

CB-I NO. 315 VOL. XXII

COMMITTEE ON PETITIONS

(THIRTEENTH LOK SABHA)

TWENTY SECOND REPORT

(Presented to Lok Sabha on 11 December, 2002)



LOK SABHA SECRETARIAT
NEW DELHI

December, 2002/Agrahayana, 1924 (Saka)

Price : Rs. 10.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Bussiness in Lok Sabha (Tenth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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COMPOSITION OF THE COMMITTEE ON PETITIONS

Shri Basudeb Acharia — *Chairman*

MEMBERS

2. Shri Ramakant Angle
3. Shri S. Bangarappa
4. Shri Ambati Brahmaniah
5. Shri Anant Gudhe*
6. Shri Babubhai K. Katara
7. Shri P.R. Khunte
8. Shri P.R. Kyndiah
9. Shri G. Mallikarjunappa
10. Shri Sadashivrao Dadoba Mandlik
11. Shri Sis Ram Ola
12. Shri Sundar Lal Patwa
13. Dr. Bikram Sarkar
14. Shri C. Sreenivasan**
15. Shri Chandra Bhushan Singh

SECRETARIAT

- | | | |
|----------------------|---|---------------------------|
| 1. Shri S.C. Rastogi | — | <i>Joint Secretary</i> |
| 2. Shri C.S. Joon | — | <i>Deputy Secretary</i> |
| 3. Shri J.S. Chauhan | — | <i>Under Secretary</i> |
| 4. Smt. Neera Singh | — | <i>Assistant Director</i> |

*Nominated w.e.f. 28 August, 2002 vide Para No. 3164 of Bulletin Part-II dated 28 August, 2002 vice Shri Anant Gangaram Geete ceased to be a member of the Committee on his appointment as Minister.

** Nominated w.e.f. 27 March, 2002 vide Para No. 2778 of Bulletin Part-II dated 27 March, 2002 vice Dr. K. Malaisamy, M.P. who resigned.

**TWENTY-SECOND REPORT OF THE COMMITTEE ON PETITIONS
(THIRTEENTH LOK SABHA)**

INTRODUCTION

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

- (i) Representation against the merger of National Test House (NTH) with the Bureau of Indian Standards (BIS).
 - (ii) Representation regarding disparity in pension scheme for class III & IV employees of Kolkata Port Trust who retired during the period between 1.5.1982 and 31.12.1983.
2. The Committee considered and adopted the draft Twenty-second Report at their sitting held on 5 December, 2002.
3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;
5 December, 2002

14 Agrahayana, 1924 (Saka)

BASUDEB ACHARIA,
Chairman,
Committee on Petitions.

CHAPTER I

REPRESENTATION AGAINST THE MERGER OF NATIONAL TEST HOUSE (NTH) WITH THE BUREAU OF INDIAN STANDARDS (BIS)

* * * * *

Shri D.S. Mazumdar, President of Gazetted Officers' Association and Shri Nagendra Singh, Convener, Officers & Employees Forum, National Test House submitted a representation against the merger of National Test House (NTH) with Bureau of Indian Standards (BIS).

1.2 The petitioners in their representation submitted that National Test House (NTH) is a pioneer and foremost organisation in the country in the field of testing and quality assurance. Various departments of Government of India like Railways, CPWD, BSF, Port Trust, Surface Transport etc. still rely on the test certificates issued by NTH for evaluating products/samples and it caters to their specific needs. NTH has developed consummate testing technologists over the decades. Since 1962, it is a Scientific & Technological Institution. Its activities involve testing, quality evaluation, Research & Development in testing technology, calibration in all branches of Science & Technology for the betterment of industries, small scale industries, agriculture, housing agencies and common man. It acts as a third party arbitrator in case of dispute referred by CBI, State Police and other vigilance agencies. It offers expert opinion in the Court of Law in the cases referred to it. It has been authorised by the Ministry of Industry under the Indian Boiler Regulation Act, 1950 for certification of High Pressure Welders. Keeping in view, about 90 years of its experience in the quality evaluation and related field and its diverse functioning, eminent scientists have taken a view that NTH should be kept as an independent Government Department:

The petitioners stated that on the other hand, the Bureau of Indian Standards (BIS) has been specifically created for preparation of National standards, marking and certification of products produced in India. As the business of BIS does not come under the purview of testing products pertaining to criminal cases both judiciary and crime control bodies will face an arduous problem in solving the disputed cases, if NTH would be merged with BIS. As soon as NTH would be merged with BIS, consumers will be deprived of getting an impartial quality assurance certification.

The petitioners contended that while arriving at the decision to merge NTH with BIS; the "Group of Secretaries" of the Government has failed

to consider the scientific, technological and other obligations associated with the issues. The decision taken to merge NTH with BIS is irrational and unscientific.

1.3 The petitioners, therefore, requested that the proposal to merge NTH with BIS should be reviewed by an Expert Committee and NTH should remain under the direct control of the Government of India.

1.4 The Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) were requested on 13th August, 2002 to furnish their factual comments on the points raised in the representation. In response, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) vide their OM No. H-11017/1/2002-NTH (P&P) dated 29th August, 2002 furnished their comments as follows:—

“In connection with the abolition of the erstwhile Department of Supply, a decision was taken in Government that the function discharged by the National Test House (NTH) (which was a subordinate office of the Department of Supply) may be transferred to the Bureau of Indian Standards (BIS) under the Department of Consumer Affairs. In pursuance of this decision, NTH was transferred to the Department of Consumer Affairs. The Department of Consumer Affairs also constituted a Committee in October, 2001, under the Chairmanship of Additional Secretary, Department of Consumer Affairs, to work out the modalities of coordination and merger of NTH with BIS, Director General, BIS; Director General, NTH and representatives from the Department of Consumer Affairs, Ministry of Finance; Department of Personnel & Training and Department of Pension were included in the Committee as Members. The Committee has already submitted its report to the Department of Consumer Affairs.

In its Report, the Committee has recommended the modalities of merger of NTH with BIS. In doing so, the Committee has also examined in detail the implications of the merger including the issues raised by the petitioner. The Committee has noted that NTH functions as an independent Government test laboratory providing service to any customer for testing and evaluation as per any specification (national, international customer's specification, etc.). NTH undertakes national jobs as a project work from different Government Departments like Defence, Railways, CPWD etc. It undertakes proficiency testing, inter-lab comparison for Department of Science & Technology and also evaluation work from BIS for formulation of national standards. NTH undertakes calibration service, failure analysis and other investigational work related to crime, building collapse etc. It also provides on request/direction authenticated test data for the legal system in the country including

High Courts, Supreme Court, CVC, CBI, Police, Customs and other authorities. NTH also provides service of a Reference Test Laboratory in case of a dispute regarding test result between a laboratory and a customer and between two laboratories.

The Committee has further noted that the functions of the BIS have been laid down in the BIS Act (Section 10) and these mostly relate to the establishment of the Indian Standard and grant of licence by BIS for use of the Standard Mark. One of the functions of BIS spelt out in Section 10(1)(h) of the Act is to establish, maintain and recognize laboratories for the purpose of standardization and quality control and for such other purposes as may be prescribed. The functions presently discharged by BIS laboratories are essentially to fulfil the objectives of the Bureau which is to provide for the harmonious development of the activities of standardization, marking and quality certification of goods and for related matters thereto. Keeping in view the basic differences in the objectives and functions of the two organisations namely NTH and BIS, the Committee has brought out certain difficulties which may arise as a result of the merger of the two institutions. Suitable amendments may have to be made in the BIS Act, if BIS is to discharge all the functions being presently performed by NTH. The report of the Committee is under examination."

1.5 The Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) further stated that the Department of Consumer Affairs had agreed with the views of the Committee set up by the Department to work out the modalities of coordination and merger of NTH with BIS that the merger may lead to certain difficulties. Approval of Government in Department of Consumer Affairs had been obtained that the issue be reconsidered in the "Committee of Secretaries".

1.6 After perusing the comments furnished by the Ministry of Consumers Affairs, Food & Public Distribution (Department of Consumer Affairs), the Committee undertook an on-the-spot study visit to Kolkata on 23rd September, 2002 and held informal discussions with the petitioners on their representation.

1.7 During the discussions with the petitioners, the Committee were informed by the representatives of the National Test House Gazetted Officers' Association that the merger proposal of NTH with BIS came rather abruptly in the month of August, 2000. According to framed guidelines of the World Trade Organisation (WTO), most of the countries across the globe maintain at least one national testing and calibration laboratory under the direct control of the Government for quality assurance of various products and consumable commodities. Hence, there is a need to maintain an independent testing laboratory like NTH according to WTO guidelines.

The petitioners further informed the Committee that NTH also usually analyses about 300 disputed samples per year and offers expert opinions to Central Bureau of Investigation, Central Vigilance Commission, Police, Magistrates, Judges etc. The services of NTH are available through its six regional branches located at Kolkata, Mumbai, Chennai, Ghaziabad, Jaipur and Guwahati. NTH provides its services to about 2000 customers and 25000 samples are tested per year. The sanctioned manpower of NTH amounts to 794 out of which 635 are working in the organisation. This includes 213 scientific personnel; 183 technical supporting staff and 239 ministerial staff.

1.8 The Committee, thereafter, took the oral evidence of the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) on 10th October, 2002 on the representation.

1.9 The Secretary during his evidence before the Committee informed that during the last five consecutive years he had appeared before the Standing Committee on Commerce/Food, Civil Supplies and Public Distribution when these Committees have gone into the entire issue of DGS&D, Department of Supply, NTH, CCA of DGS&D. They recommended many things about the abolition of Department of Supply, about pruning down the DGS&D, but any time the issue came up they repeatedly said, make it a center of excellence, let it grow, give it additional financial support, give it all autonomy and freedom that it needs and it was also said that there was a case of bringing all the laboratories under NTH so that it can really become a full fledged better and bigger organisation.

1.10 During evidence, the Secretary, Department of Consumer Affairs stated 'at no point of time, this Group of Secretaries thought it fit to call the Secretary (Commerce), who got the Supply Department merged or Secretary (Consumer Affairs). At no point of time did they discuss with the Director General (NTH) or Director-General (BIS) what you people think about it.'

He added:—

"One fine morning they (Group of Secretaries) took a view that because these two institutions have laboratories they should merge. When these orders came to our notice, I took the order of my Minister in my Department, and set up a Committee to find out how we will implement this order. This Committee comprised of Additional Secretary of my Department, the FA of my Department, who is representing the Ministry of Finance, representatives of the Department of Personnel, Public Grievances and Pensions, DGBIS, DGNTN and one or two other experts. They told me that 'yes' merger is possible but at a cost. The cost is first administrative cost, financial cost, procedural cost, legal cost and functional cost."

1.11 In a subsequent written note, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) stated that there will be administrative, legal financial and functional difficulties in the merger of NTH with BIS such as follows:—

“Administrative

- (i) The procedural systems and rules for functioning of BIS Branches and NTH laboratories are different—one being autonomous organisation and the other being part of Central Government Organisation.
- (ii) The rules for recruitment in both the organizations are different. Whereas the scientific cadre in BIS originates in Group ‘A’ posts, in the case of NTH, it originates from the post of Scientific Assistant, which is a Group ‘B’ Non-Gazetted post.
- (iii) The scales of pay, educational qualifications etc. prescribed for similar posts in these organisations are different.
- (iv) The promotional avenues for the officers and staff in these organisations are also different.
- (v) The employees of NTH are entitled to CGHS facilities and Government accommodation which they will have to forego after the merger takes place.

Financial

In case the merger takes place, there is a financial liability on the part of the Government of India. It has been anticipated that a one time payment of Rs. 84 crores is required to be made to BIS on account of the mandatory pensionary liability of the employees of NTH so transferred to BIS. In addition to this, an amount of Rs. 129 crores is required for meeting the liabilities on pension, gratuity, leave encashment, salary and other non-plan expenditure and also the plan expenditure during the next 5 years. This is considered to be essential, as BIS is not in a position to bear the additional financial liability of NTH. This liability is likely to continue even beyond 5 years also till BIS is in a position to bear this financial burden.

Legal

- (i) According to the provisions of BIS Act 1986, the BIS carries out activities of standardisation, marking and quality certification of goods and matters connected therewith. The act further provides that the laboratories established and maintained by the BIS shall carry out such functions as may be conducive to the interests of the Bureau. This clearly shows that any other activity such as commercial testing being done by the National Test House cannot be taken up by the BIS without amending the BIS Act. Thus,

amendment of the BIS Act would be essential to cover all the testing activities of NTH before the actual merger takes place.

- (ii) The legal status of both the organisations is different. NTH is a subordinate office of the Department of Consumer Affairs and BIS is an autonomous body which functions under the Bureau and the Executive body to whom all powers are statutorily vested.

Functional

The major functions of NTH consist of testing and evaluation of materials, products, equipments, apparatus and systems practically in branches of science and technology, research and development, testing technology and calibration. On the other hand, the functions of BIS as laid down in the BIS Act and Rules are all oriented towards attainment of BIS Fundamental Objectives which are the harmonious development of activities of standardization, marking and quality certification of goods. The functions of BIS laboratories are also to carry out activities related to BIS functions of standard formulation and certification. Testing is the basic activity of NTH whereas in BIS the testing is only a peripheral activity related to the standard formulation and certification. Thus, there are basic differences between the objectives and functions of NTH and those of BIS. Transfer of NTH functions to BIS would, therefore, disturb the focus of achievement of their respective objectives."

1.12 On the question of the efficacy of the decision to merge NTH with BIS, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) stated in their written note that:—

"NTH was established in 1912 on a modest scale for the Railways, primarily for the evaluation of certain indigenous products aimed at import substitution. Since 1912, the Government realised that there is a need for an independent Government laboratory for providing unbiased test results to courts, police authorities, CBI, CVC etc. and also to the other Central/State Government Ministries/Departments/Organisations. Therefore, the rational on the basis of which NTH was established, will get diluted with its merger with a standard formulation organisation such as BIS. There will be no other Organisation to discharge the functions independently which NTH is doing at present for quite some time."

1.13 When the Committee desired to know as to how the Department of Consumer Affairs would manage and coordinate the various functions of NTH and BIS after their merger, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) stated in their written note that:—

"The Department of Consumer Affairs is not in favour of merger of NTH with BIS; rather it has been proposed to keep both the

organisations as separate entities under the same Department with a better coordination, cutting down duplication and ensuring the activities of the two to supplement each other to the maximum extent possible. There is an urgent need to review the decision in the interest of both the organisations, as also their employees, scientists, technicians etc. The Department has already taken up the issue with the Committee of Secretaries to review the decision of the Group of Secretaries about the merger of NTH with BIS."

1.14 When the Committee desired to know as to whether the Committee of Secretaries had given a fresh consideration to the proposed merger, the Ministry in their written note stated as follows:—

"The meeting of the Committee of Secretaries to review the decision of the Group of Secretaries was scheduled twice but it had to be postponed due to exigencies of service. Fresh date for the meeting has not yet been fixed."

Observations/Recommendations

1.15 The Committee note that the National Test House (NTH) is a laboratory of national importance where testing facilities are available to the customers. NTH had been established way back in the year 1912 for evaluation of certain indigenous products aimed at import substitution. Presently, NTH is a subordinate office of the Department of Consumer Affairs. NTH provides test certification to various materials, products, equipments, apparatus and systems practically in all branches in Science & Technology and Research and Development. Its activities involve testing technology and calibration works. This organisation also helps in solving disputed matters referred to it by the Vigilance Agencies, Police and Courts of Law through evaluation/testing of the appropriate samples etc.

On the other hand, the Bureau of Indian Standards (BIS) has been established under the Bureau of Indian Standards Act, 1986. The functions of BIS have been laid down in section 10 of the Bureau of Indian Standards Act. The Committee note that the work of BIS mostly relates to establishment of the Indian Standard and grant of licence for the use of Standard Mark. One of the functions of BIS spelt out in Section 10(1)(h) of the Act is to establish, maintain and recognise laboratories for purpose of standardisation and quality control.

1.16 The main contention of the petitioners is that the Government has taken an irrational and unscientific decision to merge NTH with BIS. The petitioners have stated that as the business of BIS does not come under the purview of testing products pertaining to criminal cases both judiciary and crime control bodies will face an arduous task in solving the disputed cases, if NTH would be merged with BIS. Moreover, the consumers will be deprived of getting an impartial quality assurance certification after such merger. The petitioners have, therefore, requested that NTH should remain under the direct control of the Government.

1.17 The Committee observe that though the Parliamentary Committee on Commerce/Food, Civil Supplies and Public Distribution, who have gone into the entire issue of reorganisation of DGS&D etc., have observed that 'NTH, should be made a centre of excellence' and to achieve that objective, all autonomy and freedom with necessary financial support should be provided to it, the 'Group of Secretaries' instead of initiating steps to implement this recommendation of such high powered Committees, decided to recommend the merger of NTH with BIS.

1.18 The Committee were informed that with the abolition of the erstwhile Department of Supply, a decision was taken to transfer NTH to the BIS under the Department of Consumer Affairs. A "Group of Secretaries" examined the issue and took the decision to merge NTH with BIS. During the course of his oral evidence the Secretary, Department of Consumer Affairs has informed that at no point of time the Secretaries of the Department of Supply and Consumer Affairs, the Director General NTH or Director General BIS had been associated by the "Group of Secretaries" while taking the decision to merge NTH with BIS.

The Committee strongly deprecate that before arriving at the decision to merge NTH with BIS, the group of Secretaries did not think it fit to consult the concerned Secretaries and Organisational Heads so as to ascertain their views in the matter.

1.19 The Committee note that in pursuance of the decision to merge NTH and BIS, the Department of Consumer Affairs constituted a Committee in October, 2001 to work out the modalities of coordination and merger of NTH with BIS. This Committee has pointed out certain difficulties which will arise as a result of the merger of these two Institutions. The Department of Consumer Affairs have stated that there will be administrative, financial, legal and functional difficulties in case the merger of the two institutions takes place. In this context, the Committee are informed that the procedure, system and rules of functioning of BIS branches and NTH laboratories are different as BIS is an autonomous organisation and NTH is a part of the Government. The rules of recruitment, scales of pay, employee benefits etc. are different in both these organisations. Around Rs. 84 crores may be required for mandatory pensionary liabilities toward the employees of NTH so transferred to BIS. In addition Rs. 129 crores may be required for meeting the liabilities on pension, gratuity, salary, leave encashment and expenditure during the next five years upon such merger. Furthermore, an amendment of the BIS Act would be essential to cover all the testing activities of NTH before the actual merger takes place.

The Committee note that the Department of Consumer Affairs is not in favour of merger of NTH with BIS, rather it has been proposed to keep both the organisations as separate entities under the same Department with a better coordination, cutting down duplication and ensuring the activities of

the two to supplement each other to the maximum extent possible. The Department of Consumer Affairs has already taken up the issue with the "Committee of Secretaries" to review the decision of the "Group of Secretaries" about the merger of NTH with BIS. However, the Committee of Secretaries has not yet convened its meeting to examine the issue. The Committee, therefore, recommend that a fresh review may be made by the "Committee of Secretaries" of the decision to merge NTH with BIS in a scientific manner and with a positive perspective in mind, expeditiously.

1.20 The Committee note that most of the countries across the globe maintain one national testing and calibration laboratory under the direct control of the Government for quality assurance of various products and consumable commodities. The Committee recommend that the principles enunciated by the World Trade Organisation may be adhered to in the testing and quality assurance of products in the country. The Committee also recommend that NTH which gives reliable and unbiased test certification to consumers should be retained as an independent government organisation.

1.21 The Committee can hardly appreciate the manner in which the well considered recommendations of Parliamentary Committees are being treated by the Government. They therefore, recommend that not only the independent identity of NTH be maintained but as recommended by Parliamentary Committees on Commerce/Food, Civil Supplies and Public Distribution, necessary inputs be provided to it so that it could become a centre of excellence.

CHAPTER II

REPRESENTATION REGARDING DISPARITY IN PENSION SCHEME FOR CLASS III & IV EMPLOYEES OF KOLKATA PORT TRUST WHO RETIRED DURING THE PERIOD BETWEEN 1.5.1982 AND 31.12.1983.

2.1 On 13 July, 2000 Dr. A.K. Patel, M.P. forwarded a representation signed by Shri Biswanath Mitra, resident of 309/1, Upen Banerjee Road, P.O. Parnastree Palli, Kolkata-700 060 regarding disparity in pension scheme for class III & IV employees of Kolkata Port Trust who retired during the period between 1.5.1982 and 31.12.1983.

2.2 In the representation, the petitioner *inter-alia* submitted the following points:—

- (i) As per the Central Government Policy to introduce Liberalised Pension System in respect of Port Trusts employees retiring on or after 1.4.1979, the Ministry of Shipping & Transport (now Ministry of Surface Transport) had issued orders in April, 1980 for application of the said policy. Accordingly, the Bombay Port Trust issued order and implemented the Scheme w.e.f. February, 1983. After a writ petition in Bombay High Court, the Government in March, 1986 allowed option to the class III and IV employees who retired after 31.3.1979 and before 31.12.1983 for switching over to the Pension Scheme. Bombay Port Trust had asked for fresh option for the Pension Scheme from their class III and IV employees who retired after 31.3.1979 and before 31.12.1983 through a resolution passed by Bombay Port Trust Board on 6.7.1986;
- (ii) In respect of Kolkata Port Trust, the Board of Trustees of Kolkata Port Trust in its meeting held on 30.11.1981 had allowed the class III & IV employees who had retired with Central Provident Fund (C.P.F.) Scheme after 1.1.1980 and also to the family members of those class III & IV employees who had died after 1.1.1980 to opt for the pension scheme w.e.f. 3.3.1982 as per Central Government Policy to introduce Liberalised Pension System. This decision was conveyed through letter of FA & CAO office dated 4.12.1981. As per these orders, the persons who had retired under C.P.F. Scheme during 1.1.1980 to 3.3.1982, got the benefit to switch over to pension scheme. After that, F.A. & C.A.O., Kolkata Port Trust had issued another order No. 1804P dated 25.3.1982 in which the time for exercising option had been extended upto 30.4.1982 though the wage settlement for the period

1.1.1980 to 31.12.1983 was finalised on 1.1.1981 and the same was approved by the Government on 26.2.1981. In this case employees who retired during this period 26.2.1981 to 30.4.1982 were very much aware of the effect of settlement in regard to pay but the same employees got one more chance to switch over to pension scheme through the order dated 25.3.1982. The Kolkata Port Trust authority vide their letter 174 P FA & CAO/s office dated 2.5.1985 in continuation of office circular no. 552P dated 17.8.1984 as amended by Circular no. 1825 P dated 30.3.1985 had asked fresh option for the employees who retired between 1.1.1984 to 31.7.1984 under C.P.F. Scheme to switch over to pension scheme. The employees who retired during the period 14.5.1984 to 31.7.1984 were very much aware of the pay revision. But the same employees got one more chance to switch over to pension scheme through the order dated 2.5.1985. As such the stand of the Ministry of Surface Transport that fresh options to switch over to pension scheme by employees who were under C.P.F. were allowed only when there was a wage revision, was not at all correct;

- (iii) In respect of Bombay Port Trust, the employees who retired under CPF Scheme after 31.3.1979 and before February 1983 got benefit to switch over to pension scheme first time after their retirement and the employees who retired under CPF Scheme after February, 1983 and before December, 1983 got one more chance to switch over to pension scheme though there was no fresh wage revision during February 1983 to December, 1983; and
- (iv) There was settlement regarding wage revision with Labour Federation on 12.6.1989 for the period 1.1.1988 to 31.12.1992 and on 6.12.1994 for the period 1.1.1993 to 31.12.1997 but no fresh option was asked from the employees who retired under C.P.F. Scheme w.e.f. 1.1.1988 and 1.1.1993 due to change of wage revision. It shows, that there was no fixed criteria for asking fresh option due to the wage revision with retrospective effect. The employees of Kolkata Port Trust who retired under C.P.F. Scheme during 1.5.1982 to 31.12.1983 should be given single time chance after their retirement to come over to pension scheme on the pattern of Bombay Port Trust Employees. There should not be any discrimination between employees of Kolkata Port Trust & Bombay Port Trust. It was purely against the principle of natural justice as per Art. 14 and 16 of Constitution of India.

2.3 The petitioner, therefore, prayed that class III & IV employees of Kolkata Port Trust who retired under C.P.F. Scheme during the period between 1.5.1982 and 31.12.1983 may be given fresh option to switch over to pension scheme.

2.4 The representation was forwarded to the Ministry of Shipping on 2 August, 2000 for furnishing their point-wise comments on the matter. The Ministry of Shipping *vide* O.M. dated 14 June, 2001 have furnished the following comments:—

“The Kolkata Port Trust had allowed option to the employees who retired under Contributory Provident Fund (CPF) Scheme after 1.1.1980 and also to family members of those Class III & IV employees who died after 1.1.1980 to opt for pension scheme. This option was to be exercised before 30.4.1982. A fresh option was also allowed to those Class III & IV employees who were in service as on 1.1.1984 and who had retired between 1.4.1984 and 31.7.1984 with CPF benefits. Thus no fresh option was available to those who retired between 1.5.1982 and 31.12.1983. These options were asked for whenever there was a fresh pay revision at relevant times as a result of wage settlement or on introduction of a liberalised pension formula. There is no proposal to give fresh option to these employees who retired between 1.5.1982 to 31.12.1983.

As regards the option given to Class III and IV employees of Bombay Port Trust, it is stated that when the Central Government introduced liberalised pension system in respect of their employees retiring on or after 1.4.1979, the then Ministry of Shipping and Transport communicated their approval in April, 1980 to apply the liberalised formula in respect of employees of the Port Trusts and Dock Labour Boards who were governed by the pension scheme as applicable to the Central Govt. employees. However, the Bombay Port Trust actually implemented the liberalised formula from February, 1983. As a result, some of the employees who retired under CPF scheme or on pension scheme with liberal definition of pay, could not avail of the liberalised formula. Some of the aggrieved employees filed a Writ Petition in the High Court at Bombay and the case came up for hearing, the whole matter was examined afresh and it was decided by the Government in the month of March, 1986 to allow option to Officers/Employees of Bombay Port Trust who were on CPF scheme to come over to liberalised pension scheme. This option was given to Class III & IV employees who were in service as on 31.3.1979 and retired/died before 31.12.1983 and those Class I & II officers who were on CPF as on 31.3.1979 and who retired/died before 31.7.1982. This was implemented by a resolution passed by the Bombay Board Trust Board on 06.7.1986. In view of the above it is reiterated that fresh options to switch over to pension scheme by

employees who were under CPF were allowed only when there was a wage revision. This includes cases where liberalised pension scheme on the lines of Central Government scheme was introduced in the Port Sector in 1979. These options were allowed by the Calcutta Port Trust between 1979 to 1982 directly as a result of either introduction of liberalised pension scheme or fresh wage revision.

As regard Government approval for asking fresh option from the employees of the Port Trusts and Dock Labour Boards who retired after 1.1.1986 it may be mentioned that the Central Government, in pursuance of the recommendations of the IVth Central Pay Commission, had issued orders in May, 1987 giving option to the Central Government employees who retired after 1.1.1986 under CPF scheme to come over to pension scheme. Similarly, Port & Dock employees demanded the same benefits which was accepted by the Government and orders were issued *vide* Ministry's letter dated 9.1.1997. The total number of Class III & IV employees of Calcutta Port Trust who had retired under CPF Scheme between the period from 1.5.1982 to 31.12.1983 was 1133".

2.5 The Committee, thereafter, undertook on-the-spot study visit to Kolkata for having informal discussions with the petitioners and the officials of Kolkata Port Trust.

2.6 During the discussions with the petitioners on 18.6.2001, the Committee were informed that during the period 1.1.1980 to 31.12.1997 about 9300 Class III & IV employees retired under CPF Scheme from Kolkata Port Trust. Out of these more than 90% had already been allowed fresh options to switch over to pension scheme leaving just 10% out of the purview of pension scheme without any valid reason or justification. Class I & II were given the option but class III & IV had not been given this option.

2.7 As regards the main difference in terms of monetary benefits under C.P.F. Scheme and the Liberalised Pension Scheme, the petitioners contended that by extending the liberalised scheme, the idea of the Government was to provide an effective old age social security by way of pension. Pension to the retired employees was not available under the C.P.F. Scheme. The request for getting a fresh option to switch over to Liberalised Pension Scheme from C.P.F. was claimed to be logical, genuine and justified which shall restore their fundamental right. The petitioner also agreed that he would not insist on payment of arrears, if he was given the option to switch over to pension scheme.

2.8 As regards the correlation of wage revision of the Class III & IV employees with the option of pension scheme for these employees, the petitioner stated that there was no relationship between offer of such option and the wage revision.

2.9 As regards the number of class III & IV employees of Kolkata Port Trust who had not opted for pension and who now desired to switch over to the pension scheme, the Committee were informed that there were 685 such employees.

2.10 During the discussions with the officials of Kolkata Port Trust on 21.6.2001, the Committee were informed that the existing employees were given option to switch over to pension scheme on 13 occasions between 1962 and 1986. As per Government order dated 8.7.1986 all existing CPF beneficiaries were given the option to switch over to pension scheme 3 months prior to their retirement. Retired employees were given an option to switch over to Pension Scheme on 16 occasions after their retirement. Class III & Class IV employees retiring between 1.5.1982 to 31.12.1983 were given option to switch over to pension scheme on eight occasions. Such option was given to them during their service period, before their retirement.

2.11 On the question of number of employees of Kolkata Port Trust who retired during the period 1.5.1982 to 31.12.1983 with CPF benefits, the Committee were informed by the officials of the Port Trust that 1133 CPF beneficiaries (254 class III plus 879 class IV) retired with CPF benefits.

2.12 When the Committee desired to know as to whether Kolkata Port Trust would consider giving the liberalised pension benefits to all the Class III & IV employees who retired between 1.5.1982 and 31.12.1983, the officials of the Kolkata Port Trust stated that option to switch over to the pension scheme to both existing employees and retired employees were given as per instructions issued by Government from time to time. Such decision was not taken by Kolkata Port Trust independently but Government decision applicable to all Ports was duly implemented in Kolkata Port Trust. If Government by further order allowed CPF beneficiaries who retired between 1.5.1982 and 31.12.1983 to exercise option to switch over to pension scheme, Kolkata Port Trust in its present financial condition would not be able to take on the added burden. Giving an option to such retired employees to switch over to pension scheme would amount to digging up old records which may not always be available. Financial involvement in giving pensionary benefits to CPF beneficiaries who retired between the aforesaid period would amount to Rs. 22 crore with an assumption that 5% of retirees may not exercise such option. An amount of Rs. 23.15 lakhs per month would be required for monthly disbursement of pension. The Kolkata Port Trust was hard pressed in paying pension to its existing pensioners.

2.13 The Committee, thereafter, took oral evidence of the representatives of the Ministry of Shipping on 31 January, 2002. During evidence, the Committee desired to know the number of cases in the Kolkata Port Trust where switchover has been allowed to the employees from contributory provident fund to the Liberalised pension scheme after

retirement. To this, the representative of Ministry of Shipping stated as under:—

"The Government has, from time to time, given an opportunity to the employees in services and in many cases even after retirement, to consider and opt whether they would like to switch over from Contributory Provident Fund to the pension scheme. Whenever there has been any change either by way of wage settlement or the pension scheme was liberalised, this opportunity was given and the period during which an employee had choice had also been stated. This has been done across the board for all the port trusts. Therefore, in the case of the Kolkata Port Trust also there are instances where employees did get an opportunity to exercise the option after retirement.

There are some employees who retired during specified spells, who had the option to switch over to the pension scheme while they were in service but did not have such an option after their retirement. This particular case is not the only one in which option was not given after retirement of the employee. Therefore, there are a few spells. I can quote from the information given by the Kolkata Port Trust to the hon. Members of this hon. Committee when they were in Kolkata.

The Kolkata Port Trust had given some information to the Hon'ble Committee. I am reading from it. There were certain annexures where this information was given—by which order number and of options was given.

Sir, as per the Kolkata Port's Circular No. 5070/38(ix) dated 25.9.1972, the option was given to be exercised by 30th September, 1972 to all the existing Class III and Class IV employees and Class III and Class IV employees retired on or after 1.12.1968. Therefore, any employee, who retired either on 1.12.1968 or after that was eligible for this. But, suppose, if an employee had retired before 1.12.1968, let us say, he retired in 1967, he was not eligible for this option because his date of retirement is prior to 1.12.1968. The previous option given was in May, 1962, which was given to all employees in service as on 31.5.1962. Therefore, the employees who retired in 1967, did not have the opportunity of exercising their option after retirement. Therefore, this spell of 1982-83—about 17 months—is not the only period where the employees did not have the option of exercising it after retirement. This has happened in the past also. The basic issue has been that whenever there has been a change in the pension or there has been a wage settlement, at that time, the employees were given an option. In this particular case, those people who retired between May, 1982 to December, 1983, the Kolkata Port implemented the liberalised pension scheme, much before their date of retirement, and they were given an opportunity to exercise their option. Therefore, there was a time for these people to apply."

2.14 When the Committee pointed out to the witness that even there was a wage revision in Kolkata Port Trust and the retired employees were also allowed to exercise their option or switch over from C.P.F. scheme to Liberalised Pension Scheme, the representative of the Ministry of Shipping stated as under:—

“This wage revision took place somewhere between 1979 and 1980. The Kolkata Port implemented this at that particular time. So, the employees who retired up to December, 1983, were given the benefit of exercising their option as a result of liberalised pension scheme.”

2.15 When the Committee asked whether the employees who retired prior to wage revision were permitted to exercise their option or switch over from the Contributory Provident Fund to the Liberalised Pension scheme, the representative of the Ministry of Shipping stated as under:—

“The benefit was extended to employees who had retired with CPF benefits after 1.1.1979 but before 23.4.1979. That means whenever there was some time lag between the liberalisation of pension and its implementation, it was extended to even those employees who had in the meantime retired. In fact, this period has been specified at different points of time. For example, those people who retired up to December, 1983, had eight options to decide whether they would continue under CPF or they would like to switch over to pension scheme.

As regards the number of exact employees who were given this option at different spells of time, this information is not readily available in regard to the Kolkata Port in addition to whatever information has been given. However, I would request the hon'ble Chairman, Kolkata Port Trust, to place the information before the Committee. I do not know whether he would be in a position to give this information as to how many employees were there who were allowed to exercise this option from time to time, after retirement.”

The Chariman Kolkata Port Trust added:—

“Sir, it is a long period of time. It starts from 1962 onwards. The employees who were in service prior to 1962, they were under CPF and after 1962, everybody is under pension. We have given them choice, at least, 14-15 times.

The first offer was made in 1962 as soon as the pension scheme was introduced. We are giving offer to the CPF employees that if you want to switch over, you can switch over. What Shri Jain has said regarding the wage revision, existing employees are always allowed to switch over. The problem arises only in respect of the retired employees because they have retired. They might have missed an opportunity of wage revision. This wage revision had

taken place after their retirement. Then, only the Government enabled different parts and undertaking to bring those people also and retired people also under the ambit of the new benefits."

2.16 The Committee desired to know whether the same option has been given in the case of employees who retired between 1.5.1982 to 31.12.1983. To this, the Chairman, Kolkata Port Trust stated that:—

"We find that there is a gap. This period is not covered."

2.17 The Committee desired to know the reason for not covering this particular period. To this, the representative of the Ministry of Shipping stated:—

"Sir, as you may kindly recall, we gave you an impression and information in Kolkata. However, we are slightly wrong that this is a single case. We have detected two other cases also. During 1.6.1962 to 30.11.1968, almost six years, there was no such enabling order. So the people who had retired during that period, they could not come under this. So, we have located another interregnum from 1.1.1978 to 31.12.1978—almost one year. There is another gap and this is the third interregnum where we do not find any covering Government order."

He further added:—

"This option is given when there is some change either in the pension scheme or some benefit. During the period between 1982 to 1983, there was no change under liberalisation of pension, which would have affected these employees. Suppose, had there been some liberalisation of pension in 1983, which gets implemented in 1984, the employees who retired by the end of 1983, are eligible for that liberalised pension but unless they are given an option to exercise, after retirement they are deprived of that. The information submitted to this hon'ble Committee by the Kolkata Port about the delays in liberalisation in pension, subsequent to 1983, from that statement I find that after 1983, it was in 1990 that there was a liberalisation in pension scheme. Therefore, for the employees who retired in 1983, there was no denial of any liberalised benefit to them. There was no further liberalisation of pension."

2.18 When the Committee desired to know if the liberalised pension scheme has been allowed to those who retired between 31.12.1983 to 31.12.1984; the representatives of Ministry of Shipping stated that those who retired between 1.1.1984 and 31.7.1984 were allowed to exercise their option upto July, 1985.

2.19 When the Committee desired to know whether the liberalised pension scheme was applicable to those who retired in July, 1985, the representative of Ministry of Shipping replied in negative.

2.20 The Committee desired to know whether there is a uniform system to the exercise of option for pension scheme for Port Trusts. To this, the representative of Ministry of Shipping state as under:—

“The orders are issued by the Ministry to all the ports with specified dates. Thereafter the individual ports have to issue the orders to effect the orders issued by the Ministry. Out of 11 major ports that we had at that time, it is possible that one out of them may have taken some time to implement the order because of some clarification that they wanted. So, the orders have been implemented uniformly but the timings of implementation may have been different, and because of the different timings of the implementation, it is possible that some of the ports may have permitted their employees, even after retirement during this period, to exercise their option.”

2.21 When the Committee desired to know as to whether any port trust had permitted its employees to exercise their option during this specified period, the representative of Ministry of Shipping informed as under:—

“Mumbai Port Trust has permitted its employees because in the case of the Mumbai Port Trust, this was implemented in 1983 as against 1980 or during that time in other ports.”

2.22 The Committee desired to know the reasons for delay in implementing the Liberalised Pension Scheme in Mumbai Port Trust. To this, the representative of the Ministry of Shipping stated:—

“The exact reasons why it took three years, we will submit to this Committee. But if I am given just few minutes to explain the background of this specific petition, this petitioner, after retirement under the CPF, was given post-superannuation leave of about three years. The period of leave expired on 5.1.1986. As per the recommendations of the Fourth Central Pay Commission, some pension scheme was liberalised for the employees of the Central Government. There was a demand from the Port employees to replicate that benefits to the Port employees also, which was agreed to, and it was in 1997 that the same benefit was extended to Port employees and the employees of the Dock Labour Board. In the year 1997, based on the recommendation of the Fourth Central Pay Commission, the Ministry of Surface Transport—at that time it was called Ministry of Surface Transport—allowed those employees who were in service as on 1.1.1986, to exercise option. This particular petitioner had retired in 1983 but was on post-superannuation leave. His leave expired on 5th of January, 1986. So, probably he also applied, thinking that he was in service as on 1.1.1986. And since he was on post-superannuation leave, the Kolkata Port also entertained his application presuming that he was in service as on 1.1.1986.”

2.23 The Committee desired to know whether the amount was refunded, if so; when. To this, the witness replied:—

“It was refunded after about two months. Therefore, the main issue was whether the petitioner was in service as on 1.1.1986 or not. This petitioner had retired in 1983. This may have few implications. One is the question of policy of extending the deadline, giving one more option, applying it retrospectively. In this specific case, based on the fact whether this petitioner was in service as on 1.1.1986 or not, the first aspect is a very wide aspect which may have very far-reaching implications because in case it is considered to extend this, it will have to be extended not only to this particular period, may be, it will have to be extended for all the periods. People who retired prior to 1982 may also come and say that they would also like to have one more option. Also, it may have to be extended to other ports. But as far as the specific case of this petitioner is concerned whether he was in service or not as on 1.1.1986, because at one point of time the Port mistook it that he was in service, our view and the view of the Kolkata Port is that since he had retired in 1983, he was not in service.”

2.24 When the Committee desired to know whether legal opinion was taken in regard to the period of post-superannuation leave, if it could be treated as in service, the Chairman, Kolkata Port Trust stated:—

“I cannot confirm offhand, but we can again check it.”

2.25 The Committee then desired to know whether the employees asked to deposit the amount after it was detected that it was a mistake as he had retired in 1983 but he was on post superannuation leave for three years. To this, the Chairman of Kolkata Port Trust stated:—

“Yes, Sir, we have checked up and we found that there was a particular provision in the leave rules for CPF beneficiaries regarding post-retirement leave, at that time. In this particular case, he was allowed full pay and half pay leave as per provisions of leave rules for post-superannuation leave. CPF has now been almost phased out. But I checked up and grant of post-superannuation leave is as per rules.”

2.26 When the Committee desired to know whether the Mumbai High Court has issued any order in the case of Mumbai Port Trust Employees. To this, the representative of the Ministry of Shipping stated:—

“The writs were pending in the court but there was no order of the court. The Government had considered and allowed them to exercise their option. But there were few points. It was not the only point. There was one point regarding definition of pay. There were two definitions. One which was applicable to Government servants. There was another definition which was applicable to port employees. So, they were permitted to exercise an option whether they would like to

change over for the definition of pay. So, there were two-three things. It was not exactly the same case. There was no order of the High Court."

2.27 The Committee desired to know whether there is any legal bar in the case of Kolkata Port. To this, the representative of the Ministry of Shipping stated:—

"Sir, if I may just, for the purpose of record, submit there was not one but probably there were more than one writs pending. If I may repeat, these two cases are not similar. We certainly would like to give whatever is reasonable and due. Sir, the question here was whether this particular employee had an opportunity or not. In this case he had an opportunity, not once, not twice but as many as eight times to exercise his option. I totally agree with you and the general feeling that if an employee did not have an opportunity he must be given an opportunity. Here is a case where he had an opportunity; he did not opt till he retired. He retired in 1983; he opts in 1997. So, the time lag that has passed is to be taken note of and the fact that he had an option at that time. The question here is can the Government now, as a welfare measure give one more option. In that case the implications, as I said, are there. If he had no option then he could be given one. In case of Mumbai their was this implication that some of the employees' case would be delayed implementation. In the case of Kolkata they had an opportunity. In the case of Mumbai they did not have an opportunity."

2.28 The Committee desired to know whether there is any choice in front of the individual major port not to implement it in that port, the witness replied:

"A port trust can take a view. Thereafter, the Government does have the power to give any directions."

2.29 When the Committee pointed out for not taking action against the officers of Kolkata Port Trust who have asked the petitioner to deposit the money. To this, the representative of the Ministry of Shipping stated:—

"Sir, he opted for this. That is why he was asked to deposit that money. I would request the Chairman of Kolkata Port Trust to explain further."

The Chairman, Kolkata Port Trust added:—

"Sir, the basic point is whether this gentleman has been denied an opportunity. For eight times he was given an option. We are submitting before this august Committee with all humility at our command that it is a fact that he applied and down below somewhere the people could not understand the implication and accepted his application. He deposited the money. It was immediately detected. As

you have very rightly said, we may go in for a legal opinion whether this particular gentleman was in service as on 1.1.1986 or not. We will certainly obtain that opinion. A mistake was detected at higher level and the money was refunded. We detected nothing more in that. Of course, it is not a very happy situation. But then we have other factors also in our mind. In a similar case if somebody is allowed even by mistake there might be many cases. We are running an organisation which is not financially sound. We have to be very very careful about all these implications. I am placing all the facts before you.

2.30 The Committee desired that the matter may be re-examined with an humanitarian approach. To this, the representative of the Ministry of Shipping replied:—

“Obviously, Sir. But my submission before this hon’ble Committee is that as far as the policy aspect of deadline is concerned, we would like to stick to that because extending the deadline or giving another opportunity would open a flood-gate. But as far as this specific case is concerned, since he was on post-superannuation leave which went beyond 1.1.1986, which was the cut-off date, we would take legal opinion as to whether on 1.1.1986 could he have to be treated as deemed in service or not. This will be a specific case relevant to this person or to such other people with similar thing. There may be few more or may not be few more such cases where a person who retired before 1.1.1986 sought post-superannuation leave, granted post-superannuation leave, post-superannuation leave going beyond 1.1.1986 and opting for this conversion. There may be very few cases with all these factors. So, on this specific case, not extending the deadline or giving another opportunity which will open and have implications for the Port, the Port is competent to take a view. I think, Sir, we will also write that they should take a view after consulting their legal consultant and whatever is the legal opinion or whatever are the considerations that they would like to take into account in line with the legal opinion.”

Observations/Recommendations

2.31 The Committee note the disparity in pension scheme for Class III and IV employees of Kolkata Port Trust who retired during the period between 1.5.1982 and 31.12.1983. The Committee also note that during the period 1.1.1980 to 31.12.1997 about 9300 class III and IV employees retired under CPF Scheme for Kolkata Port Trust and out of these more than 90% had already been allowed to exercise their options to switch over to pension scheme leaving just 10% out of purview of pension scheme in the light of various Government orders of wage settlements. The Committee find that there had been instances when the fresh options to switch over from CPF to pension scheme were invited irrespective of changes made in pension scheme under wage settlement as has been

claimed by the representatives of the Ministry of Shipping or Kolkata Port Trust during his evidence before the Committee.

2.32 The Committee also take not of the financial burden and other implications involved if Government by further order allow CPF beneficiaries who retired between 1.5.1982 and 31.12.1983 to exercise option to switch over to pension scheme *vis-a-vis* hardships of 685 such employees of Class III and IV of Kolkata Port Trust who now desire to switch over to the pension scheme. However these employees were given enough opportunities of switch over during their service period before their retirement. There have been occasions also where the employees of Kolkata Port Trust were given opportunities to exercise their option of switch over even after retirement but the employees of this particular period i.e. between 1.5.1982 and 31.12.1983 have been denied such opportunity.

2.33 The Committee note the point made by the Chairman, Kolkata Port Trust that the petitioner opted for the pension scheme and accordingly deposited the money. But later on option to opt for the pension scheme was denied to him and his money was refunded. The Committee further note that the petitioner, after retirement under the CPF, was given post-superannuation leave of about three years which expired on 5.1.1986.

2.34 The Committee note that the representative of the Ministry of Shipping had assured them that the Government will seek legal opinion about the status of the petitioner particularly on the point whether being on post-superannuation leave can he be deemed to be in service on 1.1.1986.

2.35 The Committee recommend that the Government should seek legal opinion in the matter without any delay and hope that in the light of the legal opinion, the case of the petitioner will be decided at the earliest. They would like to be informed of the steps taken by the Government in this regard.

NEW DELHI;
5 December, 2002

14 Agrahayana, 1924 (Saka)

BASUDEB ACHARIA,
Chairman,
Committee on Petitions.