

FORTY-EIGHTH REPORT

COMMITTEE ON PETITIONS

(SIXTEENTH LOK SABHA)

MINISTRY OF DEFENCE

(DEPARTMENT OF DEFENCE PRODUCTION)

(Presented to Lok Sabha on 3.8.2018)



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ANNEXURES

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**COMPOSITION OF THE COMMITTEE ON PETITIONS
(2017-2018)**

Shri Bhagat Singh Koshyari -*Chairperson*

MEMBERS

2. Shri Suresh C. Angadi
3. Shri Om Birla
4. Shri Jitendra Chaudhury
5. Shri Ram Tahal Choudhary
6. Dr. K. Gopal
7. Shri C.P. Joshi
8. Shri Chhedi Paswan
9. Shri Kamlesh Paswan
10. Shri Arjun Charan Sethi
11. Shri Kodikunnil Suresh
12. Shri Dinesh Trivedi
13. Shri Rajan Vichare
14. Shri Dharmendra Yadav
15. Vacant

SECRETARIAT

- | | | |
|----------------------------|---|----------------------------|
| 1. Shri Shiv Kumar | - | Joint Secretary |
| 2. Shri Raju Srivastava | - | Additional Director |
| 3. Shri G.C. Dobhal | - | Deputy Secretary |
| 4. Shri Harish Kumar Sethi | - | Senior Executive Assistant |

FORTY-EIGHTH REPORT OF THE COMMITTEE ON PETITIONS**(SIXTEENTH LOK SABHA)****INTRODUCTION**

I, the Chairperson, Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Forty-Eighth Report (Sixteenth Lok Sabha) of the Committee to the House on the Representation received from Shri D. Shivamurti and forwarded by Shri Suresh Angadi, M.P., Lok Sabha alleging violation of Department of Personnel & Training/Department of Public Enterprises (DoPT/DPE) Guidelines by the Hindustan Aeronautics Limited.

2. The Committee considered and adopted the draft Forty-Eighth Report at their sitting held on 16 April, 2018.
3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;
16 April, 2018
26 Chaitra, 1940 (Saka)

BHAGAT SINGH KOSHYARI,
Chairperson,
Committee on Petitions.

REPORT

REPRESENTATION RECEIVED FROM SHRI D. SHIVAMURTI FORWARDED BY SHRI SURESH ANGADI, M.P., LOK SABHA ALLEGING VIOLATION OF DEPARTMENT OF PERSONNEL & TRAINING/ DEPARTMENT OF PUBLIC ENTERPRISES (DoPT/DPE) GUIDELINES BY THE HINDUSTAN AERONAUTICS LIMITED.

Shri Suresh Angadi, M.P., Lok Sabha had forwarded a Representation of Shri D. Shivamurti before the Committee alleging violation of DoPT/DPE Guidelines by the Hindustan Aeronautics Limited.

2. Shri D. Shivamurti, in his Representation, *inter-alia* stated that he joined the Hindustan Aeronautics Limited (HAL) as Chief Manager in 1991. Based on the interview conducted by the Public Enterprises Selection Board, he was appointed Director (Finance) on 28 October, 2005 that too without submitting Technical Resignation being an internal candidate of the HAL. The representationist further stated that being the only internal eligible candidate for the post of Chairman, HAL, he was not granted extension, rather adverse comments were made in his Annual Confidential Report (ACR). As per the DoPT/DPE Guidelines, the adverse comments made in the ACR should have been communicated to him by the HAL, instead the Ministry of Defence/ Public Enterprises Selection Board conducted joint appraisal, recommended non-extension and forwarded proposal to EO(ACC), Department of Personnel & Training. The representationist, therefore, requested the Committee on Petitions to take up his case to provide him justice.

3. The Committee on Petitions took up the Representation for examination under Direction 95 of the Directions by the Speaker, Lok Sabha. Accordingly, the Representation received from Shri D. Shivamurti was forwarded to the Ministry of Defence for furnishing their comments on the issues raised in the Representation. Since the matter raised in the Representation was regarding adherence to the Guidelines of DoPT/DPE related to the employees of the HAL, the examination of the Representation by the Committee on Petitions is based on the following aspects:-

- (I) History of the Hindustan Aeronautics Limited (HAL)
- (II) Recruitment Rules of HAL
- (III) Grades, Pay Structure and the Appointing Authorities in HAL
- (IV) Types of Induction in HAL - Executives and Non-Executives
- (V) Eligibility Criteria for various posts in HAL

(VI) Comments received from the Ministry of Defence on the Representation of Shri D. Shivamurti

4. The examination on the points raised in the Representation is discussed in the succeeding paragraphs.

I. History of the Hindustan Aeronautics Limited (HAL)

5. The history and growth of the Hindustan Aeronautics Limited is synonymous with the growth of Aeronautical industry in India over the past 70 years. The Company which had its origin as the Hindustan Aircraft Company was incorporated on 23 December, 1940 at Bangalore by Shri Walchand Hirachand a farsighted visionary in association with the Government of Mysore with an Authorised Capital of Rs.4 crore (Paid up capital Rs. 40 lakh) and with the aim of manufacturing aircraft in India. In March 1941, the Government of India became one of the shareholders in the Company holding 1/3 of its paid-up capital and subsequently took over its management in 1942. In collaboration with the Inter Continental Aircraft Company of USA, the Hindustan Aircraft Company commenced its business of manufacturing of Harlow Trainer, Curtiss Hawk Fighter and Vultee Bomber Aircraft. In Dec 1945, the company was placed under the administrative control of Ministry of Industry & Supply. In January 1951, Hindustan Aircraft Private Limited was placed under the Administrative control of Ministry of Defence. The Company had built aircraft and engines of foreign design under licence, such as Prentice, Vampire and Gnat aircraft. It also undertook the design and development of aircraft indigenously. In August 1951, the HT-2 Trainer aircraft, designed and produced by the company under the able leadership of Dr. V. M. Ghatge flew for the first time. Nearly 200 Trainers were manufactured and supplied to the Indian Air Force and other customers. With the gradual building up of its design capability, the company successfully designed and developed four other aircraft i.e. two seater 'Pushpak' suitable for flying clubs, 'Krishak' for Air Observatory Post (AOP) role, HF-24 Jet Fighter '(Marut)' and the HJT-16 Basic Jet Trainer '(Kiran)'.

6. Meanwhile, in August 1963, the Aeronautics India Limited (AIL) was incorporated as a Company wholly owned by the Government of India to undertake the manufacture of the MiG-21 aircraft under licence. In June 1964, the Aircraft Manufacturing Depot which was set up in 1960 as an Air Force unit to produce the Airframe for the HS-748 transport aircraft was transferred to the AIL. Soon thereafter, the Government decided to amalgamate the Hindustan Aircraft Limited, with the AIL so as to conserve resources in the field of aviation where the technical talent in the country was limited and to enable the activities of all the aircraft manufacturing units to be planned and co-ordinated in the most efficient and economical manner. Amalgamation of

the two companies i.e. the Hindustan Aircraft Limited and the Aeronautics India Limited was brought about on 1st October, 1964 by an Amalgamation Order issued by the Government of India and the Company after the amalgamation was named as "Hindustan Aeronautics Limited (HAL)" with its principal business being design, development, manufacture, repair and overhaul of aircraft, helicopter, engines and related systems like avionics, instruments and accessories.

II. Recruitment Rules of HAL

7. The need for having a comprehensive and exclusive set of Recruitment Rules was felt necessary based on feedback received from various Divisions/Offices and Employees handling Recruitment functions. Accordingly, comprehensive set of Recruitment Rules has been formulated by compiling and consolidating the policies, Rules and Guidelines issued and amended by the HAL from time to time. The provisions of these Rules apply to all the employees of HAL other than the personnel on deputation or contract (excepting those against regular manpower sanctions). The main aim of having this comprehensive set of Recruitment Rules is to make available a Ready Reckoner to the Employees handling recruitment functions across the Company.

III. Grades/Scales, Scales of Pay and Appointing Authorities

8. The extracts from the HR Manual Book-I 'Modified Recruitment Rules-2013' are as under:-

EXECUTIVES:

There are ten different Scales of Pay in Executive cadre starting with Grade I and two Board Level posts, which are applicable for Directors and Chairman. In future, changes in the Scales of Pay if any, the same may be taken as Scales of Pay.

Grade	Scales of Pay (w.e.f. 1.1.07) (Rs.)	Appointing Authorities
Junior Executives:		Managing Directors/Functional Directors/ Directors/ Executive Directors/ General Managers / Chief Designers / Chief of Projects /Chief of Planning of the Divisions / Offices and / or any other Executives to whom the powers of appointment have been specifically delegated.
Grade-I	12600-32500	
Grade-II	16400-40500	
Executives:		

Grade-III	20600-46500	Managing Directors/ Directors / Functional Directors
Grade-IV	24900-50500	
Senior Executives:		
Grade-V	29100-54500	
Grade-VI	32900-58000	
Grade-VII	36600-62000	Chairman
Grade-VIII	43200-66000	
Grade-IX	51300-73000	Board of Directors
Grade-X	62000-80000	
Directors / Chairman:		President of India
Schedule-B	75000-100000	
Schedule-A	80000-125000	

NON-EXECUTIVES:

There are four Channels of induction, viz., Channel A, B, C & D with eleven different Scales of Pay in the non-executive Cadre starting with Scale 1. In future, changes in the Scales of Pay, if any, the same may be taken as Scales of Pay.

Scale	Scales of Pay (w.e.f., 1.1.07) (Rs.)	Appointing Authorities
1	6500-17510	Managing Directors/Functional Directors/Directors, Executive Directors/General Managers/Chief Designers/Chief of Projects/Chief of Planning of the Divisions/Offices and/or any other Executives of the Company to whom the powers of appointment have been specifically delegated.
2	7000-20000	
3	7500-22070	
	8250-23490	
5	8750-25670	
6	9250-27170	
7	9750-28630	
8	10200-30740	
9	11200-31780	
10	12000-32120	
Special Scale	12600-32500	

IV Types of Induction - Executives and Non-Executives

9. There will be one Management Trainees training scheme for inducting Trainees in the Executive cadre. In order to ensure the availability of adequate number of Engineers &

Professionals possessing requisite qualification and specialized knowledge in different disciplines across the Company, Management Trainees shall be inducted centrally and the recruitment for the same shall be carried out by Corporate Office. Fresh Engineers are inducted as Design Trainees also for positioning in the R&D Centers.

10. Candidates possessing Degree in Engineering / Technology or its equivalent are inducted as Management Trainees (Technical/IMM) & Design Trainees. Disciplines in which Management Trainees (Technical/IMM) & Design Trainees are inducted and grouping of branches of engineering in different disciplines are as under:-

Disciplines in which induction is done			Eligible branches of Engineering Degree
MT (Technical)	MT (IMM)	Design Trainees	
Aeronautical	-	Aeronautical	Aeronautical / Aerospace
Computer Science	-	-	Computer Science/Computer Engg/ Computer Science & IT/Information Technology/Information Science & Technology/Computer Systems/ Information Systems/Information Science/ Software Engg./Computer Technology/ Computer Science & Engg.
Electrical	Electrical	Electrical	Electrical / Electrical & Electronics / Electrical & Instrumentation
Electronics	-	Electronics	Electronics / Electronics & Communication /Instrumentation & Control/Instrumentation & Electronics / Applied Electronics & Instrumentation/Electronics & Instrumentation/ Electronics & Telecommunication
Mechanical	Mechanical	Mechanical	Mechanical / Mechanical & Industrial Engg / Mechanical & Production Engg.
Metallurgy	-	-	Metallurgy / Materials & Metallurgy / Metallurgy & Materials Engg. / Metallurgy & Materials Technology / Metallurgy & Material Science
Production	Production	-	Industrial Production / Production Engg./ Industrial Engg & Production / Mechanical Production & Industrial Engg. / Production Engg. & Management / Industrial Engg./ Manufacturing Engg./ Production & Industrial Engg./ Industrial Engg. & Management / Manufacturing Science & Engg. / Manufacturing Process & Automation / Mechanical Stream – Production Engg.

Candidates possessing relevant professional qualifications indicated at Chapter 5.3 in HR, Finance & Legal disciplines are inducted as Management Trainees (HR/Finance/Legal).

11. In order to become eligible to apply for the posts of Management Trainees / Design Trainees, candidates should have secured the following minimum percentage of Marks, in the aggregate, of all the Semesters / Years or corresponding CGPA Ratings/ Gradations in their qualifying examinations [Graduation as well as Professional qualification in respect of posts in Non-Technical disciplines]:-

Post	Unreserved / OBC candidates	SC / ST Candidates
MT (Technical / IMM)	65%	55%
MT / DT (Aeronautical)	60%	50%
MT (HR / Legal)	60%	50%

12. Internal candidates whose higher qualifications have been accepted and incorporated in their personal records and who fulfill the requirements stipulated in the Notification are eligible to apply for the post of Management Trainees / Design Trainees. Diploma / Other Trainees possessing the requisite qualification are not eligible to apply for the post of Management Trainees / Design Trainees during their training period.

13. Employees of the company who are selected as Management Trainees will be posted to the same or other Divisions, after completion of their training at the HMA / identified Institutions. These employees are entitled to only train fare and daily allowance for the onward journey. They are not entitled to any other grants/allowances for self or family. As regards their salary, they will draw the consolidated salary last drawn prior to their induction as Management Trainees or stipend applicable to newly inducted Management Trainees, whichever is higher. However, they will not earn Vacation Leave and Annual Increment in respect of training period. They will also not be eligible for payment of Ex-gratia or Incentive, as the case may be, during this period.

14. Campus recruitment is resorted to as one of the multiple Channels of recruitment. Currently, Campus selections are held in the following Institutes for Technical disciplines as Design Trainees:-

- (i) All IITs
- (ii) IT-BHU, Varanasi
- (iii) MNNIT, Allahabad
- (iv) All NITs
- (v) VNIT Nagpur, NITK, Surathkal

- (vi) BITS, Pilani
- (vii) PEC University of Technology, Chandigarh (only Aeronautical)
- (viii) Madras Institute of Technology, Chennai (only Aeronautical)
- (ix) IISc, Bangalore

15. The following Management Institutes are identified for direct posting in Grade-II (Marketing & Business Development, International Business) / Management Trainees in the disciplines such as Finance & Accounts, HR, IMM, etc.

- (i) All Indian Institutes of Management (IIMs)
- (ii) Indian Institute of Foreign Trade (IIFT), Delhi
- (iii) Faculty of Management Studies (FMS), Delhi
- (iv) Xavier Labour Relations Institute (XLRI), Jamshedpur (For HR)
- (v) Management Development Institute (MDI), Gurgaon
- (vi) ICAI for Chartered Accountants (All chapters) (For Finance)
- (vii) Tata Institute of Social Sciences, Mumbai. (For HR)
- (viii) XIM, Bhubaneswar (For HR)
- (ix) XISS, Ranchi (For HR)

16. With a view to have a balanced Manpower profile comprising of experienced professional and young executives, lateral induction is resorted to as one of the Channels of Induction. The induction through lateral entry is done on need basis.

V. Eligibility Criteria

AGE LIMIT

Grade of Appointment / Appointment as	Age limit applicable to UR Category (years)
Management Trainees / Design Trainees	28
Diploma / Technician / Other Trainees (Non-Executives)	28
I / II	35
III / IV / V	45
VI / VII	48
VIII	50
IX	54

MINIMUM QUALIFICATIONS

EXECUTIVES:

Sl. No.	Discipline	Educational Qualification
1	Technical / IMM	Degree in Engineering / Technology or its equivalent
2A	Non- Technical	University Degree with relevant Professional Qualification in the concerned discipline (Like CA/ICWA/CS/MBA/PG Degree/PG Diploma)
B	Finance & Accounts	Bachelor's Degree with a pass in final examination of CA / ICWA from the Institute of Chartered Accountants of India / Institute of Cost Accountants of India
C	Secretariat	Pass in Associate Membership Examination of the Institute of Company Secretaries of India, New Delhi
D	Public Relations	Bachelor's degree in any discipline with PG Degree / PG Diploma in Journalism and Communication / Journalism and Mass Communication / Communication / Journalism / Mass Communication / Broadcast Journalism / Media Communication / Public Relations from recognized Indian Universities
E	Human Resource	Bachelor's Degree with PG Degree / PG Diploma / MBA / MSW / MA with specialization in Human Resources / Personnel Management / Industrial Relations / Labour Management / Organizational Development / Human Resource Development / Labour Welfare etc., from Institutes / Universities recognized by appropriate statutory authorities
F	Legal / Law	Bachelor of Law (5 years integrated course after 10+2) or Bachelor degree with Bachelor of Law (10+2+3+3)
G	Security & Vigilance	<p>i) Successful completion of ten months pre-Commission training course from the Officers' Training School, Madras or from any other equivalent Institution under the Defence Forces; OR</p> <p>ii) Successful completion of one to one and a half years course conducted by the Central/State Governments qualifying for appointment as Deputy Superintendent of Police/Sub-Inspectors in State Police, Railway Protection Force, Central Reserve Police, Border Security Force; OR</p> <p>iii) Successful completion of one year training course conducted by Central Government for those selected for the posts of Intelligence Officers in the Central Intelligence Bureau and Research and Analysis Wing; OR</p> <p>iv) Successful completion of Training conducted by the</p>

		<p>central government for candidates selected for the post of Sub Inspectors in the CISF or successful completion of one year training conducted by Home Ministry, Government of India, for SI in CBI;</p> <p>OR</p> <p>v) 52 weeks training course of Instructions for IAF Police in the rank of Sergeant, Junior Warrant Officer, Warrant Officer and Master Warrant Officer;</p> <p>OR</p> <p>vi) Two years PG Degree (M Sc) in Forensic Science & Criminology acquired after (10+2+3);</p> <p>OR</p> <p>vii) Two years PG Degree (MA) in the following Subjects, acquired after Graduation (10+2+3):-</p> <p>MA – Sociology/ Economics/Psychology/Public Administration/ Criminology/ Political Science/ Anthropology/ Human Rights/ Media Studies/ Social Policy/ Public Policy;</p> <p>OR</p> <p>viii) Bachelor's Degree with 2 years PG Degree / PG Diploma / MBA / MSW / MA (3 / 4 + 2 years after 10+2) with specialization in Human Resources / Personnel Management/Industrial Relations/ Labour Management/Organizational Development/ Human Resource Development/ Labour Welfare etc., from Institutes / Universities recognized by appropriate statutory authorities.</p> <p>Note: Candidates possessing the qualifications indicated at Sl. Nos. (i) to (v) and who apply for the post will be called for Written Test (Grade I). The condition of minimum 60% of marks [50% for SC/ST] in the qualifying examination for calling candidates for Written Test (Grade I) would apply only in respect of the qualifications indicated at Sl.Nos (vi) to (viii).</p>
H	Fire Fighting/Fire Brigade	<p>i) Bachelor degree of Fire Engineering from the National Fire Service College, Nagpur awarded by the Nagpur University i.e., B.E., (Fire Engineering); OR</p> <p>ii) Bachelor degree of Fire Engineering / Fire Technology from Institutes / Universities recognized by appropriate statutory authorities. OR</p> <p>iii) Pass in Associate Membership/Membership Examination of Institute of Fire Engineering. UK; OR</p> <p>iv) Degree of recognized University with Pass in GIFE – India / UK.</p> <p>Personnel with the above qualification will not, however, be eligible for recruitment to posts in the Technical Discipline</p>

		where a Degree in Engineering is specifically prescribed.
I	Official Language	Masters Degree (2 years) in Hindi with English as a compulsory or elective subject at Degree level AND PG Diploma in Translation from Hindi to English and vice- versa of minimum of one year duration.
J(a)	Russian Language Translator	i) Degree in Engineering / Technology or its equivalent + proficiency in Russian Language from recognized Universities / Institutes. OR ii) Degree in Engineering / Technology or its equivalent from Russian Universities provided it is recognized on par with Degree in Engineering / Technology or equivalent offered by recognized Indian Universities. However, Designation of Assistant Engineer (Russian Language Interpreter) will not be used. Candidates need to be inducted as Assistant Engineer. They will also do the job of Interpretation. iii) In case candidates as at i) & ii) are not available, the Divisions / Offices can induct candidates possessing 5 years Integrated Degree of Master of Arts in Russian Language (Translation & Interpretation) (Full Time Regular Course) from Recognized Universities/Institutes, as Russian Language Interpreter, in Grade-I.
(b)	Russian Language Interpreter	(i) 5 years Integrated Degree of Master of Arts in Russian Language (Translation & Interpretation) from Recognized Universities / Institutes, as Russian Language Interpreter, in Grade-I Only. OR (ii) 3 years Bachelors Degree in Russian Language plus 2 years Post Graduate Degree / Post Graduate Diploma in Russian Language from Recognized Universities / Institutes, as Russian Language Interpreter, in Grade-I Only.
K	French Language Translator/ Interpreter	2 years MA (French) from Calcutta University; OR 2 years Post Graduate Degree / Post Graduate Diploma in French from Recognized Universities / Institutes
L	Library	2 years Post Graduate Degree / Post Graduate Diploma in Library Science (i.e M.Lib)
M	AME Licence Holders for induction in Grade-I	Diploma in Engineering + 4 years of relevant post qualification experience + AME Licence

NON-EXECUTIVES:

17. The Channels, Qualifications, Scales of Pay and corresponding Skill Levels to which Non-Executives are inducted are as follows:-

Channel / Scale of Pay	Qualifications		Skill Level
	Technical	Non-Technical	
A / 1	No Induction	SSLC	Un-skilled
B / 4	ITI	PUC / Inter *	Semi-skilled
C / 5	NAC / NCTVT	BA/ B.Sc / B.Com* \$	Skilled
D / 6	Diploma in Engg.	MA/M.Sc/M.Com *	Highly skilled
<p>* With relevant certificates of Proficiency in Typing, Stenography, PC Operations etc (Minimum of 3 months duration), as the case may be. In respect of candidates possessing the Qualification of Degree in Computer Science or Degree in Computer Application, the certificate of proficiency in PC Operations need not be insisted upon.</p> <p>\$ would mean Bachelors Degree in Arts / Science / Commerce / Administration / Management / Computer Applications (like BA/BSc/BCom/BCA/BBA/BBM).</p>			

VI. Comments received from the Ministry of Defence

18. The Ministry of Defence vide their communication dated 27 August, 2015, furnished the following reply:-

"Shri D. Shivamurti had joined HAL on 27.2.1991 as Chief Manager (Finance). He was appointed as General Manager (Finance) w.e.f. 1.7.2001 and subsequently as Director (Finance) vide Ministry of Defence letter No.49(22)/2/2004/D(HAL) dated 28.10.2005 for a period of five years and he had assumed charge as Director (Finance) of the HAL on the same day. As per records, Shri D. Shivamurti possess the qualification of Post Graduate Diploma in Management from IIM, Bangalore. He had worked in HAL from 27.2.1991 to 3.3.2011 (20 years). Prior to joining HAL, as per records, he had worked in M/s Indian Petrochemicals Corporation Ltd., Baroda, from April 1980 to 23.2.1991.

PESB appointments are on tenure basis. Extension of the tenure of his appointment as Director (Finance) was not granted as communicated vide Ministry of Defence letter dated 3.3.2011. His date of birth is 10.1.1956. In his case, Chairman, HAL was the Reporting Authority regarding his performance and his observation after assessing his performance was that 'he is not suitable for higher position. May be reassessed for extension of tenure as Director(Finance)". His ACR was accepted by the Accepting Authority (Hon'ble Raksha Mantri) and it was reported by the Chairman, HAL on 23.12.2010 that his ACR for the period 2009-10 has been communicated to him. There was no procedural lapse in his non-extension as alleged.

Relieving from the post of Director (Finance) tantamount to relieving from the HAL. There are Rules for retention of lien in the HAL when employees are appointed to Board level posts. The Rules provide that the HAL shall permit retention of lien for the specified period (5 years now) to its employees holding posts below the Board level when they are

appointed to posts at the Board level within the HAL or any other Central PSE. This implies that those desirous of retention of lien need to apply for the same and that retention of lien needs to be permitted. In the case of Shri D. Shivamurti, consequent to his appointment as Director (Finance), as he had not submitted application seeking retention of lien, HAL had not permitted retention of lien on the Post of General Manager (Finance) on his appointment as Director (Finance) w.e.f. 28.10.2005. Consequently, the question of retention of lien becomes infructuous. Further, the maximum period for which lien could be retained is 5 years. Consequently, even if Shri D. Shivamurti had applied and was permitted to retain lien, the question of his reverting to the Post of General Manager (Finance) would not have arisen on non-extension of his services as Director (Finance) w.e.f. 3.3.2011, as he had completed 5 years and 4 months service as Director (Finance) in HAL (28.10.2005 to 3.3.2011).

As per the Rules for retention of lien and as per Article 107B of the Articles of Association of the HAL, one has to submit the application for retention of lien and the approval of the Competent Authority permitting retention of lien needs to be obtained. Shri D. Shivamurti had not submitted any application for retention of lien on the post of General Manager (Finance) on being appointed as Director (Finance) w.e.f. 28.10.2005. Hence, the question of retention of lien does not arise. The Department of Public Enterprises O.M. dated 13.1.1999 specifically stipulates that the maximum period for which retention of lien to be permitted will be 5 years, Shri D. Shivamurti had completed 5 years and 4 months of service as Director (Finance) on being relieved w.e.f. 3.3.2011.

HAL has amended Clause 107B of the Articles of Association in September, 2014 indicating that the HAL shall permit retention of lien upto a period not exceeding 5 years to its employees holding posts below the Board Level when they are appointed to posts at the Board Level when they are appointed to posts at the Board Level within HAL or another CPSEs.

Shri D. Shivamurti contention that since 4.3.2011, he is waiting for posting is factually not correct and is clearly an afterthought. All his earlier actions would stand to prove that he was sure that his association with HAL had ended on 3.3.2011 (except for settlement of Accounts, etc., which was delayed pending receipt of Vigilance Clearance from the Ministry in view of the Disciplinary Action initiated subsequently). The following would substantiate the said position:-

- (a) Consequent to non-extension of the term as Director (Finance) and on being relieved from the post of Director (Finance) on 3.3.2011 in terms of Ministry's letter dated 3.3.2011, he had neither made any request for reversion back to the post of General Manager (Finance) nor raised the issue of retention of lien. Also, he had submitted a letter of resignation dated 3.3.2011 from the post of Director*

with immediate effect i.e., 3.3.2011, presumably when he came to know that the Ministry had issued the letter dated 3.3.2011 conveying the decision of non-extension of his tenure as Director (Finance). In the resignation letter dated 3.3.2011, he had requested to credit all his dues to his Bank Account;

- (b) Upon non extension of his term as Director (Finance) beyond 3.3.2011, he had requested for settlement of Provident Fund dues vide his letters dated 7.3.2011 and 4.5.2011 and to this effect he had also given a declaration that "he will not join any Organisation". At that point of time also, he had not raised the issue of retention of lien. On completion of required formalities, his Provident Fund dues were settled in 2011 itself and he had accepted the same without any demur. The request for settlement of Provident Fund would have been made by him as he was sure of termination of his services/severance of relations with the HAL;*
- (c) The first communication from Shri D. Shivamurti on the subject of lien was received by HAL only in May, 2014 i.e., after a lapse of more than 3 years from the date of his relieving from the post of Director (Finance), which was duly replied. It would be surprising to anybody that he did not approach HAL from 3.3.2011 to May, 2014, for more than 3 years, seeking 'posting' or 'retention of lien'. In this connection, it is to be brought out here that his Accounts on cessation of service were settled in May, 2014, on receipt of Vigilance Clearance from the Ministry vide letter dated 18.3.2014. Issue of Vigilance Clearance and settlement of Accounts were delayed as a Disciplinary Case was initiated against him by the Government. The Disciplinary Case was closed with issuance of Minor Punishment of 'Censure' vide Ministry's Order No.867/Vig.I/2008/D(Vig./DDP) dated 2.4.2013.*
- (d) It is also pertinent to note here that his accounts were settled in may, 2014 and that the first communication on retention of lien was also made by him in May, 2014. It could be presumed that he was waiting for information about clearance/settlement of his accounts, before coming up with the plea of retention lien, etc. This would show that his actions are not straight forward and are made with ulterior motives. In conclusion, Shri D. Shivamurti had not applied for retention of lien on the post of General Manager (Finance) on his appointment as Director (Finance) w.e.f. 28.10.2005 or during his tenure of 5 years. Hence, his contention of having lien on the post of General Manager (Finance) does not have any basis.*

19. *Details of a few well settled propositions of lien which will clearly indicate that the claim of lien raised by Shri D. Shivamurti is not legally tenable are as follows:-*

- (a) *The term lien comes from the Latin term ligament meaning binding. The meaning of lien in Service Law is different from other meanings in the context of contract, common law, equity, etc. The lien of a Government Employee in Service Law is the right of the Government employee to hold a permanent post substantively to which he has been permanently appointed.*
- (b) *Lien means the title of a Government Servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively.*
- (c) *A Government Servant's lien (if any, he had retained) on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government of a State Government) outside the Cadre on which he is borne. This was well known to Shri D. Shivamurti. This is quite evident from the Notification No.28020/1/96-Estt(c) dated 9.2.1988. It is also settled position in law that a person cannot hold lien in two permanent posts at the same time.*
- (d) *It may be noted that the appointment of Shri D. Shivamurti to the post of Director (Finance) was a regular substantive appointment on the basis of selection. It was in the nature of a direct recruitment. Therefore, on his appointment to the permanent post of Director (Finance), Shri D. Shivamurti acquired lien on the said post and his lien on the post of General Manager (Finance) stood terminated, unless the option of retention of lien was exercised. As stated above, in the instant case, Shri D. Shivamurti had not submitted any application to permit him to retain the lien. Hence, claim of lien is not available to him.*
- (e) *The post of Director (Finance) is a higher post and in view of the nature of duties and responsibilities attached to it, is in a different cadre.*
- (f) *The posts of General Manager (Finance) and Director (Finance) may be said to be posts in the same service but these posts cannot be said to be in the same cadre. When the status, nature of duties and pay scales attached to the posts are different, they cannot be said to be in the same cadre.*
- (g) *The point regarding lien also stands fully covered by the decisions of Supreme Court in the case of Dr. S. K. Kacker. Fundamental Rule 9(13) defines lien to mean title of a Government Servant to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post to which he has been appointed substantively. Therefore, if a Government Servant is appointed substantively to a permanent post or a tenure post he becomes a Government Servant for the purposes of his tenure. Consequently, he is entitled to retain lien on that post. A tenure post means as per*

FR(30-A) a permanent post which an individual Government Servant may not hold for more than a limited period. The Supreme Court observed as follows in this behalf in Dr. Kacker's case:-

"10.It would indicate that on appointment to a permanent post, be it under the Central Government or the State Government, outside the cadre on which he is borne, his lien on the previous permanent post stands terminated on his acquiring a lien in a permanent post. The post of Director is the head of the AIIMS and it is independent of all the Departments. The Director is enjoined to supervise not only the administrative work of the AIIMS, but also its Management for and on behalf of the Institute Body. Therefore, on his appointment to the permanent post as a Director, he lost his lien on the post as a Professor and Head of the ENT Department. Resultantly, when the tenure of the appellant had expired on/by efflux of time or in case any of the eventualities mentioned in Regulation 30-A had happened, he can not revert to the post of Professor and Head of the Department."

- (h) Shri D. Shivamurti has sought to rely upon the judgement of Jharkhand High Court dated 8.4.03 in the case of Deobrat Sahay v/s Union of India to claim that he has an automatic lien over the post of General Manager (Finance) and consequently after being relieved from the post of Director (Finance) with effect from 3.3.11 he ought to have been continued as General Manager (Finance) until he attained the age of superannuation i.e., 60 years.*
- (i) The question as to whether an Officer would have automatic lien notwithstanding the rules to the contrary has already been answered in the negative by the Jharkhand High Court, in the said decision itself, by relying upon the judgement of the Supreme Court in the above referred case of Dr. S. K. Kacker v/s AIIMS & Ors, (1996) 10 SCC 734. However, on the question as to whether the Petitioner in the said case was entitled to continue on the post that he was holding prior to his appointment to tenure post has been dealt with in para 22 and 23 of the judgment. It has been clearly laid down in para 22 as under:-*

"Existence of such lien and the incidents thereof are dependent on the Service Rules of Terms & Conditions by which Public Servant is governed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the later post and lien against his previous post automatically disappears. But if the Rules provides to the contrary, a Public Servant holding substantively a permanent post retains a lien on that post during the period provided in the Rule. There are circumstances where the lien of a

Government Servant is suspended on a permanent post which he holds substantively on his appointment on a tenure post in a substantive capacity."

- (j) *It is clear from the above that holding a lien against previous post is not automatic and is controlled by the Rules. Case of Shri D. Shivamurti is thus governed by the Rules regarding retention of lien covered by HAL Service Rules. The said Rules provide that the Competent Authority may permit retention of lien for a period not exceeding 3 years (at the relevant point of time). Thus, it requires an employee to specifically apply for and obtain permission to retain lien for a period not exceeding 3 years. In fact, the Rule does not provide for automatic lien in the absence of an application seeking permission to retain lien. Admittedly, Shri D. Shivamurti did not apply for retaining lien at the time of his appointment as a Director (Finance) on 28.10.05. No such permission was also sought for subsequently i.e., during the period when he was holding the permanent substantive post of Director (Finance). In fact, even at the time when he was relieved from the post of Director (Finance) on 3.3.11, no such claim of retention of lien was made. Such a claim has been made now, i.e., after 3 years of being relieved from service and after settlement of the retirement benefits. In that view of the matter, it is submitted that Shri Shivamurti is not legally entitled to retain lien as the Rules do not provide for such automatic retention.*

The allegations made/aspects brought out by Shri D. Shivamurti have no linkage to his contention of having lien on the post of General Manager (Finance). However, based on available documents/information, comments are provided below:-

Shri Shivamurti was confirmed in the post of Director (Finance) vide Ministry's letter No. 49(22)/3/2005/D(HAL) dated 22.12.09. Shri A. K. Zutshi was the previous regular incumbent in the post of Director (Finance), HAL, who was appointed to the said post w.e.f. 5.5.95. During June 2003, an FIR in respect of Shri Zutshi was raised. Considering that the charge alleged against him were quite serious, Ministry of Defence had conveyed during June 2003 the decision that pending further developments, all financial/sensitive assignments may be transferred from Shri Zutshi to another Director. Later on, Shri Zutshi was suspended from service w.e.f. 3.7.04. The tenure of appointment of Shri A. K. Zutshi came to an end on 4.5.05. The post was subsequently filled up on regular basis with the appointment of Shri Shivamurti as Director (Finance) w.e.f. 28.10.05. In the intervening period from June 2003 to October 2005, prior to the appointment of Shri Shivamurti, charge of the post of Director (Finance) was held by other Directors.

The Ministry of Defence had initially approved the appointment of Shri Ashok K. Baweja, who was to retire as Chairman, HAL w.e.f 31.03.09, as Advisor (Regional Transport

Aircraft), for a period of one year. The approval accorded by the Ministry of Defence was noted by the Board of Directors of HAL as its 317th Meeting held on 13.3.09. Subsequently, Ministry of Defence had instructed to put on hold the appointment of Shri Baweja as Advisor, as the Project was yet to be cleared by the Government. This was noted by the Board of Directors of HAL at its 318th Meeting held on 27.4.09. As such, the Statement of Shri D. Shivamurti that the Board had refused to ratify the Ministry of Defence decision is not factually correct.

Non-Extension:

The allegations made/aspects brought out by Shri Shivmurti have no linkage to his contention of having lien on the post of General Manager (Finance). It is also to be noted that he has raised the issue of non-extension after more than 3 years from the date of relieving from the post of Director (Finance). However, based on available documents/information, comments are provided below:-

- (a) Shri Ashok Nayak was appointed as Managing Director, HAL (Bangalore Complex) w.e.f. 1.7.07 and as Chairman, HAL w.e.f 1.4.09.
- (b) Divisional Accounts are signed by Head of Finance, the Divisional Head (General Manager) & Statutory Auditors.
- (c) All the Divisional Accounts are duly prepared by professional Accountants and Audited by the Statutory Auditors (under the Companies Act, 1956). Further, the signed Accounts are duly adopted by the Board of Directors of HAL. Subsequently, the accounts are also duly audited by C&AG to ensure the correctness and to depict the true and fair view of the Accounts as per the statutory requirement.
- (d) Further, the interview for the post of Chairman, HAL was held on 13.8.08, much before the finalization of Accounts for the year 2008-09.
- (e) The Profit & Loss and Balance Sheet of the Company is prepared in line with the Accounting Standards prescribed by the Institute of Chartered Accountants of India and also in line with the Accounting Policy duly approved by the Board.
- (f) HAL being a Navratna PSU and being subjected to different layers of Audit under the Law, need to prepare the financial statements with utmost care to depict true and fair view of the financial performance of the Company and cannot exclude or include any item of expenditure to suit the requirements. The Profit

Before Tax of HAL Helicopter Complex during the year 2008-09 was Rs.44.13 crore and the loss during the year 2009-10 was Rs.13.50 crore.

- (g) *A separate Helicopter Complex was formed in the year 2009. Shri R. Srinivasan was appointed as Managing Director (Helicopter Complex) w.e.f. 22.6.09. Subsequently, he was posted as Director (HR) w.e.f. 17.9.10 as per the approval communicated vide Ministry of Defence letter No. H/99099/2/2010-D(HAL) dated 17.9.10.*
- (h) *Policy Guidelines exist in the Company for the Functional Directors to indicate their remarks in the PARs of Heads of Finance, IMM & HR Departments of the Complex Offices and the Divisions. However, Shri Shivamurti vide letter dated 31.3.09 had brought out that some of the PARs of Finance and IMM Officials were not routed through Director (Finance). A communication in this regard was issued immediately to all the Complex HR Heads to ensure compliance of the laid down Rules/Policy Guidelines.*

A proposal, approved by the Board of HAL, for enhancement of age of retirement was sent to Ministry during 2011 to obtain the approval of the Competent Authority. The proposal was as follows:-

- a) *Extend the age of superannuation of Officers in Design & Development Discipline from 60 to 62 years; & Beyond 62 upto 65 years;*
- b) *Extend the age superannuation of Officers in the Production Discipline (Manufacturing/Overhaul/ Assembly/Testing Shops, Production Engineering, Tooling Quality Control Management Services, Customer Services, Laboratory, IT, Flight Test) from 60 to 62 years;*
- c) *Extension would be granted based on needs and the profile of the Officer. Further, the Officer should have secured average PAR Marks of 80% during the preceding 5 years;*
- d) *Power of granting the extension will be vested in the following Authorities:-*

Grade of the Officer	Approving Authority
<i>I to VIII</i>	<i>Board of Directors</i>
<i>IX & X</i>	<i>Secretary (DP), MoD</i>

- e) *The need for extension and suitability of the officer would be evaluated by a Committee of Directors, cleared by the Chairman and the recommendations submitted to the Approving Authority;*

- f) *Proposals in respect of Officers in Grades IX & X (GMs & EDs) would be forwarded, with the recommendation of the Board for consideration by Secretary (DP);*
- g) *The power of granting extension for the posts of whole time/Functional Directors and Chairman would vest with the Hon'ble Raksha Mantri/Appointments Committee of the Cabinet (ACC); and*
- h) *The Competent Authority would also have the right to terminate the services before expiry of such extension by giving 3 months notice in writing or by payment of Basic Pay + DA in lieu of the notice.*

The proposal was not made with the intension of helping a particular individual. The proposals were not approved also. HAL had forwarded the application of Shri Shivamurti for the post of Chairman, HAL, to the Ministry vide letter No. HAL/HR/46(13)/11 Dated 7.2.11."

20. The Committee enquired about the Terms & Conditions of appointment of Shri D. Shivamurti and the nature of the Post in which he was appointed, the Ministry of Defence, in a written reply, submitted:-

- a) *"Shri D. Shivamurti had joined HAL on 27.2.1991 as Chief Manager (Finance). He was appointed to the post of General Manager (Finance) effective from 1.7.2001. He was appointed as Director (Finance) vide Ministry of Defence letter No. 49(22)/2/2004/D(HAL) dated 28.10.2005 for a period of 5 years and had assumed the charge as Director (Finance) of the HAL on the same day;*
- b) *In 2010, on completion of his 5 years tenure as Director (Finance), the Ministry of Defence vide letter No. 49(22)/3/2005/D(HAL) dated 26.10.2010 had intimated HAL not to terminate his appointment as Director (Finance), beyond 27.10.2010, till a formal communication is sent by the Government in this regard. Subsequently, the Ministry of Defence vide letter No. 49(22)/3/2005/D(HAL) dated 3.3.2011 had intimated that the Competent Authority had not approved the extension of tenure of Shri D. Shivamurti as Director (Finance) with immediate effect. Accordingly, he was relieved from the post of Director (Finance), HAL with immediate effect vide HAL's letter No. HAL/HR/44(2)-14/2011/22 dated 3.3.2011;*
- c) *HAL could not settle his dues other than PF, as the Ministry had not issued Vigilance Clearance in respect of him. though HAL had requested the Ministry for*

Vigilance Clearance in March 2011 itself. Shri D. Shivamurti's Provident Fund dues were settled in 2011, based on his application, and to this effect he had also given an undertaking that he would not be joining any other Company vide his letter dated 4.5.2011.

- d) *Shri D. Shivamurti had not raised any issue on his contention of having lien on the post of General Manager (Finance), on being relieved from the post of Director (Finance);*
- e) *Shri D. Shivamurti had raised the issue of having lien on the post of General Manager (Finance) for the first time only in May 2014 i.e., after a lapse of more than 3 years from the date of his relieving from the post of Director (Finance). His contention of having lien on the post of General Manager (Finance) was not accepted by HAL, on the following grounds:-*
 - i) *As per Article 107B of the Articles of Association of HAL, the HAL shall permit retention of lien upto a specified period (5 years now) to its employees holding Posts below the Board level when they are appointed to Posts at the Board level within HAL or in any other CPSEs. This implies that desirous Officers have to apply for lien which will be considered by the HAL to permit retention of lien;*
 - ii) *Shri D. Shivamurti had not submitted any application for retention of lien on the Post of General Manager (Finance) on appointment to the post of Director (Finance) or during his tenure as Director (Finance);*
 - iii) *As per DPE OM No. 23/19/98/GL-014/DPE(GM) dated 13.1.1999 [circulated vide HAL's Circular dated 4.3.99], the maximum period for which retention of lien is to be permitted in the case of below Board level employees of Public Sector Enterprises on their selection and appointment to Board level Posts in the same or any other Central Public Enterprises would be 5 years.*
- f) *In order to substantiate the above grounds, following four cases, wherein Officers had sought lien on their earlier Post when appointed as Director / CMD are brought out below:-*
 - i) *Dr. A. K. Mishra, the then Director (Finance), HAL, on his appointment as Director (Finance), HAL w.e.f. 28.10.2011, had requested vide his application dated 31.10.2011 for retention of lien on the previous post of Executive Director (Finance). The same was permitted and he was*

intimated vide letter dated 25.11.2011. Subsequently, on amendment of the Policy to permit retention of lien upto 5 years, Dr. A.K. Mishra vide his letter dated 7.10.2014 had requested for retention of lien upto 31.1.16 (date of superannuation) and the same was permitted vide letter dated 21.10.2014;

- ii) *Shri Devasis Chowdhury, the then General Manager (Marketing), HAL, was appointed as Chairman & Managing Director, MIDHANI, Hyderabad, in April 2003. On his appointment as CMD, MIDHANI, Shri Chowdhury had requested for retention of lien for 3 years in HAL vide his Note dated 23.4.03. The same was permitted and communicated to him vide letter dated 24.4.2003;*
- iii) *Shri D. K. Venkatesh, the present incumbent in the HAL Board as Director (Engineering and R&D), HAL, on his appointment as Director w.e.f. 27.11.2015, had requested vide his application dated 30.11.2015 for retention of lien on the previous post of Officer on Special Duty, HAL Design Complex till his superannuation i.e., 31.5.2018 (2 years and 6 months). The same was permitted and he was intimated vide letter dated 8.12.2015;*
- iv) *Shri C. V. Ramana Rao, the present incumbent in the HAL Board as Director (Finance), HAL, on his appointment as Director w.e.f. 1.2.2016, had requested vide his application dated 3.2.2016 for retention of lien on the previous post of General Manager (Finance – A & A), HAL Corporate Office, till his superannuation i.e., 31.7.2018 (2 years and 6 months). The same was permitted and he was intimated vide letter dated 8.2.2016.*
- g) *It is to be noted here that Shri D. Shivamurti's actions of raising the issue of lien for the first time only in May 2014 i.e., after a lapse of more than 3 years from the date of his relieving from the post of Director (Finance), clearly appear to be afterthoughts. All his earlier actions would stand to prove that he was sure that his association with HAL had ended on 3.3.2011 [except for settlement of dues, etc., which was delayed for want of Vigilance Clearance from the Ministry in view of the Disciplinary Action initiated subsequently].*
- h) *HAL had replied to all the representations made by Shri D. Shivamurti in the past. He had also approached the National Commission for Scheduled Castes and HAL had duly replied to the Commission, whenever replies were sought from HAL. Personal Hearings before the Commission were also attended by HAL and by Officials from the Ministry of Defence on various dates;*

*The initial offer of appointment in HAL to Shri D. Shivamurti was issued for the post of Chief Manager (Internal Audit), HAL Corporate Office vide letter dated 13.10.1990. Subsequently, it was decided to post Shri D. Shivamurti as Chief Manager (Finance), HAL Overhaul Division, Bangalore. Shri D. Shivamurti joined the post of Chief Manager (Finance) on 27.2.1991. Chief Manager (Finance) is a permanent post in HAL. A copy of the Offer of Appointment issued to Shri Shivamurti vide letter dated 13.10.1990 indicating the Terms & Conditions of Appointment is enclosed as **Annexure-I**."*

21. The Committee desired to know about the nature of the Post(s) of General Manager (Finance) and Director (Finance) and also prescribed Recruitment Rules for Appointment to Substantive Posts and also to Non-Substantive / Temporary / Contractual Post in HAL, the Ministry of Defence, in a written reply, submitted:-

"The terminology of 'Substantive Post' is not used in HAL. Post of General Manager (Finance) in HAL is a permanent one, i.e. the incumbent can continue in service upto the age of superannuation viz. 60 years. Appointment as Director (Finance) can also be continued upto the age of 60 years, with extension(s) of service, and accordingly the post can also be construed as a permanent one as per the extant Government Guidelines for Central PSU Directors.

Appointment/Promotion to the post of General Manager (Finance) is made by the HAL internally, with the approval of the Board of Directors i.e. the Board of Directors is the Appointing Authority. Appointment to the Post of Director (Finance), which is a Board Level Post, is made by the Government. Appointment as Director (Finance) is made for tenure of 5 years in the first instance or till the age of Superannuation of the Officer (on attaining the age of 60 years) or until further orders, whichever event occurs earlier. In respect of incumbents who complete 5 years service as Director and who have balance service left for superannuation, extension of appointment in the Post is again considered by the Government and on approval by the Competent Authority, Orders are issued for appointment for further tenures of 5 years each at a time or till the age of superannuation or until further orders, whichever event occurs earlier.

There are no separate Rules for appointment to the post of General Manager (Finance) alone. The Rules are common for appointment to Posts in various Disciplines, with changes made in the Job Specifications for Posts in each Discipline. Shri D. Shivamurti's appointment to the Post of General Manager (Finance) was by promotion from the Post of Additional General Manager (Finance).

22. The Committee further desired to know about the appointments made in PESB on Tenure basis, relevant Rules and Procedure with respect to extension of Tenure of PESB Appointments and the Competent Authority to approve the extension of tenure of various Posts, the Ministry of Defence, in a written reply submitted:-

"It is a fact that appointments to Board level Posts in CPSEs are made for a tenure of 5 years in the first instance or till the age of Superannuation of the Officer (on attaining the age of 60 years) or until further orders, whichever event occurs earlier. In respect of incumbents who complete 5 years service as Director and who have balance service left for superannuation, extension of appointment in the Post is again considered by the Government.

23. The Committee thereafter desired to know that after non-extension of Tenure of Shri D. Shivamurti, as Director (Finance), was he ceased to be an employee of HAL and the Rules which provide that relieving from the Post of Director (Finance) tantamount to relieving from the HAL, the Ministry of Defence, in a written reply, submitted:-

"Consequent to non-extension of his Tenure as Director (Finance) w.e.f. 3.3.2011, Shri D. Shivamurti ceased to be an employee of HAL, as he had not retained lien on the Post of General Manager (Finance). HAL has prescribed Rules for retention of lien in the HAL when employees are appointed to Board level Posts. The said Rules stipulate that the HAL shall permit retention of lien for the specified period (5 years now) to its employees holding posts below the Board level when they are appointed to Posts at the Board level within the HAL or any other Central PSE. The said Rules imply that those desirous of retention of lien need to submit application for retention of lien and the approval of the Competent Authority permitting retention of lien needs to be obtained.

In the case of Shri D. Shivamurti, as he had not submitted application seeking retention of lien [either at the time of his appointment as Director (Finance) or during his tenure as Director (Finance)], the question of permitting retention of lien on the Post of General Manager (Finance), on his appointment as Director (Finance) w.e.f. 28.10.2005 did not arise. Consequently, he had no lien on the Post of General Manager (Finance). As such, relieving Shri D. Shivamurti from the Post of Director (Finance) w.e.f. 3.3.2011, tantamount to relieving him from the HAL.

24. On being enquired by the Committee about the reasons responsible for not his reversion back to the Substantive Post of General Manager (Finance), the Ministry of Defence, in a written reply submitted:-

"Shri D. Shivamurti could not be reverted to the Post of General Manager (Finance), since he had not retained lien on the said Post, on his appointment to the Post of Director (Finance). Further, it is also pertinent to mention here that the maximum period for which lien could be retained is 5 years."

25. On being further enquired by the Committee about the prescribed DoPT/DPE Guidelines with regard to the communication of adverse remarks in APAR / ACR to the employee, the Ministry of Defence, in a written reply submitted:-

"The DPE Guidelines vide O.M. No.5(1)/200-GM dated 28.5.2009 provide for communicating the full Annual Performance Appraisal Report(APAR) including the overall Grade of the concerned Officer which inter-alia state as under:-

The issue of communication of entries in the APAR has been considered by Supreme Court in the case of Shri Dev Dutt Vs. Union of India (Civil Appeal No.7631 of 2002). In their judgement dated 12.5.2008, the Supreme Court has observed that "when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible". It has been further mentioned in the judgement that the above directions will, inter-alia, be applicable to the employees of Public Sector Corporations.

In compliance of the above referred judgement of Supreme Court, the Government has issued instructions to the effect that full Annual Performance Appraisal Report including the overall grade shall be communicated to the concerned officer."

26. The Committee then desired to know about the specific procedure followed by HAL with regard to the communication of adverse remarks in APAR / ACR to its employee, the Ministry of Defence, in a written reply submitted:-

"The procedure followed in HAL provides that all Officers who have scored final Marks below 50 (out of a maximum of 100) and rated as Below Average in the APAR would be

intimated in writing about the same. Further, giving oral feedback by the Appraiser, to the Appraisee, on his performance, is an ongoing process. Extracts from the Rules in HAL in this regard (Feed Back System) are as under:-

- 14.1 All Officers who have scored final marks of below 50 and rated as Below Average would be intimated in writing about the same, through the concerned Division/Office, as follows:-

Officers in Grade	Approving Authority
VII and above	Corporate Office
V / VI	Complex Office
I to IV	Division / Office

This communication would be signed by the Head of the P&A Department at Corporate Office/Complex Office/Division/Office.

- 14.2 In addition to the above, oral feedback by the Appraisers, to the Appraisee, on his performance, should be an ongoing process. It is necessary to encourage progress and correct mistakes. The Appraisee should be encouraged and the areas requiring immediate attention for improving his performance should be highlighted.
- 14.3 The Initiating Authority should inform the Appraisee in writing as and when the need arises.
- 14.4 Further to the Feedback/Communication as at paras 14.1 to 14.3 above, the HRD Cell should ensure communication of the Areas/Traits for improvement, if any, to the Appraisee, after the Report is completed by all concerned. Such communication would be issued as follows:-

i) For Officers upto and including Grade IV:-

The HRD Cells of the respective Divisions/Offices would identify the cases where feedback is required and would ensure that necessary communications are issued to the Officers, through the IA/RA.

ii) For Officers in Grades V & VI :-

The HRD Cell of the Complex Office will identify the cases where feedback is required to be given and would communicate the same to the Officers concerned through the concerned Division/Office.

(iii) For Officers in Grade VII and above:-

Corporate Office will identify the cases where feedback is required to be given and would communicate the same to the Officers concerned, through the concerned Division/Office, with a copy to the Complex Office.

27. The Committee further desired to know the prescribed Rules followed by the HAL under which a lien of a Post of an employee can be retained or terminated and whether the relevant Rules are different for Board level employees and below Board level employees, the Ministry of Defence, in a written reply submitted:-

"HAL has prescribed Rules which provide that the HAL shall permit retention of lien for the specified period (5 years now) to its employees holding posts below the Board level when they are appointed to Posts at the Board level within the HAL or any other Central PSE. There are no specific Rules in the HAL for Termination of lien by Board level employees who are permitted to retain lien on the below Board level Posts. There are no laid down provisions in the HAL providing for lien on the below Board level Posts by below level employees, in case they are offered appointment in other Organizations."

28. Thereafter, the Committee desired to know about the relevant Rules with regard to the retention of lien when employees are appointed to Board level Posts, within or outside the Central PSE and in such cases, does termination of lien *suo-moto* deem to apply, the Ministry of Defence, in a written reply submitted:-

"HAL has prescribed Rules which provide that the HAL shall permit retention of lien for the specified period (5 years now) to its employees holding posts below the Board level when they are appointed to Posts at the Board level within the HAL or any other Central PSE."

Termination of lien suo-moto or otherwise would apply only in cases where lien on the below Board level Post is permitted to be retained and consequently retained by the individual. Such a question will not arise in cases where permission for retention of lien is not sought or lien is not retained."

29. During the oral evidence held on 26.9.2017, the representatives of the Ministry of Defence on the issue, deposed before the Committee as follows:-

"As regards ACRs/filling up of Posts, HAL looks after the same upto and including the level of Executive Directors. Posts of Directors are filled by the PESB. Shri D. Shivamurti's ACR, being Director (Finance), after initiation by Chairman, was sent to the Ministry of Defence for further action."

Initiating Authority is the Chairman and Accepting Authority is the Government. The writing of ACR as Initiating Authority is done by the Chairman.

ACRs are submitted annually and remarks are recorded. In the case of Shri D. Shivamurti evaluation was done in 2010 for extension of otherwise of his tenure on the basis of his ACRs and Special Performance Report in PESB by joint appraisal. Immediately after receipt of the recommendation of PESB. The proposal for non-extension was sent for approval of ACC on 21.10.2010."

30. On being specifically enquired by the Committee as to whether there is any prescribed time-limit under the Rules within which application for retention of lien is to be submitted and the details of application of Shri D. Shivamurti for seeking retention of lien, the Ministry of Defence, in a written reply submitted:-

"The Rules of the HAL have not prescribed any time-limit within which the application for retention of lien is to be submitted. However, it is implied that one has to submit the Application for retention of lien at the time of appointment to the Board level Post. Shri D. Shivamurti, consequent to his appointment as Director (Finance), had not submitted application for retention of lien at the time of his appointment as Director (Finance) w.e.f. 28.10.2005 or even during his tenure as Director (Finance). However, citing the discussions at National Commission for Scheduled Castes, Shri D. Shivamurti vide letter dated 27.5.2015 [after 4 years & 2 months of his relieving from the Post of Director (Finance)], had submitted a request for extension of lien. The same was received by HAL on 29.5.2015 and was regretted vide HAL's letter dated 8.6.2015."

31. In this regard, the representatives of the Ministry of Defence, during their oral evidence held on 26.9.2017, deposed before the Committee as follows:-

"As far as lien is concerned, it is strictly in terms of DPE Guidelines. The DPE Guidelines stipulated that till the year 1999 it was for three years which was extended to five years vide DPE O.M. No.23/19/98/GL-014/DPE (GM) dated 13.1.1999. He could have retained lien upto 17.10.2010, i.e., five years. Shri Shivamurti did not choose to exercise this right to retain lien. HAL is strictly governed by the DPE Guidelines only and have no other Guidelines relating to lien."

32. The Committee further desired to know about the Rules which provide for the requirement of an application from an employee desirous of retention of lien and the Competent Authority to permit or approve for such retention of lien in case someone is appointed to a Board level Post, the Ministry of Defence, in a written reply submitted:-

"The Rules state that the HAL shall permit retention of lien for the specified period (5 years now) to its employees holding posts below the Board level when they are appointed to Posts at the Board level within the HAL or any other Central PSE. The Rule position implies that those desirous of retention of lien need to submit the application and the approval of the Competent Authority permitting retention of lien needs to be obtained. The Head of the HAL, i.e., CMD is the Competent Authority to permit or approve for such retention of lien."

33. The Committee thereupon asked about the reasons for the delay in implementing DPE Guidelines/ Instructions in regard to specification of maximum period for retention of lien for the Posts below the Board level when they are appointed to the Posts at the Board level within the HAL or any other Central PSE, as 5 years vide DPE OM dated 13.1.1999, the Ministry of Defence, in a written reply submitted:-

"The DPE OM dated 13.1.99 was notified internally within the HAL, vide letter dated 4.3.1999 for information of all concerned. The delay was only in amending Article 107B of the Articles of Association of the HAL and the HR Rules."

34. On being further enquired by the Committee about the specific reason for termination of lien in case of Shri D. Shivamurti, the Ministry of Defence, in a written reply submitted:-

"Shri D. Shivamurti had not retained lien on the Post of General Manager (Finance) consequent to his appointment as Director (Finance). Hence, the question of termination of lien in the case of Shri D. Shivamurti did not arise."

OBSERVATIONS / RECOMMENDATIONS

Devising a system to evaluate Annual Confidential Report (ACR) periodically

35. The Committee note that Shri D. Shivamurti initially joined the Hindustan Aeronautics Limited (HAL) on 27.2.1991 as Chief Manager (Finance). Thereafter, he was appointed to the post of Assistant General Manager (Finance) and then General Manager (Finance) on 1.7.2001. Based on the interview conducted by the Public Enterprises Selection Board under the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), he was appointed as Director (Finance) on 28.10.2005 for a fix tenure of 5 years. The post of Director (Finance) is a non-substantive Board level post; which is filled up with the approval of the Appointments Committee of the Cabinet (ACC) as per the Orders/Guidelines of DoPT/DPE, for a fix tenure of 5 years and which is further extendable to 5 years or till the age of superannuation of the Officer, i.e., on attaining the age of 60 years. Shri Shivamurti was not granted extension inspite of his being the only internal eligible candidate for the post of Chairman, Hindustan Aeronautics Limited, rather adverse comments were made in his Annual Confidential Report (ACR). As per the DoPT/DPE Guidelines, the adverse comments made in the ACR should have been communicated to Shri Shivamurti by the HAL Administrative Authorities. However, the Ministry of Defence/Public Enterprises Selection Board recommended non-extension of his tenure beyond 5 years and forwarded the proposal to EO(ACC), Department of Personnel & Training after conducting a Joint Appraisal.

36. The Committee further note from the submission made by the representatives of the Ministry of Defence that normally ACRs are evaluated on yearly basis. However, if there are any adverse remarks in the ACR, there is a provision of Joint Appraisal. In the instant case of Shri D. Shivamurti, the Committee are surprised to find that the ACR evaluation was done at the end of the tenure of his post as Director (Finance), i.e., five years due to which his extension was not considered. The then Chairman, HAL was the

Reporting Authority in respect of his performance and the adverse observations made by him were accepted by the Hon'ble Raksha Mantri, who was the Accepting Authority in the matter. However, it was reported by the Chairman, HAL on 23.12.2010 that his ACR for the period 2009-10 was duly communicated to Shri D. Shivamurti.

37. The Committee also note that the tenure of 5 years of Shri D. Shivamurti was not extended further and instead, he was relieved from the services of HAL w.e.f., 3.3.2011 citing adverse Joint Appraisal against him. Since no convincing evidence in support of their averments was given by the Ministry/HAL Authorities, the Committee have no option but to believe that the entire adverse scenario against the Shri Shivamurti, who had successfully completed his tenure of 5 years, was to curtail the prospects of his selection for the post of the Chairman, HAL. On account of this, Shri D. Shivamurti had also to wait for final settlement of his dues. Though from the foregoing, it appears that there was no procedural lapses with respect to non-extension of lien in the case of Shri D. Shivamurti, the Committee are of the opinion that a well-crafted, universal and transparent procedure should be devised by the Ministry of Defence/HAL for considering ACRs or Joint Appraisal in all the cases so that the Appraisal Mechanism should not be selectively applied as it was invoked in the case of Shri D. Shivamurti. The Committee, therefore, recommend that the Ministry should initiate concrete measures to devise a fool-proof and transparent system to evaluate one's ACR periodically or conduct Joint Appraisal to avoid recurrence of such incidences in future. The Committee may be apprised of the action taken in this regard.

Modification in Service Rules for retention of lien considering the principle of natural justice

38. The Committee note that the initial offer of appointment in HAL to Shri D. Shivamurti was issued for the post of Chief Manager (Internal Audit) *vide* letter dated 13.10.1990. Subsequently, it was decided to post Shri D. Shivamurti as Chief Manager

(Finance), HAL Overhaul Division, Bangalore. Shri D. Shivamurti joined the post of Chief Manager (Finance) on 27.2.1991. Though the Chief Manager (Finance) is a permanent post in the HAL, the terminology of 'Substantive Post' had not been used in the HAL. The post of General Manager (Finance) in HAL is also a permanent one, i.e., the incumbent can continue in service upto the age of superannuation viz., 60 years. Appointment/Promotion to the post of General Manager (Finance) is made by the HAL internally, with the approval of the Appointing Authority, i.e., the Board of Directors. On the other hand, appointment to the Post of Director (Finance), which is a Board Level Post, is made by the Government. Appointment as Director (Finance) is made for tenure of 5 years - in the first instance - or till the age of Superannuation of the Officer (*on attaining the age of 60 years*) or until further orders, whichever event occurs earlier. Appointment as Director (Finance) can also be continued upto the age of 60 years, with subsequent extension of service, and accordingly the post can also be construed as a Permanent one as per the extent DoPT/DPE Guidelines for the Central PSU Directors.

39. The Committee further note that the post of General Manager in HAL is a below Board Level Permanent post, which is filled up by the HAL internally with the approval of the Board of Directors. In the instant case of Shri D. Shivamurti, the representationist, the matter of retention of lien started when he was promoted from the below Board Level post to the Board Level post and could not inform about his intent to continue his lien on the old post, i.e., below Board Level post. In this regard, the Committee strongly recommend that for retention of lien in the case of promotion/appointment from a permanent post to a tenure post, the Ministry of Defence should take necessary steps to modify the Service Rules in such a manner that it automatically retains his/her lien to a permanent post considering the principle of natural justice. The Committee may be apprised of the action taken on this issue with wider ramifications.

Mandatory information in the event of 'Lapse of Lien'

40. The Committee note that the Article 107B of the Articles of Association of the HAL provides for retention of lien in the Company when employees are appointed to Board level posts. As per the relevant Rules, those desirous of retention of lien need to apply for the same and that retention of lien needs to be permitted by the Competent Authority, i.e., the CMD, HAL. In pursuance of the Ministry of Industry (Department of Public Enterprises) O.M. dated 13.1.1999 and the Ministry of Defence O.M. dated 17.2.1999, the HAL permitted the retention of lien for 5 years *vide* their orders dated 4.3.1999 to its employees holding posts below the Board level when they are appointed to post(s) at the Board level within the Company or any other CPSEs.

41. As per the submissions made by the Ministry of Defence, the Committee further note that Shri D. Shivamurti did not exercise his right to apply for lien on the post of General Manager (Finance) on his appointment as Director (Finance) w.e.f., 28.10.2005 or even during his tenure till 3.3.2011, i.e., the date on which he ceased to be the Director (Finance) as his term was not extended further by the Competent Authority, i.e., the ACC, on the recommendation of the Public Enterprises Selection Board/DoPT.

42. The Committee further note from the submission made by the Ministry that Shri D. Shivamurti had applied for his lien in the HAL on the post of General Manager (Finance) only in May, 2014, i.e., after a lapse of more than 3 years from the date of his relieving from the post of Director (Finance). His account on cessation of service was settled in May, 2014 itself after the receipt of Vigilance clearance from the Ministry of Defence *vide* letter dated 18.3.2014. As per extent Rules/Guidelines, nothing much could had been done in this regard, as Shri D. Shivamurti had already applied for his final accounts with the Company after non-extension of his term as Director (Finance).

43. On the issue of retention of lien, the Committee are satisfied to note that the DoPT/DPE Guidelines in respect of retention of lien are being implemented in the Ministry of Defence and Public Sector Undertakings thereunder - including the Hindustan Aeronautics Limited - in true spirit. In this context, the Committee would like to rely on the case of Dr. S. K. Kacker, in which the Hon'ble Supreme Court observed as follows:-

"It would indicate that on appointment to a permanent post, be it under the Central Government or the State Government, outside the cadre on which he is borne, his lien on the previous permanent post stands terminated on his acquiring a lien in a permanent post. The post of Director is the head of the AIIMS and it is independent of all the Departments. The Director is enjoined to supervise not only the administrative work of the AIIMS, but also its Management for and on behalf of the Institute Body. Therefore, on his appointment to the permanent post as a Director, he lost his lien on the post as a Professor and Head of the ENT Department. Resultantly, when the tenure of the appellant had expired on/by efflux of time or in case any of the eventualities mentioned in Regulation 30-A had happened, he can not revert to the post of Professor and Head of the Department."

44. Further, the Committee have also taken note of the Hon'ble Jharkhand High Court's judgement dated 8.4.03 in the case of Deobrat Sahay v/s Union of India, Para 22 of which states as under :-

"Existence of such lien and the incidents thereof are dependent on the Service Rules of Terms & Conditions by which Public Servant is governed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the later post and lien against his previous post automatically disappears. But if the Rules provides to the contrary, a Public Servant holding substantively a permanent post retains a lien on that post during the period provided in the Rule. There are circumstances where the lien of a Government Servant is suspended on a permanent post which he holds substantively on his appointment on a tenure post in a substantive capacity."

45. However, the Committee observe from the written replies as well as during the oral evidence of the representatives of the Ministry that the Ministry continue to harp on only one point that is non-application of retention of lien on the previous/substantive post by Shri D. Shivamurti, whereas, the Committee are of firm opinion that the Ministry should

revisit and modify the existing Rules/Guidelines to the extent that the employees may be mandatorily informed in writing of the lapse of lien in their previous post beforehand so that occurrence of such hardship to the employees do not recur in future. However, after going through the sequential recapitulation of the various aspects raised by Shri D. Shivamurti and the submissions made by the Ministry, the Committee urge the Ministry of Defence to re-visit his entire case by taking into account the following determining factors:-

- (i) *If the lien on a substantive post in an Organisation is ipso facto acquired by a serving employee, whether there is any need for that employee to seek the retention of lien in writing or otherwise, the Organisation could arbitrarily terminate the lien on a permanent post, thereby, leaving the employee not to have lien on any post.*
- (ii) *Whether the Hindustan Aeronautics Limited had implemented the Presidential Directives dated 13 January, 1999 which inter alia relate to extension of lien of an employee from 3 to 5 years after a mammoth delay of 16 years.*
- (iii) *During the service of Shri D. Shivamurti, whether his lien was extended by the Hindustan Aeronautics Limited.*
- (iv) *Since there exist a difference between 'relieving of an employee from a Post' and 'relieving of an employee from the Service', whether on 3 March, 2011, Shri D. Shivamurti was relieved from the post of director (Finance) and not from the Service of the Hindustan Aeronautics Limited.*

The Committee would like to be apprised of the measures taken by the Ministry of Defence for mitigating the hardships faced by Shri D. Shivamurti by way of termination of his services in the Hindustan Aeronautics Limited on technical grounds which could otherwise have been fuctionalized even by a lower level functionary by following the basic tenets of the law of natural justice and welfare-oriented interpretation of Rules/Regulations of the Organisation.

Formation of Rules/Provision to safeguard the employees to retain their lien

46. The Committee have been apprised that the HAL has prescribed Rules for retention of lien in the HAL when employees are appointed to Board level Posts. The said Rules stipulate that the HAL shall permit retention of lien for the specified period (5 years now) to its employees holding posts below the Board level, when they are appointed to Posts at the Board level within the HAL or any other PSE as per the Ministry of Industry (Department of Public Enterprises) O.M. dated 13.1.1999. The said Rules imply that those desirous of retention of lien need to submit application for retention of lien beyond the prescribed period and the approval of the Competent Authority permitting retention of lien, i.e., CMD/HAL, needs to be obtained beforehand. In the case of Shri D. Shivamurti, as he had not submitted application seeking retention of lien *[either at the time of his appointment as Director (Finance) or during his tenure as Director (Finance)]*, the question of permitting retention of lien on his previous Post of General Manager (Finance), on his appointment as Director (Finance) w.e.f. 28.10.2005 did not arise. Consequently, he had no lien on the post of General Manager (Finance). As such, relieving Shri D. Shivamurti from the Post of Director (Finance) w.e.f. 3.3.2011, tantamounts to relieving him from the HAL.

47. Further, as regards, relieving of an employee from a particular post tantamount to relieving from the Company itself, the Ministry have not furnished any Rule *in vogue* in this respect. The Committee have taken note of the fact that there is no such specific Rules/Provisions to this effect, as per the reply furnished by the Ministry of Defence. The Committee, therefore, recommend that a specific Rule/Provision be urgently formulated by the Ministry of Defence in consultation with the Ministry of Industry (Department of Public Enterprises) in general, and the HAL, in particular, so that there could not be any room for ambiguity or different interpretations by different Authorities in future at the cost of not only marring the career aspirations of employees but also forced termination

of employment of long serving personnel like Shri Shivamurti. The Committee would like to be apprised of the action initiated in this direction.

Review of the existing Rules/Guidelines to amend/regulate the 'Retention of Lien'

48. The Committee are informed that from the year 1999, the lien on a post was extended to five years. The HAL strictly comply with the DPE Guidelines in respect of Board Level Posts which are approved by the ACC. Though, all the service conditions for the below Board level posts are governed by the Recruitment Rules of the HAL, there are no specific Guidelines relating to retention of lien by the Board level officers for their previous below Board level post. Notwithstanding the fact that DoPT/DPE Guidelines are being followed by the Ministry of Defence in general, and in the HAL in particular, the Committee strongly feel that the Recruitment Rules for the appointments, viz., below Board level, Board level and also appointments with respect to below Board level to Board level, as in the instant case, need a revisit to amend/regulate the retention of lien for an employee on the previous post to the effect that it should not be terminated automatically without the consent of the individual to obviate similar situation in future. In any case, the individual should have the option to go back to the previous post before the expiry of the lien period. The Committee, therefore, urge that the Ministry of Defence, in consultation with the Ministry of Heavy Industries & Public Enterprises (Department of Public Enterprises) and the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), should review the existing Rules/Guidelines and take action accordingly to amend the relevant Rules/Guidelines in terms of regulating the automatic retention of lien of an employee on the previous post till confirmation of an employee on the new post. The Committee would like to be apprised of the final outcome in this regard within three months of the presentation of this Report to the House.