

# **COMMITTEE OF PRIVILEGES**

**(FIFTH LOK SABHA)**

**SIXTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*November, 1973/Agrahayana, 1895 (Saka)*

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Corrigenda to the Sixth Report  
of the Committee of Privileges  
(Fifth Lok Sabha)

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PERSONNEL OF THE COMMITTEE OF PRIVILEGES  
(1973-74)

Dr. Henry Austin—*Chairman*

MEMBERS

2. Shri Frank Anthony
3. Shri H. K. L. Bhagat
4. Shri Somnath Chatterjee
5. Shri Darbara Singh
6. Shri H. R. Gokhale
7. Shri Nihar Laskar
8. Shri B. P. Maurya
9. Shri H. N. Mukerjee
10. Shri K. Raghuramaiah
11. Shri Vasant Sathe
12. Dr. Shankar Dayal Sharma
13. Shri Maddi Sudarsanam
14. Shri R. P. Ulaganambi
15. Shri Atal Bihari Vajpayee

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary*

Shri B. K. Mukherjee—*Deputy Secretary*

Shri J. R. Kapur—*Under Secretary*

# **SIXTH REPORT OF THE COMMITTEE OF PRIVILEGES**

## **(Fifth Lok Sabha)**

### **I. Introduction & Procedure**

I, the Chairman of the Committee of Privileges, having been authorised to submit the report on their behalf, present this report to the House on the question of implementation of the resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee, Deputy Iron & Steel Controller, referred<sup>1</sup> to the Committee by the House on the 11th May, 1973.

2. The Committee held five sittings. The relevant minutes of these sittings form part of the report and are appended thereto.

3. At the first sitting held on the 16th May, 1973, the Committee deliberated on the matter.

4. At the second sitting held on the 18th June, 1973, the Committee decided to obtain from the Ministry of Steel and Mines a detailed factual note stating the steps taken by Government to implement the second part of the resolution adopted by Lok Sabha on the 2nd December, 1970, the difficulties which had arisen in implementing that resolution, reference made by the Ministry of Steel and Mines to the Attorney-General and the Opinion given by the Attorney-General on the matter.

5. At the third and fourth sittings held on the 5th July and 3rd August, 1973, the Committee perused the detailed factual note furnished by the Ministry of Steel and Mines and deliberated on the matter.

6. At the fifth sitting held on the 12th September, 1973, the Committee considered their draft Report and adopted it.

### **II. Facts of the case**

7. On the 2nd December, 1970, the Lok Sabha, after considering the 12th Report<sup>2</sup> of the Committee of Privileges (Fourth Lok Sabha), adopted the following resolution:

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<sup>1</sup> L.S. Debate dt. 11-5-1973.

<sup>2</sup> The summary of the case is at Appendix I.

"That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be summoned before the bar of the House and be reprimanded and the House do further recommend that the Government in the light of gravity of the offence administered to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House."

8. In pursuance of the above decision of the House on the 2nd December, 1970, Shri S. C. Mukherjee was summoned at the Bar of the House and reprimanded by the Speaker in the name of the House on the 9th December, 1970.

9. On the 3rd December, 1970, a written communication was sent to Ministry of Steel and Heavy Engineering inviting their attention to the following recommendation contained in the resolution adopted by the House on the 2nd December, 1970, with the request that necessary action in the matter might be taken:—

"...and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House."

10. On the 25th April, 1973<sup>a</sup>, Shri Madhu Limaye, M.P., drew the attention of the House to the non-implementation of the aforesaid recommendation contained in the resolution adopted by the House on the 2nd December, 1970.

11. Thereafter, Shri S. Mohan Kumaramangalam, Minister of Steel and Mines, stated<sup>a</sup> *inter alia* in the House as follows:

"He (Shri S. C. Mukherjee) submitted a Petition to you (Speaker) requesting that his case be reviewed. That Petition was dismissed by you on the 31st of December, 1971. On the 1st of January, 1972, a hearing (by Commissioner of Departmental Enquiries) took place of the charge against him. In that hearing, he requested that the transcripts of the evidence that had been given by him before the Public Accounts Committee, may be made available

<sup>a</sup> L.S. Deb. dt. 25-4-1973. cc. 244—263.

<sup>a</sup> *Ibid.*

to him. I, thereupon, requested you whether these could be made available to him. On the 1st of March, 1972, you indicated that it would not be possible to make available to Shri Mukherjee any of the records of this House or any Committee of this House, because these matters were final and had been decided here. No outside authority could sit in judgment on what took place in this House. I entirely appreciated that position. But the difficulty then arose as to what were Mr. Mukherjee's rights in relation to the charge framed against him. Hon. Members must be aware that under article 311 of the Constitution every Government servant has a right to show cause against the punishment proposed to be inflicted on him, and, therefore, has a right to defend himself and ask for material and cross-examine witnesses. In view of your ruling that these materials could not be made available to him—with which I entirely agree—I was naturally in a dilemma. I could not instruct the disciplinary proceedings against him to continue because the disciplinary proceedings would obviously be invalid if he was not permitted to have all the material with which he could defend himself. I, therefore, also really could not prove the case against him. Thus began a legal conundrum. I spent some time at it and what I thought—at that time as ingenious but now I do not think it is so—was that possibly a charge could be framed against him that in committing contempt of the House, he had committed misconduct as a Government servant. And, in view of the complications of the matter, we referred it to the Attorney General. And, on referring it to the Attorney General for his advice, he advised us and he said that the view taken by the hon. Speaker about the position relating to the records of the House is of course perfectly correct, he was in entire agreement with that position legally, but that so far as the position regarding Shri Mukherjee being proceeded against in relation to what he had done, namely, contempt of the House, is concerned, it would not be possible to proceed on the basis of the disciplinary enquiry, and, therefore, he suggested that the matter may be taken back to the House for the advice of the House in the Matter... Thereupon, I requested the leaders of the different opposition parties to meet me on the 20th December, 1972. A number of hon. Members were present. It was a representative meeting. In the course of that meeting I put my dilemma

quite plainly before the hon. Members and they showed a spirit of understanding, and it was then decided that Shri Era Sezhiyan, the Chairman of the Public Accounts Committee, should go into the matter and make his recommendation to the meeting and the meeting will decide what should be done. Shri Sezhiyan thereupon had written a letter to my colleague Shri Raghuramaiah indicating that it would not be proper or possible for him to make a recommendation as Chairman of the Public Accounts Committee, because the matter was dealt with by this House itself. Therefore, we have once again convened a meeting of the leaders of the opposition parties which is to take place, if I am not wrong, on the 10th of May, 1973, where we hope to come to a final decision in the matter. Hon. Members would, I am sure, appreciate that we have been quite assiduous in trying to find a solution to the problem. There are certain obvious difficulties about which the hon. Members of the opposition are conscious. We do not want to take a decision which would lead, as it were, to a self-defeating decision. That is, Government takes a decision and it so happens that the matter goes to a court and the court sets it aside, and this is what the learned Attorney General warned us in relation to this matter. Therefore, what the Government has done is perfectly correct and proper and there has been no confusion at all."

12. On the 11th May, 1973, Shri K. Raghuramaiah, Minister of Parliamentary Affairs, moved<sup>a</sup> the following motion which was adopted by the House:—

"That this House, having considered the statement made by the Minister of Steel and Mines in the House on the 25th April, 1973, points raised by Members thereon, and other relevant facts relating to the implementation of the latter part of the resolution adopted by Lok Sabha on the 2nd December, 1970, namely, 'that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House', do resolve that the matter be referred to the Committee of Privileges;



The House do further direct that the Committee report to the House by the 16th August,\* 1973."

### III. Findings of the Committee

13. The Committee, at their sitting held on the 18th June, 1973, considered the scope of their terms of reference and decided that the only question before the Committee was the consideration of the constitutional difficulties in implementing the second part of the resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee. The Committee were of the view that it was not necessary to examine Shri S. C. Mukherjee in person at this stage as that would amount to reopening the whole case which was neither necessary nor called for in view of the resolution adopted by Lok Sabha on the 2nd December, 1970, adjudging Shri S. C. Mukherjee having committed a breach of privilege and contempt of the House by misleading the Committee on Public Accounts.

14. The Committee noted that Shri S. C. Mukherjee had already been given a full opportunity to explain his case, both orally and in writing, before the Sub-Committee of the Committee on Public Accounts which had investigated this matter on a reference from the Committee of Privileges. The Committee of Privileges of Fourth Lok Sabha had made the following observations in their Twelfth Report on this case:—

"While arriving at their conclusions, the Committee observed that full and adequate opportunity had already been given to Sarvashri N. N. Wanchoo and S. C. Mukherjee to explain their position in the matter, both orally and in writing, before the Sub-Committee of the Public Accounts Committee which had investigated the matter in detail. The Committee did not, therefore, consider it necessary to ask them to appear before the Committee for further oral examination or to submit any further written statement to the Committee."

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\* The time for presentation of Report of the committee was extended by the House up to the last day of the first week of the next session on a motion moved on the 10th August, 1973.

The Committee endorse the above observations.

15. The Committee, therefore, decided to call for a detailed factual note from the Ministry of Steel and Mines stating the steps taken by that Ministry to implement the second part of the resolution adopted by Lok Sabha on the 2nd December, 1970, the difficulties which had arisen in implementing that resolution, reference made by that Ministry to the Attorney-General and the Opinion given by the Attorney-General on the matter.

16. The Ministry of Steel and Mines, in their factual note submitted to the Committee, stated *inter alia* as follows:—

“(i) The matter was discussed at a meeting of the Secretaries held on 25-1-1971.... It was decided that it was necessary to observe the prescribed procedure for issue of charge-sheet and for giving a reasonable opportunity to Shri Mukherjee through an inquiry before taking a final decision in the matter.

“(ii) Accordingly, Shri Mukherjee was served with a charge-sheet on 21-5-1971.... Simultaneously, the Hon'ble Speaker, Lok Sabha, was informed on 22-5-1971 that it would be necessary, during the proceedings to be initiated against Shri Mukherjee, to tell him as to how and in what manner he was responsible for false evidence being tendered before the Committee on Public Accounts. A request was made to Hon'ble Speaker that relevant proceedings of the Committee, and the verbatim evidence tendered by Shri N. N. Wanchoo and Shri S. C. Mukherjee before the Committee in March, 1966, might be made available to the Department of Steel. This request of the Department of Steel was, however, not acceded to by the Hon'ble Speaker for the reason that the relevant verbatim record of evidence given before the Sub-Committee of the Public Accounts Committee had not been laid on the Table of the House by the Committee and, as such, it was 'confidential' and not open to inspection by anyone. However, the Lok Sabha Secretariat supplied this Department with a copy of the minutes of the sitting of the sub-Committee of the PAC held from 9th to 12th March, 1966 during which amongst others, Shri N. N. Wanchoo and Shri S. C. Mukherjee had tendered evidence.

(iii) In the meantime, Shri Mukherjee, in his reply to the charge-sheet served on him in May, 1971, requested in his letter dated 26-5-1971 that the following files|documents *inter-alia* might be made available to him:—

‘(a) Verbatim transcript of the PAC proceedings on 9th and 10th March, 1966 containing the evidence tendered by Shri Wanchoo and myself on the question of Bank Guarantee.

(b) Verbatim transcript of oral evidence on the subject of Bank Guarantee tendered before the Sarkar Committee by:—

(i) Shri A. S. Bam

(ii) Shri N. N. Wanchoo

(iii) Shri S. Bhoothalingam

(iv) Shri G. N. Sen

(v) Myself.’

In reply, Shri Mukherjee was informed on 13-7-1971, on this point, as follows:—

‘In the CCS (CCA) Rules, 1965 there is no provision for inspection of documents for the purposes of submission of written statement of defence Rule 14(4) of the said Rules is not intended for submission of any elaborate statement but only to give an opportunity to the person concerned to admit or deny his guilt. For this purpose, inspection of documents/files is not necessary. Shri Mukherjee may, if he considers necessary, make a request for inspection of documents|files and also for copies|extracts of documents to the Inquiry Officer at the time of oral enquiry, when his request will be considered by that authority on merits and with reference to the rules on the subject’.

(iv) The Oral Inquiry of the case was entrusted to the Commissioner for Departmental Enquires nominated by the Central Vigilance Commission for the purpose. The Preliminary hearing of the inquiry took place on 1-1-1972. At the very outset, Shri Mukherjee submitted an application asking *inter alia* for the following documents:

‘(i) Verbatim report of the evidence (questions and answers) tendered by Shri Mukherjee before P.A.C. which are considered to be false or misleading.

- (ii) Verbatim report of the evidence (questions and answers) tendered by Shri Wanchoo before P.A.C. which he claims to have given on Shri Mukherjee's verbal advice.'

The Commissioner for Departmental Enquires directed that the above documents should be made available to Shri Mukherjee for inspection.

- (v) In view of the directions of the Commissioner for Departmental Enquiries, the Hon'ble Speaker, Lok Sabha, was again approached on January 14, 1972 with the request that he might reconsider the question of making available the documents required for inspection by Shri Mukherjee. On being approached, the Lok Sabha Secretariat again declined to furnish this verbatim record. Further, the Speaker had, in his reply dated March 1, 1972 observed as follows:

"The question whether any false evidence was given before the Public Accounts Committee or that Committee was misled by Shri S. C. Mukherjee and thereby a contempt of the House was committed by him is within the exclusive jurisdiction of the House and the decision of the House on the matter is not subject to question or review by any outside authority.'

- (vi) It may also be stated that on July 28, 1971, Shri Mukherjee had submitted a petition addressed to the Speaker wherein he had requested for review of the reprimand administered to him by Parliament. On December 1, 1971, the Lok Sabha Secretariat had called for certain factual comments from the Department of Steel. However, before these could be furnished, a communication was received from the Lok Sabha Secretariat on January 3, 1972, rejecting the petition submitted by Shri Mukherjee.

This matter was discussed by the late Steel Minister with the Hon'ble Speaker on 30-1-1972. It was felt, as a result of the discussions, that the advice of the Attorney General should be sought through the Ministry of Law, on the two major points:

- (i) The proper procedure for dealing with petitions to Parliament of the type submitted by Shri S. C. Mukherjee and the legality, appropriateness or otherwise of Parliament re-opening a matter on which it had already arrived at a finding; and

- (ii) the most appropriate manner of implementing the second part of Parliament's Resolution without inadvertently or consciously offending the Constitution or committing contempt of Parliament."

Accordingly, a brief was prepared and the matter was referred to the Ministry of Law. A copy of the reply dated 1-3-1972, referred to in para (v) above, received from the Speaker was also made available to the Ministry of Law. It may be added that from the reply dated 1-3-1972, received from the Speaker, it had become clear that the only way it would not be possible to pursue the disciplinary inquiry against Shri S. C. Mukherjee on the charge framed against him any further, but that an inquiry into the substance of the offence on which the Lok Sabha had already come to a finding might infringe the privileges of Parliament. On the other hand, if Government did not institute any proceeding and award any punishment, it would be running counter to the express direction given in the second part of the Lok Sabha Resolution; but if any major punishment was awarded without giving Shri Mukherjee a full opportunity to defend himself, it was possible that the provisions of Article 311 of the Constitution would be attracted.

- (vii) In brief, the opinion of the learned Attorney General was that if Government proceeded with a disciplinary inquiry without affording the fullest opportunity to the officer charged to defend himself and take action under the 'directive' of the Lok Sabha Resolution to award the 'maximum punishment', there was no doubt that the courts would strike down such a punishment. On the other hand, it would not be advisable to ignore the Lok Sabha Resolution. In the circumstances, the Attorney General opined that the best course would be to request the Lok Sabha to review its Resolution of December 2, 1970 and, if possible, delete the second part of the Resolution.

- (viii) In view of the clear legal opinion, it was felt that the best course would be to report the matter back to the Lok Sabha, pointing out the constitutional difficulties in the way of Government implementing the second part of the Resolution."

17. The Committee at their sitting held on the 5th July, 1973, deliberated on the matter in the light of the factual note submitted

by the Ministry of Steel and Mines and the Opinion<sup>a</sup> of the Attorney-General on the matter.

18. The Committee observe that in pursuance of the first part of the Resolution adopted by Lok Sabha on the 2nd December, 1970, Shri S. C. Mukherjee was summoned at the Bar of the Lok Sabha on the 9th December, 1970 and reprimanded by the Speaker for having committed contempt of the House by deliberately misrepresenting facts and giving false evidence before the Committee on Public Accounts.

In the second part of the aforesaid Resolution, the Lok Sabha recommended "that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House."

19. The Ministry of Law, in their statement of case (See Appendix II) have pointed out that in the aforesaid Resolution, Lok Sabha had not specified the "maximum punishment". According to the Ministry of Law, if the "maximum punishment" referred to in the aforesaid Resolution of Lok Sabha is "a major punishment like dismissal, removal or reduction in rank then, before inflicting such punishment it is necessary under this sub-article [Sub-article (2) of Article 311 of the Constitution of India] as well as under Rules<sup>b</sup> 14 and 15 of The Central Civil Service (Classification, Control and Appeal) Rules 1965, to hold a regular inquiry and impose the punishment in accordance with the gravity of the offence by the disciplinary authority".

20. Article 311 (2) of the Constitution provides:—

"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 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 reduce in rank on the ground of conduct which has led to his conviction

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<sup>a</sup> See Annexure VII to Appendix II.

<sup>b</sup> See Appendix III.

tion 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 reasonably 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."

21. Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 *inter alia* provides that "no order imposing any of the penalties specified in clauses (v) to (ix) of rule 11 (major penalties, *namely*, reduction to a lower stage in the time-scale of pay; reduction to a lower time-scale of pay, grade, post or service; compulsory retirement; removal from service and dismissal from service) shall be made except after an enquiry held....".

Rule 15 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, lays down the procedure for taking action on the inquiry report against a Government servant and for imposing penalties on him. This rule *inter alia* provides that if any major penalty is to be imposed on a Government servant, he shall be given a copy of the report of the inquiry conducted against him and a notice stating the penalty proposed to be imposed on him and calling upon him to submit such representation as he may wish to make on the proposed penalty within a specified time. After considering the representation, if any, made by the Government servant, the disciplinary authority can determine what penalty, if any should be imposed on the Government Servant and make such order as it may deem fit.

22. The Committee note that part (b) of the proviso to article 311(2) of the Constitution provides for an exception to the obligation to hold an inquiry against a Government servant before he is dismissed or removed or reduced in rank, "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 reasonably practicable to hold such inquiry."

The Committee are, however, of the opinion that this provision will not cover the case of a Government servant against whom a departmental inquiry is to be conducted and who is available to take part in the proceedings of that inquiry. The Committee agree with

the views of the Minister of Law, Justice and Company affairs on this matter, contained in his note, dated the 29th August, 1973 (See Appendix IV).

23. After careful consideration of the implications of the provisions of Article 311(2) of the Constitution and Rules 14 and 15 of Central Civil Service (Classification, Control and Appeal) Rules 1965, the Committee are of the opinion that in order to impose on Shri S. C. Mukherjee "maximum punishment under the law" (*namely*, a major punishment like dismissal, removal from service or reduction in rank), as recommended by Lok Sabha in their Resolution of 2nd December, 1970, it would be necessary to fulfil the constitutional requirements of Article 311(2) and the procedural requirements of Rules 14 and 15 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965.

24. However, the constitutional and legal implications of fulfilling the requirements of Article 311(2) and Rules 14 and 15 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, will be as follows:—

- (i) An inquiry is required to be held by the disciplinary authority (Government) against Shri S. C. Mukherjee, as to whether Shri S. C. Mukherjee was responsible for the misrepresentation of certain facts and the tendering of false evidence before the Committee on Public Accounts in 1966;
- (ii) In accordance with the laws of natural justice, Shri S. C. Mukherjee will have to be provided access, during the course of the aforesaid inquiry, to the documents on which the charge against him is based, which will include the verbatim record of evidence given before the Committee on Public Accounts by Sarvashri S. C. Mukherjee and N. N. Wapchoo in 1966, when Shri S. C. Mukherjee gave false evidence before the Committee on Public Accounts;
- (iii) The penalty to be imposed on Shri S. C. Mukherjee will be only on the basis of the evidence edduced during the inquiry.

25. According to the opinion<sup>10</sup> of the Attorney-General of India, "Shri Mukherjee is entitled to be heard in the pending disciplinary proceedings against him and thus is entitled to the materials he has asked for.... and if such information be not given, the inquiry will,

<sup>10</sup> See Appendix II.



in my view, be vitiated". The Attorney-General is also of the opinion that if maximum punishment is inflicted on Shri Mukherjee by Government in pursuance of the Resolution adopted by Lok Sabha on the 2nd December, 1970, it will be "at the risk of such punishment, if challenged, being struck down by a court of law". The Attorney-General has "no doubt that such challenge will succeed".

26. The Committee thus observe that in order to implement the second part of the Resolution adopted by Lok Sabha on the 2nd December, 1970 recommending that Government should administer to Shri S. C. Mukherjee "maximum" punishment under the law, the finding and decision of the House, arrived at after detailed and thorough investigations by the Committee on Public Accounts and the Report of the Committee of Privileges, namely that Shri S. C. Mukherjee had "deliberately misrepresented facts and given false evidence before the Committee on Public Accounts" will have to be made the subject matter of an inquiry by a subordinate outside authority and also subject to a possible judicial scrutiny if the punishment awarded to Shri S. C. Mukherjee by Government is subsequently challenged in a court of law.

27. The Committee are of the view that such a course of action will be highly derogatory to the dignity and authority of the House as the House is the master of its own privileges and no outside authority can question, inquire into, scrutinise, review or sit in judgement on the decisions of the House in matters of its breaches of privileges and contempt. It is also well-established that the House has exclusive jurisdiction over its internal proceedings. The question whether false evidence has been tendered before a Parliamentary Committee is an internal matter of the House and is thus within the exclusive jurisdiction of the House. This position was well stated by the Speaker, Lok Sabha (Dr. G. S. Dhillon) in his letter dated the 1st March, 1972, in reply to the request from the Minister of Steel and Mines (late Shri S. Mohan Kumaramangalam) for making available to Shri S. C. Mukherjee the verbatim record of evidence given by him before the Committee on Public Accounts in 1966:

"The question whether any false evidence was given before the Public Accounts Committee or that Committee was misled by Shri S. C. Mukherjee and thereby a contempt of the House was committed by him is within the exclusive jurisdiction of the House and the decision of the House on the matter is not subject to question or review by any outside authority. Any departmental proceedings against Shri S. C. Mukherjee have accordingly to proceed on the

basis of the findings and decision of the House in the matter."

28. The Committee, after considering all aspects of the matter, are of the opinion that the second part of the Resolution adopted by Lok Sabha on the 2nd December, 1970, recommending that "the Government in the light of the gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law" may be rescinded by the House.

#### IV. Recommendation of the Committee

29. The Committee recommend that the following part of the Resolution adopted by Lok Sabha on the 2nd December, 1970, may be rescinded:—

"and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to the House."

NEW DELHI;  
The 12th September 1973.

HENRY AUSTIN,  
Chairman,  
Committee of Privileges.

# MINUTES

## I

### First Sitting

*New Delhi, Wednesday, the 16th May, 1973*

The Committee sat from 15.00 to 16.00 hours.

### PRESENT

Dr. Henry Austin—*Chairman*

### MEMBERS

2. Shri Darbara Singh
3. Shri Dinesh Chandra Goswami
4. Shri Nihar Laskar
5. Shri H. N. Mukherjee
6. Shri Vasant Sathe
7. Dr. Shankar Dayal Sharma
8. Shri Satyendra Narayan Sinha.

### SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary*

Shri J. R. Kapur—*Under Secretary.*

2. The Committee took up for consideration the question of implementation of the resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller.

The Committee decided to defer further consideration of the matter to a sitting when the Minister of Parliamentary Affairs and the Minister of Law, Justice and Company Affairs, both members of the Committee, might be present. The Committee also decided that the Minister of Steel and Mines, Shri S. Mohan Kumaramangalam, might be invited to that sitting of the Committee.

The Committee decided to hold their sitting for the purpose on the 18th June, 1973.

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\*Paras 3 to 5 relate to other case and have accordingly been omitted.

## II

## Second Sitting

New Delhi, Monday, the 18th June, 1973

The Committee sat from 15.00 to 16.30 hours.

## PRESENT

Dr. Henry Austin—*Chairman*

## MEMBERS

2. Shri H. K. L. Bhagat
3. Shri Somnath Chatterjee
4. Shri Darbara Singh
5. Shri H. R. Gokhale
6. Shri H. N. Mukerjee
7. Shri Vasant Sathe
8. Dr. Shankar Dayal Sharma
9. Shri R. P. Ulaganambi
10. Shri Atal Bihari Vajpayee

## SECRETARIAT

Shri J. R. Kapur—*Under Secretary.*

2. At the outset, the Committee adopted the following condolence resolution on the tragic death of Shri S. Mohan Kumaramangalam:—

“The Committee of Privileges place on record their deep sense of sorrow and grief on the tragic death of Shri S. Mohan Kumaramangalam, Minister of Steel and Mines, in the air accident near Delhi Airport on the 31st May, 1973.”

The members stood in silence for a while as mark of respect to the departed soul.

3. The Committee then took up further consideration of the question of implementation of the resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller.

4. The Committee pursued the letter<sup>12</sup> dated the 8th June, 1973, received from Shri Madhu Limaye, M. P., regarding the case of Shri S. C. Mukherjee. The Committee did not appreciate the tenor of Shri Madhu Limaye's letter. The Committee did not also agree with the suggestion of Shri Limaye that the evidence given by Shri S. C. Mukherjee before the Sarkar Committee might be called for and that Shri S. C. Mukherjee should also be examined in person, as that would amount to reopening the whole case which could not be done in view of the resolution adopted by Lok Sabha on 2nd December, 1970. The Committee were of the view that the only question now before the Committee was the consideration of constitutional difficulties in implementing the second part of the resolution adopted by Lok Sabha on the 2nd December, 1970.

5. The Minister of Law, Justice and Company Affairs suggested that further consideration of the matter might be deferred to a subsequent sitting so that he might be in a position to place before the Committee his considered views on the matter.

6. The Committee also decided that, in the meantime, the Ministry of Steel and Mines might be requested to furnish a detailed factual note stating the steps taken by them to implement the second part of the resolution adopted by Lok Sabha on the 2nd December, 1970, the difficulties which had arisen in implementing that resolution, reference made by that Ministry to the Attorney-General and the Opinion given by the Attorney-General on the matter.

The Committee decided to meet again to consider this matter further on the 5th July, 1973 at 16.00 hours.

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### III

#### Third Sitting

*New Delhi, Thursday, the 5th July, 1973*

The Committee sat from 16.00 to 17.55 hours.

#### PRESENT

Dr. Henry Austin—*Chairman*

<sup>12</sup>See Appendix V.

<sup>13</sup>Para 7 & 8 relate to other cases and have accordingly been omitted.

**MEMBERS**

2. Shri Somnath Chatterjee
3. Shri Darbara Singh
4. Shri H. R. Gokhale
5. Shri Nihar Laskar
6. Shri B. P. Maurya
7. Shri H. N. Mukerjee
8. Shri K. Raghuramaiah
9. Shri Vasant Sathe
10. Shri Maddi Sundarsanam
11. Shri Atal Bihari Vajpayee

**SECRETARIAT**

Shri B. K. Mukherjee—*Deputy Secretary*

Shri J. R. Kapur—*Under Secretary*

2. The Committee took up further consideration of the question of implementation of the resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller.

3. The Committee perused the detailed factual note furnished by the Ministry of Steel and Mines, stating the steps taken by Government to implement the second part of the resolution adopted by Lok Sabha on the 2nd December, 1970, the difficulties which had arisen in implementing that resolution, reference made by that Ministry to the Attorney-General and the Opinion given by the Attorney-General thereon.

4. After considering all aspects of the matter, the Committee were of the view that there were legal and constitutional difficulties in implementing the aforesaid resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee. The Committee, accordingly, decided to recommend to the House that the following part of the aforesaid resolution might be deleted:—

“and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to the House.”

*The Committee then adjourned.*

## IV

### Fourth Sitting

*New Delhi, Friday, the 3rd August, 1973.*

The Committee sat from 15.00 to 16.30 hours.

### PRESENT

Dr. Henry Austin—*Chairman*

### MEMBERS

2. Shri Somnath Chatterjee
3. Shri Darbara Singh
4. Shri H. N. Mukerjee
5. Shri Vasant Sathe
6. Dr. Shankar Dayal Sharma

### SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary*

Shri J. R. Kapur—*Under Secretary*

2. The Committee considered their draft Report on the question of implementation of the Resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee, Deputy Iron and Steel Controller, referred to the Committee by the House on the 11th May, 1973.

3. The Committee observed that part (b) of the proviso to Article 311(2) provided for an exception to the obligation to hold an inquiry against a Government servant before he was dismissed or removed or reduced in rank, "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 reasonably practicable to hold such inquiry."

The Committee felt that the interpretation and implications of this provision and the question whether this provision would not cover the case of a Government servant committed by Lok Sabha for its breach of privilege and contempt, needed careful examination.

4. The Committee, therefore, decided to hear the considered views of the Minister of Law, Justice and Company Affairs (Shri H. R. Gokhale), a member of the Committee, on the matter and desired that he might also be requested to give a written note on the matter for the benefit of the Committee.

5. The Committee authorised the Chairman to move a motion in the House for an extension of time for the presentation of the

Report of the Committee on this matter till the last day of the first week of the next session of Lok Sabha.

6. The Committee decided to meet again on Thursday, the 9th August, 1973 to consider the other items on the agenda.

*The Committee then adjourned.*

## V

### Fifth Sitting

*New Delhi, Wednesday the 12th September, 1973*

The Committee sat from 16.00 to 17.15 hours.

### PRESENT

Dr. Henry Austin—*Chairman*

### MEMBERS

2. Shri H. K. L. Bhagat
3. Shri Somnath Chatterjee
4. Shri Darbara Singh
5. Shri H. R. Gokhale
6. Shri Nihar Laskar
7. Shri B. P. Maurya
8. Shri H. N. Mukerjee
9. Shri K. Raghuramaiah
10. Shri Vasant Sathe
11. Dr. Shankar Dayal Sharma
12. Shri Maddi Sudarsanam.

### SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary*

Shri J. R. Kapur—*Under Secretary*

2. The Committee took up further consideration of the question of implementation of the resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee, Deputy Iron and Steel Controller. In this connection, the Committee perused the note<sup>14</sup> furnished by Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, containing his views regarding the applicability of part (b) of proviso to Article 311(2) of the Constitution to the case of Shri S. C. Mukherjee.

<sup>14</sup>See Appendix IV.



Shri H. R. Gokhale also elucidated the views contained in his aforesaid note.

The Committee agreed with the views of Shri H. R. Gokhale and adopted their draft Report on the matter with the deletion of the following paragraph 27 from the Draft Report:—

"The Committee have no doubt that Government have taken note of the fact that Shri S. C. Mukherjee was reprimanded at the Bar of the House for having 'deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House' and will take such action as they may deem fit."

3. The Committee authorised the Chairman to finalise the report for presentation to the House after incorporating therein the note containing the views of Shri H. R. Gokhale referred to above.

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*The Committee then adjourned.*

## APPENDIX I

(See para 7 of the Report)

### *Summary of Twelfth Report of the Committee of Privileges (Fourth Lok Sabha) and relevant proceedings in the House*

#### LOK SABHA

(1970)

#### **Point of Privilege**

*Giving false evidence before Public Accounts Committee by a Government Officer*

#### **Facts of the case and reference to the Committee of Privileges**

On the 6th March, 1969, Shri Madhu Limaye, a member, moved the following motion in the House:

“That the question of privilege against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel, and Shri S. C. Mukherjee, then Deputy Iron and Steel Controller, for allegedly giving false evidence before the Public Accounts Committee, be referred to the Committee of Privileges.”

2. While raising the question of privilege, Shri Madhu Limaye stated<sup>2</sup> *inter alia* as follows:

“On the basis of irrefutable evidence, I accuse the former Secretary of the Steel Ministry Mr. Wanchoo, and Mr. S. C. Mukherjee, former Deputy Controller of Iron and Steel of fabricating false and misleading briefs and giving false evidence before the most important Committee of Parliament, namely, the Public Accounts Committee.

It was during the hearing by the Public Accounts Committee in the notorious Steel Barter and pre-import cases involving Aminchand Pyarelal, Ramkrishna Kulwantra and

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<sup>1</sup>L.S. Deb. dt. 6-3-1969, cc 219—26.

<sup>2</sup>Original in Hindi.

other allied firms, that Mr. Wanchoo, in the presence of Mr. Mukherjee gave false evidence.

The Sub-Committee of the Public Accounts Committee enquired of the Ministry of Finance as to what conditions they had laid down for the Ministry of Iron and Steel while agreeing to the proposal for the issue of pre-import licences.

The Joint Secretary of the Ministry of Finance said that they had laid down two conditions:

- (a) There should be a firm export contract and the Bank should ensure that foreign exchange realised would be actually remitted to India; and
- (b) The firms should provide 15 per cent bank guarantee.

Clarifying the expression 'firm export contract the Joint Secretary, Finance, said that the Ministry meant contract with a foreign buyer'.

On the basis of this information, the Sub-Committee of the public Accounts Committee.....asked Mr. Wanchoo whether the Steel Controller understood the above conditions and their implications correctly. Mr. Wanchoo replied:

'The instructions of the Ministry left some room for different interpretations.....I feel the instructions of the Ministry were not as clear as they ought to have been on this particular point viz. what was intended'.

(In reply to another question), Shri Wanchoo stated:

'The Ministry of Iron and Steel do not seem to have translated the instructions of the Economic Affairs Department in clear and unambiguous terms.'

It was because of this evidence that the Public Accounts Committee was misled into making the following observations in its 50th Report (para 4.35 at page 62).

"The Sub-Committee regret to observe that these views of Ministry of Finance were not communicated in clear and unambiguous terms by the Department of

**Iron and Steel....The Sub-Committee cannot but deprecate in strongest words this failure on the part of the Iron and Steel Ministry'.**

Now my contention is that the whole story weaved by Mr. Wanchoo about ambiguity, about two possible interpretations as also about not translating and conveying properly the Finance Ministry's instructions to the Steel Controller is a concoction pure and simple....Mr. Wanchoo knew that there was no basis for making this observation. And yet Mr. Wanchoo, in the presence of the then Deputy Steel Controller Mr. S. C. Mukherjee and many other Officers from the Ministries of Finance, Iron and Steel and Home Affairs and Additional Auditor General of India, deliberately gave false evidence, suppressed the true facts, and misled the Public Accounts Committee and the Parliament.

\* \* \* \*

Now having sought the clarification and got it in the most unambiguous and clearest possible terms, the Steel Controller violated the instructions of the Finance Ministry, properly translated and conveyed by the Steel Ministry to the Steel Controller.

Not only this. While appearing before the Public Accounts Committee they deliberately suppressed this evidence on the files and successfully misled the Public Accounts Committee into absolving the Steel Controller of all responsibility in the matter....."

3. The Ministry of Steel and Heavy Engineering (Shri C. M. Poonacha) speaking on the motion, stated as follows:

"Shri N. N. Wanchoo, ICS former Steel Secretary, appears to have committed certain errors in furnishing information to the Public Accounts Committee about certain matters of 1960, five or six years later. It has, however, to be pointed out that Shri Wanchoo took an early opportunity to bring the error to the notice of the Public Accounts Committee when the first action taken report on the recommendations of the Public Accounts Committee was sent to the Committee. During the investigation by the Committee of Inquiry on Steel Transactions, headed by Shri A. K. Sarkar, Shri Wanchoo referred again to the errors and made no attempt to conceal them. The Sarkar Committee

did not draw any adverse inference against Shri Wanchoo. One of the members of the Committee, however, in his dissenting note expressed the view that Shri Wanchoo had been misled by Shri Mukherjee but even that dissenting member did not make any observation against Shri Wanchoo.

Adverse observation having been made by a dissenting member of the Sarkar Committee against Shri Mukherjee and the matter raised being one of privilege, it is in the interest of all concerned that possible doubts about Shri Mukherjee's conduct should be looked into by the Privileges Committee. The case of Shri Wanchoo does not contain even this element of doubt but since his case is closely interlinked with that of Shri Mukherjee, Government would have no objection to the cases against both of them being referred to the Committee of Privileges."

4. The motion moved by Shri Madhu Limaye was then adopted by the House and the matter referred to the Committee of Privileges (on the 6th March, 1969).

5. Subsequently, on the 22nd March, 1969, Shri Madhu Limaye submitted to the Speaker, Lok Sabha, another notice on the same subject in respect of other cognate matters, which was also referred by the Speaker (Dr. G. S. Dhillon) to, and considered by, the Committee of Privileges along with the previous reference made to the Committee by the House earlier. In that notice, Shri Madhu Limaye had pointed out that false evidence had been given before the Committee on Public Accounts on the following additional counts:

- (i) *The date on which the Iron and Steel Controller became aware of the omission that occurred in the matter of issue of pre-import licence to M/s. Ram Krishan Kulwant Rai, without their fulfilling the condition of having an export contract.*

According to Shri Madhu Limaye, the Public Accounts Committee had asked Shri S. C. Mukherjee as to when he came to know that M/s. Ram Krishan Kulwant Rai had been given import licences without their having any export contract. Shri S. C. Mukherjee's reply was that the mistake was brought to his notice by the Hindustan Steel Limited sometime in the month of November, 1960. Shri Madhu Limaye alleged that the 'mistake' was in fact pointed out by Hindustan Steel Limited in their two letters.

dated the 26th August and the 25th October, 1960, addressed to Shri S. C. Mukherjee. Thus the information given to the Public Accounts Committee by Shri S. C. Mukherjee that the 'mistake' came to his notice sometime in November, 1960 was absolutely false.

(ii) *The figures about the imports allowed after the discovery of the mistake*

According to Shri Madhu Limaye, Shri S. C. Mukherjee had told the Public Accounts Committee that Rs. 95 lakhs worth of Steel had already been imported when the 'mistake' was brought to his notice and that only Rs. 3.9 lakhs worth of steel had been imported after the 'mistake' was detected. But taking 26th August, 1960, as the correct date on which the 'mistake' was pointed out by Hindustan Steel Limited, the value of import of steel subsequent to this date was Rs. 8994605/-. Even the value of import after 25th October, 1960 was Rs. 2694768/-. Thus, Mr. Mukherjee deliberately misled the Public Accounts Committee by saying that the imports cleared after the 'mistake' was discovered amounted to only Rs. 3.9 lakhs.

(iii) *Revision of the form of guarantee bond*

According to Shri Madhu Limaye, Shri S. C. Mukherjee, during his evidence had informed the Public Accounts Committee that:

- (a) the Central Government Solicitor at Calcutta in drafting the Bank Guarantee Form took the view that no bank would agree to give an absolute guarantee in the manner outlined by the Ministry of Steel, Mines & Fuel's letter dated the 16th February, 1960;
- (b) the form of the guarantee bond as actually drafted by the Solicitor was adopted by the Deputy Chief Controller.

The truth, however, was that the Central Government Solicitor never took the view attributed at (a) above because the form of the guarantee bond as drafted by him completely fulfilled the stipulation of the Ministry stated in their said letter.

**The form of the guarantee bond as drafted by the Solicitor made the guarantee amount forfeitable simply on failure to export the specified quantity of Semis within a specified number of**

months from the date of the execution of the bond. It was Mr. S. C. Mukherjee who made alterations in the form of the guarantee bond secretly. The effect of these alterations was to make the guaranteed amount forfeitable only if there was failure to export within 3 months from the date of delivery of the Semis by Hindustan Steel Limited. Thus, Mr. S. C. Mukherjee made the guarantee of forfeiture dependent on settlement of all disputes concerning delivery of the quantities of requisite quality by the Hindustan Steel Limited to the barterer.

6. Pursuant to a decision taken by the Committee of Privileges on the 16th July, 1969, the Chairman of the Public Accounts Committee was addressed by the then Chairman of the Committee of Privileges for the views of the Public Accounts Committee on the question whether any false evidence had been given before the Public Accounts Committee as alleged by Shri Limaye, and if so, by whom and in what respect. The Public Accounts Committee decided to remit this matter for detailed examination by a Sub-Committee of that Committee. The said Sub-Committee examined Sarvashri N. N. Wanchoo and S. C. Mukherjee at their sitting held on the 22nd October, 1969 and submitted their Report to the Public Accounts Committee, who approved the report. A copy of that Report was then forwarded by the Chairman, Public Accounts Committee to the Chairman, Committee of Privileges.

#### *Findings and Conclusions of the Committee*

7. The Committee of Privileges, in their Twelfth Report, presented to the House on the 24th November, 1970, after considering the Report of the Public Accounts Committee on the question of privilege and the evidence, both oral and written, given before the Sub-Committee of that Committee by Sarvashri N. N. Wanchoo and S. C. Mukherjee, reported *inter alia* as follows:

"In their Report,.....the Public Accounts Committee have examined in detail the following three issues raised by Shri Madhu Limaye, M.P.:

- (i) 'That Shri N. N. Wanchoo, the then Secretary Ministry of Steel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller 'gave false evidence' before the Public Accounts Committee by not apprising the Committee of the existence of certain instructions issued by the Department of Steel about the conditions on which pre-import licences could be issued under barter deals;

- (ii) That in regard to a barter deal involving M/s. Ram Krishan Kulwant Rai, where the import licences were issued by mistake even though there was no export contract, Mr. Mukherjee gave 'misleading' evidence before the Committee by telling them that the mistake came to notice sometime in November and that the bulk of the imports had taken place by that time. Subsequently, in certain notes, which were submitted to the Committee, Shri N. P. Mathur, the then Joint Secretary, Shri T. Swaminathan, the then Secretary, Department of Steel and Shri S. Sahay, the then Iron and Steel Controller also failed to place the full facts in this regard, before the Committee; and
- (iii) That in regard to guarantee bonds to be taken from firms which undertook barter deals, the Public Accounts Committee was incorrectly informed during evidence that the Central Government's Solicitor at Calcutta took the view that these bonds could not be made absolute and drafted them in a conditional manner.'

\* \* \* \*

After a careful consideration of the documents made available to the Committee and the oral as well as written evidence given by Sarvashri N. N. Wanchoo and S. C. Mukherjee before the Sub-Committee of the Public Accounts Committee, the Committee fully agree with the findings and observations of the Public Accounts Committee contained in their Report on the matter, furnished to the Chairman of the Committee of Privileges. The conclusions of the Committee on the specific issues raised by Shri Madhu Limaye, M.P., are given in the succeeding paragraphs.

\* \* \* \*

- (i) *Omission to bring to the notice of the Public Accounts Committee certain instructions issued by the Ministry of Steel, Mines and Fuel about the conditions on which pre-import licences could be issued under barter deals.*

The Committee agree with the findings of the Public Accounts Committee that although 'there was an omission on the part of Shri Wanchoo to bring to the notice of the Public Accounts Committee during his evidence before the Committee on the 10th March, 1966, certain instructions issued by the Ministry of Steel, Mines and Fuel in March, 1960, about the conditions on which pre-import licences could be issued under barter deals', yet it cannot be concluded that Shri Wanchoo had intended to mislead the Public



Accounts Committee's in view of the circumstances of the case stated in the Report of the Public Accounts Committee in this respect.

The Committee also agree with the Public Accounts Committee that as Shri S. C. Mukherjee had not himself given evidence on this point before the Public Accounts Committee Shri S. C. Mukherjee cannot be held directly responsible for the Public Accounts Committee having been misled on this point, although he could have, 'if he had been alert, corrected Shri Wanchoo when he was giving evidence before the Public Accounts Committee'.

The Committee are, therefore, of the view that no further action is called for in so far as this aspect of the matter is concerned.

(ii) *Issue of pre-import licence in the absence of an export contract*

As regards the question of misleading the Public Accounts Committee by Sarvashri N. N. Wanchoo and S. C. Mukherjee during their evidence on the 10th March and 19th August, 1966, before that Committee, about the date on which the mistake in issuing five pre-import licences in June, 1960, in favour of M/s. Ram Krishan Kulwantrai, under a barter transaction (contract No. 28), in the absence of an export contract, came to the notice of the Deputy Iron and Steel Controller (Shri S. C. Mukherjee) and the Ministry of Steel, Mines and Fuel, the Committee agree with the finding of the Public Accounts Committee that in the circumstances of the case, Shri S. C. Mukherjee should be given the benefit of doubt and that, it cannot, therefore, be held that Shri S. C. Mukherjee misled the Public Accounts Committee in regard to the date on which the mistake came to his notice. The question of Shri N. N. Wanchoo having misled the Public Accounts Committee in regard to the date on which the mistake came to the notice of the Ministry of Steel, Mines and Fuel, and the question of the other three officers, namely, Shri T. Swaminathan, formerly Secretary, Ministry of Steel, Shri S. Sahay, Iron and Steel Controller and Shri N. P. Mathur, Joint Secretary, Ministry of Steel, having misled the Public Accounts Committee on this point, does not arise as concluded by the Public Accounts Committee.

As regards the question whether the Public Accounts Committee was misled about the quantum and value of im-

ports which had taken place by the time the mistake in issuing the pre-import licence in the absence of an export contract came to notice, the Committee agree with the view of the Public Accounts Committee that though 'there was a factual inaccuracy in the statement given to the Public Accounts Committee about the quantum and value of imports made by the party in this case after the mistake in issue of import licence came to the notice in November, 1960', and the witness (Shri S. C. Mukherjee) 'should have informed the Committee that goods valued at Rs. 28.94 lakhs were still to come into the country in November, 1960, when the mistake came to notice', but this 'did not tantamount to misleading the Committee', in view of the reasons given by the Public Accounts Committee.

The Committee are, accordingly, of the opinion that no further action is called for in the matter on this issue.

### (iii) *Changes in Bank Guarantee Form*

The Committee agree with the finding of the Public Accounts Committee that 'a material change in the form of the bank guarantee was made by Shri Mukherjee and not by the Government Solicitor', and that, therefore, a 'misrepresentation of the position to this extent' was made by Shri S. C. Mukherjee when he gave evidence before the Public Accounts Committee in March, 1966.

The Committee have, accordingly, reached the conclusion that Shri S. C. Mukherjee did not correctly present the facts to the Public Accounts Committee during the course of his oral evidence on the question of changes made in the Bank Guarantee form. The Committee are, therefore, of the opinion that Shri S. C. Mukherjee has committed a breach of privilege and contempt of the House by misrepresenting the position in the matter and thereby misleading the Public Accounts Committee. The fact that such contempt has been committed by a responsible public servant of Shri S. C. Mukherjee's position, has increased the gravity of the offence.

The Committee do not, however, consider that Shri N. N. Wanchoo, who had also given evidence on this point before the Public Accounts Committee, can be held responsible for misleading the Public Accounts Committee, in view of the reasons stated by the Public Accounts Committee".

## *Recommendations of the Committee*

8. The Committee of Privileges recommended that:

“Shri S. C. Mukherjee deserves to be censured for the contempt of the House committed by him in misleading the Public Accounts Committee in the matter of changes made in the bank guarantee form. The Committee, however, feel that the requirements of the case would be fulfilled if the disapproval and displeasure of the House in respect of the contempt of the House committed by Shri S. C. Mukherjee is conveyed to him (Shri S. C. Mukherjee) and also to the Government of India for such disciplinary action against him as they deemed fit”.

### *Action taken by the House*

9. On the 2nd December, 1970, Shri Madhu Limaye moved<sup>3</sup> and the House adopted, the following motion:

“That this House do consider the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970”.

10. After the above motion was adopted, Shri Madhu Limaye moved<sup>4</sup> the following motion:

“That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be committed to jail custody for a week.”

Dr. Ram Subhag Singh, another member, however, moved<sup>5</sup> an amendment to the above motion moved by Shri Madhu Limaye to the effect that instead of committing Shri S. C. Mukherjee to jail custody for a week, he be summoned before the Bar of the House and be reprimanded and that the House might further recommend that the Government in the light of gravity of the offence should administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to the House.

<sup>3</sup> LS Deb dt. 2-12-1970

<sup>4</sup> LS Deb dt. 2-12-1970

<sup>5</sup> *I bid.*

11. After some discussion, the above amendment moved by Dr. Ram Subhag Singh was agreed to and the motion was adopted by the House in the following amended form:

"That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be summoned before the Bar of the House and be reprimanded and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House."

12. In pursuance of the above decision of the House on the 2nd December, 1970, the following Summons was issued<sup>a</sup> by the Speaker (Dr. G. S. Dhillon) on the 3rd December, 1970, to Shri S. C. Mukherjee to appear in person at the Bar of the Lok Sabha on the 9th December, 1970, to receive the reprimand:

#### "LOK SABHA

#### SUMMONS TO RECEIVE REPRIMAND

WHEREAS the Lok Sabha has on the 2nd December, 1970, adopted the following motion:

"That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be summoned before the Bar of the House and be reprimanded and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House."

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<sup>a</sup>The summons was served on Shri S. B. Mukherjee through the Ministry of Iron & Steel who were also asked to take action on the recommendation of the House that the Government in the light of gravity of the offence might administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to the House.

NOW, THEREFORE, in pursuance of the above decision of Lok Sabha, you, Shri S. C. Mukherjee, formerly Deputy Iron and Steel Controller (at present Executive Secretary, Joint Plant Committee, Calcutta), are hereby summoned to appear in person to receive the reprimand at the Bar of Lok Sabha in the Parliament House, New Delhi, on Wednesday, the 9th December, 1970, at 12.00 hours.

Herein fail not.

Given under my hand and seal at New Delhi, this 3rd day of December, 1970.

Sd/-  
Speaker, Lok Sabha.  
SEAL

*New Delhi, dated the 3rd December, 1970".*

13. On the 9th December, 1970, immediately after the Question Hour, the Speaker made the following observations:

"We will now take up the item regarding the reprimand to Shri S. C. Mukherjee who in pursuance of the decision taken by the House on the 2nd December, 1970, has been summoned by me to appear at the Bar of this House, today, to receive the reprimand.

I need hardly remind the House that when Shri S. C. Mukherjee is being reprimanded, there should be silence, so that the dignity and authority of the House is maintained and the significance of the reprimand and the solemnity of it is emphasized."

14. Immediately thereafter, the Speaker asked the Watch and Ward Officer if Shri S. C. Mukherjee was in attendance. The Watch and Ward Officer replies in the affirmative. The Speaker then directed the Watch and Ward Officer to bring him in. Shri S. C. Mukherjee was then brought to the Bar of the House by the Watch and Ward Officer, where Shri S. C. Mukherjee bowed to the Speaker. The Speaker (seated in the Chair) then reprimanded Shri S. C. Mukherjee as follows:

"S. C. Mukherjee, this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, has adjudged you guilty of committing contempt of the House for having deliberately misrepresented facts and given false evidence before the Committee on Public Accounts. The House

resolved on the 2nd December, 1970, that you be summoned before the Bar of the House and be reprimanded therefor.

Accordingly in the name of the House, I reprimand you for having committed contempt of this House.

I now direct you to withdraw."

Shri S. C. Mukherjee then bowed to the Speaker and withdrew as directed by him.

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## APPENDIX II

(See para 16 of the Report)

*Factual note submitted by the Ministry of Steel and Mines*

No. C-14011/1/70-Vig. Vol. III

**SUBJECT:**—*Implementation of the resolution adopted by Lok Sabha on the 2nd December, 1970, regarding punishment to be given by Government to Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller.*

On December 2, 1970, the Lok Sabha, while considering the 12th Report of the Committee on Privileges, adopted the following resolution:

“That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be summoned before the bar of the House and be reprimanded, and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House.”

2. In pursuance of the first part of this Resolution, Shri Mukherjee was duly brought before the Bar of the House and reprimanded. The Lok Sabha Secretariat had requested the Department of Steel to take necessary action on the second part of the Resolution.

3. On receipt of a reference from the Lok Sabha Secretariat, the question of the steps to be taken to implement the second part of the Resolution was considered by the Secretary, Department of Steel, Secretary, Ministry of Law and Secretary, Department of Personnel (dealing with Vigilance matters) the following issues were considered:

- (i) The form and the content of the show cause notice to be issued to Shri Mukherjee and also whether formal proceedings should or could be drawn up before the question of punishment was considered.
- (ii) The exact significance of the words 'maximum punishment' under the law had to be assessed.
- (iii) If an inquiry was ordered, Shri Mukherjee was likely to lead evidence in regard to the facts of the case. If the Inquiry Officer considered fresh evidence on facts at this stage, would it conflict with the privilege of Parliament, which had already pronounced its judgement on this aspect.
- (iv) On the other hand, if Shri Mukherjee was not allowed an opportunity to lead evidence on facts, (he had already stated in a communication dated 28th December, 1970 that full opportunity was not given to him and that, therefore, further inquiry was necessary) it was likely that he might go to Court on this issue.
- (v) There was also the possibility, which must be considered, that if, on the basis of evidence brought before the Inquiry Officer a recommendation was made that the nature of the offence was not serious enough to warrant the maximum penalty, this view might be upheld by the Union Public Service Commission.

A copy of the paper containing the background of case concerned prepared for this purpose, is enclosed (Annexure—I) A copy of this paper was also sent to the Central Vigilance Commissioner for his information.

4. The matter was discussed at a meeting of the Secretaries held on 25th January, 1971. A copy of the minutes thereof is enclosed (Annexure—II). It will be seen therefrom that it was decided that it was necessary to observe the prescribed procedure for issue of charge-sheet and for giving a reasonable opportunity to Shri Mukherjee through an inquiry before taking a final decision in the matter.

5. Accordingly, Shri Mukherjee was served with a charge-sheet on 21st May, 1971 a copy which is enclosed (Annexure—III). (This charge-sheet was prepared in consultation with the Central Vigilance Commissioner, the Department of Personnel and the Ministry of



Law). Simultaneously, the Hon'ble Speaker, Lok Sabha, was informed on 22nd May, 1971 that it would be necessary, during the proceedings to be initiated against Shri Mukherjee, to tell him as to how and in what manner he was responsible for false evidence being tendered before the Committee on Public Accounts. A request was made to Hon'ble Speaker that relevant proceedings of the Committee, and the verbatim evidence tendered by Shri N. N. Wanchoo and Shri S. C. Mukherjee before the Committee in March, 1966, might be made available to the Department of Steel. This request of the Department of Steel, was, however, not acceded to by the Hon'ble Speaker *Hon'ble Speaker vide* his D.O. letter No: 1|8|70|PAC dated May 31, 1971 (Annexure—IV) for the reason that the relevant verbatim record of evidence given before the Sub-Committee of the Public Accounts Committee had not been laid on the Table of the House by the Committee and, as such, it was 'confidential' and not open to inspection by anyone. However, the Lok Sabha Secretariat supplied this Department with a copy of the Minutes of the sitting of the sub-Committee of the PAC held from 9th to 12th March, 1966 during which, amongst others, Shri N. N. Wanchoo and Shri S. C. Mukherjee had tendered evidence.

6. In the meantime, Shri Mukherjee, in his reply to the charge-sheet served on him in May 1971, requested in his letter dated 26th May, 1971 that the following files/documents *inter-alia* might be made available to him:—

- “(a) Verbatim transcript of the PAC proceedings on 9th and 10th March, 1966 containing the evidence tendered by Shri Wanchoo and myself on the question of Bank Guarantee.
- (b) Verbatim transcript of oral evidence on the subject of Bank Guarantee tendered before the Sarkar Committee by:—
  - (i) Shri A. S. Bam
  - (ii) Shri N. N. Wanchoo
  - (iii) Shri S. Bhoothalingam
  - (iv) Shri G. N. Sen
  - (v) Myself.”

In reply, Shri Mukherjee was informed on 13th July 1971, on this point, as follows:

“In the CCS(CCA) Rules, 1965 there is no provision for inspection of documents for the purposes of submission of

written statement of defence. Rule 14(4) of the said Rules is not intended for submission of any elaborate statement but only to give an opportunity to the person concerned to admit or deny his guilt. For this purpose, inspection of documents/files is not necessary. Shri Mukherjee may, if he considers necessary, make a request for inspection of documents/files and also for copies/extracts of documents to the Inquiry Officer at the time of oral enquiry, when his request will be considered by that authority on merits and with reference to the rules on the subject."

7. The Oral Inquiry of the case was entrusted to the Commissioner for Departmental Enquiries nominated by the Central Vigilance Commission for the purpose. The Preliminary hearing of the inquiry took place on 1st January, 1972. At the very outset, Shri Mukherjee submitted an application asking *inter alia* for the following documents:

- "(i) Verbatim report of the evidence (questions and answers) tendered by Shri Mukherjee before P. A. C. which are considered to be false or misleading.
- (ii) Verbatim report of the evidence (questions and answers) tendered by Shri Wanchoo before P.A.C. which he claims to have given on Shri Mukherjee's verbal advice."

The Commissioner for Departmental Enquiries directed that the above documents should be made available to Shri Mukherjee for inspection.

8. In view of the directions of the Commissioner for Departmental Enquiries, the Hon'ble Speaker, Lok Sabha, was again approached on January 14, 1971 with the request that he might reconsider the question of making available the documents required for inspection by Shri Mukherjee. A copy of D. O. letter dated 14th January, 1972, addressed to the Hon'ble Speaker is enclosed (Annexure—V). On being approached, the Lok Sabha Secretariat again declined to furnish this verbatim record. Further, the Speaker had, in his reply dated March 1, 1972 observed as follows:

"The question whether any false evidence was given before the Public Accounts Committee or that Committee was misled by Shri S. C. Mukherjee and thereby a contempt of the House was committed by him is within the exclusive jurisdiction of the House and the decision of the House on the matter is not subject to question or review by any outside authority."

9. It may also be stated that on July 28, 1971, Shri Mukherjee had submitted a petition addressed to the Speaker wherein he had requested for review of the reprimand administered to him by Parliament. On December 1, 1971, the Lok Sabha Secretariat had called for certain factual comments from the Department of Steel. However, before these could be furnished, a communication was received from the Lok Sabha Secretariat on January 3, 1972, rejecting the petition submitted by Shri Sukherjee.

10. This matter was discussed by the late Steel Minister with the Hon'ble Speaker on 30th January, 1972. It was felt, as a result of the discussions, that the advice of the Attorney General should be sought through the Ministry of Law, on the two major points:

- (i) The proper procedure for dealing with petitions to Parliament of the type submitted by Shri S. C. Mukherjee and the legality, appropriateness or otherwise of Parliament re-opening a matter on which it had already arrived at a finding; and
- (ii) the most appropriate manner of implementing the second part of Parliament's Resolution without inadvertently or consciously offending the Constitution or committing contempt of Parliament."

Accordingly, a brief was prepared and the matter was referred to the Ministry of Law. A copy of the reply dated 1st March, 1972, referred to in para 8 above, received from the Speaker was also made available to the Ministry of Law. It may be added that from the reply dated 1st March, 1972, received from the Speaker, it had become clear that not only would it not be possible to pursue the disciplinary inquiry against Shri S. C. Mukherjee on the charge framed against him any further, but that an inquiry into the substance of the offence on which the Lok Sabha had already come to a finding might infringe the privileges of Parliament. On the other hand, if Government did not institute any proceeding and award any punishment, it would be running counter to the express direction given in the second part of the Lok Sabha Resolution; but if any major punishment was awarded without giving Shri Mukherjee a full opportunity to defend himself, it was possible that the provisions of Article 311 of the Constitution would be attracted. A copy of the statement of case given to the Attorney General, which was drafted in consultation with the Ministry of Law, and the opinion of the Attorney General are placed at Annexures VI & VII.

11. In brief, the opinion of the learned Attorney General was that if Government proceeded with a disciplinary inquiry without affording the fullest opportunity to the officer charged to defend himself and take action under the "directive" of the Lok Sabha Resolution to award the "maximum punishment", there was no doubt that the courts would strike down such a punishment. On the other hand, it would not be advisable to ignore the Lok Sabha Resolution. In the circumstances, the Attorney General opined that the best course would be to request the Lok Sabha to review its Resolution of December 2, 1970 and, if possible, delete the second part of the Resolution.

12. In view of the clear legal opinion, it was felt that the best course would be to report the matter back to the Lok Sabha, pointing out the constitutional difficulties in the way of Government implementing the second part of the Resolution. Before doing so, the matter was placed before the Leaders of Opposition parties|Groups of Lok Sabha at an informal meeting held on 19th December, 1972. It was decided at this meeting that Shri Era Sezhiyan, Member, Lok Sabha, might consult, in his capacity as Chairman of the P. A. C. the other Members and then send his suggestions in the matter. The suggestions from Shri Sezhiyan which were his own in his capacity as a Member of Parliament and not otherwise, were received *vide* his letter dated the 14th March, 1973, addressed to the Ministry of Parliamentary Affairs (Annexure VIII). It would be seen therefrom that Shri Sezhiyan had suggested that a fresh Motion in the following terms might be moved and adopted in the House so as to clear the way for Government to take such disciplinary action against Shri Mukherjee as might be possible under the Rules:

"That this House resolve that in the motion adopted by the House on the 2nd December, 1970, regarding the Twelfth Report of the Committee of Privileges for the words "maximum punishment" words "suitable punishment may be substituted."

13. The matter was again discussed at a meeting with the Leaders of the Opposition Parties|Groups of Lok Sabha on 10th May, 1973. As a result of this Meeting, the following Resolution was moved and adopted by the Lok Sabha 11th May 1973:

"That this House, having considered the statement made by the Minister of Steel and Mines in the House on the 25th April 1973, points raised by Members thereon, and other

relevant facts relating to the implementation of the latter part of the resolution adopted by Lok Sabha on the 22nd December, 1970, namely, 'that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House', do resolve that the matter be referred to the Committee of Privileges;

The House do further direct that the Committee report to the House by the 16th August, 1973"

### ANNEXURE

*Statement of the case regarding the Privilege Motion against Shri. S. C. Mukherjee, formerly Dy. Iron and Steel Controller.*

The P.A.C. (1965-66) (Third Lok Sabha) presented their 50th Report on various Export Scheme and allied matters with reference to para 88 (Enclosure I) of the Audit Report (Civil) on Revenue Receipts, 1965. In Chapter IV of this Report they had criticised the working of the "barter deals" in which the Iron and Steel Controller had failed to forfeit bond amounts (Bank-guarantees) to the value of Rs. 51 lakhs.

2. The reason, which necessitated acceptance of the principle of barter, was that in 1958 there was a heavy shortage of steel and no foreign exchange was available for imports. At a meeting attended by the representatives of the Ministry of Finance, Planning Commission, Ministry of Commerce and Industry, and the Department of Iron and Steel a scheme was approved which envisaged the import of steel against the export of certain items otherwise not easy to export such as manganese ore, chrome ore etc. It was expected that under such arrangements, the total exports would increase. At the same time, due to the time-lag between the Commissioning of open hearth furnaces and the commissioning of Blooming and Slabbing Mills of the Public Sector steel Plants, semis (i.e. ingots, slags and billots) were also available as surplus because the rolling mills were not ready. The barter scheme was accordingly enlarged to provide for pre-import of finished steel by some firms subject to the condition that the foreign exchange spent on this account would be recouped by them by export of semis lying surplus with the Public Sector Steel Plants. Since the firms were being allowed to pre-import the material, it was necessary to take adequate steps to bind them to fulfil the export commitments. Accordingly, the Deptt. of Iron and Steel in their letter dated 2.2.60

(Enclosure II) asked the I&S Controller, to adopt the following procedure before issuing the Pre-import licences:—

- (a) the firms might be asked to produce an irrevocable letter of credit assigned in favour of the exporter for the value entire export quantity;
- (b) in case the exporter was not able to produce an irrevocable letter of credit for the entire quantity of export, then he might be asked to furnish an irrevocable bank-guarantee equivalent to 15 per cent of the value of the import licence applied for;
- (c) it should be made clear to the exporters that the guarantee would be forfeitable in case of failure to earn the foreign exchange by export, whatever be the reason therefor;
- (e) the guarantee would be releasable on actual export of the I&S Controller would have no further dealings with him;
- (e) the guarantee would be releasable on actual export of the full quantity contracted for; and
- (f) import licence should be issued only in cases where a firm contract for exports existed.

A 'Bank Guarantee Form' was evolved by the Iron and Steel Controller in consultation with the Central Government Solicitor at Calcutta and was used in all the barter cases. This form became the focus of criticism as, while evolving it, the instructions of the Government had not been translated faithfully and in the cases where the firms failed to earn the foreign exchange spent on pre-imports, bank-guarantees to the tune of Rs. 51 lakhs could not be forfeited.

3. Shri N. N. Wanchoo, the then Secretary, in this Ministry, and Shri Mukherjee, the then Deputy Iron and Steel Controller, had given evidence in 1966 before the Sub-Committee appointed by the PAC to undertake detailed examination of the operation of the various Export Promotion Schemes during the period 1957-64 with reference to para 88 of the Audit Report (Civil) on Revenue Receipts, 1965. During the course of the examination, Shri Mukherjee assisted Shri Wanchoo as well as gave independent evidence. In this connection, attention is invited to paras 4.62 to 4.67 of the Fiftieth Report of the PAC (1965-66) (Extracts are at Enclosure III). This Sub-Committee was given to understand that the Central Government Solicitor at Calcutta was solely responsible for evolving the Bank guarantee form; and they were critical of him as per the extracts of the Report reproduced below:—

"Para 4.66

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The sub-Committee fail to appreciate the attitude of the Government Solicitor who took upon himself obligation to advise that no bank would agree to such a bank-guarantee. Instead of drafting the document and embodying the intentions of the Government he went outside the scope of his duties and drafted a form which was least satisfactory.

4. The Sub-Committee also pointed out a number of other discrepancies in the working of the barter scheme. They, however, said that they would not like to go into the details of the case but recommended to Govt. (para 4.167 of the Report copy at Enclosure IV) that these cases should be got investigated by a high-powered committee. In pursuance of these recommendations, Govt. appointed a Committee in 1966 known as the Committee of Inquiry (Steel Transactions) headed by Justice Sarkar, Retired Chief Justice of the Supreme Court. This Committee looked into the matter in great detail and as far as the matter of 'Bank Guarantee Form' was concerned, they did not come to any adverse conclusion. However, Shri P. C. Padhi, one of the members of the Committee, in his dissenting note not only commented adversely on the 'Bank Guarantee Form' but held Shri Mukherjee responsible for it. He also held that this officer was responsible for giving misleading evidence before the PAC by shifting the entire blame for devising the form on the Central Govt. Solicitor, while he himself was responsible for making material alterations in the form which went in favour of the firms. Shri Padhi held that this officer, even during the course of his evidence before the Sarkar Committee tried in the beginning to suppress the fact that he had made some changes in the wording of the bank guarantee. According to Shri Padhi, when Shri Mukherjee was questioned as to whether he considered that form satisfied the conditions laid down by the Govt., his reply on the first day was that he did not apply his mind to it and "the Solicitor's was the final word in drafting." However, on the second day when the draft form with alterations in his own hand, was shown to Shri Mukherjee, he acknowledged the same. Thus, according to Shri Padhi, Shri Mukherjee, even at this stage, tried to mislead the Sarkar Committee on this point though he was in the know of the significance of what he had done.

5. Before going into the details of the alterations made in the Bank Guarantee Form, it may be mentioned that Govt. did not accept the dissenting note of Shri Padhi but accepted *in toto* the recommendations of the majority view. However, in pursuance of certain other

observations made by the Sarkar Committee (Majority), departmental action was initiated against Shri Mukherjee on the following counts:—

- (a) he improperly allowed some of the Bank Guarantees furnished by the bartering firms in respect of the semi-barter deals, to be reduced in value;
- (b) he approved the terms of a barter deal in favour of M/s. Aminchand Payarelal wherein he allowed the firm to import steel material for a value in excess of the foreign exchange that the firm was expected to earn; and
- (c) he did not ensure that proper watch was being kept on the expiry dates of the Bank Guarantees furnished by the firms in respect of the semi-Barter deals.

6. Departmental enquiry was held and the Enquiry Officer came to the conclusion that charges (a) and (b) above could not be proved and charge (c) proved only partially. CVC, who consulted in the matter, advised that it would be sufficient if the lapse was brought to the notice of the officer and he was asked to be more careful in future. The case was considered by the Disciplinary Authority and it was decided to accept the advice of the CVC. An order bringing the laps to the notice of this officer and warning him to be more careful in future, was accordingly issued on 11-3-70.

7. Reverting to the issue of the 'Bank Guarantee Form', it was devised by the I&S Controller in consultations with the Govt. Solicitor at Calcutta for processing the barter deal cases. A detailed note giving the facts of the case was prepared by Shri Mukherjee particularly indicating the instructions of the Ministry, (also reproduced in para 2 above) and the Solicitor was requested to devise suitable form. This was done by the Solicitor and on its receipt, Shri Mukherjee made changes in his own hand as follows:—

*Clause as suggested by the Solicitor*

*As amended by Shri Mukherjee*

(1) WHEREAS the Govt. acting through the I & S Controller has agreed to enter into a contract with the obligor for import of ... tons of ... on the undertakings of the Obligor to export ... tons of billets produced by M/s. HSL within ... month from the date of these presents .....

WHEREAS the Govt. acting through the I & S Controller has agreed to enter in contract with the obligor for import of ... tons of ... on the undertakings of the Obligor to export ... tons of billets, produced by M/s. HSL within 3 months from the date of delivery of the materials by M/s. HSL.

(2) NOW THE CONDITION OF THE above written bond is such that if the Obligor shall fail to secure foreign purchaser for and arrange export out of India ... tons of ... produced by the H. S. Ltd. within ... months from the date of these presents..

NOW THE CONDITION OF THE above written bond is such that if the Obligor shall fail to secure foreign purchaser for and arrange exports out of India.. tons of ... produced by the H.S. Ltd within three months from the date of delivery of the materials by M/s. HSL.



It will be noted that the phrase 'from the date of these presents' was altered into 'from the date of delivery by HSL.' The file was submitted by Shri Mukherjee to the I&S Controller without mentioning that certain alterations|corrections had been made by him in the form. His note reads as follows:—

"Controller and P&AO may please see. We may ask all firms, who have already been granted I/L and furnished bank guarantee in the old form, to replace them by the one drawn up by the Solicitor."

The PAC pointed out that although the Ministry's instructions required that the parties should furnish an absolute guarantee for export, the Bank Guarantee Form was worded in a qualified manner by making it contingent on delivery of steel by HSL. Even though Shri Mukherjee had mentioned that the drafting of the guarantee bond form was the sole responsibility of the Government. Solicitor, subsequently when he was shown the form containing corrections in his own hand, he accepted the position. The Sarkar Committee, which had gone into this aspect, had made the following observation:—

"Para 4.18

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Shri Mukerjee, however, made change in the bank guarantee drafted by the Solicitor, namely, that, instead of the words "within from the date of these presents" within which period according to Mr. Son's draft, the semis were to be exported, he put the words "within three months of the delivery of the materials by the Hindustan Steel Limited.". In the form in which the Solicitor drafted, it might be that the condition stipulated, in the letter of 2nd February, 1960 (that whatever be the reasons for the failure to earn foreign exchange the bank guarantee was forfeitable). was attracted. However, if all the circumstances connected with the furnishing of the bank guarantee were taken into consideration, it would be difficult to say whether the condition imported by the words used by the Solicitor would have been enforced as an absolute condition. Shri Bhoothalingam, during examination stated that at the time that this matter leading to the issue of the letter of 2nd February, 1960 was considered, he did not specifically think of the point whether the condition of forfeiture should be absolute. He however, said that such a condition would have been unreasonable. Shri Wanchoo also

took the same view. By changing it in the manner in which Shri Mukherjee had done—providing for the export being made within a certain time of supply by Hindustan Steel Ltd. the bank guarantee was made workable and easily enforceable.....”

“Para 4.19

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The Committee would like to point out that while it is true that no bank guarantee had even been sought to be enforced, the fact remains that any attempt to enforce a bank guarantee would have raised the disputed question whether Hindustan Steel Ltd. had supplied the contracted quality of the materials. On this question, the Committee does not consider itself competent to pronounce. Nor does it think that such a pronouncement would lead to any useful result. In this view of the matter, the Committee are unable to hold at this stage that failure to enforce the bank guarantees has caused loss to the Government....”

8. This matter was raised during a short duration discussion on the Sarkar Committee Report on 19th December 1968 when Shri Madhu Limaye made a reference to the false evidence given by Shri Mukherjee before the P.A.C. He subsequently brought a ‘QUESTION OF PRIVILEGE’ on the 6th March, 1969, against Shri Wanchoo and Shri Mukherjee for having given false evidence before the PAC and .... wanted it to be referred to the Committee on Privileges. The motion moved by Shri Madhu Limaye was adopted by the Lok Sabha on the same date and the matter was referred to the Committee on Privileges. At the request of the Privileges Committee, a Sub-Committee of the PAC went into the question whether on the following three points there was any false evidence tendered by the Officers concerned:

- (a) Omission to bring to the notice of the PAC certain instructions issued by the Ministry of Steel, Mines and Fuel about the conditions on which pre-import licences would be issued under barter deals;
- (b) Issue of pre-import licence in the absence of an export contract, and
- (c) Changes in Bank Guarantee Form.

9. The Sub-Committee of P.A.C. examined S/Shri N. N. Wanchoo and S. C. Mukherjee on 22nd October, 1969 and furnished a report

to the Privileges Committee. The Privileges Committee did not examine Shri S.C. Mukherjee once again even though it would be seen from para 4 of the proceedings of the fourth sitting of the Privileges Committee held on 27th April, 1970 (Enclosure V) that they had intended to examine in person Shri N.N. Wanchoo, the then Secretary, Department of Iron and Steel, Shri S.C. Mukherjee, the then Deputy Iron and Steel Controller and Shri H.R.S. Rao, the then Assistant Sales Manager, Hindustan Steel Ltd., at a sitting to be held some time in June or July. However, in its subsequent sittings on 5th May, 13th May and 18th August, 1970, there is no reference to oral or written evidence again being taken from these officers. After a careful scrutiny of all available documents as well as oral and written evidence given by S/Shri N. N. Wanchoo and S. C. Mukherjee, before the Sub-Committee of the PAC, the Privileges Committee, came to the following conclusions:—

- (i) Regarding (a), the Privileges Committee agreed with the P.A.C. that Shri S.C. Mukherjee had not himself given evidence on this point before the P.A.C. and, therefore, he cannot be held directly responsible for the P.A.C. having been misled on this point, although he could have, "if he had been alert, corrected Shri Wanchoo when he was giving evidence before the P.A.C." In the view of the Committee, therefore, no action was called for on this aspect of the matter.
- (ii) Regarding (b) the Privileges Committee agreed with the findings of the P.A.C. that though "there was a factual inaccuracy in the statement given to the P.A.C. about the quantum and value of imports made by the party in this case after the mistake in issue of import licence came to the notice in November, 1960", this did not tantamount to misleading the Committee. In view of this, the Committee did not recommend any further action on this issue.
- (iii) As regards (c), relating to the changes in the Bank Guarantee Form, the Privileges Committee agreed with the PAC that "a material change in the form of the bank guarantee was made by Shri S.C. Mukherjee and not by the Government Solicitor" and that, therefore, a "misrepresentation of the position to this extent" was made by Shri S. C. Mukherjee when he gave evidence before the PAC in March, 1966. The Privileges Committee, therefore, concluded that in their opinion Shri S.C. Mukherjee deserves to be censured for contempt of the House committed

by him in misleading the PAC in the matter of changes made in the bank guarantee form. Accordingly, this Committee recommended that the disapproval and displeasure of the House in respect of the contempt of the House committed by him should be conveyed to him and also the Government of India should take such disciplinary action against him as they deem fit.

10. At its last sitting held on 17th October, 1970, the Committee recorded the following recommendation:—

“After a careful consideration of the documents made available to the Committee and the findings of the Sub-Committee on Public Accounts in the matter, the Committee have reached the conclusion that Shri S. C. Mukherjee did not correctly present the facts to the Public Accounts Committee during the course of his oral evidence on the question of changes made in the bank guarantee form. The Committee are, therefore, of the opinion that Shri S. C. Mukherjee has committed a breach of privilege and contempt of the House by misrepresenting the position in the matter and thereby misleading the Public Accounts Committee. The fact that such contempt has been committed by a responsible public servant of Shri S. C. Mukherjee’s position has increased the gravity of the offence.

The Committee are of the view that Shri S. C. Mukherjee deserves to be censured for the contempt of the House committed by him.

The Committee, however, feel that the requirements of the case would be fulfilled if the disapproval and displeasure of the House in respect of the contempt of the House committed by Shri S. C. Mukherjee is conveyed to him (Shri Mukherjee) and also to the Government of India for disciplinary action against him.”

This recommendation of the Privileges Committee was considered at length by the Lok Sabha on the 2nd December, 1970, after which the following Motion was adopted:—

“That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the

then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on PAC and committed contempt of this House, do resolve that he be summoned before the Bar of the House and be reprimanded and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House."

11. Even though the motion was adopted by the Lok Sabha in the form mentioned in the preceding paragraph, it would be of interest to see what Shri R. D. Bhandare, Chairman of the Privileges Committee had to say during the debate on 2nd December, 1970 on the import of the word 'maximum punishment'.

"...I do not know what meaning should be attached to the term 'maximum punishment'. If we go through the Law of Lexicon by Maxwell, I do not think this term will carry any meaning, because we have the Constitution and rules for civil conduct: Both have to be followed. Article 311(2) shall have to be followed at the time of meting out the punishment. When I had moved my amendment for the acceptance of the original report with some consequential action, it was thought it would suffice. But now wiser and more learned friends wanted to put in this amendment. I am simply mentioning that the form 'maximum punishment' does not signifying anything in the light of what I have said."

12. In replying to the debate on this Motion, before accepting the amendment, the Minister for Parliamentary Affairs had stated as under:—

"...It has been rightly pointed out by Shri Vajpayee and in a way by Dr. Ram Subhag Singh and others that there are certain constitutional precedures; these procedures have to be followed in cases of this type. There is Article 311 and then there are also certain rules framed under the Constitution. In certain cases consultation with the UPSC will be necessary.

I understand that it is the intention of the sponers of this amendment and of this House that every right shall be given to the person charged to defend himself in accordance with the Constitution; it is in that spirit that we are

passing this Resolution. I want to make this doubly clear, as I understand, it is the intention of the House not to deprive any person of any constitutional right provided under the Constitution...."

13. Shri Mukherjee appeared before the Bar of the Lok Sabha on 9th December, 1970 and the Speaker administered the reprimand to him. Government are now required to take action on the second operative part of the Motion viz. that the Government should administer him maximum punishment under the law.

14. Government have now to take disciplinary action against Shri Mukherjee on this particular finding of having misrepresented facts and tendered false evidence before the PAC. The following points have to be considered in this connection:

- (i) The form and the content of the show cause notice to be issued to Shri Mukherjee and also whether formal proceedings should or can be drawn up before the question of punishment is considered.
- (ii) The exact significance of the words 'maximum punishment under the law' has to be assessed.
- (iii) If an inquiry is ordered, Shri Mukherjee is likely to lead evidence in regard to the facts of the case. If the Inquiry Officer considers fresh evidence on facts at this stage, will it conflict with the privilege of Parliament, which has already pronounced its judgment on this aspect.
- (iv) On the other hand, if Shri Mukherjee is not allowed an opportunity to lead evidence on facts, he has already stated in a communication dated 28th December 1970 (Enclosure VI) that full opportunity has not been given to him and that therefore, further inquiry was necessary. It is also likely that he might go to Court on this issue.
- (v) There is also the possibility which must be considered that if, on the basis of evidence brought before the Inquiry Officer a recommendation is made that the nature of the offence is not serious enough to warrant the maximum penalty this view might be upheld by the Union Public Service Commission.

The implication of these alternatives have to be considered in detail and carefully before the next step is taken.

Sd/-

(M. RAMJI)

Deputy Secretary to the Government of India

**Enclosure I**

***Para 88 of the Central Government Audit Report (Civil) on Revenue Receipts 1965.***

88. Failure to forfeit bond amounts due to Government.

Under the Export Promotion Scheme introduced in 1957, import licences for raw materials used in the manufacture of goods intended for export were issued as follows:—

- (i) Established exporter's licences.— These licences were issued on the basis of the value of past exports and were subject to the condition that the licence holders would effect further exports of the manufactured/processed goods upto at least 100 per cent of the value of the import licences. In pursuance of this condition, the importer was required to execute a bond/undertaking binding himself to fulfil this condition, failing which under the terms of the Bond the amount of the bond was to be forfeited to the Government.
- (ii) Prospective exporters' licences.—These licences were issued in anticipation of the earnings of foreign exchange by the prospective exporters on the basis of foreign buyers' orders pending with them. These licences were also granted subject to the condition that the importer would effect exports of manufactured/processed goods of a value equal to 133-1/3 per cent of the value of his imports or half of the value of the finished goods which would be made from the imported materials. Here also, in order to ensure the fulfilment of this condition, the importers were required to execute a bond accompanied by a bank guarantee.

In respect of licences worth Rs. 55 lakhs issued to prospective exporters, no exports were made, and in consequence of this failure, bonds of the value of Rs. 19.03 lakhs executed by the licences were forfeited and the amount credited to the Government.

However, in regard to certain licences issued upto March 1959 for the import of art silk yarn, etc., it was noticed that although no export had been made in respect of Established exporter's licence worth Rs. 5.37 crores, the bond/undertakings were not enforced and the importers were released from the export obligation without the Government forfeiting the bond amount or taking any other action under the Import Trade Control Regulation. Government have stated that these licences were issued under the rules on the basis of earlier exports and that as the goods were later withdrawn from the purview of the Export Promotion Scheme, the export obligations were not enforced.

### Enclosure II

*Extract from Fiftieth Report of Public Accounts Committee  
(1965-66) (Third Lok Sabha)*

No. SC(C)-5(5)/60

GOVERNMENT OF INDIA

MINISTRY OF STEEL, MINES AND FUEL,

(DEPARTMENT OF IRON AND STEEL)

New Delhi, the 2nd February, 1960.  
Magha, 1881 (Saka).

From

Shri C. A. Nair,  
Officer on Special Duty.

To

The Iron & Steel Controller,  
33, Netaji Subhas Road,  
Calcutta-1.

SUBJECT:—*Procedure for barter deals.*

Sir,

The procedure adopted so far in the case of barter deals is to issue an import licence for steel after export has taken place. In barter, the size of the export commodity is large and deliveries can be made only over a period of time. If the present procedure is adopted, it is felt that the import of steel may take place after our pressing needs are over. It may even come after our steel plants have started producing the same category. Hence the procedure to be followed for barter deals in exports involving the export of scrap, pig iron, or steel ingots/or slabs has been considered in consultation



with the Ministry of Finance and it has been decided to revise the existing procedure.

2. In cases where delay in exports is anticipated for reasons satisfactory to the Iron and Steel Controller, the following procedure may be adopted:

- (a) On production of an irrevocable letter of credit assigned in the favour of the exporter for the value of the entire export quantity, an import licence for import of steel items may be issued.
- (b) in case the exporter is not able to procure an irrevocable letter of credit for the entire quantity of export then he may be asked to furnish an irrevocable bank guarantee equivalent to 15 per cent of the value of the import licence applied for.

It should be made clear to the exporter that the guarantee will be forfeitable in case of failure to earn the foreign exchange by export, whatever be the reason therefor. It should also be made clear to the exporter that in case of failure to export, Iron and Steel Controller will have no further dealings with him. The guarantee will be releasable on actual export of the full quantity contracted for.

Import licence should be issued only in cases where a firm contract for export exists.

Yours faithfully,  
Sd/- C. A. Nair  
Officer on Special Duty.

### Enclosure III

*Extract from Fiftieth Report of Public Accounts Committee  
(1965-66) (Third Lok Sabha)*

#### *Bank Guarantee Form:*

4.62. The Sub-Committee were informed during evidence that although the Ministry's letter of 2-2-1960 laid down that the party should furnish an absolute guarantee to export, the Solicitor of the Iron and Steel Controller (Government Solicitor) in drafting the guarantee form took the view that no bank would agree to such an absolute guarantee. He (Solicitor) worded the bank guarantee form

(at Appendix XXXII) in a qualified manner in that the condition of the guarantee was that "the Iron and Steel Controller has agreed to enter into contract with the obliger (i.e., the party) for import.... on the undertaking of the obliger to export..... produced by M/s. Hindustan Steel Ltd., within 3 months from the date of delivery of the material, by M/s. Hindustan Steel Ltd." Therefore, the actual form of the bank guarantee as drafted by the Solicitor was quite different in all material respects from the intentions of the Government's letter.

4.63. Asked why they went to the Solicitor when the terms of the guarantee were already known to them and a guarantee form was in use earlier for export of ferrous scrap, pig iron, etc., the Secretary of the Ministry who made available a copy of the old guarantee form (Appendix XXXIII) stated that "this bond (old guarantee bond) is obviously not suitable for the type of transactions we were going to enter into".

4.64. Asked if there was any failure when old form was in use, the Deputy Iron & Steel Controller stated that there has been no failures. Asked why then they changed it and referred the matter to the Solicitor, he stated "because of the Ministry's letter where some conditions were given for pre-imports, we thought that we should have a look at the form and we sent it to the Solicitor. He felt that this form is not suitable and he drafted a different form."

When pointed out that the previous form was better than the revised one as under that, the currency period of the guarantee could be fixed by Government as they considered necessary, the Secretary of the Ministry stated that "the main failure was not in watching when the bank-guarantee was expiring and taking timely action."

4.65. The Sub-Committee enquired if the Controller was not at fault in not insisting on bank guarantees in terms of Ministry's letter dated 2-2-1960, the Secretary stated that "The Steel Controller, when he found that the Solicitor drafted the bank guarantee in a form which did not entirely carry out the wishes of the Ministry should have really brought this matter to the notice of the Ministry or taken it up again with the Solicitor. There was undoubtedly failure on his part to do so. Quite often as laymen we issue instructions and lawyer draft them differently. I do not say that it was a grievous omission although it would have been better if he had

brought it to our notice so that we could have either modified our instructions or acquiesced in that particular form of guarantee”.

4.66. This is yet another case where Iron and Steel Controller did not carry out the conditions laid down by the Ministry in their letter dated 2-2-1960 regarding furnishing of bank guarantee. The Iron and Steel Controller was responsible to the Ministry. If he felt any difficulty in getting guarantees in the form required, he should have placed the matter before the Ministry for their consideration. The Sub-Committee regret to note that this was not done. On the other hand he referred it to the Solicitor who drafted the guarantee form which was not in consonance with the intention of the Ministry.

The Sub-Committee fail to appreciate the attitude of the Government Solicitor who took upon himself obligation to advise that no bank would agree to such a bank guarantee. Instead of drafting the document and embodying the intentions of the Government, he went outside the scope of his duties and drafted a form which was least satisfactory.

The result has been that limited, conditional and qualified bank guarantees were furnished by the parties and accepted by the Iron and Steel Controller, with attendant difficulties in enforcing the same. The Sub-Committee cannot help feeling that there was a serious lapse on the part of Iron and Steel Controller in taking guarantees in a form which did not carry out intentions of the Ministry.

4.67. They would also recommend that Government should look into this matter and prescribe a suitable bank guarantee form for use by the Iron and Steel Controller in future.

#### Enclosure IV

*Extract from Fiftieth Report of Public Accounts Committee  
(1965-66) (Third Lok Sabha)*

4.167. In view of the lapses which have taken place in these deals, both in the offices of the Government as well as on the part of the parties, these cases require a thorough probe. In the case of the officers of the Government, the Sub-Committee also desire that responsibility should be fixed for the various lapses. The Sub-Committee therefore, suggest that these cases should be investigated by a

high powered Committee which should consist of a person of the status of a High Court judge; an officer from the office of the Comptroller and Auditor General of India; an officer from the Central Board of Revenue well-versed in Customs Law, Import and Export (Control) Act 1947 and Income-tax Law. This high powered Committee should be suitably assisted by an agency expert in investigation of the cases.

### **Enclosure V**

*Para 4 of the proceedings of the 4th sitting of the Privileges Committee held on 27th April, 1970.*

The Committee decided to examine in person Shri N. N. Wanchoo, the then Secretary, Department of Iron and Steel, Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller and Shri H. R. S. Rao, the then Assistant Sales Manager, Hindustan Steel Limited, at their sitting to be held some time in the last week of June or first week of July, 1970.

### **Enclosure VI**

*Copy of letter dated 28th December, 1970 from Shri S. C. Mukherjee addressed to Secretary, Ministry of Steel and Heavy Engineering.*

You will kindly recall the personal representation I had made to you on 10th December, 1970 about the injustice done to me by the Lok Sabha. I have been reprimanded for having "deliberately misrepresented facts and given false evidence" before PAC, whereas, in actual fact, I did not make any representation at all or given any evidence on the subject. This could happen because neither the Parliament nor the Committee of Privileges had given me a hearing or any reasonable opportunity to state my case.

The summons to appear before the Parliament for receiving the reprimand and the Report of the Committee of Privileges reached me simultaneously at a point of time when it was too late to make any representation before Parliament. I contacted one member of Parliament and placed the facts before him. I have been informed by him that he had spoken to the Speaker who, I am given to understand, told him that though it was too late at that stage for the

Speaker to do anything, he would be prepared to look into the matter if I made a petition to him. The Speaker has also kindly agreed, if necessary, to place all facts before the Parliament in order that the injustice done to me may be rectified and the record of Parliament corrected.

I am at present preparing a petition which will, of course, be forwarded to the Speaker through you. I thought I should keep you informed of these developments.

With kind regards and best wishes for the New Year.

## ANNEXURE II

*Record note of the discussion held in the room of Secretary, Ministry of Steel and Heavy Engineering, on 25-1-971 regarding disciplinary action to be taken against Shri S. C. Mukherjee, formerly Deputy Iron and Steel Controller.*

### PRESENT

Shri H. C. Sarin	Secretary, Ministry of Steel & Heavy Engineering
Shri B. B. Lal	Secretary, Department of Personnel.
Shri R. S. Gae	Secretary, Ministry of Law.
Shri K. G. R. Iyer	Joint Secretary, Ministry of Steel and Heavy Engineering.
Shri M. Ramji	Deputy Secretary, Ministry of Steel and Heavy Engineering.

Initiating the discussion, Secretary, Steel and Heavy Engineering stated that the facts of the case had been mentioned in the paper already circulated and that the six issues indicated in para 14 of the paper had to be considered. He then invited attention to the following points:—

- (a) The Privileges Committee of Parliament had intended to examine Shri S. C. Mukherjee some time in June or

July, 1969, but eventually had not given him an opportunity to be heard in person before coming to its conclusions. In fact, Shri Mukherjee's grievance appears to be that he had not been given a hearing or reasonable opportunity to state his case before the Privileges Committee;

- (b) In the observations made by the Sarkar Committee on the specific issues of changes in the Bank Guarantee form made by Shri Mukherjee, there were no derogatory remarks by the Committee as such.

2. The question for consideration now was how to proceed with the disciplinary action against Shri Mukherjee on this particular issue. The Law Secretary mentioned that notwithstanding the proceedings in parliament in respect of this case the Government servant concerned, had the Constitutional safeguards under Article 311(2) and the procedures prescribed in the Classification, Control and Appeal Rules had necessarily to be followed. Secretary, Department of personnel, stated that the allegations against Shri S. C. Mukherjee were in the nature of "misconduct" and the Central Vigilance Commission would have to be consulted.

3. The next question for consideration was that in the event of the Enquiry Officer finding Shri Mukherjee guilty of misconduct, it may not necessarily follow that the maximum punishment (*viz.* dismissal) would have to be imposed on him. The nature of punishment would depend on the gravity of the charges proved against him. At the appropriate stage, the Union Public Service Commission would also have to be consulted.

It was suggested that it might be advisable to consult the Cabinet Secretary as to whether this matter should be placed before the Cabinet Committee on Parliamentary and Legal Affairs, being the first of its kind so far.

4. After discussion, it was agreed that—

- (a) it would be necessary to observe the prescribed procedure for issue of charge-sheet and giving reasonable opportunity to Shri Mukherjee through an enquiry before taking a final decision;
- (b) as the allegation against Shri Mukherjee was in the nature of "misconduct", the jurisdiction of the Central Vigilance Commission would be attracted;

- (c) A Commissioner for Departmental Enquiries would have to be appointed to enquire into the specific charges indicated by the Privileges Committee of parliament;
- (d) At the appropriate stage the Union Public Service Commission will have to be consulted;
- (e) The Cabinet Secretary's advice may be sought as to whether this case should be placed before the Cabinet Committee on Parliamentary & Legal Affairs (This question was subsequently discussed by Secretary, Ministry of Steel and Heavy Engineering, with Cabinet Secretary who advised that since the issues involved were clear and the Government servant had the Constitutional safeguards under Article 311(2), it was not necessary to bring up the matter before the Cabinet Committee).
- (f) The charges to be framed should be specific and confined to the allegation of having misrepresented facts and giving false evidence before the Committee on Public Accounts.

Sd/-

(K. G. R. Iyer)

### ANNEXURE III

No. C-14011|1|70-Vig.

GOVERNMENT OF INDIA

MINISTRY OF STEEL AND MINES

(DEPARTMENT OF STEEL)

*New Delhi, the 17th May, 1971.*

### MEMORANDUM

The President proposes to hold an enquiry against Shri S. C. Mukherjee under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Enclosure I). A statement of the imputations of misconduct or misbehaviour in support of each articles of charge is enclosed (Enclosure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Enclosures III and IV).

2. Shri Mukherjee is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri Mukherjee is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, or the orders|directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against his *ex parte*.

5. Attention of Shri Mukherjee is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Mukherjee is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.

By order and in the name of the President.

Sd|-

(A. CHATTERJI)

Deputy Secretary to the Govt. of India.

Shri S. C. Mukherjee,

Deputy Iron and Steel Controller.

Calcutta.

### **Enclosure I**

*Statement of articles of charge framed against Shri S. C. Mukherjee,  
Deputy Iron & Steel Controller, Calcutta*

That Shri S. C. Mukherjee while functioning as Deputy Iron and Steel Controller, in the office of Iron nad Steel Controller, Calcutta during the year 1966 acted in a manner unbecoming of a Government servant in as much as he was responsible for the misrepresentation of certain facts and the tendering of false evidence before



the Committee on Public Accounts 1965-66 (Fiftieth Report) (Third Lok Sabha). He has thereby contravened Rule 3 of the C.C.S. (Conduct) Rules, 1964.

### Enclosure II

*Statement of imputation of misconduct in support of the articles of charge framed against Shri S. C. Mukherjee, Deputy Iron and Steel Controller, Calcutta.*

In the year 1966, Shri N. N. Wanchoo, then Secretary, Deptt. of Iron and steel, and Shri S. C. Mukherjee, Deputy Iron & Steel Controller, Calcutta, tendered evidence before the Public Accounts Committee of Lok Sabha in connection with the "barter deals". During this evidence, when the question of bank guarantees relating to these 'barter deals' came up for consideration, S|Shri Wanchoo and Mukherjee had mentioned that the form was drafted by the Central Government Solicitor at Calcutta. The Public Accounts Committee had criticised and passed some strictures against the Govt. Solicitor in para 4.66 of their 50th Report of the Public Accounts Committee 1965-66 (Third Lok Sabha). It came to light subsequently in the investigation conducted by Committee of Enquiry (Steel Transaction) headed by Justice A. K. Sarkar that material changes had been effected by Shri Mukherjee himself in the bank guarantee form as originally drafted by the Govt. Solicitor. The changes made by Shri Mukherjee in the form are as follows:—

*Clause as suggested by the Solicitor*

*Changes made by Shri Mukherjee*

WHEREAS the Government that the Iron and Steel Controller has agreed to enter into a contract with the Obligor for import of...tons of...on the undertakings of the Obligor to export..... tons of...produced by Messrs Hindustan Steel Ltd., within...months from the date of these presents. AND WHEREAS the Obligor and the Surety have at the direction of the Government has entered into the bond as above written as a security for honouring the undertaking of the Obligor to export.... tons....produced by the Hindustan Steel Ltd.

NOW THE CONDITION of the above written bond is such that if the Obligor shall fail to secure foreign purchaser for and arrange export of...tons of.... produced by the Hindustan Steel Ltd., within .... months out of India from

WHEREAS the Government that the Iron and Steel Controller has agreed to enter into a Contract with the obligor for import of...tons of...on the undertakings of the Obligor to export...tons of..... ....produced by Messrs Hindustan Steel Ltd. within *three months from the date of delivery of the materials by M/s. Hindustan Steel Ltd.*, AND WHEREAS THE obligor and Surety have at the direction of the Govt. has entered into the bond as above written as a security for honouring the undertaking of the obligor to export.. tons....produced by the Hindustan Steel Ltd.

NOW THE CONDITION of the above written bond is such that If the Obligee shall fail to secure foreign purchase for and arrange *export out of India* of tons of.... produced by the Hindustan Steel Ltd., within ~~three~~ months out of India from the

*Clause as suggested by the Solicitor**Changes made by Shri Mukherjee*

the date of these presents or such further time as the Govt. may agree to allow to the Obligor these presents shall remain in full force and virtue and otherwise the same shall, be void and no effect AND it is hereby agreed and declared that the obligation of the Surety under these presents shall not be impaired in any way by reason of time of facilities being allowed to the Obligor by Govt. without notice to the Surety.

date of delivery of the materials by M/s. Hindustan Steel Ltd. or such further time as the Govt. may agree to allow to the Obligor these presents shall remain in full force and virtue and otherwise the same shall void and no effect AND it is hereby agreed and declared that the obligation of the Surety under these present shall not be impaired in any way by reason of time of facilities being allowed to the Obligor by Govt without notice to the Surety.

2. The matter was raised during a short duration discussion in the Lok Sabha on the Sarkar Committee Report on 19-12-68 when Shri Madhu Limaye made a reference to the false evidence given by Shri Mukherjee before the PAC. Subsequently on 6-8-69, Shri Limaye brought a 'Question of Privilege' against S|Shri Wanchoo and Mukherjee for having given false evidence before the PAC. The Lok Sabha adopted a motion and the matter was referred to the Committee on Privileges. At the request of the Privileges Committee, a Sub-Committee of the PAC went into the question to determine *inter alia* whether S|Shri Wanchoo and Mukherjee were responsible for tendering false evidence before the PAC in the case of Bank Guarantee form.

3. The Sub-Committee of the PAC examined S|Shri Wanchoo and Mukherjee on 22-10-69. Shri Wanchoo, when questioned whether the evidence given by him in March, 1966 before the PAC regarding the form of guarantee having been changed by the Solicitor was based on any records, informed the Sub-Committee that his statement was based on the verbal information made available to him by Shri Mukherjee who was then sitting by his side. On the basis of the evidence tendered before the Sub-Committee and the records produced before them the Committee came to the conclusion that Shri Mukherjee had made a material change in the form of the bank guarantee for which the Govt. Solicitor at Calcutta was not responsible. The Committee also came to the conclusion that Shri Mukherjee was, therefore, responsible for misrepresenting the position before the PAC. Details of the false statement given by Shri Mukherjee and other matters are given in extenso in the 12th Report of the Committee on Privileges which is appended herewith.

**Enclosure III****List of documents**

1. Iron and Steel Controller's file regarding the bank guarantee form.
2. Fiftieth Report of the Public Accounts Committee (1965-66) (Third Lok Sabha).
3. Report of the Committee of Inquiry (Steel Transactions).
4. Report of the Committee of Privileges (Fourth Lok Sabha) Twelfth Report.
5. Motion adopted by the Lok Sabha on the 2nd December, 1970, regarding the reprimand and maximum punishment to be administered to Shri S. C. Mukherjee.
6. Proceedings of the Lok Sabha of 2nd December, 1970.

**Enclosure IV****List of witnesses**

1. Shri N. N. Wanchoo, then Secretary, Department of Iron and Steel.
2. Shri A. S. Bam, then Iron and Steel Controller.
3. Shri S. N. Sen, Solicitor to the Central Government.
4. An officer from the Lok Sabha Sectt.
5. An Officer from the Committee of Inquiry (Steel Transactions), Ministry of Steel & Mines (Department of Steel).

**ANNEXURE IV**

Dr. G. S. DHILLON  
SPEAKER, LOK SABHA

**CONFIDENTIAL**

D.O. No. 1|8|70|PAC  
Speaker's House  
(20, Akbar Road)  
NEW DELHI  
May 31, 1971

Dear Shri Kumaramangalam,

Please refer to your confidential D.O. letter No. MSHE|71|C|

4011|1|70-Vig|1835 dated 22-5-1971 regarding supply of the verbatim evidence tendered by Sarvashri N. N. Wanchoo and S. C. Mukherjee before the Public Accounts Committee during March, 1966.

2. As you are aware, the Lok Sabha adopted the motion on 2nd December, 1970 *inter alia* recommending maximum punishment under the Law to be administered to Shri S. C. Mukherjee, after having considered the 12th Report of the Committee of Privileges (4th Lok Sabha). This Report is a comprehensive one and contains copies|extracts of all the relevant documents. The verbatim proceedings of the sitting on 22nd October, 1969 of the Sub-Committee of Public Accounts Committee and the report of the Public Accounts Committee which at the instance of the Committee of Privileges examined whether any false evidence had been given before them, have also been appended to this Report. I, therefore, feel that this should provide comprehensive material for the departmental proceedings against Shri S. C. Mukherjee.

3. The relevant verbatim record of evidence given before the Sub-Committee of the Public Accounts Committee in March, 1966, which you desire to have, was not laid on the Table of the House by the Committee and as such is confidential and not open for inspection by any one (c.f. Rule 275 (2) of the Rules of Procedure & Conduct of Business in Lok Sabha.) However, minutes of the sittings of Sub-Committee of Public Accounts Committee of March 1966, which recorded in substance the testimony given before them by the concerned officials were laid on the Table of the House along with the 50th Report of Public Accounts Committee (3rd Lok Sabha) and are available. If, however, even after going through all these documents, minutes and reports, the necessity to refer to the verbatim record of the evidence of any official before the Public Accounts Committee|Sub-Committee of Public Accounts Committee, is felt, the specific point, the name and designation of the official and the date of evidence may be precisely indicated so that the matter could, in the first instance, be referred to and considered by the Public Accounts Committee, after it is constituted.

Yours sincerely,

Sd/-

(G. S. DHILLON)

Shri S. Mohan Kumaramangalam,

Minister of Steel and Mines,

Govt. of India,

New Delhi.

## Annexure V

CONFIDENTIAL

No. C-14011|1|70-Vig|192

January 14, 1972.

Please refer to your D.O. letter No. 1|8|70-PAC, dated May 31, 1971, regarding supply of the verbatim evidence tendered by S|Shri N. N. Wanchoo and S. C. Mukherjee before the Public Accounts Committee.

2. In accordance with the procedure for Departmental Inquiries, a charge-sheet was served on Shri Mukherjee asking him to submit his statement of defence. Shri Mukherjee, in his statement of defence, has denied the charges levelled against him that he was responsible for misrepresentation of certain facts and tendering of false evidence before the Committee on Public Accounts 1965-66. Accordingly, the case, as per the provisions contained in Classification, Control and Appeal Rules, was entrusted for formal inquiry to a Commissioner for Departmental Enquiries, in consultation with the Central Vigilance Commission.

3. On the very first hearing, Shri Mukherjee submitted an application asking for *inter alia* the following documents:—

- (i) verbatim report of the evidence (questions and answers) tendered by him (Shri Mukherjee) before PAC which are considered to be false or misleading; and
- (ii) verbatim report of the evidence (questions and answers) tendered by Shri Wanchoo before PAC which he claims to have given on Shri Mukherjee's verbal advice.

4. The Commissioner for Departmental Enquiries has directed the Presenting Officer to make available the said documents for inspection by Shri Mukherjee.

5. In view of the above, I shall be grateful if you could reconsider the question of making available the documents requested for inspection by Shri Mukherjee, so that the directions of the Commissioner for Departmental Enquiries could be implemented and the case against him processed further.

Yours sincerely,

Sd|-

(S. MOHAN KUMARAMANGALAM)

Shri G. S. Dhillon,  
Speaker,  
Lok Sabha,

## ANNEXURE VI

*Statement of case for the Opinion of the Attorney General of India.*

It has become necessary to trouble the learned Counsel with regard to the implications and effect of the Resolution passed by the Lok Sabha in 2-12-1970 which reads as follows:

"That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be summoned before the bar of the House and be reprimanded and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House."

2. To appreciate the background a few facts may have to be stated. In 1958, a scheme was evolved known as "barter deal" under which certain firms were allowed to pre-import finished steel subject to the condition that the foreign exchange spent on this account would be recouped by them by export of Hindustan Steel Limited's surplus production of semi-finished steel categories (semis in brief) within a stipulated period. A procedure was laid down by which the parties who were given the pre-import facilities should give irrevocable bank guarantees which were liable to be forfeited in the event of their failure to export the material. Accordingly, a bank guarantee form was evolved by the Iron and Steel Controller in consultation with the Central Government Solicitor at Calcutta. Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, was associated in finalising of the guarantee form.

3. During the hearings of the Public Accounts Committee (1965-66) Shri N. N. Wanchoo, the then Secretary, Ministry of Iron and Steel, gave evidence. Shri Mukherjee was also present along with Shri Wanchoo when the latter gave evidence and answered some of

the questions, with the permission of the Committee. In this connection the following excerpts from the minutes of the sittings of the Sub-Committee of the P.A.C. are relevant:

"He (Shri N. N. Wanchoo) further explained that although Government instructions were that the party should give an absolute guarantee to export, the Solicitors of the Steel Controller drafted the guarantee form in a qualified manner in that it provided that the party was obliged to export if the H.S.L. in its turn supplied the steel within a reasonable period.

Asked why it was necessary to refer to the question of bank guarantee form to the Solicitor when a guarantee form was already in use in connection with pre-import against ferrous scrap, the Secretary under took to furnish a copy of the old form and give a reply later."

\* \* \*

"The bank guarantee form laid down earlier by the Ministry (a copy of which was made available to the Sub-Committee) was revised by the Solicitor of the Steel Controller, after grant of pre-import licences against deals involving export of semis was decided upon. The revised form differed from the original one in many respects e.g. it provided that the party would export within three months from the date of delivery of the materials by HSL etc. Asked why did they refer the matter to the Solicitors, the Deputy Steel Controller stated that because of conditions laid down by the Ministry for pre-import licences, they thought that the Solicitor should have a look at the guarantee form. He also stated that they did not experience any difficulty in enforcing the guarantee under the old form. The Secretary of the Ministry admitted that the revised form provided for a limited bank guarantee but that the main failure had been in not watching when the guarantee was expiring and taking timely action to renew the same."

4. The Sub-Committee of the Public Accounts Committee made the following observations on the basis of the above-quoted evidence:

"This is yet another case where Iron and Steel Controller did not carry out the condition laid down by the Ministry in their letter dated 2-2-1960 regarding furnishing of bank

guarantee. The Iron and Steel Controller was responsible to the Ministry. If he felt any difficulty in getting guarantees in the form required, he should have placed the matter before the Ministry for their consideration. The Sub-Committee regret to note that this was not done. On the other hand he referred it to the Solicitor who drafted the guarantee form which was not in consonance with the intention of the Ministry.

The Sub-Committee fail to appreciate the attitude of the Government Solicitor who took upon himself obligation to advise that no bank would agree to such a bank-guarantee. Instead of drafting the document and embodying the intentions of the Government, he went outside the scope of his duties and drafted a form which was least satisfactory."

5. The P.A.C. recommended the appointment of a high-powered committee to go into the working of the barter scheme. Accordingly, Government appointed a Committee of Inquiry (Steel Transactions) headed by Justice Sarkar, Retired Chief Justice of India. It came out during the course of the inquiry that certain additions had been made by Shri Mukherjee to the draft form suggested by the Solicitor. The changes made would be clear from the following:

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*As suggested by the Solicitor*

*As changed by Shri Mukherjee*

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(1) Whereas the Govt. acting through the I &amp; S Controller has agreed to enter into a contract with the obliger for import of . . . tons of . . . on the undertakings of the obliger to export . . . tons of billets produced by M/s. HSL <i>within . . . months from the date of these presents . . .</i></p> | <p>Whereas the Govt. acting through the I&amp;S Controller has agreed to enter into a contract with the obliger for import of . . . tons of . . . on the undertakings of the obliger to export . . . tons of . . . billets produced by M/s. HSL <i>within 3 months from the date of delivery of the materials by M/s. HSL.</i></p> |
| <p>(2) Now the condition of the above written bond is such that if the obliger shall fail to secure a foreign purchaser for and arrange export out of India . . . tons of . . . produced by the HSL <i>within . . . months out of India from the date of these presents . . .</i></p>                                | <p>Now the condition of the above written bond is such that if the Obliger shall fail to secure a foreign purchaser for and arrange export out of India . . . tons of . . . produced by the HSL <i>within three months from the date of delivery of the materials by M/s. HSL.</i></p>                                             |
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6. Learned Counsel will note that while the draft as prepared by the Solicitor provided for enforcement of the bond within a specified time after the execution of the guarantee bond, the form as modified provided for enforcement of the guarantee within three months from



the date HSL supplied the semis for export purposes. It may also be noted that supply from HSL was an essential prerequisite to the export being made. The majority opinion of the Sarkar Committee was that the additions made by Shri Mukherjee were practical in nature, but the minority opinion placed the blame on Shri Mukherjee for making the guarantee form conditional and not absolute.

7. During a short duration discussion in the Lok Sabha on 19-12-1968 Shri Madhu Limaye, then on M.P., made a reference to the false evidence tendered before the P.A.C. He subsequently moved a Privilege Motion against Shri Wanchoo and Shri Mukherjee for having given false evidence before the P.A.C. The matter was referred to the Committee on Privileges. At the request of the Privileges Committee, a Sub-Committee of the P.A.C. went into the question whether there was any false evidence tendered by the concerned officers. After a scrutiny of all the available documents as well as oral and written evidence given to Shri Wanchoo and Shri Mukherjee the Sub-Committee came to the conclusion "that a material change in the form of bank guarantee was made by Shri S. C. Mukherjee and not by Government Solicitor and that therefore a misrepresentation of the position to this extent was made by Shri Mukherjee when he gave evidence before the P.A.C. in 1966."

8. It appears that the Committee of Privileges had decided to examine Shri Mukherjee, Shri Wanchoo and Shri Rao of Hindustan Steel on 27th April, 1970. It also appears that the Committee of Privileges was reconstituted with different set of Members in the mean time. This Committee later on decided to dispose of the case without such examination. The said Committee of Privileges had at one stage made a request to the Sub-Committee of the PAC for a report on "whether any false evidence had been given before the Public Accounts Committee as alleged by Shri Madhu Limaye and if so by whom and in what respect." This Sub-Committee did not ask Shri Mukherjee to defend himself on the question of committing a contempt of the House. The Sub-Committee only blamed Shri Mukherjee for not having corrected Shri Wanchoo when he was giving evidence. There was no other finding against Shri Mukherjee. Apparently it is because of this that the previous Committee of Privileges had decided to examine Shri Mukherjee and others. The new Committee of Privileges decided even without examining Shri Mukherjee that he was guilty of contempt of the House, and also exonerated Shri Wanchoo.

9. The Privileges Committee concluded that in their opinion Shri Mukherjee deserved to be censured for the contempt of the House committed by him in misleading the P.A.C.

10. The Lok Sabha considered the recommendations of the Privileges Committee on 2-12-1970 and passed the Resolution quoted in paragraph 1 of this Statement. Shri Mukherjee was accordingly summoned before the Bar of the Lok Sabha on 9th December, 1970 and the Speaker administered the reprimand to him.

11. In view of the second part of the Resolution the following charge was framed against Shri Mukherjee:

“That Shri S. C. Mukherjee while functioning as Deputy Iron & Steel Controller, in the Office of Iron and Steel Controller, Calcutta during the year 1966 acted in a manner unbecoming of a Government servant in as much as he was responsible for the misrepresentation of certain facts and the tendering of false evidence before the Committee on Public Accounts 1965-66 (Fiftieth Report) Third Lok Sabha. He has thereby contravened Rule 3 of the C.C.S. (Conduct) Rules, 1964.”

12. The Commissioner for Department Inquiries was appointed as the Inquiry Officer. Shri Mukherjee requested the Inquiry Office to furnish him:

- (i) verbatim report of the evidence (questions and answers) tendered by him before P.A.C. which are considered to be false or misleading; and
- (ii) verbatim report of the evidence (questions and answers) tendered by Shri Wanchoo before P.A.C. which he claims to have given on Shri Mukherjee's verbal advice.

13. Learned Counsel will notice that the House in its Resolution had recommended “that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House.” The Counsel is aware that Article 311 is a limitation on the pleasure doctrine contained in Article 310. We are concerned with Article 311(2) which reads:

“No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he had been informed of the charges against him and given

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."

Learned Counsel will notice that the Lok Sabha have not specified the maximum punishment for an offence for which they themselves summoned and reprimanded the Officer. If it is presumed that the maximum punishment referred to in the Resolution of the Lok Sabha is a major punishment like dismissal, removal or reduction in rank then, before inflicting such punishments it is necessary under this sub-article as well as under Rules 14 and 15 of the C.C.S. (C.C.A.) Rules, 1965 to hold a regular inquiry and impose the punishment in accordance with the gravity of the offence by the disciplinary authority which in this case is the President. The question is whether this constitutional guarantee available to a Government servant can in any way be curtailed because of the Parliamentary Resolution.

14. It may be straightway stated that the three contingencies mentioned in the proviso to Article 311(2) when an inquiry can be dispensed with are not present in this case. Shri Mukherjee no doubt has been reprimanded by Parliament; but the question is whether the proceedings before the PAC and its Sub-Committee can be relied upon to support the position that no enquiry as contemplated under Article 311 and the CCS (CCA) Rules, 1965 is necessary, and action can be taken against him straightway on the ground of conduct which has led to his conviction on a criminal charge? The difficulty however is that the conviction here is a conviction by the Parliament for contempt and not a conviction by a court of Law on a criminal charge as appears to be necessary for the first contingency to Article 311(2) to be attracted. The second contingency, namely, that it is not reasonably practicable to hold such inquiry, is not attracted in this case since Shri Mukherjee is available and is taking part in the inquiry before the Commissioner of Departmental Inquiries. Nor can we say that it is not expedient to hold such an inquiry in the interest of the security of State. This can only be on the personal satisfaction of the President in view of *Sardari Lal's case*. *Prima facie* it therefore appears that none of the three contingencies contemplated under the proviso are attracted in this case and an inquiry will have to be held in accordance with Rules 14 and 15 of the C.C.S. (CCA) Rules, 1965.

15. As already stated Shri Mukherjee wanted the verbatim record of the evidence given by him as well as by Shri Wanchoo before the Public Accounts Committee. A request was made to the Speaker to furnish the same. Since this evidence was not placed on the Table of the House, the Speaker declined to furnish the same. In his reply dated 1-3-1972 the Speaker has stated:

"The question whether any false evidence was given before the Public Accounts Committee or that Committee was misled by Shri S. C. Mukherjee and thereby a contempt of the House was committed (sic) by him is within the exclusive jurisdiction of the House and the decision of the House on the matter is not subject to question or review by any outside authority. Any departmental proceedings against Shri S. C. Mukherjee have accordingly to proceed on the basis of the finding and decision of the House in the matter."

It is possible that Shri Mukherjee may contend that denial of these documents would amount to denial of natural justice since they are material for putting forward his defence.

16. Learned Counsel will note that the Lok Sabha in its Resolution has directed the imposition of the maximum penalty. Usually, when a Government servant is subjected to departmental action, it is for the disciplinary authority to decide upon the quantum of punishment. In view of the specific direction by the Lok Sabha it may become embarrassing for the disciplinary authority to impose anything less than dismissal on Shri Mukherjee. It is to be considered whether imposition of such maximum punishment would amount to the disciplinary authority failing to exercise its own jurisdiction in accordance with law. It is even possible that Shri Mukherjee may plead that the maximum punishment has been imposed against him not because the facts and circumstances of the case warrant it but because of the direction given in the Resolution of the House. The further point to be considered is whether the disciplinary authority in not imposing the maximum punishment would be committing contempt of the House in as much as it has disregarded the specific direction of the House.

17. If the Learned Counsel comes to a conclusion that a separate inquiry by the disciplinary authority is necessary then it may result in a conflict between the decision of the House and the decision of the disciplinary authority. A question has been raised whether it will be possible for Parliament to revise its earlier Resolution to enable

the disciplinary authority to discharge its appropriate functions as enjoined in Article 311(2) and the C.C.S. (C.C.&A.) Rules, 1965. There does not appear to be any legal or constitutional bar to the Parliament revising its own earlier decision by following the procedure prescribed under the rules.

18.1. If a regular inquiry is to be held on the basis of the charges already framed, it may be difficult to resist the request of Shri Mukherjee for a verbatim record of the evidence given by him as well as by Shri Wanchoo before the Public Accounts Committee. As stated in para 15 the Speaker had declined to furnish the same. A question has been raised whether it is at all necessary to go on with the disciplinary inquiry in its present form. The Hon'ble Speaker in his letter to the Minister for Steel and Mines dated 1st March, 1972 has taken the view that any departmental proceedings against Shri S. C. Mukherjee has to produced on the basis of the findings and decision of the House in the matter.

18.2. This view of the Hon'ble Speaker assumes that even the disciplinary authority will not be able to go behind the decision of the House as to whether Shri Mukherjee really made a mis-representation and whether he is guilty of the charges framed against him in the pending disciplinary inquiry. If the learned Counsel feels that this position taken by the Hon'ble Speaker is correct, then we have to consider how to given effect to the recommendations of the House "that the Government, in the light of the gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law."

19. A possible way of dealing with the situation would be to drop the pending disciplinary inquiry and start a fresh one with a new charge more or less on the following lines:

"You having been held guilty of contempt of the Lok Sabha and reprimanded on... have acted in a manner unbecoming of a Government servant and have thereby rendered yourself unfit for continuing in Government service...."

If the learned Counsel agrees with the conclusion in para 14 infra, then, the only inquiry will be whether he was so reprimanded. After the inquiry he has to be given a reasonable opportunity of making representation on the penalty proposed as required under Article 311(2) of the Constitution.

20. It can be argued that to be reprimanded or punished for contempt of Court by Lok Sabha would apparently bring it within the mischief of Rule 3(1) (iii) of the Central Civil Services (Conduct) Rules, 1964. This requires that every Government servant shall at all times do nothing which is unbecoming of a Government servant. Learned Counsel may also consider that acceptance of this argument would logically render all public servants found guilty of contempt of Parliament, Legislative Assemblies, Supreme Court or High Courts liable to disciplinary action, however technical in nature the contempt may have been.

21. Shri Mukherjee in his representation to the Hon'ble Speaker a copy of which is placed on the file at Slip 'H' has also strenuously contended that he has not had an opportunity to defend himself before the Privileges Committee. Even when he was examined by the Public Accounts Committee he was not questioned regarding the alleged contempt of the House. While, as a matter of fact, the Lok Sabha had actually reprimanded Shri Mukherjee he is questioning the very basis of the action by the Lok Sabha. The question is whether it will be proper under these circumstances for the disciplinary authority of inflict a punishment under the CCS (CCA) Rules, on Shri Mukherjee. One of the points that has been canvassed is the true scope and effect of the recommendation of the Lok Sabha in its Resolution dated 2nd December, 1970 already quoted in para 1 infra. Normally the punishment will have to be commensurate with the gravity of the offence committed by the delinquent officer. This is for the disciplinary authority to consider having regard to the facts and circumstances of each case. It is pertinent to mention here that though the Lok Sabha were competent to impose any punishment available to them, including imprisonment, there own punishment was only a reprimand—which could be one of the yardsticks for determining the gravity of the offence. If, suppose the disciplinary authority on the basis of the facts and circumstances of the case comes to the conclusion that in this particular case mere censure would be sufficient—will it adequately carry out the recommendation of the Lok Sabha? Does the recommendation mean that one of the main penalties should be inflicted, notwithstanding the fact that the disciplinary authority feels that minor penalty like censure would be sufficient?

22. A further question that may have to be considered is whether on the basis of the charges already framed (para 11) above and the explanation given by Shri Mukherjee, it is open to the disciplinary authority to come to the conclusion that in view of the facts and

circumstances of the case, it is not necessary to inflict a major penalty and so impose a minor penalty like censure. Whether such an action would be in order having regard to the recommendations of the Lok Sabha in its Resolution dated 2nd December, 1970 already referred to?

23. Learned Counsel is requested to examine the questions discussed above and advise:

- (1) Whether, in view of the finding in the Resolution of the House which amounts to a finding of mis-conduct, it is incumbent upon the disciplinary authority to hold an inquiry under Rules 14 and 15 of the C.C.S. (C.C.&A.) Rules, 1965 before imposing penalty on Shri Mukherjee;
- (2) In case learned Counsel holds that an inquiry is necessary under Rules 14 and 15 of the C.C.S. (C.C.&A.) Rules, 1965—
  - (a) Whether it is necessary to comply with the request of Shri Mukherjee for furnishing him the verbatim report of the evidence given by him and Shri N. N. Wanchoo,
  - (b) whether the failure to supply the aforesaid documents would in any way vitiate the inquiry, and
  - (c) whether the furnishing of the aforesaid documents would in any way transgress the privileges of Parliament?
- (3) In case the disciplinary authority in the course of the inquiry comes to any conclusion which differs from the findings of the Parliament, will this finding not be tantamount to contempt of Parliament?
- (4) Whether it is open to Parliament to revise its earlier Resolution by leaving it to the disciplinary authority to take appropriate action on the basis of the inquiry held by it;
  - (a) (a) Whether it is open to the disciplinary authority on the basis of the explanation offered by Shri Mukherjee to the charge to decide to impose a minor penalty.
  - (b) Whether adopting such a course would be in order in view of the recommendations of the Lok Sabha in its Resolution dated 2nd December, 1970.

- (6) (a) Whether it would be proper to drop the pending proceedings and start fresh disciplinary proceedings and frame a charge as outlined in para 19 above.
- (b) Whether such a course would amount to imposing punishment without complying with the provisions of Article Article 311(2) of the Constitution.
- (7) Whether learned Counsel would suggest some other way of complying with the recommendations in the Resolution of Lok Sabha dated 2nd December, 1970, and
- (8) Generally.

NEW DELHI;

(S. S. SHETTY),

Dated: the

J.S. & L.A.

## ANNEXURE VII

### *Opinion of the Attorney General*

This Opinion is pursuant to the statement of Case dated 5th September, 1972 prepared by Shri S. S. Shetty, Joint Secretary and Legal Adviser, Ministry of Law and Justice.

2. As referred to in paragraph 1 of the statement of Case, the Lok Sabha passed the following resolution on 2nd December, 1970 (hereinafter called "the said resolution").

"That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be summoned before the bar of the House and be reprimanded and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House".

3. It is stated in paragraph 1 of the Statement of Case "In view of the second part of the Resolution the following charge (hereinafter called "the said charge") was framed against Shri Mukherjee:

"That Shri S. C. Mukherjee while functioning as Deputy Iron



and Steel Controller, in the Office of Iron and Steel Controller, Calcutta during the year 1966 acted in a manner unbecoming of a Government servant in as much as he was responsible for the mis-representation of certain facts and the tendering of false evidence before the Committee on Public Accounts 1965-66 (Fiftieth Report) Third Lok Sabha. He has thereby contravened Rule 3 of the C.C.S. (Conduct) Rule, 1964".

4. In paragraph 12 of the Statement of Case it is stated as follows:

"The Commissioner for Departmental Inquiries was appointed as the Inquiry Officer. Shri Mukherjee requested the Inquiry Officer to furnish him:

- (i) verbatim report of the evidence (questions and answers) tendered by him before P.A.C. which are considered to be false or misleading; and
- (ii) verbatim report of the evidence (questions and answers) tendered by Shri Wanchoo before P.A.C. which he claims to have given on Shri Mukherjee's verbal advice."

5. To meet the said charge Shri Mukherjee wanted the verbatim record of the evidence given by him as well as by Shri Wanchoo before the Public Accounts Committee. Upon a request made to the Speaker to furnish the said record, the Speaker refused to furnish the same by his reply dated 1st March, 1972 as follows, as referred to in paragraph 15 of the Statement of Case.

"The question whether any false evidence was given before the Public Accounts Committee or that Committee was misled by Shri S. C. Mukherjee and thereby a contempt of the House was committed (sic) by him is within the exclusive jurisdiction of the House on the matter is not subject to question or review by any outside authority. Any departmental proceedings against Shri S. C. Mukherjee have accordingly to proceed on the basis of the finding and decision of the House in the matter".

6. If the said charge against Shri Mukherjee be proceeded with before the Inquiry Officer, Shri Mukherjee will, in my view, be entitled to the information asked for by him as aforesaid and if such information be not given, the inquiry will, in my view, be

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vitiated. On the other hand, if such information be given in spite of the Speaker's said reply dated 1st March, 1972, the person or persons in Government disclosing such information will, in my view, be guilty of contempt of the privileges of Parliament.

7. Moreover, the said charge would necessitate an inquiry by the Inquiry Officer whether Shri Mukherjee "was responsible for the mis-representation of certain facts and the tendering of false evidence before the Committee on Public Accounts 1965-66 (Fiftieth Report). Third Lok Sabha" as stated in the said charge. The Inquiry Officer cannot sit in judgment over the correctness or otherwise of the Report of the Committee of Privileges presented to the Lok Sabha on 24th November, 1970 or of the said Resolution of the Lok Sabha. Subject to what is stated in the next succeeding paragraph hereof, the said resolution is binding on all concerned, whether it was passed rightly or wrongly.

8. The recommendation (hereinafter called "the said recommendation") contained in the latter part of the said resolution that "the Government in the light of the gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House" is not, in my view, binding on Government in the sense that the said recommendation is punishment by the Lok Sabha for breach of its privileges.

9. The said recommendation has, indeed, resulted in an awkward situation. On the one hand, Government, being responsible to Parliament, is expected to carry out its wishes. On the other hand, Shri Mukherjee is entitled to be heard in the pending disciplinary proceedings against him and thus is entitled to the materials he has asked for, which the Speaker has refused to furnish and any one in Government furnishing such information would do so at the peril of being guilty of contempt of Parliament.

10. In the circumstances, the best solution would, in my view, be to have the said resolution revised as referred to in paragraph 17 of the Statement of Case. There is no bar against the Lok Sabha revising the said resolution on the above lines.

11. In any event, the said charge cannot, in my view, be proceeded with in view of what is stated in paragraph 7 hereof.

12. If the said resolution is revised by the Lok Sabha as referred to in paragraph 10 hereof, the revision should delete the whole of the said recommendation and, in the event of such revision, it would be for Government to decide whether it would still take any action

against Shri Mukherjee in spite of the fact that he had no opportunity of being heard before the said resolution was passed and in spite of the finding of the majority of the Sarkar Committee in favour of Shri Mukherjee as referred to in paragraph 6 of the Statement of Case. And if Government should decide to take action against Shri Mukherjee in the event of the deletion of the said recommendation, Government should, in any event, withdraw the said charge and frame a new charge on the lines suggested in paragraph 19 of the Statement of Case and thereafter Government may inflict a minor penalty as referred to in paragraph 22 of the Statement of Case.

13. But if the said resolution is not revised by the Lok Sabha as aforesaid, Government should, in my view, give effect to the said resolution on the basis of a new charge as suggested in paragraph 19 of the Statement of Case, that is, inflict maximum punishment on Shri Mukherjee in order to avoid confrontation with the Lok Sabha but at the risk of such punishment, if challenged, being struck down by a Court of law. I have no doubt that such challenge will succeed.

14. The question asked in paragraph 23 of the Statement of Case may now be answered.

Question (i) Whether, in view of the finding in the Resolution of the House which amounts to a finding of misconduct, it is incumbent upon the disciplinary authority to hold an inquiry under Rules 14 and 15 of the C.C.S. (C.C.&A.) Rules, 1965 before imposing penalty on Shri Mukherjee;

Answer: It is not incumbent upon the disciplinary authority either to hold any inquiry or to impose any penalty on Shri Mukherjee but Government should respect the resolution of the Lok Sabha and give effect thereto.

Question (2) (a) In case learned Counsel holds that an enquiry is necessary under Rules 14 and 15 of the C.C.S. (C.C.&A.) Rules, 1965:

(a) whether it is necessary to comply with the request of Shri Mukherjee for furnishing him the verbatim report of the evidence given by him and Shri N. N. Wanchoo;

Answer: Yes.

Question (2)(b) Whether the failure to supply the aforesaid documents would in any way vitiate the inquiry;

*Answer:* Yes.

Question (2)(c) Whether the furnishing of the aforesaid documents would in any way transgress the privileges of Parliament?

*Answer:* Yes, in view of the refusal of the Speaker to furnish the information asked for by Shri Mukherjee, as referred to in paragraph 5 hereof. In this connection *vide* paragraph 6 hereof.

Question (3) In case the disciplinary authority in the course of the inquiry comes to any conclusion which differs from the findings of the Parliament, will this finding not be tantamount to contempt of Parliament?

*Answer:* Yes, it would be contempt of Parliament.

Question (4) Whether it is open to Parliament to revise its earlier Resolution by leaving it to the disciplinary authority to take appropriate action on the basis of the inquiry held by it;

*Answer:* Yes, in this connection *vide* paragraphs 10 & 12 hereof.

Question (5) (a) Whether it is open to the disciplinary authority on the basis of the explanation offered by Shri Mukherjee to the charge to decide to impose a minor penalty;

(b) Whether adopting such a course would be in order in view of the recommendations of the Lok Sabha in its Resolution dated 2-12-1970.

*Answer:* As stated in paragraph 8 hereof, the recommendation contained in the said resolution is not binding on Government, but it would be inadvisable for Government not to give effect to the said recommendation. In this connection, *vide* paragraph 13 hereof.

Question (6) (a) Whether it would be proper to drop the pending proceedings and start fresh disciplinary proceedings and frame a charge as outlined in para 19 above.

*Answer:* Yes.

Question (6) (b) Whether such a course would amount to imposing punishment without complying with the provisions of Article 311 (2) of the Constitution.

Answer: Yes, if Shri Mukherjee be dismissed or removed or reduced in rank within the meaning of Article 311 (2).

Question (7) Whether learned Counsel would suggest some other way of complying with the recommendations in the Resolution of Lok Sabha dated 2-12-1970.

Answer: Vide paragraphs 11, 12 and 13 hereof.

Generally (8) There is nothing to add.

NEW DELHI;

Sd/-

Dated: 11th September, 1972.

(NIREN DE)

Attorney General for India.

### ANNEXURE VIII

*Copy of letter dated 14th March, 1973 from Shri Era Sezhiyan, Member, Lok Sabha, to Shri K. Raghu Ramaiah, Minister for Parliamentary Affairs, New Delhi.*

At the invitation of Mr. Raj Bahadur, the then Minister for Parliamentary Affairs, I attended a meeting of the Leaders of Opposition on December 19, 1972. Mr. Mohan Kumaramangalam, Minister for Steel and Mines briefed us on the difficulties felt by the Government in taking action against Mr. S. C. Mukherjee as per a motion adopted by the Lok Sabha on a matter of the breach of privilege. Against the background note given to us, we had a small discussion and some of us felt that the problem should be gone through in detail.

I went through the note very carefully and also through the Report of the Committee of the Privileges and the discussion in Lok Sabha on 2-12-1970. I had the benefit of discussion with some other colleagues also in Parliament. But I want to make it clear even now that whatever suggestion or opinion that I express in this note will be mine own given in my capacity as a Member of Parliament and not otherwise.

In this case, the recommendation made by the Committee of Privileges in their Twelfth Report (para 28) presented to the Fourth Lok Sabha on the 24th November, 1970, was as follows:—

“The Committee are of the view that Shri S. C. Mukherjee

deserves to be censured for the contempt of the House committed by him in misleading the Public Accounts Committee in the matter of changes made in the bank guarantee form.

The Committee, however, feel that the requirements of the case would be fulfilled if the disapproval and displeasure of the House in respect of the contempt of the House committed by Shri S. C. Mukherjee is conveyed to him (Shri S. C. Mukherjee) and also to the Government of India for such disciplinary action against him as they deem fit."

The above Report of the Committee of Privileges was discussed in the Fourth Lok Sabha on the 2nd December, 1970, on a motion moved by Shri Madhu Limaye (*vide* Lok Sabha Debates dated 2-12-1970 cc. 393—462). Shri Madhu Limaye then moved the following motion in Lok Sabha:—

"That this House having considered the Twelfth Report of the Committee of Privileges presented to the House on the 24th November, 1970, in which Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, has been held to have deliberately misrepresented facts and given false evidence before the Committee on Public Accounts and committed contempt of this House, do resolve that he be committed to jail custody for a week."

(*ibid* cc 415-16)

To the above motion of Shri Madhu Limaye, Dr. Ram Subhag Singh and some others moved the following amendment in the House:—

"That, in the motion,—

for 'committed to jail custody, for a week' substitute 'summoned before the bar of the House and be reprimanded and the House do further recommend that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House!'"

(*ibid* cc 416, 461)

After a debate in the House, the above amendment moved by Dr. Ram Subhag Singh and others was adopted by the House. Thus,

the decision "...that the Government in the light of gravity of the offence administer to Shri S. C. Mukherjee maximum punishment under the law and report the same to this House" was taken by the House on a amendment moved in the House itself.

From the above it is very clear that neither the Privileges Committee nor the Public Accounts Committee have any say in the matter at this stage. The House has taken a final decision in this case and that decision cannot now be questioned, not even by the courts. The only question now is how the decision could be carried out by the Government. I agree there is some difficulty for the Government inasmuch as they have no room to manoeuvre on the quantum of punishment. The original recommendation of the Committee of Privileges to the Government to take "such disciplinary action against him as they deem fit" could have given the required manoeuvrability, but now that has been amended by the House. In the circumstances, I feel that a motion may be moved in the House in the following terms:

"That this House resolve that in the motion adopted by the House on the 2nd December, 1970 regarding the Twelfth Report of the Committee of Privileges, for the words 'maximum punishment' words 'suitable punishment' may be substituted."

Such a motion moved and adopted in the House may clear the way for the Government to take such disciplinary action as may be possible for them under the rules.

### APPENDIX III

Rules 14 and 15 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965.

#### Part VI—*Procedure for Imposing Penalties*

**14. Procedure for imposing major penalties.**—(1) No order imposing any of the penalties specified in clauses (v) to (ix) of rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1950 (37 of 1950), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1950, as the case may be, an authority to inquire into the truth thereof.

*Explanation.*—Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up—

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain—
  - (a) a statement of all relevant facts including any admission or confession made by the Government servant;
  - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.



(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall not act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

6. The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority—

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the Government servant;
- (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);
- (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and
- (v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten work-

ing days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(8) The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

..

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

NOTE.—If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

- (iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

NOTE.—The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in

its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

NOTE.—New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servants shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex-parte*.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of rule 11 [but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 11], has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry case to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiry authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry a report shall be prepared and it shall contain—

- (a) the articles of charge and the statement of the imputations of mis-conduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

*Explanation.*—If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include—

- (a) the report prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the Government servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the presenting Officer or the Government servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

**15. Action on the inquiry report.**—(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge. If the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified clauses (i) to (iv) of rule—should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) (i) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall—

(a) furnish to the Government servant a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;

(b) give the Government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 14;

(ii) (a) In every case in which it is necessary to consult the Commission, the record of the inquiry, together with a copy of the notice given under clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

(b) The disciplinary authority shall after considering the representation, if any, made by the Government servant, and the advice given by the Commission, determine what penalty, if any, should be imposed on the Government servant and make such order as it may deem fit.

(iii) Where it is not necessary to consult the Commission the disciplinary authority shall consider the representation, if any, made by the Government servant in pursuance of the notice given to him under clause (i) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit.



## APPENDIX IV

(See Para 22 of the Report)

*Note from the Minister of Law, Justice and Company Affairs.*

The question for consideration is whether part (b) of the proviso to Article 311(2), which carves out an exception to the obligation to hold an inquiry against a Government servant, can cover the case of a Government servant committed by Lok Sabha for its breach of privilege and contempt.

2. A reading of part (b) of the aforesaid proviso bears out that the dispensing with of an inquiry is predicated upon the subjective satisfaction of the authority empowered to dismiss or remove the person or to reduce him in rank if he is satisfied that "it is not reasonably practicable to hold such inquiry." Though the above proviso (b) did not directly come for consideration before the Supreme Court, the Orissa High Court in *State of Orissa vs. Krishnaswami Murty* (AIR 1964, Orissa 29 at p. 31), while dealing with this proviso, observed:

"It is true that at both the stages the satisfaction is the 'subjective' satisfaction of the superior authority holding the enquiry. But Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and Proviso (b) to clause (2) of Article 311 of the Constitution requires that the reasons for such satisfaction should be recorded in writing, thereby giving some sort of limited jurisdiction to Court to examine whether they are good reasons, in law, or no reasons at all. It is also true that according to clause (3) of Article 311 of the Constitution, the satisfaction of the authority concerned is final. But it is well settled that the finality conferred by such a statutory provision will not take away the limited jurisdiction of the civil courts."

3. The core conception of the proviso is that the holding of the inquiry is "not reasonably practicable." "Practicable" has been judicially recognised to mean "capable of being carried out in action", "feasible", "possible to be accomplished with known means or resources". The introduction of the word as qualifying

the measures to be taken clearly negative an absolute duty but requires measures which are feasible. "Practicable" conveys a notion of costs involved in the measure, as has been approved by Lord Blackburn in *Shepherd vs. Henderson* 7 AC 70:

"In matters of business, a thing is said to be *impossible* when it is not practicable; and a thing is *impracticable* when it can only be done at an excessive or unreasonable cost. A man may be said to have lost a shilling when he has dropped it into deep water; though it might be possible, by some very expensive contrivance, to recover it. So, if a ship sustains such extensive damage that it would not be reasonably practicable to repair her, seeing that the expense of repairs would be such that no man of common sense would incur the outlay, the ship is said to be totally lost."

4. As Shri Mukherjee is very much available to take part in the proceedings, there appears to be no impediment in the "holding" of the inquiry and the non-availability of certain evidence might not make the holding of the inquiry not reasonably practicable.

Sd/- (H. R. GOKHALE),

*Minister of Law, Justice and Company Affairs.*

29-8-1973.

## APPENDIX V

(See Para 4 of Minutes of 18-6-1973)

*Letter dated 6-6-1973, received from Shri Madhu Limaye, M.P. relating to the case of Shri S. C. Mukherjee*

### MEMO ON PRIVILEGE QUESTIONS

1. Mr. Padhi in his minute of dissent (Sarkar Report) has quoted from the evidence which Mr. S. C. Mukerjee gave before the Sarkar Committee and has observed that Mr. Mukerjee prepared false briefs for the P.A.C. and allowed misleading evidence to be given before the Committee by his Secretary when he knew that the evidence was false. But the entire evidence has not been published. It must be with the Government in the files of the Sarkar Committee. I have heard some people talking about guiltlessness of this officer. We always like to condemn the bureaucracy in the abstract. But when somebody is hauled up we become very soft towards him.

1.1. When workers are dismissed, when Delhi Policemen are crucified, when UP PAC Jawans are being hounded not many people seem to be moved to tears. But touch an officer and especially an IAS or ICS of the rank of Under Secretary or above, and the hell comes loose. Of course, Mr. Mukerjee is not from the IAS, but he was second in command to Messrs. Boothalingam and Bam of the ICS.

1.2. I, therefore, suggest that the Privileges Committee send for the evidence by the Deputy Controller of Steel before the Sarkar Committee, compare it with the evidence tendered before the PAC and PAC sub-Committee, and then proceed to examine Mr. S. C. Mukerjee himself—for, I think, he should be heard.

1.3. Then alone a decision should be taken on the implementation of the latter part of the House resolution of 2nd December, 1970.

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Yours sincerely,  
Sd/-  
MADHU LIMAYE