lok Sabha,
Parliament of India,
Lok Sabha Secretariat,
Parliament House,
New Delhi—110001.

Hon'ble Chairman of Rajya Sabha,
Rajya Sabha Secretariat,
Parliament of India,
Parliament House Annexe,
New Delhi—110001.

SUBJECT: *Regularisation of service of those, who helped Railways during the difficult period of service in 1974 (All India Strike period) Request for.*

Hon'ble Sir,

We all the nine signatories of the Joint application (Already sent to your Honour's Office), we beg to approach your kind self with memorandum to consider our appeal for which we place the following for your kind perusal and sympathetic consideration please :—

That we all the signatories of the Joint application have also rendered our valuable service in connection with passing of Goods Trains from Naihati Yard and other Yards and helped the Railway Administration in the serious difficult period of all India Railway Strike commencing from 8.5.1974—Photo copy of the certificate granted in our names by the DEN-II/ SDAH/NH—Already sent to your honour's office from time to time in support of our application and duly received by your Honour's Office.

That during the above all India Strike period, the Hon'ble authorities of Railways Administration gave us various

assurances that our names will be recognised/recorded as loyal Government servants and they will certainly provide us in Railway Administration by way of regular appointment as a special case on "Top Priority" basis. The Hon'ble Railway Authorities also gave us assurances that they will give us some other special benefits in the matter of promotion, confirmation etc. and "we believed in them as the word of God". But to our utter surprise, we see that our matter has been kept pending since long 1974. We have not yet received any appointment letter from the Railway Administration and we have been quite in the dark in the above matter.

That we repeatedly requested the authorities of Sealdah Division. Eastern Railway, Calcutta to regularise our service matter by way of allowing us to resume normal duties as usual and issue of regular appointment letter/office order in our names as promised by the Railway Authorities earlier—*i.e.*, during the difficult period of Railway Strike in 1974. When we helped the Railway Administration (in the days of their trouble) but unfortunately all the while, the Railway Authorities kept strictly silent and did not care to give any reply and rather harassed.

We therefore, request your kindself to consider our pitiable Distressed pecuniary condition and your honour will be pleased to see that our service matters are set led as a special case on "Top priority" basis without further delay. This may kindly be treated as "Most urgent" please.

An act of grace for which we shall feel ever obliged.

Yours faithfully,

Sd/-
(BIMAL SAHA) and others.

APPENDIX IX

(*See* Para 8.2 of the Report)

[Representation from Shri A.S. Ramakrishnan regarding fixation of his pay]

From

A.S. RAMAKRISHNAN
(Retired Telephone Operator
Telephone Exchange SHORANUR)
Narangaparampil House,
P.O. KAVALAPPARA
(Via) SHORANUR (KERALA)
PIN : 679523

To

The Chairman
Petitions/Grievances Committee of Parliament
Parliament House
NEW DELHI.

Most Respected Sir,

With due respect and humble submission I am to bring to your notice my grievances as an Ex-employee of the Telecommunications Department (Formerly of the P&T), as I have failed to get justice at the hands of the Departmental authorities.

I am an Ex-serviceman (JC—26459 EME) re-employed as a Telephone Operator with effect from 22.10.74 and retired from that service on 31.5.84 (AN). On my re-employment in the P&T Deptt., I was paid the minimum of the scale of pay of Rs. 260/- p.m. In the year 1980 my pay was fixed taking into account my Army Service of 28 years and the pay last drawn in the Army. Unfortunately when the fixation was done based on rules and regulations and its inter-

pretation, my pay was fixed at Rs. 221/- p.m. as against Rs. 260/- (Minimum of the scale) drawn by me and the overpayment was recovered. In this connection a copy of D.G. P & T New Delhi letter No. 3-68/79-PAT dated 2 April 1980 is enclosed.*

All my efforts to bring to the notice of the authorities that the pay fixation should have been done in such a way as to give some benefits to the Ex-servicemen and not to cause hardships, have failed on deaf ears. My contention is that whatever the rules and regulations may say, a person is entitled to the minimum of the scale and that the question of overpayment in this case should not arise But no one in the Govt. offices seems to understand me. They will understand only if they are placed in similar circumstances. It is a pity that what I have gained in my 28 years of Army Service, a basic pension of Rs. 170/- p.m. should be a cause for fixation of my pay at a lower level. I do not mind if the entire pension is stopped during my re-employed period provided my Army Service of 28 years is taken into account for the grant of increments and other benefits. What I have drawn in the re-employed service, Rs. 260/- (minimum of the scale) plus pension of Rs. 170/- totals Rs. 430/-, whereas I would have been eligible for Rs. 480/- (maximum of the scale) of my Army Service is taken into account. If there are rules which stand in the way of doing justice, those should be amended. In my honest opinion, there is no one in the Defence or Finance Ministry who are sympathetic to the Ex-servicemen.

I remember of the remarks made by one of the Secretaries in the Finance Ministry in the case of pay fixation of an Ex-Havildar Clerk on his re-employment as LDC that "the service of a combatant cleark cannot be considered as equivalent to that of a civilian clerk (LDC) because those unfit for civil service only join the Army." In his opinion a combatant service is an inferior service and the same could not, therefore, be considered as equivalent to that of a civilian counterpart. This seems to be exactly the attitude even now of our Secretaries who are running the administration and who are empowered with all the financial powers of the Government and are really the Heads of Departments. I can give you a concrete proof of this, as to how these gentlemen are acting against the interests of Ex-servicemen. In this connection I am enclosing a copy of Min. of Def. O.M. *No. F.5 (14)-

*Not enclosed.

E-III (B)/77 dated 19 July 78 and attention is drawn to the sentence under-lined. The Govt. has declared a benefit to the re-employed Ex-servicemen that the pension upto Rs. 125/- entire pension be ignored at the time of fixation of pay. In order to undue its effect they have added the sentence that those who opt for these benefits would be considered as new entrants, thereby denying the increments already earned to the re-employed persons. I have lost 8 increments of Rs. 8/- and a total of Rs. 64/- p.m. plus DA and other allowances. Perhaps the Minister or the Govt. may not be aware of this at all.

My humble prayer before you is that some thing be done urgently to do justice to the unfortunate Ex-servicemen like me by ordering refund of the overpayment already made and by deleting the offending sentences from the Govt. letters referred to above, so that those already in service may not be considered as new entrants for the purpose of fixation of pay.

I hope, this humble submission from an Ex-serviceman would receive your sympathetic consideration and the departments be directed to give humane considerations while dealing with the cases of Ex-servicemen. It is also my humble request that this may not be sent to the concerned department for necessary action and direct disposal as is the usual practice as I feel it will serve no useful purpose. What I would request is that the Committee go through my grievances, if they are satisfied that justice has been denied to me, obtain the comments of the Departmental Head and then give a decision.

Yours faithfully,

Sd/-
(A. S. RAMAKRISHNAN)

KAVALAPPARA
10 Feb. 86

APPENDIX X

Comments of the Ministry of Communications (Deptt. of Telecom-regardmunications) on the representation from Shri A. S. Ramak rishnan ing fixation of his pay

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF TELECOMMUNICATIONS
NEW DELHI-110001.

SUBJECT : *Representation regarding pay fixation on re-employment—case of Shri A.S. Ramakrishnan, Retired Telephone Operator.*

Reference Lok Sabha Secretariat U.O. No. 53/CI/86/R-41 dated 25.3-1986, on the above subject.

The fixation of initial pay of ex-servicemen on their re-employment in this Department is normally dealt with under the provisions contained in the Ministry of Finance Office Memorandum No. 8 (34)-EST. III/57 dated 25.11.1958, as amended from time to time. Under these orders, the initial pay of a re-employed official could be fixed at a higher stage than the minimum of the time scale by allowing one increment for each year of service, which the official has rendered before retirement in the defence services in a post, not lower than that in which the official is re-employed. For this purpose, only such service in the defence service, wherein the pay drawn was equal to or more than the minimum of the re-employed time scale of pay is taken into account. However, the pay proposed to be fixed in such cases in the civil post plus pensionary benefits admissible, should not exceed the last pay drawn. While calculating the pensionary benefits, it was stipulated that an amount of Rs. 15/- would be ignored. This limit was enhanced from time to time and at present in the case of ex-servicemen (personnel below commissioned officer rank), the entire pension could be ignored, as per the Ministry of Defence Office Memorandum No. 2-1/83-D (Civil-I) dated 8.2.1983.

3 Shri A.S. Ramakrisnan had served in the army from 9.5.1944 to 26.6.1972, before his appointment as Telephone Operator in this Department on 22.10.1974. The pre-retirement pay of the official was Rs. 373/-. His pension and pension equivalent of gratuity was Rs. 170/- and Rs. 31.94 respectively. At that time the ignorable limit of pension for the purpose of pay fixation was Rs 50/-. Thus his pay in the civil post plus pensionary benefits of Rs. 151.94 (*i.e.* Rs. 170-31-94-50), should not exceed Rs. 373/-. Thus his pay was fixed at the stage of Rs. 221/- with effect from 22.10.1974 with date of next increment on 1.10.1975.

4. The ignorable limit of pension was further enhanced to Rs. 125/-, *vide* Ministry of Finance Office Memorandum No. 5 (14)-E. III (B)/77 dated 19.7.1978. These orders are effective from the date of issue. However, it was laid down that in respect of those, who are already re-employed, they might be allowed to exercise option to take advantage of those orders within six months from the date of issue of the above orders, on the condition that they might be treated as if they have been re-employed for first time from the date of issue of these orders. Shri Ramakrishnan had exercise option for fixation of pay under Office Memorandum dated 19 7.1978 and his pay fixation was revised and his pay was refixed at the stage of Rs. 292/- with effect from 19.7.1978 with date of next increment on 1.7.1979 in the scale of Rs. 260-480/-.

5. For greater appreciation of facts, the details of the process of pay fixation have been indicated separately in the Annexure.

6. The ignorable limit of pension has been further liberalised. According to the Ministry of Defence Office Memorandum No. 2 (1)/83/D (Civil-I) dated 8.2.1983, in the case of personnel below commissioned officer rank, the entire pension might be ignored for the purpose of fixation of pay. The official has opted for fixation of pay under the above Office Memorandum and his case has been kept pending for the present. It will be examined after information regarding enhancement of pension is received from the EME Record Office, Secunderabad.

7. The main complaint of Shri Ramakrishnan is that his pay was initially fixed below the minimum and over payment was recovered. The circumstances leading to the fixation of pay below the minimum have

been explained in para 2 of the U.O. and need no further elucidation. As the Divisional Engineer, Telegraphs, Palghat, had allowed him to draw pay at the minimum of the scale for some time before receipt of instructions from the Office of the Director General, Posts and Telegraphs, there was some overpayment which was recovered from the official. In this connection it may be mentioned that it is the policy of the Government to recover over payment wherever occurred and it is the duty of the government servant to repay over payment, even if the amount of overpayment is drawn in good faith.

8. Another complaint made by Shri Ramakrishnan is that the officers of the Ministry of Finance/Defence have acted against the interest of ex-servicemen by stipulating that the liberalisations made under the Ministry of Finance Office Memorandum dated 19.7.1978 and Ministry of Defence Office Memorandum dated 8.2.1983 will be allowed to those, who were re-employed prior to the date of issue of the orders, only on the condition that they would be treated as if they were re-employed from the date of issue of orders. In this connection, it may be mentioned that the orders cited above are effective from the date of issue and are, strictly speaking, applicable only to those, who are re-employed on the date of issue of orders or afterwards. It is not the policy of the government to give retrospective effect to its orders except under exceptional circumstances. However, the government, as a special case, allowed those, who have been re-employed prior to the issue of the above orders, to exercise option, to take advantage of the above orders The stipulation, that pay in such cases would be determined afresh as if they have been re-employed for the first time from the date of issue of orders, is justified in view of the fact that the orders regarding liberalisation is effective only from the date of issue. In view of this, the complaint of Shri Ramakrishnan is unfounded and without basis.

9. *Lok Sabha Secretariat may kindly see.*

Sd/-
(B.S.G.K. SETTY)
Deputy Director General (T)

Lok Sabha Secretariat (Committee Branch) (Attention : Shri O.P. Chopra, Senior Legislative Committee Officer), New Delhi.

Department of Telecommunications U.O. No. 14-1/86-PAT dated 24.4.1986.

ANNEXURE

No. 4/1/83-G.M.
Government of India
Ministry of Industry
Bureau of Public Enterprises

Public Enterprises Bhavan,
CGO Complex No. 14
Lodhi Road, New Delhi-3

Dated the 5th August, 1983.

SUBJECT : *Recruitment and managerial policies of public enterprises—Observation made during the Chief Executive Conference held on 5-6 April, 1983.*

With regard to the recruitment and managerial policies of public enterprises, the following observations were made during the Chief Executives Conference held on 5-6 April, 1983.

(i) Every industry that is set up dislocates the local population and many of them belong to the poorest and the weakest sections. There is a commitment to employ those who are dislodged; at least one member per family should be provided employment. The persons so employed should be given training, if they are not trained.

(ii) Special considerations should be given to minority as also to others who cannot easily get employment. In every area of public life, the public sector has a great responsibility.

(iii) Most of the women who are engaged through employment exchanges are working on daily wages for years; and in order to deprive them of the benefits of labour law, management gives them short breaks. Ministry of Labour issued guidelines for the regularisation of such casual workers. Each one of

the public enterprise should see to it that all such Government policies are implemented.

(iv) The Chief Executives of public enterprises should keep in touch with the local problems, the problems of the workers, their families and problems of the area. By so doing, a lot of trouble and problems can be avoided at the very start.

(v) It should be seen that the virus of communalism and casteism does not exist in the public sector wherever any kind of caste or communal tension is noticed timely action should be taken to nip such tensions in the beginning and not after it assures dimensions.

(vi) Public Enterprises should have enlightened personnel policy which is well articulated and made known to all employees in the organisation.

2 The basic parameters of the recruitment and managerial policies of the public enterprises have been spelt out in the BPE's O.M. No. 2(116)/69-BPE (GM-I) dated (16.2.1970 read with the subsequent to O.M. dated 20th April, 1978, 13th November, 1978 and 26th July, 1978. In brief they *inter alia* stipulates that :

(i) Appointments to Top Posts are to be made by the Government on the basis of suitability of the individual candidate to the specific post ;

(ii) In the case of middle level and senior middle level executive cadres, appointments re-made on all India basis, merit and qualifications being the principal criteria. Care is also to be taken to ensure that there is no reasonable ground for complaints by the local candidates. For higher technical post, the best qualified person is to be recruited either through advertisement on all India basis or by personal contact.

(iii) In the lower formations, recruitment is to be made through the Employment Exchange only if the post carried scales of pay the maximum of which does not exceed Rs. 800/- p.m. In the case of unskilled workers preference is to be given to the people coming through the Local Employment Exchange where

the project is situated. Persons displaced from the areas acquired for the project or those belonging to SC/ST are given over riding priority in the matter of employment. Next to be preferred are those who, even if they come from some distance have been or about to be retrenched from other public Enterprises. Even in the case of skilled workers, clerks and other non-technical staff, so long as the basic qualifications and experience are forth-coming preference is to be given in the order of priority mention above.

(iv) The enterprises are also required to notify all vacancies to the Employment Exchanges and insert suitable advertisements in the local and National Press in respect of vacancies in higher categories of posts.

(v) No casual employee should ordinarily be appointed. Appointment of casual employees could be made by the enterprises only for casual work in accordance with the prescribed procedures Wherever the vacancies have continued beyond a stipulated period, the persons engaged on casual basis should also be considered for appointment on regular basis subject to the satisfaction of the norms evolved in this regard.

3. The management of the public enterprises should review their recruitment and managerial policies in the light of the parameters given above. While doing so, they should ensure that the recruitment and managerial policies do not in any case discriminate against individuals on the basis of caste, creed, sex or the area of origin. The management of the enterprises are also expected to get in touch with the local authorities to tackle the problems of the workers/their families and organise refresher course wherever necessary. Care should also be taken to see that the recruitment and managerial polcies are reviewed periodically with a view to ensuring that the concerned public enterprises are able to operate on commercial and competitive lines while at the same time meeting the justifiable aspirations for employment opportunities of the local categories.

4. Ministry of Industry, Ministry of Steel & Mines, Ministry of

Energy, etc. are requested to bring the foregoing to the notice of the public enterprises under their administrative control for necessary action.

Sd/-
(Y.P. KAPOOR)
Director

To

All administrative Ministries/Departments of Government of India

Copy to :

(i) The Comptroller & Auditor General of India (50 copies).

(ii) J.S. (K)/Secretary (PESB)/Adviser (P)/Adviser (F)/A Adviser (C)/Director (M)/D.S. (I&R)/D.S. (C)/PS to SS & DG, BPE.

(iii) Chief Executives of all the Public Enterprises.

(iv) Secretary General, Standing Conference of Public Enterprises, Himalaya House, Connaught Place, New Delhi.

(v) All I.F.As in the administrative Ministries.

Sd/-
(Y.P. KAPOOR)
Director

APPENDIX XI

(Letter from Shri M. Ismail, ex-MP)

From :

MD ISMAIL
EX-M.P.

To

Shri O. P. Chopra,
Senior Legislative Committee Officer.

SUBJECT : *Action Taken by Government on the recommendations of the Committee on Petitions contained in their Eighteenth Report (7 LS) on the representation regarding withdrawal of liquidation proceedings of Containers and Closures Limited and revival of the unit by providing necessary funds.*

Ref : No. 57/9/CL/84. Dated : 10th Oct. 1985.

Dear Sir,

On 27.11.85 I received through Telegraphic message that we are to appear before the Committee on Petitions, Lok Sabha on 9.12.85 in connection with my representation regarding withdrawal of Liquidation proceedings of Containers and Closures Limited. But as my physician has advised me not to move and take complete rest, I regret that I shall not be able to appear before the Committee personally on the date mentioned. But as the matter is very urgent one to us, I am sending two workmen of the company concerned (Shri Bimal Dutta and Shri Shiba Pada Basu, who submitted the original petition) and the General Secretary and Vice President (M.L.A.) of the Labour Union. I do thereby request you to make such arrangement that they may be present at the time of hearing before the Committee.

In this connection I like to submit as follow :—

1. The Company was a Govt. managed concern under IBCI. This Unit of metal packaging Industry in this eastern region was left in the lark through denotification in spite of popular request from the workmen of the unit. Number of times it was pointed out to the Government that the reasons for sickness of the unit were due to maladministration and mismanagement and that the workers offered their unstinted Co-operation to make the unit viable. The Government issued the notification on 7.12.83 extending the period of take over beyond five years. (in Lok Sabha). But surprisingly enough, that at the same time the Bank was advised to carry on liquidation proceedings. The workers were kept in dark about the proceedings and that no proper notice of denotification was issued from any quarter. It appears that the liquidation order was issued by the Hon'ble High Court on 28.10.83 and the workers came to know of the same on 25.11.83 through a gate notice issued by the then Co-ordinator of the company. The whole affairs appeared to be motificated and had jeopardised the interest of the workers and the state economy as well.

2. In the comments to the Petition Committee dated 20.12.83, the Ministry of Industry mentioned that the company met a total cash loss of 577.5 lakhs during the period of take over (i.e. from 1972 till Dec. 82). But here it should be noted that during the same period of take over the Government earned Rs. 550 lakhs (Approx.) as the Central Excise through this company. Besides, during this period the company had to pay Rs. 30,00,000 (Approx) as Sales Tax, and Rs. 215 lakhs (Approx.) as interest against the loan taken from the Bank and the IRDI. As far as the Government is concerned there is no net loss. It has served more in the shape of Excise Duty, Sales Tax and Bank interest. It think, it is an important point in favour of this unit.

3. In my last submission to the committee dated 4th Jan. 1984, I pointed out the opinions of Shri N. Guha, the G.M. of M/s. Balmer Lawrie, whom the Ministry of Industries asked to

examine the viability of the company. In his note he pointed the following plus points :—

(i) CCL offers logical and compatible diversification.

(ii) The product has a good deal of strength and likely to remain so for several years to come.

(iii) Challenge from substitutes in some categories will be counter balanced by increased overall demand in new areas.

(iv) The product has export potential.

(v) The printing machine recently installed can be used to great advantage. Except Metal Box none in this part of the country has modern lithography facilities.

(vi) Operation of the factory is not susceptible to be plagued by power cuts.

(vii) Building/Sheds are in good condition. There is scope for expansion and addition of new product lines.

(viii) Oil Companies, drugs and pharmaceuticals companies are major buyers. Commitment of purchase by oil companies and IDPL etc. will greatly enhance viability/profitability.

(ix) Skilled workmen already available.

He has also noted some minus points. But in conclusion he noted as "CCL opens new possibilities provided BL is prepared to take up as a challenge and put up with the struggle for a short period for a year or so. At least 150/200 people including some of those who are in supervisory/managerial category need to be dispensed with and BL has to induct good managerial team through a judicious mixture of some of the existing managers and recruitments of a few hands. I am inclined to recommend that BL should show positive interest in CCL.

4. I would like to point out that the owners of this undertaking had closed the factory and started black-marketing of tin plates etc. The workers took initiative and reported the same

on which there was an enquiry in 1972 after which this undertaking was taken over by the provision of I (D&R) Act Nineteen Fifty One (1951), Hence the cash losses have occurred during the period of management of taken over units. Liquidation of this company would mean that the workers and their families are being punished for the malpractices of both private sector and public sector owners.

I would further point out that there is still market for the goods manufactured in this undertaking, the market requirement is being managed by metal box, Paisa International and other concerns from Bombay, Delhi and Hyderabad.

It is therefore not understood as to why the government will not take this challenge and run the company after reopening and nationalising the same, or by merging with Balmer Lawri or any oil company unless of course it been done as a measure of political discrimination to the people of West Bengal by favouring Industries outside West Bengal Expanding the scope of employment there and closing down factories in West Bengal denying job opportunities.

With kind regards,

Yours sincerely,

Sd/-
(MD ISMAIL)

Akashdeep Printers 20, Ansari Road, New Delhi-110002.