

**TWENTY-SECOND REPORT
PUBLIC ACCOUNTS COMMITTEE
(1980-81)**

(SEVENTH LOK SABHA)

**IMPORT OF DEFECTIVE SPECIAL PURPOSE
CARRIERS AND INCORPORATION OF
INCORRECT DATA IN A CONTRACT**

MINISTRY OF DEFENCE

[Action Taken on 131st Report (Sixth Lok Sabha)]



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

**LOK SABHA SECRETARIAT
NEW DELHI**

*March, 1981/Phalgun, 1902 (Saka)
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Corrigenda to 22nd Report of PAC
(Seventh Lok Sabha)

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(i)

PUBLIC ACCOUNTS COMMITTEE

(1980-81)

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2. Shri D. C. Pande—*Chief Financial Committee Officer.*
3. Shri K. C. Rastogi—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Twenty-Second Report on action taken by the Government on the recommendations of the Public Accounts Committee contained in their Hundred and Thirty-First Report (Sixth Lok Sabha) on Paragraphs 36 and 22 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Defence Services). The 131st Report dealt with a case of incorporation of incorrect data of soil conditions in a contract. The details of the quantities of hard soil and ordinary rock were included on the basis of a mere visual examination of the soil without undertaking soil investigation or obtaining expert opinion, on the nature of the soil, which resulted in the escalation in cost and delay in the completion of the work. In this Action Taken Report, the Committee have noted that instructions have since been issued to the executives to consult experts in the field in cases where, due to the peculiar nature of the material to be excavated, doubts arose as to its correct classification.

2. On 20 August, 1980, the following 'Action Taken Sub-Committee' was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the P.A.C. in their earlier reports:—

1. Shri Chandrajit Yadav—Chairman.

Members

2. Shri K. P. Unnikrishnan
3. Shri K. P. Singh Deo
4. Shri V. N. Gadgil
5. Shri Satish Agarwal
6. Shri N. K. P. Salve

3. The Action Taken Sub-Committee of the Public Accounts Committee (1980-81) considered and adopted the Report at their sitting held on 2 March, 1981. The Report was finally adopted by the Public Accounts Committee (1980-81) on 11 March, 1981.

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

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

CHANDRAJIT YADAV,

NEW DELHI;
11 March, 1981.

Phalgun 20, 1902 (Saka)

Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report deals with the action taken by Government on the Committee's recommendations or observations contained in their 131st Report (Sixth Lok Sabha) on paragraphs 36 and 22 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Defence Services).

1.2. The 131st Report was presented to the Lok Sabha on 24 April, 1979 and contained 10 recommendations or observations. Replies to all the recommendations have been received from Government and these have been broadly categorised as follows:

(i) Recommendations or observations that have been accepted by Government:

Sl. Nos. 1(i), 1(ii), 1(iii), 1(iv), 1(v), 1(vi), 1(vii), 1(viii), 2, 3, 6, 7, 8 and 10.

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

Sl. No. 1(ix).

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

Sl. Nos. 4 and 5.

(iv) Recommendations or observations in respect of which Government have furnished interim replies:

Sl. No. 9.

1.3. The Committee require that final reply to the recommendation in respect of which interim reply has so far been furnished, should be submitted expeditiously.

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

Incorporation of incorrect data of soil conditions in the tenders
(Sl. Nos. 4 and 5—Paragraphs 2.36 and 2.37)

1.5. Dealing with the question of incorporation of incorrect data of soil conditions in the tender documents for a contract for the construction of access roads to a Naval depot at a station, resulting in extra expenditure and delay in the completion of the work, the

Committee had in paragraphs 2.36 and 2.37 of their 131st Report (Sixth Lok Sabha) recommended as follows:

"The Committee believe that the escalation in cost and abnormal delay in the completion of the work were to a large extent due to the incorporation of incorrect data of soil conditions in the tender. This belief of the Committee is borne out by the fact that the quantity of excavation over areas in ordinary rock indicated as 550 cu. m. in the contract was unrealistic as according to the Audit Paragraph the quantity of such excavation done was 35,002 cu. m. The Committee are surprised that the details of the quantities of hard soil and ordinary rock were included in the tender document on the basis of a mere visual examination of the soil and the types of implements used for excavation without undertaking soil investigations or, alternatively, obtaining expert opinion on the nature of the soil. Such prior soil investigations etc. were not deemed necessary by the authorities when even before finalisation of the tenders the Garrison Engineer had suggested in March 1969 that cutting of hill-side should be indicated as both 'hard soil' and 'laterite' (ordinary rock), without any break-up, which was, however, not agreed to."

"Subsequently, in October 1969 the Garrison Engineer approached the Commander Works Engineer seeking approval for a deviation order to the contract on the plea that cutting hill-side in laterite was required in all the 5 quarries from where earth required for the work was to be obtained by excavation. This proposal of the Garrison Engineer involving an additional expenditure of Rs. 1.14 lakhs was made at a time when the contractor after excavating the hard soil in 2 quarries had sought permission to start work in ordinary rock. This proposal contained deviation from the contract for 33225 Cu. m. of rough excavation in soft (ordinary) rock by reducing an equal quantity from 'rough excavation in hard soil'. This proposal of the Garrison Engineer, which appears to have been quite correctly made, was summarily rejected. The Committee feel that at least at this stage when the Garrison Engineer had so explicitly indicated his doubts about the correctness of the soil strata shown in the contract, the authorities should have got examined the soil strata by a geologist or obtained a test report on the nature of the soil strata from

College of Military Engineering etc. The Committee strongly disapprove this cavalier approach of the Department as they feel that had the decision on the proposal of the Garrison Engineer been taken after obtaining expert opinion on the nature of soil strata, the Department would have not only saved quite a substantial part of extra expenditure that had to be incurred but also reduced to a large extent the delay in the completion of the work."

1.6. In their Action Taken Note dated 28 March, 1980 the Ministry of Defence have stated as follows:—

"It is true that the work was delayed for 16 months which is not considered abnormal in view of the position explained in the context of para 2.35.

The Committee has brought out that the quantity of 550 CM of excavation over areas in ordinary rock was unrealistic as the total of such excavation done came to 35,002 CM. A careful examination of the relevant documents would show that this does not reflect the true picture. What has mainly changed is the arbitrator's interpretation of classification of "Hard soil" as "ordinary rock". The verbatim description of works given in the tender and the contract is re-produced below:—

Items 1	Rate Rs. P.	Quantity (Cubic metre)		
			2	3
3. Rough excavation (cutting hill side) in hard soil not exceeding 5' deep and getting out and removing exceeding 440 yds and not exceeding 830 yds. from starting point and depositing where directed and forming embankments including raising (or lowering) spreading in layers not exceeding 12" thick, watering, ramming/rolling each layer and finishing to required size, share etc. lift not exceeding 5' high from base.	5.78 Cubic Metre	23300		
4. All as in item 3 above but removing exceeding 830 yds. and not exceeding 1320 yds.	6.11 Cubic Metre	2500	44,300	
5. All as in item 3 above but removing exceeding 1760 yds. and not exceeding 2200 yds.	6.79 Cubic Metre	15600		
6. All as in item 3 above but removing exceeding 2200 yds and not exceeding 2640 yds.	7.13 Cubic Metre	2900		

	1	2	3
10.	Excavation over areas in ordinary rock not exceeding 5' deep and getting out and removing to a distance exceeding 50 yds. and not exceeding 100 yds. and depositing where directed and forming embankments (including berms on both sides) including raising (or lowering), spreading in layers not exceeding 12" thick, watering, ramming/rolling each layer and finishing to required size, shape etc, lift not exceeding 5' high from base.	8.41 Cubic Metre	250
11.	All as in item 10 above, but removing exceeding 100 yds and not exceeding 440 yds.	9.83 Cubic Metre	550

3. It will be seen that the soil to be removed from the quarries was grouped under Items 3 to 6. Items 10 and 11 did not visualise the rock to be excavated from the quarries but were meant for any rock which was encountered along with alignment of the embankment. It is for this reason that the minimum haulage distance under Items 3 to 6 is 440 yds. whereas in Items 10 and 11 the maximum distance was 440 yds. It is also pointed out that the centre of the nearest quarry from the nearest edge of the embankment was about 440 yds. It is thus submitted that the quantity of soil to be excavated from the quarries was given in the contract correctly. Disagreement with the Arbitrator's interpretation is only on the classification. Para 1(b) (vii) on page 10 of the Standard Schedule of Rates (1962) defines "hard soil" as that which can be excavated with "close application of picks" the soil was classified as "hard soil".

4. It is also submitted that for such earth work contracts, no soil investigation or expert opinion on the classification of soil is normally sought. However, as per directions of PAC, instructions have been issued to all executives to obtain expert opinion in cases where disputes have arisen or are likely to arise before taking a final view in the matter. A copy of relevant instructions is enclosed (Appendix I).

It is submitted that the contract was concluded by the Zonal Chief Engineer and any deviation was to be approved by him. The Garrison Engineer did submit a proposal involving an additional expenditure of Rs. 1.14 lakhs but the higher authorities decided that the soil (though laterite)

could be excavated with close application of picks and was therefore classified as "hard soil" only. As there was no doubt in the minds of the Commander Works Engineers and the Zonal Chief Engineer, it was not considered necessary to obtain expert opinion on the proposal of the Garrison Engineer to classify the soil to be excavated as "ordinary rock."

1.7. The Committee have no doubt that the problems in this contract, involving extra expenditure of Rs. 10.20 lakhs and delay of 16 months even over the extended date of completion, have arisen mainly due to incorrect classification of the soil strata required to be excavated. The Committee have noted that instructions have since been issued on 22 October, 1979, to the executives to consult experts in the field in cases where, due to the peculiar nature of the material to be excavated, doubts arise as to its correct classification.

CHAPTER II

RECOMMENDATIONS OR OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee note that during July—October, 1971, the Ministry of Defence had concluded 3 contracts with two foreign suppliers, 'A' and 'B' for the supply, *inter alia*, of a total of 250 special purpose carriers at a total cost of Rs. 1028.25 lakhs. Deliveries of the vehicles were received between October 1971 and January 1972. A defect was noticed in these vehicles which seriously affected their operation in certain regions during a certain season. To make them fully operational, repairs had to be carried out departmentally involving an estimated expenditure of Rs. 6 lakhs on material alone which the suppliers have so far refused to reimburse, although the defect was in the nature of 'manufacturing defect' for which the suppliers were responsible if it was pointed out to them during the warranty period. The Committee appreciate the submission of the Defence Secretary before them that the supplies were obtained "in the context of a very extraordinary national emergency.....in the hope that a satisfactory solution would be found for the problem of over-heating" and that "there was no hope of getting Armoured Personnel Carriers from any other source." This factor substantially mitigates the gravity of the lapses in these transactions brought to the notice of the Committee by Audit. Nevertheless, the fact remains that had the emergency continued into the ensuing summer, the field formations would have had to grapple with grave problems on account of these defective vehicles. They therefore wish to identify and record the lapses with a desire that the Ministry of Defence should hereafter be more cautious in entering into import transactions for defence stores even during an emergent situation and endeavour to avoid these lapses. The shortcomings and lapses in the transactions pointed out in the Audit Paragraph and confirmed during evidence written as well as oral, are as under:—

- (i) The contract provided that the "stores were to be inspected and accepted after receipt in India." There was no provision for preshipment inspection. In the case of stores to be imported, it is advisable to have preshipment

inspection to vouch for the quality of the stores being as contracted for.

[Ministry of Defence, D.O. No. 6(1)/77/D(Proc.),
(6th Lok Sabha)]

Action Taken

A clause for preshipment inspection of similar stores is being included in the contracts concluded now with a view to vouch for the quality of the stores.

[Ministry of Defence, D.O. No. 6(1)/77/O(Proc.),
dated 17-12-1979]

Recommendation

In the case of supplies from 'B', the 12 months guarantee period was to be reckoned from the day of arrival of these carriers at an Indian port. It would have been more favourable to the country if this period was reckoned from the date of delivery as was the case in respect of supplies from source 'A'.

[Serial No. 1, Para 1.61(ii) of Appendix to 131st Report of PAC
(6th Lok Sabha)]

Action Taken

The need for inclusion of terms of guarantee advantageous to our interest is being kept in mind while concluding the contract.

[Ministry of Defence D.O. No. 6(1)/77/D(Proc), dt. 17-12-1979]

Recommendation

The conditions for acceptance inspection *inter alia* stipulated that the normal operating temperature of oil in the engine would be 80°C and that for "short spells" the maximum permissible oil temperature could be 100°C. The maximum permissible temperature in the gear box was not to exceed 110°C but for "short spells" temperature upto 120°C was permissible. As the maximum permissible oil temperature in the engine and gear box directly affects the operational efficiency of the vehicles, the use of the words "for short spells" which gave a vague description, should have been avoided and it should have been insisted upon the suppliers that the specifications were clearly worded.

[Serial No. 1, Para 1.61(iii) of Appendix to 131st Report of
PAC (6th Lok Sabha)]

Action Taken

Such vague expression would be ~~got~~ defined in future contracts.

[Ministry of Defence D.O. No. 6(1)/77/D(Proc.).
dated 17-12-1979]

Recommendation

It is stated in evidence that "the problem of over-heating was already known at the time of contracting the supplies". That the engine had a tendency to overheat is stated to have been "discovered" also during the March-April 1971 trials of a sample received from supplier 'A' at which the supplier's representatives were present. Yet the Ministry of Defence failed to formally approach the supplier to rectify the defect before transhipment which began 6 months later.

[Serial No. 1, Para 1.61(iv) of Appendix to 131st Report of P.A.C. (6th Lok Sabha)]

Action Taken

The problem of overheating was already known at the time of contracting the supplies and despite the knowledge about the problem, the contract was signed for operational reasons. As the representative of the suppliers was present during the trial of samples received from them, it was considered possible that the representative know of the problem. However, the observation of the Committee has been noted for future guidance.

[Ministry of Defence D.O. letter No. 6(1)/77/D(Proc.),
dated 17-12-1979]

Recommendation

Even when the trial of the sample of Supplier 'A' had disclosed the defect, no samples were asked for from supplier 'B' for trial. The reason given during evidence was that "their demonstration had been witnessed by our team in that country and their performance found satisfactory". As it happened, the supplies from the second supplier also turned out to be similarly defective.

[Serial No. 1, Para 1.61(v) of Appendix to 131st Report of P.A.C. (6th Lok Sabha)]

Action Taken

As the demonstration had been witnessed by our team in that country, and performance was satisfactory, no samples were asked

for from the suppliers for trial. The supplies were covered under Warranty provisions of the contract. However, the observation of the Committee has been noted.

, [Ministry of Defence D.O. No. 6(1)/77/D(Proc.),
dated 17-12-1979]

Recommendation

In a Memorandum of Understanding signed between supplier 'A' and the Ministry on 25-7-72, the supplier assured the purchaser that the working temperature would not go beyond 120 degree C under Indian conditions and that the engine would be quite safe even when the oil temperature reached 120 degree C. The vehicles were however equipped with instruments which could not record temperatures beyond 120 degree C. The assurance was therefore *ab initio* meaningless.

[Serial No. (Para 1.61 (vi) of Appendix to 131st Report of P.A.C.
(6th Lok Sabha)]

Action Taken

The observation of the Committee has been noted for future guidance.

[Ministry of Def. D.O. No. 6(1)/77/D(Proc.), dated 17-12-1979]

Recommendation

In terms of the service|guarantee contract of March 1972 with supplier 'A' Government of India was required to pay for all expenses connected with the transportation of the service team in India and expenditure in connection with the use of working equipment. The team was to provide qualified technical assistance and *inter alia* "attend to problems relating to operation, servicing repairs and to make frequent inspection of individual vehicles to forestall more serious problems". The team was, however, unable to render any specific service relating to the problem of overheating. Thus, the Ministry allowed another opportunity to slip by to have the patent defect removed under the contract.

[Serial No. 1, Para 1.61(vii) of Appendix to 131st Report of P.A.C. (6th Lok Sabha)]

Action Taken

The Service Team was required to attend to problem relating to operation, servicing, repairs and inspection of the vehicles to make them fit for use. The problem of overheating of Engine was basically due to design inadequacy, beyond the scope of the Service Team.

[Ministry of Defence D.O. No. 6(1)/77/D(Proc.) Dated 17-12-1979]

Recommendation

It was stated that "the decision making process was compressed" on "operational compulsions" and also in view of the fact that at the particular time of the order they (vehicles) were needed and actually came to be needed "was the time when this problem of overheating was not likely to be in our way". These arguments are rather weak in view of the fact that cost of procurement was no less than Rs. 10.28 crores and the vehicles were not only for one-time use but had to be borne with for a long time. Fortunately, the emergency ended in a shortwhile. Had it continued into the ensuing summer, it would have created problems for the field formations.

[Serial No. 1, Para 1.61(vii) of Appendix to 131st Report of P.A.C. (6th Lok Sabha)]

Action Taken

The decision making process was compressed on "Operational Compulsion" and on account of the fact that the vehicles came at the time when this problem of overheating was not likely to be in our way. However, the observation of the Committee has been noted.

[Ministry of Defence D.O. No. 6(1)/77/D(Proc.), Dated 17-12-1979]

Recommendation

The Committee hope that the work relating to the carrying out of modifications in the 240 carriers, which was expected to be completed by the end of December 1978, has been completed. The Committee would like to be informed whether these carriers are now entirely fit for effect deployment in all seasons and terrains. The Committee would also like to be informed of the corrective measures adopted by the Government for avoiding lapses enumerated in the preceding para.

[Serial No. 2 (Para 1.62) of Appendix to 131st Report of PAC (6th Lok Sabha)]

Action Taken

It is confirmed that the work in relating to carrying out of modifications in the 240 carriers has been completed. It is further confirmed that the defects have been eliminated by modifications and the APCs are fit for effective deployment in all seasons and terrains. The Committee's observations have been noted for future guidance.

[Ministry of Defence D.O. No. 6(1)77D(Proc.) Dated 17-12-1979]

Recommendation

The Committee note that in May 1969, a contract for Rs. 5.49 lakhs was concluded with a contractor for the construction of access roads to a Naval depot at a station, on the basis of tenders invited in January, 1969 by a Zonal Chief Engineer. Earth work *inter alia* comprising 44,300 cu.m. of rough excavation in hard soil at the rate of Rs. 5.78-7.13 per cu. m., 2,420 cu. m. of excavation over areas in hard soil at the rate of Rs. 4.19—5.94 per cu.m. and 550 cu.m., of excavation over areas in ordinary rock at the rate of Rs. 8.41-9.83 per cu.m. was provisionally included in the contract. According to the contract, no deviation changing the original nature and scope of the contract could be ordered beyond 50 per cent of the value assessed of individual trade items specified in the contract. The entire work was to be completed in 9 months. However, there was not only considerable delay in the completion of the work, which was commenced in June, 1969 and completed only in March, 1972, i.e. in 34 months against the original estimate of 9 months but also steep escalation in the costs which rose to Rs. 15.69 lakhs, i.e., 286 per cent of contracted cost of Rs. 5.49 lakhs. Some of the salient features of the contract are dealt with in the succeeding paragraphs.

[Serial No. 3, Para 2.35 of Appendix to 131st Report of the P.A.C. (6th Lok Sabha)]

Action Taken

The completion period as per the original tender was 9 months and this had subsequently been changed to 18 months. A copy of the amendment to the tenders was issued *vide* Chief Engineer South Zone, Madras letter No. 86518/66/E8 dated 23-4-69 (Annexure I). Extension of 16 months beyond the execution time of 18 months was granted to the contractor in terms of the contract due to several reasons, the following being the more important ones:—

- (a) Delay in handing over part of the site which was to be handed over after acquisition;

- (b) Unusually heavy rains during monsoon;
- (c) delay in giving decision regarding classification of soil.

Suitable instructions have been issued to the lower formations to avert delays referred to at (a) and (c) above vide E-in-C's Branch No. 33416/E8 dated 3-9-79 (Annexure II).

2. The work commenced on 23-6-69 and was scheduled to be completed on 22-12-70 (18 months). The decision of the department to the dispute raised by the Contractor in Sep-Oct. '69 regarding classification of soil was given in March '70 i.e. well before the completion period. In any case enhancement of cost due to this can't be worked out. The completion cost of Rs. 15.69 lakhs i.e. 286 per cent of the contract value of Rs. 5.49 lakhs was mainly due to the large award given by the arbitrator in favour of the contractor. It was due to this reason that the award was contested in the lower court and the High Court and was also intended to be filed as a special leave to appeal in the Supreme Court. However, the Addl. Solicitor General of India opined that this was not a fit case for special leave to appeal. Every possible effort was made to restrict|avoid this excessive payment but our efforts did not succeed.

[Ministry of Defence D.O. No. 68(2)/79/D(N-IV) dated 28-3-1980]

ANNEXURE I

CA NO CE|SZ|COCHIN|45 OF 1968-69

SERIAL PAGE NO. 93

CHIEF ENGINEER'S OFFICE

Southern Zone

Fort St. George MADRAS-9

No. 86518|66|E8

23 APR. '69

TO

All contractors

CONSTRUCTION OF ACCESS ROADS TO NAD ALWAYE,
COCHIN

Dear Sir(s),

Reference tender documents for the above work sent under this office letter No. 86518/46/E8 dated 26 Feb., 69 and letter No. 86518/60/E8 dated 21 MAR., '69.

2.	*	*	*	*	*
3.	*	*	*	*	*
4.	*	*	*	*	*

5. The following amendments are made to the tender documents:—

Sl. No.	Sl. Page No. of Tender documents	Location	Particulars
1	2	3	4
1.	x	x	x
2.	x	x	x
3.	5	Note :	For "9(NINE) months" Read "18(EIGH- TEEN)months"

ANNEXURE II

REGISTERED
 Surveyor of Works Directorate (E8)
 Engineer-in-Chief's Branch
 Army Headquarters
 Kashmir House
 DHQ PO NEW DELHI-110011
 03 Sep'79

33416/E8

E-in-C's Lists 'A' & 'B'

ADMINISTRATION OF CONTRACTS

A case has come to the notice of this HQ wherein arbitrator has awarded substantial amount in favour of contractor on account of damages sustained by him due to delayed completion of work due to the following reasons:—

- (a) Delay in handing over of part of site.
- (b) Delay in giving decision regarding classification of soil.
- 2. If action was taken to obtain correct information for preparation of tender documents as laid down in this HQ letter No. 33416/E8 dated 23 Oct. '66 and Appendix 'AI to Contract Manual' such situation would not have arisen.
- 3. It is once again stressed that all information affecting execution of work such as availability of land, nature of soil, availability of materials etc. should be ascertained before issue of tender/conclusion of contracts to avoid delays on these accounts and consequent claims by contractors.

4. additional copies of this letter are forwarded to each of the List 'B' formations, to enable them distribute the same down to CsWE, GEs and AGEs (Indep).

Recommendation

The Committee further note that in September/October 1969 the contractor on excavating the hard soil in 2 quarries had sought permission to start work in ordinary rock. As the decision on this point was not conveyed to the contractor till February 1970 he again reminded the authorities for a quick decision for the sake of completing the work before monsoon, failing which the work was likely to be delayed for another year resulting in loss to him. The Committee deplore the delay of more than 6 months in conveying to the contractor the decision in the matter after inspection of the site in March 1970 by the Zonal Chief Engineer and the Commander Works Engineer alongwith the contractor that "the strata were only 'hard soil' and that the question of deviation order did not arise." The Committee do not agree with the contention of the Department that this delay was unavoidable as joint inspection was required by the Zonal Chief Engineer who was located in Madras as they feel that such a joint inspection could be easily arranged early particularly in view of the fact that the entire work was to be completed within 9 months. This delay was in fact, one of the reasons for the lower court to dismiss the case of the Department against the arbitrator's award on the plea that 'the contractor had to work in the rainy season and floods due to the delay by the higher authorities in approving the recommendations made by the Garrison Engineer'.

[Serial No. 6, (Para 2.38) of Appendix to 131st Report of the P.A.C. (Sixth Lok Sabha)]

Action Taken

Para 2.38: It is true that the contractor had sought permission in Sep-Oct., 69 for starting work in ordinary rock. It is submitted that any dispute between the contractor and the department is to be examined in terms of the contract according to which the contractor after lodging a complaint is not expected to stop the work physically but continues to deliver the goods and the payments are subsequently regularised in accordance with the provisions of the contract. In this connection an extract from Condition 7 of IAFW-2249 is attached (Annexure).

2. It is a fact that decision of the department to classify the soil as "hard soil" was conveyed after the joint inspection by the Chief Engineer in Mar., 70. The delay is regretted.

[Ministry of Defence D.O. No. 68(2)/79/D(N-IV)
dated 28-3-80].

ANNEXURE

Extract from Condition 7 of IAFW—2249.

7. Deviations (Applicable specifically to Measurement and Lump Sum Contracts and generally to Term Contracts).

* * * * *

"The value of all additions and deductions will be priced as per condition 62 hereof and added to, or deducted from the Contract Sum. Whenever the Accepting Officer intends to exercise such right, his intention shall be communicated to the Contractor by the G.E. whose order in writing shall specify the deviations which are to be made. the lump sum assessment of the proposed basis of payment, the change, if any, in the date for completion of the relevant phase and/or the entire Contract. Any objection by the Contractor to any matter concerning the Deviation Order, shall be notified by him in writing to the G.E. within seven days from the date of receipt of such order, but under no circumstances shall the progress of the works be stopped (unless so ordered by the G.E.) owing to differences or controversy that may arise from such objection. In default of such notifications the Contractor will be deemed to have accepted the order and the conditions stated therein without in any way affecting the right of the parties to rectify any mistake in the basis of payment only to the extent it differs from condition 62. In the event of the Contractor failing to agree with the G.E. regarding the proposed alteration of time, the objection shall be referred to the Accepting Officer, or, in the case of Contracts accepted by the G.E. to the C.W.E. whose decision shall be final and binding."

Recommendation

The Committee note that the contractor again represented in March—July 1970 *inter alia* requesting the Zonal Chief Engineer to consider his decision about the soil strata with a view to avoiding arbitration in the dispute. In July 1970, the Zonal Chief Engineer informed the contractor that the dispute would be referred to arbitration only on completion of the work. On recommending the

work in August 1970, the contractor approached the Garrison Engineer demanding extra payment on account of the fact that the work being done by him was in 'water and liquid mud and interrupted by tides'. The Ministry have admitted that the work on embankments was to be executed on existing paddy fields with a water level between 3" and 9" and that the area to the right of embankment was flood-prone during the heavy rainfall in the months of July and August and that "the work on embankment during these months was also at stand-still and only the portion of work already executed had submerged." Yet, the authorities failed to maintain their own records of the quantities of work done in varied conditions. Perhaps due to this failure, the authorities could not successfully contest the claims of the contractor for working in foul positions before the arbitrator, who partly admitted the claims of the contractor.

[Serial No. 7. (Para 2.39) of Appendix to 131st Report of the P.A.C. (Sixth Lok Sabha)]

Action Taken

The area is not known to be affected by tidal waters. However, some water-logging did take place and as has been stated earlier, the work on the embankment was at a standstill during the period of water-logging. The only possibility therefore is that some soil was sunk in the slush or got washed away. The request of the contractor for the inspection of the site was agreed to and inspection carried out immediately thereafter. Garrison Engineer thereafter decided that work was not being done in tidal conditions. It is submitted that such working conditions as claimed by the contractor have already been catered for in SSR 62, clause 17(a) of Section 1 (copy enclosed) (Annexure I). Under this clause the contractor can be compensated for working in water or liquid mud up to a limit of 1½ times the contracted rate. The arbitrator was requested by the MES authorities to restrict the claims of the contractor for certain *ad hoc* quantities of soil which got sunk into slush and got washed during floods as per the provisions of SSR 62 but the arbitrator allowed the contractor's claim. Details of the contractor's claim, amount allowed by the Arbitrator and that admissible under SSR 62 are given in Annexure II. A record of soil incorporated on the embankment was maintained. As the Garrison Engineer after inspecting the site rejected the plea of the contractor that he was working in tidal conditions and as the contractor did not press further, no additional joint records were called for or maintained. The contractor claimed certain *ad hoc* quantities of

soil which sank into the slush and got washed away during the floods. These were accepted by the Arbitrator.

[Ministry of Defence u.o. No. 68(2)/79/D(W-IV) dated 28-3-1980]

ANNEXURE—I

Extract from SSR 1962(MES) Page 6 Para 17

17. Extra Allowances—On net measured work executed in water, liquid mud or foul positions or in tidal work or work in R.C.C. overhead Reservoirs.

(a) The rates in the S. S. R. do not, unless specifically stated, include for working in water, liquid mud, foul positions or tidal conditions. Where measured work has necessarily to be executed in such conditions, and working in such conditions is not included in the rates of the S.S.R., the rates to be paid will be the ordinary rates in the S.S.R. multiplied by the appropriate figure given below:—

Ordinary rates in the
S.S.R. multiplied by

A	B
1 1/4	1 1/10
1 1/3	1 1/8
1 1/2	1 1/6
1 3/4	1 1/4

Note:—The extra allowances vide (i) above does not apply to water or liquid mud in excavations, digging wells, foundation trenches, etc. When a heavy spring of water is met with provision for pumping will be made extra.

(b) The multiplier in column A will be used for measured work which is entirely labourer where labour is the predominating factor such as "Labour only", "Except Materials", or "fixing only".

(c) The multiplier in column B will be used for measured work requiring labour and materials except that where the articles to be

fixed are mostly fabricated (or pre-cast) before being placed in position, the articles will be paid for at "Supplied only" rates without any addition, and fixing will be paid for at "Fixing only" rates multiplied by the appropriate multiplier in column A.

(d) the rates so multiplied are inclusive of—

- (i) Loss of materials, tools and plant or reinstatement of damage in connection with such work;
- (ii) Any extra pay to which workmen are entitled when working in the positions described, and for the provision of water tight boots or any special clothing and equipment and boathire when required; and
- (iii) Idle labour caused by interruptions due to working in the positions described.

ANNEXURE-II

ACTION TAKEN NOTES ON 131ST REPORT OF THE PAC ON PARAGRAPH 22 OF THE REPORT OF THE C & AG OF INDIA FOR THE YEAR 1976-77 UNION GOVT. (DEFENCE SERVICES) REGARDING PARA 2-39

(a) *Earth that got sunk into slush (Claim No. 6-A) Quantity claimed*

	Rs.
(i) 650 cu m of hard soil at contract rate, amount claimed	4,451.28
(ii) 8445 cu m of ordinary rock at contract rate plus 50% market variation amount claimed	1,14,640.87
(iii) Total of (i) & (ii) above	1,19,092.15
(iv) Amount admitted by arbitrator for payment against claim No. 6-A	1,02,078.74

(b) *Extra payment for working in foul position (Claim No. 6-B)*

(i) Total quantity of hard soil 17595.249 cu m at contract rate by multiplying 1½ co-efficient amount claimed	90,988.57
(ii) Total quantity of ordinary rock claimed 37528.20 cu m by multiplying 1½ co-efficient and adding 50% market variation to the contract rate. Amount of claim.	3,92,490.30
(iii) Total amount (i) & (ii) above	4,82,878.87
(iv) Amount accepted for payment by the arbitrator against claim No. 6-B	3,29,332.46

(c) *Quantity of hard soil that got washed away due to flood 12000 cu m (Claim 6-C) Contractor claimed that this was made good by using ordinary rock.*

(i) Total amount of claim No. 6-C by multiplying 3/4 co-efficient and 50% market variation on the contract rates	2,85,075.00
(ii) Amount admitted by arbitrator for payment	1,90,898.47

(d) Amount admissible as per SSR 1962 even considering the entire quantity claimed by the contractor, is 18245.240 cu m of hard soil and 57973.20 cu m of ordinary rock :

	Rs.	Rs.
(i) For hard soil	4,964.00	
Plus	<u>1,18,155.00</u>	—1,22,519.00
Extra 1/4 co-efficient to be paid for working in water/liquid mud	30,629.75	
Add 2% contract percentage	<u>612.59</u>	—31,242.34
(ii) For ordinary rock	76,427.25	
Plus	3,48,880.26	
Plus	<u>2,85,075.00</u>	—7,10,382.51
Extra 1/4 co-efficient to be paid for working in water/liquid mud	1,77,595.63	
Add 2% contract percentage	<u>3,551.91</u>	—1,81,147.54

(e) To summarise :

(i) The contractor claimed		
Against claim No. 6-A	1,19,092.15	
Against claim No. 6-B	4,82,878.87	
Against claim No. 6-C	<u>2,85,075.00</u>	—8,87,046.00
(ii) The arbitrator awarded		
Against claim No. 6-A	1,02,078.74	
Against claim No. 6-B	3,29,332.46	
Against claim No. 6-C	<u>1,90,898.47</u>	—6,22,309.67
(iii) The amount which should have been admissible to the contractor taking into account the extra 1/4 co-efficient and the quantity claimed by him :		
Against claim for the hard soil	31,242.34	
Against claim for ordinary rock	<u>1,81,147.54</u>	—2,12,389.88

Recommendation

The Committee note that according to the conditions of the contract, references to arbitration on matters of dispute between the parties to the contract could not take place until after the completion or alleged completion of the works unless both parties agree in writing. Further, the Zonal Chief Engineer had in July 1970 categorically informed the contractor that the dispute could be referred

to arbitration only after the completion of the work under the terms of the contract. The Committee are surprised to note that the Engineer-in-Chief appointed in November 1970, a Superintending Engineer of the Zonal Chief Engineer's Office as an arbitrator even during the course of execution of the work and that too, *suo moto* without any request having been made by the contractor. The Committee strongly disapprove this action of the Department in referring the matter to arbitration in violation of the relevant provisions of the contract.

[Sl. No. 8 (Para 2.40) of Appendix to 131st Report of the Public Accounts Committee (Sixth Lok Sabha)]

Action Taken

Recommendations in respect of Para 2.40 have been noted and suitable instructions to all concerned have been issued to avoid recurrence of such cases under Engineer-in-Chief's Branch No. 13600/GEN/E8 dated 3-9-79 (Annexure).

[Ministry of Def. U.O. No. 68(2)/79/D(N-IV) dated 31-1-1980]

ANNEXURE

Surveyor of Works Directorate (E8)

Engineer-in-Chief's Branch

Army Headquarters

Kashmir House

DHQ PO NEW DELHI-1100011.

03 Sep. 1979

13600|GEN|E8

E-in-C's Lists "B"

Arbitration Procedure

Condition 70 of LAW-2249 stipulates that unless both parties agree in writing, reference to arbitration shall not take place until after completion of works or alleged completion of works or termination of the contract.

2. A case has come to notice of this HQ wherein only Department had made a request for appointment of arbitrator during currency of the contract but written agreement for such reference to arbitration was not obtained from the contractor before appointing the arbi-

trator. In order to avoid such cases it should be ensured before appointment of arbitrator, during currency of the contract that both the parties have agreed in writing for the appointment of arbitrator.

Recommendation

The Committee further note that the arbitrator in his award of July 1972 awarded sum of Rs. 8.91 lakhs in favour of the contractor against his claims totalling Rs. 12.60 lakhs. It is highly regrettable that the arbitrator's award of July 1972 was challenged by the Department in the lower court on 10th October, 1975 after more than three year had elapsed and that too against the advice of the Additional Legal Adviser who, according to the Ministry, was not initially in favour of contesting the award in the lower court. The Committee would like to know the specific reasons for this unconscionable delay in taking the decision and for disregarding the legal advice. The Committee are convinced that had the Ministry taken timely action in this regard, they would at least have effected appreciable savings in the amount of Rs. 0.96 lakh paid by way of interest alone, which formed part of the total cost of Rs. 15.69 lakhs for the work.

[Sl. No 10 (Para 2.42) of appendix to 131st Report of the Public Accounts Committee (Sixth Lok Sabha)]

Action taken

The award of the arbitrator i.e. Rs. 8.91 lakhs in favour of the contractor was considered by the department as exceptionally high. The Additional Legal Adviser was initially not in favour of filing the award in the court as presumably all the facts were not known to him. However, the same officer was later strongly in favour of filing an appeal against judgment of the lower court. In this connection it may be added that the award was filed in the court on 31st July 1972 which was challenged in 1972 it-self in the lower court but the hearing was held on 10th October, 1975 and judgment was delivered on 18th October, 1975. It will thus be seen that there was no undue delay in challenging the award.

2. It is finally submitted that the intention of the department at every stage of the contract, during the arbitration and subsequent contesting of award in the lower court and filing an appeal in the High Court was always to safeguard the interest of the State. It is submitted that the additional expenditure of Rs. 0.96 lakhs paid as interest be viewed against this background.

[Ministry of Defence U.O. No. 68(2)/79/D(N-IV) Dated 21-12-1979]

CHAPTER III

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

Recommendation ..

It was only in September 1974 that the Directorate of Inspection decided to have an immediate study carried out into the problem of overheating by the Controllerate of Inspection (Special vehicles). This decision should have been taken much earlier as in August 1972 itself the Directorate of Inspection had confirmed this defect of overheating to be of a very serious nature proving to be a major handicap in the deployment of these carriers and also when no tangible solution of malady had been forthcoming. Further, when an immediate study was emphasized in the decision of 1974, it took about 2 years for the Controllerate of Inspection (Special Vehicles) to complete this study in May 1976 and evolve suitable modifications. The matter obviously did not receive urgent attention at all these stages.

[Serial No. 1 (Para 1.61(ix) of Appendix to 131st Report of P.A.C. (Sixth Lok Sabha)]

Action Taken

As the vehicles were covered by warranty, the matter was taken up with the suppliers to find a suitable solution to the problem. As our efforts did not yield any positive result, it was decided to study problem in depth and evolve a solution with indigenous know-how. This process involved design of coolers, fans, connecting pipes, houses and finalisation of end-connections followed by location and establishment of sources for the manufacture of these items and technical trials during high ambient condition available in summer months only. The modifications had to be further tried out twice by the Users under high ambient temperature conditions before finalisation. The technical view is that the modification was evolved in the shortest possible time.

[Ministry of Defence D.O. No. 6(1)/77/D (Proc.) dated 17-12-1979]

CHAPTER IV

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

Recommendation ..

2.36. The Committee believe that the escalation in cost and abnormal delay in the completion of the work were to a large extent due to the incorporation of incorrect data of soil conditions in the tender. This belief of the Committee is borne out by the fact that the quantity of excavation over areas in ordinary rock indicated as 550 cu. m. in the contract was unrealistic as according to the Audit paragraph the quantity of such excavation done was 35,002 cu. m. The Committee are surprised that the details of the quantities of hard soil and ordinary rock were included in the tender document on the basis of a mere visual examination of the soil and the types of implements used for excavation without undertaking soil investigations or, alternatively, obtaining expert opinion on the nature of the soil. Such prior soil investigations etc. were not deemed necessary by the authorities when even before finalisation of the tenders the Garrison Engineer had suggested in March, 1969 that cutting of hill-side should be indicated as both 'hard soil' and 'laterite' (ordinary rock), without any break-up, which was, however, not agreed to.

2.37. Subsequently, in October 1969 the Garrison Engineer approached the Commander Works Engineer seeking approval for a deviation order to the contract on the plea that cutting hill-side in laterite was required in all the 5 quarries from where earth required for the work was to be obtained by excavation. This proposal of the Garrison Engineer involving an additional expenditure of Rs. 1.14 lakhs was made at a time when the contractor after excavating the hard soil in 2 quarries had sought permission to start work in ordinary rock. This proposal contained deviation from the contract for 33,225 Cu.m. of rough excavation in soft (ordinary) rock by reducing an equal quantity from 'rough excavation in hard soil'. This proposal of the Garrison Engineer, which appears to have been quite correctly made, was summarily rejected. The Committee feel that at least at this stage when the Garrison Engineer had so explicitly indicated his doubts about the correctness of the soil strata shown in the contract, the authorities should have got examined the soil

strata by a geologist or obtained a test report on the nature of the soil strata from College of Military Engineering etc. The Committee strongly disapprove this cavalier approach of the Department as they feel that had the decision on the proposal of the Garrison Engineer been taken after obtaining expert opinion on the nature of soil strata, the Department would have not only saved quite a substantial part of extra expenditure that had to be incurred but also reduced to a large extent the delay in the completion of the work.

[Serial Nos. 4 and 5 (Paras 2.36 and 2.37) of Appendix to 131st Report of Public Accounts Committee (Sixth Lok Sabha)].

Action Taken

It is true that the work was delayed for 16 months which is not considered abnormal in view of the position explained in the context of para 2.35.

2. The Committee has brought out that the quantity of 550 CM of excavation over areas in ordinary rock was unrealistic as the total of such excavation done came to 35,002 CM. A careful examination of the relevant documents would show that this does not reflect the true picture. What has mainly changed is the arbitrator's interpretation of classification of "Hard soil" as "ordinary rock". The verbatim description of works given in the tender and the contract is re-produced below:—

Items	Rate Rs. P.	Quantity (Cubic metre)
3. Rough excavation (cutting hill side) in hard soil not exceeding 5' deep and getting out and removing exceeding 440 yds. and not exceeding 880 yds from starting point and depositing where directed and forming embankments including raising (or lowering) spreading in layers not exceeding 12" thick, watering, ramming/rolling each layer and finishing to required size, shape etc. lift not exceeding 5' high from base.	5.78/Cubic Metre	23300
4. All as in item 3 above but removing exceeding 880 yds. and not exceeding 1320 yds.	6.11/Cubic Metre	2500
5. All as in item 3 above but removing exceeding 1760/yds. and not exceeding 2200 yds.	6.79/Cubic Metre	1560
6. All as in item 3 above but removing exceeding 2200 yds. and not exceeding 2640 yds;	7.13/Cubic Metre	2900
		44,960

Items	Rate Rs.P.	Quantity (Cubic Metre)
10. Excavation over areas in ordinary rock not exceeding 5' deep and getting out and removing to a distance exceeding 50 yds. and not exceeding 100 yds. and depositing where directed and forming embankments (including berms on both sides) including raising (or lowering) spreading in layers not exceeding 12" thick, watering, ramming/rolling each layer and finishing to required size, shape etc. lift not exceeding 5' high from base.	8.41/Cubic Metre	250
11. All as in item 10 above, but removing/ exceeding 100 yds. and not exceeding 440 yds.	9.83/Cubic Metre	300
		<u>550</u>

3. It will be seen that the soil to be removed from the quarries was grouped under Items 3 to 6. Items 10 and 11 did not visualise the rock to be excavated from the quarries but were meant for any rock which was encountered along the alignment of the embankment. It is for this reason that the minimum haulage distance under Items 3 to 6 is 440 yds. whereas in Item 10 and 11 the maximum distance was 440 yds. It is also pointed out that the centre of the nearest quarry from the nearest edge of the embankment was about 440 yds. It is thus submitted that the quantity of soil to be excavated from the quarries was given in the contract correctly. Disagreement with the Arbitrator's interpretation is only on the classification. Para 1(b) (vii) on page 10 of the Standard Schedule of Rates (1962) defines "hard soil" as that which can be excavated with "close application of picks" the soil was classified as "hard soil".

4. It is also submitted that for such earth work contracts, no soil investigation or expert opinion on the classification of soil is normally sought. However, as per directions of PAC, instructions have been issued to all executives to obtain expert opinion in cases where disputes have arisen or are likely to arise before taking a final view in the matter. A copy of relevant instructions is enclosed. (Appendix I).

5. It is submitted that the contract was concluded by the Zonal Chief Engineer and any deviation was to be approved by him. The Garrison Engineer did submit a proposal involving an additional expenditure of Rs. 1.14 lakhs but the higher authorities decided that

the soil (though laterite) could be excavated with close application of picks and was therefore classified as "hard soil" only. As there was no doubt in the minds of the Commander Works Engineers and the Zonal Chief Engineer, it was not considered necessary to obtain expert opinion on the proposal of the Garrison Engineer to classify the soil to be excavated as "ordinary rock".

[Ministry of Defence U. O. No. 68(2)/79/D (N-IV)
dated 28-3-1980].

CHAPTER V

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

Recommendation

The Committee further note that no time limit was prescribed by the authorities for the finalisation of the award by the arbitrator. The Committee understand that according to the Arbitration Act the arbitrator should normally finalise his award within four months. It is surprising that the arbitrator took about 21 months and gave his award in July 1972, after his retirement from service in November, 1971. The Committee would like to know the specific reasons for this delay and the various steps taken by the Department from time to time to expedite the arbitration proceedings. The Committee fail to understand the rationale behind the provision in view of a limit of 4 months for the completion of arbitration when the actual time taken generally far exceeds this limit. The Committee reiterate their earlier recommendation made in paragraph 3.271 of their 9th Report (Sixth Lok Sabha) on Forest Department, Andamans and emphasise once again that the Ministry of Law should examine this aspect thoroughly in consultation with other Ministries who actually have to go in for arbitration proceedings in cases of agreements with private firms in order to amend the law suitably, if necessary.

[Sl. No. 9 (Para 2.41) of Appendix to 131st Report of the Public Accounts Committee (Sixth Lok Sabha)].

Action taken by the Ministry of Defence

The provision of Arbitration Act 1940, Schedule I which was applicable to this arbitration, lays down a period of 4 months for publication of award from the date of entering into the reference with both the parties. The arbitrator could extend this time by getting the concurrence of both the parties from time to time, which was done in this case. The revised IAFW-2249 which forms part of all MES contracts now lays down a timing of one year for publication of award.

2. It is true that the arbitrator had given the award after retirement from the service. We have already taken the corrective measure and issued a policy letter *vide* Engineer-in-Chief letter No. 13600/GEN/E8 dated 11th August 1972 (copy enclosed) (Annexure) that no person having less than two years residual service should be normally appointed as an arbitrator.

3. The question of amendment of the Arbitration Law is under consideration of the Government of India as indicated in the reply of Ministry of Law, Justice and Company Affairs to the Committee submitted separately.

[Ministry of Defence U. O. No. 68(2)/79/D(N-IV) dated 21-12-1979].

Action taken by the Ministry of Law, Justice and Company Affairs

As already intimated in this Ministry's action taken note dated 24th June, 1978 in reply to S. No. 1 (para 1.4) of Appendix to Forty Second Report of the P.A.C. (Sixth Lok Sabha), the Law Commission was requested to review the entire Arbitration Act, 1940 and submit a report. The Commission has since (November, 1978) submitted its 76th Report which deals with the review of Arbitration Act, 1940. In its report the Commission has also referred to para 3.271 of the 9th Report of the Public Accounts Committee (Sixth Lok Sabha) and made specific recommendations on the recommendations contained therein.

The recommendations made by the Commission in the above Report are being examined by the Government. A further note will be sent soon after a decision is taken by Government on the recommendations of the Law Commission in this regard.

Director of Audit, Defence Services has seen.

[Ministry of Law, Justice and Company Affairs (Legislative Department) O.M. No. G-2515(3)/79-B & A dated 29-8-1979].

Further information received from the Ministry on 16 April, 1980 and 18 July, 1980

In their letter dated 16 April, 1980, the Ministry have stated as follows:

"The copies of Law Commission's Report have been sent to the Indian Council of Arbitration and the Indian Chamber

of Commerce for their comments and the same are awaited. In the meantime, the Report is being examined in this Ministry.

Final note will be sent soon after a decision is taken by the Government."

In their letter dated 18 July, 1980, the Ministry have stated as follows:—

"The comments from the Indian Council of Arbitration and Indian Chamber of Commerce are still awaited.....

Final note will be sent soon after a decision is taken by the Government."

ANNEXURE

Copy of E-in-C's letter No. 13800|GEN|E8 dated 11th August, 1972 addressed to E-in-C's B List 'B' with copy to E-in-C's List 'A'

APPOINTMENT OF ARBITRATORS

Before an officer is appointed an arbitrator the Appointing Authority should take note of the date when the officer is due to retire. This is necessary in order to ensure that the arbitrator is in a position to publish his award before the date of his retirement. If this factor is not taken into account it often becomes necessary to obtain Government sanction for payment of special fees to the retired officer for continuing with the arbitration case or appoint another arbitrator where possible.

2. It is suggested that no officer should be appointed an arbitrator unless he has at least two years more to serve from the date he is appointed an arbitrator.

NEW DELHI;
March 11, 1981
Phalgun, 20, 1902 (Saka)

CHANDRAJIT YADAV,
Chairman,
Public Accounts Committee.

APPENDIX I

Surveyor of Works Directorate
Engineer-in-Chief's Branch (E8)
Army Headquarters
Kashmir House
DHQ PO, NEW DELHI-110011.

No. 33416/E8

Dated 22 October, 1979.

To

E-in-C's Lists 'A' and 'B'

ADMINISTRATION OF CONTRACTS—CLASSIFICATION OF SOIL

In a civil engineering contract concluded by a Chief Engineer some years back, disputes and differences arose between the contractor and the executive staff with regard to classification of soil excavated. The Accepting Officer's decision being not acceptable to the contractor, the latter's claim had to be settled in arbitration. The arbitrator, however, held a different view on the aspect of classification of soil, while publishing his award.

2. Though details of classification of soil are given in the MES, SSR, instances may occur, wherein, due to the peculiar nature of the material to be excavated, doubts arise as to its correct classification. In such cases, Accepting Officers would be well advised to consult experts in the field to enable them arrive at a judicious decision.

APPENDIX II

Conclusions and Recommendations

Sl. No.	Para No.	Ministry / Dept. Concerned	Conclusion/Recommendation
1.	1.3	Defence	The Committee require that final reply to the recommendation in respect of which interim reply has so far been furnished, should be submitted expeditiously.
2.	1.7	-10-	The Committee have no doubt that the problems in this contract, involving extra expenditure of Rs. 10.20 lakhs and delay of 16 months even over the extended date of completion, have arisen mainly due to incorrect classification of the soil strata required to be excavated. The Committee have noted that instructions have since been issued on 22 October 1979 to the executives to consult experts in the field in cases where, due to the peculiar nature of the material to be excavated, doubts arise as to its correct classification.

20. Atma Ram & Sons,
Kashmere Gate,
Delhi-6.
21. J. M. Jaina & Brothers,
Mori Gate, Delhi.
22. The English Book Store,
7-L, Connaught Circus,
New Delhi.
23. Bahree Brothers,
188, Lajpatrai Market,
Delhi-6.
24. Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1.
25. Bookwell,
4, Sant Narankari Colony,
Kingsway Camp,
Delhi-9.
26. The Central News Agency,
23/90, Connaught Place,
New Delhi.
27. M/s. D. K. Book Organisations,
74-D, Anand Nagar (Inder Lok),
P.B. No. 2141,
Delhi-110035.
28. M/s. Rajendra Book Agency,
IV-D/50, Lajpat Nagar,
Old Double Storey,
Delhi-110024.
29. M/s. Ashoka Book Agency,
2/27, Roop Nagar,
Delhi.
30. Books India Corporation,
B-967, Shastri Nagar,
New Delhi.

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