

COMMON CAUSE

VOICE OF "COMMON CAUSE"

TO SENIOR CITIZENS OUR SALUTATIONS

Pensioners, the senior citizens, have won again. Persistence has paid off. Pension Commutation restoration is the third in the series of major victories which COMMON CAUSE had resolved to achieve for them. We have now urged the Government of India to immediately implement the Supreme Court Judgement.

We have received numerous letters and messages conveying congratulations. It is heart-warming to feel that we have been of service to the cause of pensioners and to lend them a helping hand in the fall of life. Our recompense are the blessings and words of gratitude we receive from them. Typical of these are some. Smt. G. Chellamal writes from Arappalayam, Madurai: "the family pension besides giving monetary support makes me feel a sense of satisfaction that I stand on my own at 75, for which I find not enough words to express my gratitude". Smt. Katyani Chaudhary of 82 years writes from Calcutta: "Your organisation laboured hard in fighting the case of family pension. I am a beneficiary. I send Rs. 200/- in appreciation of your activities". Smt. Sonabai Padwal, of 86 years, has sent letter with her thumb-impression, from Sirur, Dist. Pune, conveying blessings for our having enabled her to get pension 40 years after the demise of her soldier husband whose records of Service have not been traceable. She has sent one month's interim payment which she has received. Miss M. Masani of Bombay writes: "I have received Rs. 20,000/- as arrears of my pension and send you Rs. 3000/- as donation to COMMON CAUSE for the good work it is doing". Numerous pensioners, many in their 80's and 90's, have written to convey their blessings. Daily we receive their contributions. Some pensioners, in different parts of the country, have taken on themselves the task of securing contributions and membership subscriptions from others, and transmitting these to us. We are grateful to all who thus help to strengthen this voluntary organisation.

Through this issue of the periodical we also bring to your notice the efforts which COMMON CAUSE is making to strengthen the consumers movement in the country. We would like the pensioners organisations to broad-base their activities and take interest in the important area of consumerism. Pensioners, as senior citizens, can greatly help to strengthen the cause of protecting the consumers which include everybody.

A word to members. Annual Membership has now been resumed to operate for the year from the date of renewal of subscription instead of being based on financial year. If you are not receiving your copy of the periodical, either your subscription needs renewal or the address has been incorrectly communicated. Kindly always quote the membership number when you write. If you are receiving more than one copy of this periodical please send us the address slips pasted on the wrapper.

And, to all our very best wishes for Happy New Year.

Consumer Protection Law

For Pensioners

IVth Pay Commission Recommendations

All are welcome to reproduce any material from this Publication.

This publication is not monthly. It presently issues once a quarter. There is no subscription. It goes free to members of COMMON CAUSE.

CONSUMERS PROTECTION

The Consumers Protection Bill has been passed by the Parliament. It is expected to soon receive the assent of President.

This is a very important law for the consumers. It is necessary that all organisations of consumers and activists in the field of consumerism should acquaint themselves with its provisions in detail. They should undertake the task of educating the consumers about the rights and facilities which accrue to the consumers and their organisations from this law.

Likewise, the Parliament has, in this winter session, also passed amendments in certain other laws, namely, Prevention of Food Adulteration Act, Standards of Weights & Measures Act, Essential Commodities Act and the Monopolies & Restrictive Trade Practices Act. These amendments are of primary importance to consumers and their organisations, and it is necessary that they should be cognizant of the effect of these amendments.

Considering the importance of these measures we have deemed it necessary to reproduce in these pages the Consumers Protection Bill as it was introduced and passed in the Parliament and the substance of amendments which have been made in the above mentioned existing Acts.

Immediately after this main Bill was passed and the amendments were approved we wrote to Mr. H.K.L. Bhagat, Minister of Food & Civil Supplies conveying to him our views in regard to these important enactments. Reproduced hereunder is the letter which was addressed to him. This letter conveys in substance the feelings of consumers in general and expresses satisfaction in regard to the provisions which have been made, including "services" within the provisions of this law, constituting redressal forums at the level of the districts besides those in the States and at the Centre, making it possible for individual consumers also to complain to the redressal forum, and providing for deterrent punishment for defaults of the manufacturers and traders and for compensation for loss. We have pointed out that the Consumers Protection Councils which are proposed to be set up in the States and the Centre are likely to prove mere decorative and deliberative bodies, and have suggested that they need to be converted into autonomous organisations, with their own secretariats, which would enable their decisions to be effectively implemented.

Copy of the letter dated 10th December '86

addressed to the Mr. H.K.L. Bhagat, Minister of Food & Civil Supplies, Government of India:

Dear Mr. Bhagat,

Consumers and their organisations owe you heartiest congratulations for the new legislation and the amendments which you have so effectively and expeditiously piloted. Through this legislation and by these amendments you have put the cause of consumers protection very prominently on the map.

In particular, I would like to convey to you our thorough satisfaction in respect of the following features of the new legislation and the amendments :

CONSUMER PROTECTION ACT

- (i) In the Consumers Protection Act the inclusion of "services" is a very important decision, and obviously your initiative, reflecting the demand of the consumers organisations, has brought about this welcome feature. Telecommunications, including telephones, have not been specifically brought in the list of services, as defined in sub-clause (O) of Section 2, but presumably this requirement will be met through the words "purveying the news or other information"

- (ii) The incorporation of quasi-judicial machinery in the shape of Redressal Forum at the level of each district is a step of far-reaching importance. And, very important step in this direction is that of enabling any consumer as well as consumers organisation to submit complaints to the Forum.
- (iii) Likewise, the provisions for establishing the Redressal Commissions in the States and the National Commission at the Centre are very welcome indeed. With the establishment of the National Commission, States Commissions and the District Forums the chain for seeking redressal will be very satisfactorily complete, including the provisions for appeals.
- (iv) The redressal machinery, at every level, has been given the powers of a civil court, for summoning the parties, production of documents etc. and the orders of the Forums and Commissions have been given the status of decrees of civil courts. This provision was obviously necessary, and it is gratifying that it has been made in the Act.
- (v) Very important aspect of the operations of quasi-judicial machinery is the provision for infliction of severe punishment for default or omission to comply with the order of the Forum or the Commission. It is very satisfying that provision has also been made for imprisonment besides the provision for fine and that minimum imprisonment and fine have been prescribed. We only hope that these provisions will be maintainable if they are challenged in Court.
- (vi) In connection with redressal it is also noticeable that provision has been made for giving compensation to the complainant of 'such amount as may be awarded', and that the limit of 20 times the amount of loss which was previously contemplated and which was severely criticised by the consumers organisations, has been removed.
- (vii) There are doubts about the efficacy of the Consumers Protection Councils in the shape they are proposed to be established under the

provisions of this Act. We feel that these Councils should not merely remain deliberative bodies, which meet once in three or four months and disperse thereafter. They should in fact constitute autonomous organisations, with appropriate and effective secretariats, which should have the competence to effect implementation of the decisions they take. We earnestly hope that at some stage this requirement will be given consideration. We envisage that on making these Councils effective autonomous organisations, the work presently done by the Directorates of Civil Supplies will get transferred to them.

- (viii) In the composition of these Consumers Protection Councils it should have been provided that majority of members of these bodies, both at National level and in the States, will comprise of representatives of the established and recognised consumers organisations. In this connection you will be glad to know that the work of establishment of the common plat form for all the consumers organisations has been completed and we expect to get the central organisation (National Council of Consumers Organisations) registered very soon. On its establishment it is obvious that representatives of consumers and their organisations can best be selected through this central organisation.

AMENDMENTS IN EXISTING ACTS

In the amendements effected in the Essential Commodities Act, Prevention of Food Adulteration Act, Standards of Weights & Measures Act and Monopoles & Restrictive Trade Practices Act, incorporation of the provision, whereby consumers and their organisations have also been authorised to initiate action and make complaints, is very welcome indeed. It is for the first time that initiative has been taken by the government to confer on the consumers and their organisations the competence to institute complaints before the prescribed authorities in relation to respective Acts, and this is a step in the right direction for strengthening the consumers movement in the country. We hope that the government will examine the provisions of other Acts which affect the interests of

consumers and incorporate similar provisions in them also. These statutes include, for instance, Drugs Control Act, Drugs and Cosmetics Act, Poisonous Substances Act, Household Electrical Appliances Quality Control Order, etc.

In the over-all perspective, therefore, we feel that you have taken very important steps in bringing about the changes in relevant existing laws and the formulation of the new consumer protection legislation. I have been in touch with representatives of consumer organisations, and the above views represent the views of the consumer organisations in general. We now look forward to further initiatives on the part of Government in effecting implementation of the provisions made in the new law and wide publication of the status that has been accorded to consumers and their organisations authorising them to make complaints of defaults committed by the traders and manufacturers instead of this power having remained vested only in government officials.

Yours sincerely
H. D. SHOURIE

Against the background of the law as it has now been enacted, and the amendments which have been made in the above mentioned Acts, and keeping in view the reactions which we have forwarded to the Minister of Food & Civil Supplies, we consider it necessary that all organisations of consumers should now equip themselves with knowledge, expertise and wherewithal for taking full advantage of these statutory measures in the interest of consumers in general. Following in particular are some points on which we would like to lay emphasis for action by the organisations of consumers :

1. It is of fundamental importance that where any organisation has not yet got itself registered it must take immediate steps to do so. In all the above-mentioned enactments it is provided that only the organisations which are recognised by the Government (and they will not recognise any organisation which is not registered) will have the powers to initiate action or to file complaints etc. Moreover, there will be

difficulty in claiming any financial assistance or grants for the organisations which are not registered.

2. It will be noticed in the Consumers Protection law that it is contemplated to set up Consumer Protection Councils in the States and at the Centre. Our demand should be that in these Councils the majority of membership should be of the representatives of consumers organisations. We suggest that you should convey this demand forthwith to the Ministers of Civil Supplies in the States and all organisations should also address letters on this subject to Mr. H.K.L. Bhagat, Central Minister of Food and Civil Supplies (address : Krishi Bhawan, Rafi Marg, New Delhi-110001), with copy to us for information if possible. It should also be demanded that each of these Councils should have substantial number of women, and this number should preferably be not less than one-third.

3. If it is generally agreed that the establishment of the Consumers Protection Councils, in the present shape as merely deliberative bodies, will not prove effective, we suggest that all organisations of consumers should write strongly on this matter to the Central Minister of Food & Civil Supplies and also to the States Ministers of Civil Supplies, so that they should know the views of the organisations of consumers on this important matter.

4. With the enactment of these important measures the responsibility now devolves on the consumers organisations to educate the consumers to take full advantage of these. At the same time it has become the responsibility of the consumers organisations to take steps to ensure that the provisions of making complaints are not misused by submitting frivolous or motivated complaints. It is possible that unscrupulous elements might utilise these provisions for threatening or even blackmailing traders or manufacturers, by saying that complaints would be filed for causing them harassment. It is the duty of all consumers organisations to ensure that we safeguard against the misuse of these provisions by anybody.

5. It would be desirable that consumers organisations should remain in touch with the District Redressal Forums when they start operating. Procedures in

Forums should be got streamlined in such manner that the processing and decisions of complaints are not delayed. Results and decisions of the complaints should be publicised by the consumers organisations so that they become widely known in the respective areas, to prove as deterrent to the traders and manufacturers etc and to encourage consumers to come forth with their genuine complaints for seeking redressal.

6. It will be noticed that in clause 9 (a) of the Consumers Protection law it is provided that the Redressal Forums in the districts will be set up by the State Governments "with the prior approval of the Central Government". It is strange that this condition should have been imposed in the statute, and one wonders why a State Government should have to seek prior approval of the Central Government before setting up the Redressal Forum in any of its districts. It would be appropriate that the organisations of consumers should demand the setting up of District Redressal Forums in all the districts without delay, and they should also write to the State Governments to approach the Central Government to delete this unnecessary restriction or to make it redundant in actual practice.

7. Most important provisions made in the Consumers Protection law is that defaulters among traders, manufacturers etc can be awarded deterrent punishment which shall not be less than one month's imprisonment and may extend to three years' imprisonment, and fine which shall not be less than two thousand rupees and may extend to ten thousand rupees, or with both. This provision is obviously of far-reaching consequence. Likewise, it has been provided that adequate compensation will be paid for any loss caused to the complainants. It is now for the consumers organisations to give wide publicity to the embodiment of these provisions in the law so that the manufacturers, traders and persons incharge of services may become aware of these.

8. Similarly, it will be the responsibility of the consumers organisation to give wide publicity to the provisions made in the above-mentioned other Acts by the amendments effected in them. Whereas previously

the inspectors appointed and authorised under the prevention of Food Adulteration Act could alone file complaints for any defaults, or whereas previously under the MRTP Act the complaint could be made only by an association consisting of not less than 25 members, or by 25 consumers or more, now the complaint can be made by any consumer or registered consumers organisation under these enactments. We expect that similar provisions will in due course be made under all other enactments which effect the interests of consumers.

9. In the context of above general guidelines we would like to inform the consumers organisations about the present stage of the establishment of the central organisation of consumers in the form of National Council of Consumers Organisations. Signatures of more than the required number of representatives of organisations have been secured on its memorandum of association, and we hope to get the registration processes completed very early. On behalf of the Government we have been given indication of their support and help. In the constitution provision has been made that only those organisations will be its members which have got themselves registered. Taking into account the stress that has been laid in the above-mentioned enactments, and the corresponding provision made in the constitution of NCCO, it is obviously desirable, and we repeat, that any organisation which has not hitherto got itself registered should take immediate steps to do this.

Simultaneously with the enactment of Consumers Protection law certain important amendments have been effected in the following Acts which have relationship to the problems of consumerism :

- (i) MRTP Act
- (ii) Prevention of Food Adulteration Act
- (iii) Standards of weights & Measures Act
- (iv) Essential Commodities Act.

(i) In the MRTP Act the previous provision was that complaint could be made only by "any trade or consumers association having membership of not less than

25 persons or from 25 or more consumers". In place of this provision it has now been provided that the complaint can be made by "any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not".

(ii) In the prevention of Food Adulteration Act it was previously provided that a "food inspector" alone was competent to get a sample analysed for launching proceedings for default. By the amendment it has now been provided that this can be done by the food inspector "or a recognised consumers association whether the purchaser is a member of such consumers association or not".

(iii) In the Standards of Weights & Measures Act it was previously provided that complaints could be submitted only by the "Controller or any other officer authorised in this behalf by the Controller by general or special order". The amendment now authorises "any person aggrieved" or "a recognised consumers association whether the person aggrieved is a

member of the association or not", to submit the complaint. In this amendment another very important provision is that whereas the previous penal clause stated that the defaulter could be "punished with imprisonment for a term which may extend to two years.....", It has now been provided that the defaulter "shall be punished with imprisonment for a term which shall not be less than three months but which may extend to one year, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to three years, and also with fine".

(iv) In the Essential Commodities Act it was previously provided that the complaint could be made only by a "public servant as defined in S.21 of the Indian Penal Code." With the amendment it has now been provided that complaint can also be made by "any person aggrieved or any recognised consumer association, whether such person is a number of that association or not".

CONSUMERS PROTECTION ACT

Reproduced below is the Consumers Protection Bill as it was presented before and passed by the Parliament. It becomes the Consumers Protection Act on receiving the assent of the President.

CHAPTER I PRELIMINARY

1. 1) This Act may be called the Consumer Protection Act, 1986.
 - 2) It extends to the whole of India except the State of Jammu & Kashmir.
 - 3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
 - 4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.
2. 1) In this Act, unless the context otherwise requires:—
 - a) "appropriate laboratory" means a laboratory or organisation recognised by the Central Government and includes any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect ;
 - b) "complainant" means:—
 - i) a consumer; or
 - ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force ; or
 - iii) the Central Government or any State Government, who or which makes a complaint;

c) "complaint" means any allegation in writing made by complainant that—

- i) as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage;
- ii) the goods mentioned in the complaint suffer from one or more defects ;
- iii) the services mentioned in the complaint suffer from deficiency in any respect;
- iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods,

with a view to obtaining any relief provided by or under this Act;

d) "consumer" means any person who—

- i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly or paid partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; and
- ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised or partly paid and paid partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

e) "consumer dispute" means a dispute when the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods;

g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature any manner of performance which is required to be maintained by or under law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

h) "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 9 ;

i) "goods" means goods as defined in the Sale of Goods Act, 1930

j) "manufacturer" means a person who—

- i) makes or manufacture any goods or parts thereof ; or
- ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end-product to be goods manufactured by himself ; or
- iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

Explanation—Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office;

k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

l) "notification" means a notification published in the Official Gazette ;

m) "person" includes:—

- i) a firm whether registered or not
- ii) a Hindu undivided family

- iii) a co-operative society
 - iv) every other association of persons whether registered under the Societies Registration Act, 1860 or not;
 - n) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;
 - o) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport; processing; supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
 - p) "State Commission" means a Consumer Disputes Redressal Commission established for a State under clause (b) of section 9;
 - q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof and where such goods are sold or distributed in package form, includes the packer thereof;
 - r) the expression "unfair trade practice" shall have the same meaning as in section 36A of the Monopolies and Restrictive Trade Practices Act, 1969, but shall not include an unfair trade practice adopted by the owner of an undertaking to which Part A of Chapter III of that Act applies or by any person acting on behalf of, or for the benefit of, such owner.
- 2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.
 - 3) The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time in force.

CHAPTER II

CONSUMER PROTECTION COUNCILS

4. 1) The Central Government may, by notification

- establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council)
- 2) The Central Council shall consist of the following members, namely :—
 - a) the Minister incharge of the Department of Food and Civil Supplies in the Central Government, who shall be its chairman, and
 - b) such number of other official or non-official members representing such interests as may be prescribed.
 5. 1) The Central Council shall meet as and when necessary but not less than three meetings of the Council shall be held every year.
 - 2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.
 6. The objects of the Central Council shall be to promote and protect the rights of the consumers throughout the country such as:—
 - a) the right to be protected against marketing of goods which are hazardous to life and property;
 - b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices ;
 - c) the right to be assured, wherever possible, access to a variety of goods at competitive prices;
 - d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
 - e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
 - f) the right to consumer education.
 7. 1) The State Government may, by notification, establish with effect from such date as it may specify in such notification a Council to be known as the Consumer Protection Council for (hereinafter referred to as the State Council).

- 2) The State Council shall consist of such members as may be specified by the State Government by notification from time to time.
8. The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

9. There shall be established for the purposes of this Act, the following agencies, namely:—
- a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government with the prior approval of the Central Government in each district of the State by notification;
 - b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government with the prior approval of the Central Government in the State by notification; and
 - c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.
10. 1) Each District Forum shall consist of:—
- a) a person who is, or has been, or is qualified to be a District Judge to be nominated by the State Government, to be its President;
 - b) a person of eminence in the field of education, trade or commerce;
 - c) a lady social worker.
- 2) Every member of the District Forum shall hold office for a term of five years or upto the age of 65 years whichever is earlier, and shall not be eligible for re-appointment:
Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in subsection (1) in relation to the category of the member who has resigned.

- 3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.
11. 1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the amount or value of the goods or services and the compensation, if any, claimed is less than rupees one lakh.
- 2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:—
- a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business, or personally works for gain, or
 - b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; or
 - c) the cause of action, wholly or in part, arises.
12. A complainant, in relation to any goods sold or delivered or any service provided, may be filed with a District Forum by:—
- a) the person to whom such goods are sold or delivered or such service provided;
 - b) any recognised consumer association, whether the person to whom the goods sold or delivered or service provided is a member of such association or not; or
 - c) the Central or the State Government.
- Explanation:—For the purpose of this section "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.

13. 1) The District Forum shall, on receipt of a complaint, if it relates to any goods;
- a) refer a copy of such complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;
 - b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clause (c) to (g);
 - c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or whether the goods suffer from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;
 - d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;
 - e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;
 - f) if any of the parties disputes the correctness of the findings of the appropriate laboratory or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;
 - g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14.
- 2) The District Forum shall, if the complaint received by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services:—
- a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;
 - b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute:—
 - i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or
 - ii) on the basis of evidence brought to its notice by the complainant where the opposite party

- omits or fails to take any action to represent his case within the time given by the Forum.
- 3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principals of natural justice have not been complied with.
 - 4) For purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
 - i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;
 - ii) the discovery and production of any document or other material object producible as evidence;
 - iii) the reception of evidence on affidavits;
 - iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
 - v) issuing of any commission for the examination of any witness; and
 - vi) any other matter which may be prescribed.
 - 5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973.
14. 1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things, namely:—
- a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
 - b) to replace the goods with new goods of similar description which shall be free from any defect;
 - c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant to the opposite party;
 - d) to pay such amount as may be awarded by the District Forum as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
- 2) Every order made by the District Forum shall be signed by all the members constituting it and, if there is any difference of opinion, the order of the majority of the members constituting it shall be the order of the District Forum.
- 3) Subject to the foregoing provisions, the procedure relating to the conduct of the members of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.
15. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed: Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.
16. 1) Each State Commission shall consist of:—
- a) a person who is or has been a judge of a High Court, appointed by the State Government, who shall be its President;
 - b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. one of whom shall be a woman;
- Provided that no sitting Judge of a High Court shall be appointed under this sub-section except after consultation with the Chief Justice of the High Court.

- 2) The salary or honourarium and other allowances payable to, and the other terms and conditions of service (including tenure of office) of the members of the State Commission shall be such as may be prescribed by the State Government.
17. Subject to the other provisions of this Act, the State Commission shall have jurisdiction:—
- a) to entertain—
 - i) complaints where the value of the goods or services and compensation if any, claimed exceeds rupees one lakh but does not exceed rupees ten lakhs; and
 - ii) appeals against the orders of any District Forum within the State; and
 - b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.
18. The procedure specified in section 12, 13 and 14 and under the rules made therein for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.
19. Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed: Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.
20. 1) The National Commission shall consist of :—
- a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President;
 - b) four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with: problems relating to economics, law, commerce, accountancy, industry, public affairs or administration one of whom shall be a woman :
Provided that no sitting Judge of the Supreme Court shall be appointed under this sub-section except after consultation with the Chief Justice of that Court.
- 2) The salary or honourarium and other allowances payable to and the other terms and conditions of service (including tenure of office) of the members of the National Commission shall be such as may be prescribed by the Central Government.
21. Subject to the other provisions of this Act, the National Commission shall have jurisdiction:—
- a) to entertain —
 - i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees ten lakh; and
 - ii) appeals against the orders of any State Commission; and
 - b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.
22. The National Commission, shall in the disposal of any complaints or of any proceedings before it have the powers of a civil court as specified in sub-section (4) and (5) of section 13 and follow such procedure as may be prescribed by the Central Government.
23. Any person aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of

section 21 may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order :

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filling it within that period.

24. Every order of a District Forum, State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

25. Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the Court within the local limits of whose jurisdiction:—

a) in the case of an order against a company, the registered office of the company is situated, or

b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

and thereupon, the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

26. Where a complaint instituted is found to be frivolous or vexatious, the District Forum, the State Commission or, as the case may be, the National Commission, may dismiss the complaint.

27. Where a trader or a person against whom a complaint made fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both ;

Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, as the case may be specified in this section.

CHAPTER IV MISCELLANEOUS

28. No suit, prosecution or other legal proceedings shall lie against the members of the District Forum or the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of any thing which is in good faith done or intended to be done by such member, officer or person under this Act are under any rule or order made thereunder.

29. 1) If any difficulty arises, in giving effect to the provisions of this Act, the Central Government may, be order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

30. 1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, clause (vi) of sub-section (4) of section 13, section 19, sub-section (2) of section 20 and section 22 of this Act.

2) The State Government may, by notification, make rules for carrying out of the provisions contained in sub-section (3) of section 10, sub-section (2) of section 12, clause(c) of sub-section (1) of section 13, sub-section (3) of

section 14, section 15 and sub-section (2) of section 16.

31. 1) Every rule made by the Central Government under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in

making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

- 2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

FOR PENSIONERS

Pensioners have won again. The Supreme Court judgement on pension commutation restoration case has vindicated the contention of the pensioners that it is inequitous on the part of the Government to continue deducting the commuted portion of pension throughout life. COMMON CAUSE filed the writ petition and brought this inequity into focus by citing the cases of a number of old pensioners, in their 80's and 90's from whom the Government had taken back 2 to 3 times, and more, the amount they were given on commutation as lump-sum. When notice was issued to the Government by the Supreme Court they took the absurd position that the scheme of commutation was being worked on no-profit-no-loss basis, and that whereas the Government suffers loss when a pensioner dies early, the pensioner suffers when he lives long. This implied obviously that the pensioner was being penalised for living long; a pensioner who lives long in Ernakulam has to subsidise the Government for any loss which it might suffer on account of a pensioner in Amritsar dying early. In any case, we contended, the Government did not suffer loss because the remaining portion of pension was saved to the Government in the case of pensioner dying early. Continued deduction of the pension comprised arbitrariness, violating article 14 of the Constitution; it violated the principle enshrined in article 40 of the Constitution which imposes an obligation on the Government to look after the aged and infirm.

Eventually, after prolonged encounters the Government came forth with the formula that they would be willing to restore the commuted portion of the pension on completion of 15 years after retirement or on attainment of 70 years whichever was later. If the word 'later' was substituted by the word 'earlier' we would have accepted. This formula was obviously inequitous for the defence pensioners, particularly the lower ranks, who retire early, even in their 30's. We explained this to the Supreme Court. The Government came forth with tables based on actuarial calculations to show that irrespective of the age of retirement the benefit of lump-sum payment at the time of commutation extinguished in all cases on the attainment of the age of 70 years. These tables were based on the principles of insurance, and we pointed out to the Court that the principles of insurance were based on commercial contract. Pension was not a matter of commercial contract. It was a welfare measure, and it was wrong for the Government to plead their case disregarding the serious deprivation the continued deduction of pension caused to the old pensioners. We had pleaded for restoration of commuted portion on completion of the period of commutation, i.e. the commutation factor, or at most on completion of a year or two after completion of the commutation factor period. We also pleaded that the restoration should be effected from the date of submission of our writ petition in 1983, because the delay in disposal of the

case had come about due to factors which were not caused by us.

The Court has decided in favour of the pensioners. Three main points of the judgement are: the commuted portion of the pension would be restored after 15 years of retirement; this will apply equally to civil as well as defence pensioners; the restoration will be effected from 1.4.1985 i.e. the pensioners would be entitled to the arrears from this date; and the Government was directed to effect implementation of this decision within three months. We do not consider it necessary to reproduce the judgement. Its decisions constitute a victory for the pensioners. The summary of these decisions was put across in almost all newspapers, but it is unfortunate that the summary in some newspapers was somewhat incorrect, with the result that considerable confusion was caused and numerous enquiries were addressed through telephone and letters to COMMON CAUSE. We have explained the correct position to everybody. The "Times of India" carried an extensive presentation of this matter in the issue of 10th December '86 on its front page in all its editions. For the benefit of pensioners we reproduce hereinafter the write-up which appeared in this newspaper. This write-up has put this latest decision of the Supreme Court against the background of the two previous judgements of the Supreme Court which COMMON CAUSE has won for the pensioners.

Before we reproduce the write-up of the Times of India it would be appropriate to mention some points which have been communicated to us by the pensioners on hearing of this latest judgement. We are overwhelmed by the kind words and congratulations which have been sent by the pensioners and the organisations of pensioners from all over the country. We attribute this victory to the support that the pensioners throughout continued to extend to us in putting up the fight for their rights, and to the excellent presentation of the case by our counsel Mr. Anil Diwan, Mr. Harish Salve and Mr. P.H. Parekh, to whom we owe deep gratitude on behalf of all pensioners of the country. Some old pensioners have expressed that the restoration should have been effected from the date when

they, respectively, completed 15 years after retirement, i.e. if a pensioner retired in 1960, his full pension should have been restored from 1975 and he should have been paid the arrears from 1975 onwards. This type of demand from any pensioner is obviously misconceived; we never contemplated that it would be appropriate or desirable to demand such restoration. There are literally millions of pensioners; the question of payment of arrears of this nature and magnitude would have negated the entire case. Secondly, it has been stated by some pensioners that whereas civil pensioners will secure restoration of the full pension 2/3 years after completion of the commutation factor and reasonable period thereafter, the defence pensioners will now benefit by securing restoration in some cases even before the completion of commutation factor. This dispensation in favour of defence pensioners is obviously welcome; we had struggled to avoid inequity coming about to them. Thirdly, some pensioners desire that now that we have secured this third victory we should follow it up by demanding the refund of two months' emoluments which were taken towards family pension contribution etc. We have already made our position clear in regard to these comparatively minor matters, preferring to concentrate on the three major problems which we have by now been able to solve for the pensioners.

The above-mentioned write-up of news appearing in the Times of India of 10th December is reproduced below :

SC JUDGEMENT TO BENEFIT 2 M PENSIONERS

"The Supreme Court today decreed that the commuted portion of pensions will be restored and pensioners will start receiving the full pension 15 years after retirement. The decision, which will eventually benefit two million pensioners will apply to both civil and defence pensioners.

Moreover, the court held, pensions will be restored with effect from April 1, 1985, and pensioners will be entitled to draw arrears from that date. The court has directed the government of India to implement the judgement within three months.

The long-awaited judgement came in response to a writ petition filed by the public interest organisation 'Common Cause'. It was delivered by the chief justice, Mr. P. N. Bhagwati, and Mr. Justice Ranganath Misra today.

Under the existing dispensation their pensions would have continued to be cut for as long as they lived.

It will immediately benefit two lakh pensioners who retired more than 15 years ago. States that have not begun restoring the commuted pensions will soon have to follow suit. Thereby, apart from Central government pensioners, pensioners who retired from state services will also benefit.

Civilian pensioners have been entitled to have up to one-third and defence pensioners up to one-half of their pensions commuted at the time of retirement. The amounts the government gave them subsequently were correspondingly reduced. Facts collected by 'Common Cause' from all over the country showed that in the case of pensioners who lived long, the total deductions by the government often exceeded two to three times the amount that the pensioners had commuted. It was to rectify this unilateral and arbitrary confiscation of what was the pensioners' due that 'Common Cause' moved the Supreme Court.

During the hearing of the writ petition, the government of India had expressed willingness to restore the commuted portion of the pensions but had laid down the condition that this would come into operation only on the completion of 15 years after retirement or attainment of the age of 70 years whichever was later.

'Common Cause' continued to contest this on the grounds that this formula would prove very detrimental to the defence pensioners who constituted the majority of pensioners. They retire early, 'Common Cause' contended, some of the lower ranks retire in their 30's. Under the government's proposed formula they would have to wait till they were 70 years of age before starting to receive their full pension.

The judgement will ensure that their pensions will be restored 15 years after retirement irrespective of the age of retirement.

This judgement follows two other landmark judgements which it has delivered during the past four years relating to the problems of pensioners. The previous decisions were also delivered in response to writ petitions submitted by 'Common Cause'.

The first judgement was delivered in December, 1982 in which the court laid down that the pension liberalisation which was effected in 1979 and which had been denied to the pensioners who retired prior to April 1, 1979, must be made applicable to all pensioners irrespective of their dates of retirement. The court held that the pensioners comprised one class and discrimination cannot be effected between them on the basis of dates of retirement. The judgement helped more than 25 lakh pensioners, and has since become a landmark judgement in assessing whether a government decision is arbitrary or not. Under it, pensioners received arrears from 1979 and their pensions increased in accordance with the 1979 liberalisation.

The second judgement related to the scheme of family pensions introduced by the government of India in 1964. While initiating the scheme the government had laid down that it would be applicable only to those pensioners who retired after January 1, 1964. 'Common Cause' argued that the order of the government of India discriminated against the pensioners who had retired before January 1, 1964. It pointed out that, because of this stipulation the widows of these pensioners, for no fault of theirs and on no rational ground, were disentitled from the benefit of family pensions. The court upheld the argument and thereby more than one lakh widows started deriving benefit of family pensions. The widows received arrears of family pensions from 1977, most of them receiving about Rs. 10,000 in arrears alone.

The new judgement will now ensure restoration of pensions 15 years after retirement irrespective of the age of retirement.

'Common Cause' was represented in the case by Mr. Anil Diwan, Mr. Harish N. Salve and Mr. P. H. Parekh. The government of India was represented by the attorney-general, Mr. K. Parasaran.

MORE FOR PENSIONERS

Besides the above important matters arising from the Supreme Court decision on our writ petition relating to pension commutation and the IVth Pay Commission recommendations there are other following matters which would be of interest to the pensioners.

A representation was submitted on behalf of the All India Services' Association, Jaipur, and certain other associations of pensioners to the Central Administrative Tribunal in regard to the discrimination caused by the pension liberalisation which was effected from 1.1.1973; depriving the pre-1973 pensioners of its benefits. This matter has been decided in favour of pensioners by the Tribunal, with the result that the increases of pensions and gratuity, particularly relating to the prescription of maxima, have been made applicable to the pre-1973 pensioner. The credit for pursuing this matter goes primarily to the dedicated work of Mr. R. D. Mathur, Chairman of the Jaipur Association. Decision was given by the Tribunal in the end of August '86, but the copy of judgement became available in the end of October '86. Government has been given period of 90 days for filing the appeal if they so desire. Further information in this regard will become known in the coming weeks.

Writ petitions regarding application of the Supreme Court judgement to pre-1972 defence pensioners and another writ petition comprising wider dimension of the application of the judgement, the former submitted by the Indian Ex-Services League and the latter by the Bharat Pensioners Samaj, are yet pending, and nothing can be said with any certainty as to when they will be finally heard and decided.

IVth PAY COMMISSION REPORT

Recommendations of the IVth Pay Commission Report have been extensively mentioned in the newspapers. These have given general satisfaction to the

pensioners. We will now await the decisions of the Government on these recommendations, and will then determine the line of action in respect of any particular recommendations which may need to be pursued. Considering the sweep and importance of these recommendations we reproduce, hereunder the summary chapter of the Commission Report.

SUMMARY OF MAIN RECOMMENDATIONS AND CONCLUSIONS

2.3 Pensions to former members of the armed forces and civilian employees of central government is not by way of charity or an ex-gratia payment, or a purely social welfare measure. It is in the nature of a "right" which is enforceable by law.

2.11 The existing Act, the rules and regulations do not contain a definition of the term pension which explains its meaning, concept or content.

2.13 The concept of 'pension' always had the latent desire to provide for the eventuality of old age and disability by disease or accident or death. Its real purpose was security.

2.15 The basic idea earlier was to give a sense of economic security and independence to a civil servant so as to make his functioning more efficient. The meaning changed over the years and became more and more generous.

2.16 A pension is a series of periodic payments to a person usually payable monthly, for life, for past services of himself or another.

2.17 The concept of "pension" carries within it the germ of certainty, periodicity and "adequacy".

2.17 While the capacity or financial resource of the employer is a factor to determine adequacy, we should continue the efforts to provide adequate pensions to government employees.

2.17 Aim should be provide that even in retirement, if the employee has been careful and prudent, he may maintain his residuary family in a way and at a standard considered reasonable by the society where he belongs, making cost of living adjustments as and when necessary.

2.21 Aim of pension is to provide economic security in the fall of life. Since prices undergo change, it

should also be the aim to maintain the level of pension.

2.23 There should also be a fair and just system of pension adjustments to provide for unforeseen socio-economic changes.

2.27 'Content' of pension is variable according to the conditions of the service, the reasonable expectations arising out of it and the resources of the employer. The content of social security 'pension' is ever widening.

2.28 Broadly speaking, there are two methods to meet the financial commitment for pensions: the current disbursement approach, and the 'funded' plan approach. In most developed countries, the funded plans are contributory.

2.30 We subscribe to the objectives stated in general terms, that a retirement plan should provide an orderly means of retirement for older employees.

2.32 to 2.35 The age of the employee, state of health, length of service and his pay are some of the factors to be taken into consideration in determining pension.

2.36 Economy of the state is another factor which bears on determination of pensions and connected with this is the other factor whether the employee is entitled to any other social benefit in addition to pension.

2.38 Existence of separate schemes of pensions like contributory scheme, may be a relevant factor in determining what will be a proper or a suitable scheme of pensions.

2.39 Any benefit, like concessional medical treatment, that may be available in addition to retirement is also of relevance to take into consideration.

2.40 Benefits of a pension for widows, or for the family, is an attractive benefit by itself and deserves to be taken into consideration.

2.41 Traditionally, pensions were unalterable, but that was because the value of money was stable. Now, there is no escape from the concept of adjustment in view of the persistent rise in the cost of living. A person may be willing to accept a somewhat lower rate of pension calculation if he is assured that its value will not decline appreciably.

2.43 It has been declared as the law of the land in the case filed by Common Cause that pensioners form a class by themselves and this class is not divisible for purpose of entitlement and payment of pension into those who retire 'before' and those who retire 'after' a certain date arbitrarily fixed for the purpose. This being the law, it is a factor to reckon that any changed formula for computation of pension will work back for all pensioners who retired earlier also.

2.44 The scheme of pension should not act as a disincentive to savings or breed waste or extravagance or undermine the incentive to work. The state should explore the possibility of utilising the experience and expertise of its good and able pensioners as best as possible. Pensioners should look on such opportunities as means for serving their country even in retirement.

2.45 Good pensions, like any thing good, should be earned during working life and valued during retired life.

3.2 Most of the State governments have generally been following the central government pattern for grant of pensionary benefits to their employees. Even changes made from time to time in various rules with regard to these benefits by the State governments appear to have been influenced by the improvements made by the central government.

3.9 The retirement benefits in different States are generally on the existing central government pattern except in regard to the restoration of commuted value of pension.

4.1 The benefits available to employees of Public Sector Undertakings (PSU) at the time of retirement are mostly in the form of employers' contribution to provident fund, gratuity and facilities for leave encashment. Family pension scheme has also been adopted by some of the PSU under the provisions of the Employee's Provident fund & Miscellaneous provisions Act, 1952. This scheme is different from the family pension scheme applicable to central government employees.

5.12 No reduction is favoured in the existing requirement of 10 years qualifying service for grant of pension to civilian employees.

5.15 The calculation of pension with reference to the pay last drawn may not be beneficial to employees

in all cases. The existing scheme under which pension is calculated with reference to pay drawn during the last 10 months of service may continue.

5.19 To simplify and rationalise matters pension may be calculated at 50 per cent of pay for all categories of central government employees.

5.20 Basic pension for government employees may not exceed Rs. 4500 per mensem.

5.21 The pay for purposes of retirement benefits should be the basic pay in the revised pay structure.

5.22 In evolving a scheme based on pension fund the government will have to consider if the fund should cover only the fresh entrants to government service or also the existing employees. The institutional arrangements for management of the pension fund by way of creation of special trust, employees response to the proposed scheme and all other related aspects will also have to be considered.

5.23 To rationalise matters service gratuity may be allowed at a uniform rate of 1/2 month's pay for each completed six monthly period of qualifying service below 10 years.

5.27 No change is recommended in the existing rules governing payments of Death-cum-Retirement Gratuity. DCRG may be treated as retirement gratuity.

5.30 Temporary employees who have rendered continuous satisfactory service for long periods should be given the benefits of pension and DCRG as available to permanent employees on superannuation. The required period of service may be reduced from 20 to 10 years in such cases. In the case of employees whose total temporary service is less than 10 years at the time of retirement terminal gratuity may continue to be admissible as at present.

6.6 The basic rates of family pension should be different from the normal pension rates.

6.8 The existing rates for grant of family pension may be revised as follows :—

Basic pay in the revised scales	Rate of family pension per mensem
a) Rs. 1500/- and below	30 per cent of pay subject to a minimum of Rs. 300/-

b) Above Rs. 1500/- 15 per cent of pay subject to a minimum of Rs. 450/- and a maximum of Rs. 1000/-.

No change is necessary in the existing provisions for payment of family pension at higher rate for a period of 7 years or upto age of 65 years, whichever is less. Family pensioners should continue to be eligible for grant of relief on pension in case of increase in prices to the same extent as other pensioners.

6.11 A better way of providing relief to the family of an employee who dies while in service after 20 years of service would be to increase the rates of death gratuity.

6.11 The rates of death gratuity may be revised as follows :—

Qualifying service	Amount of death gratuity
Less than one year	2 times of pay
One year and above but less than 5 years	6 times of pay
5 years and above but less than 20 years	12 times of pay
20 years and above	1/2 of pay for each completed 6 monthly period of qualifying service subject to a maximum of 33 times the pay and monetary limit of Rs. 1.00 lakh.

6.12 In all cases of death in hardness (whether the employees are permanent, quasi-permanent or temporary), death gratuity may be paid to the families at rates recommended.

6.13 There should be uniformity with regard to the age limits applicable to children of deceased employees in the matter of grant of pensionary benefits under the various rules. It may be examined by government whether a uniform age limit could be prescribed both for sons and daughters. Once a uniform age limit has been prescribed, the condition under the existing rules that the family pension payable to a son or a daughter shall be stopped if he or she starts earning his/her livelihood may be removed.

6.17 Modification in the definition of family for grant of benefits under the different service rules has several implications and should be considered by government

in all its aspects, keeping in view the repercussions on employees working in various organised sectors. Government may also consider the larger question of the responsibility which it should assume at this stage for the families and other dependents of deceased government employees only.

7.10 In the family pension scheme under the pension rules no separate pension is payable to children. If the wife/husband of the deceased employee is alive family pension is paid on'y to her/him. Where the deceased employee does not have a living wife/husband that pension is payable to children upto specified age. The same principle should apply to family pension under EOP rules also and the additional Pension admissible to children should be merged and consolidated family pension given.

7.11 The rules for payment of education allowance to children are cumbersome as they involve verification of annual income of deceased employees family from time to time before the allowance is paid. The present procedure needs to be simplified and brought in line with the provisions of family pension under pension rules.

7.11 Rates of consolidated family pension inclusive of children's pension and education allowance where applicable in different sets of circumstance will be as given in 7.11.

7.12 At present the monthly amount of disability pension for 100 per cent loss in the earning capacity is equal to the ordinary family Pension admissible under the Pension rules. This may continue.

7.13 In cases where an employee has suffered disability attributable to government service and has been granted disability pension under the EOP rules and needs some artificial aids under medical advice he should be provided such aids initially and their replacement subsequently should also be provided by government.

7.17 The existing pay limit Rs. 700/- per mensem for grant of family pension under liberalised pensionary awards may be raised to Rs. 2200/- per mensem. These awards need to be rationalised.

8.7 to 8.9 No change recommended in the existing limits on commutation of pension. The whole system of commutation of pension requires a de novo examination. Government may examine the feasibility of introducing scheme under which pension will be restored after a short Period of about 7 years or so for both civil and defence pensioners.

9.6 Contributory Provident Fund beneficiaries who have retired prior to March 31, 1985 with a basic pay upto Rs 500/- per mensem may be given an ex gratia payment of Rs. 300/- per mensem in addition to the benefits already received by them under the CPF scheme. The ex gratia payments and the periodic increases already received by those who retired on pay upto Rs. 500/- may be so adjusted that the total amount of ex gratia payment is not less than Rs. 300/-. The ex gratia amount of Rs. 300/- per mensem may be reviewed as and when dearness relief is sanctioned to pensioners.

9.7 Widows and dependent children of deceased CPF beneficiaries getting pay upto Rs. 500/- per mensem may be sanctioned ex gratia payment of 50 per cent of the rate.

9.8 The Contributory Provident Fund beneficiaries still in service on January 1, 1986 should be deemed to have come over to the pension scheme on that date unless they specifically opt out to continue under the CPF scheme. Government may extend the benefit of DCRG to CPF beneficiaries in departments other than Railways on the same lines as in Railways.

9.9 Department of Railways may consider the feasibility of giving option to other CPF retirees to come over to the pension scheme with effect from January 1, 1986 subject to their refunding to government the entire amount of government contribution inclusive of interest thereon credited to their provident fund account at the time of their retirement.

10.1 Based on the recommendations of pay commissions, government has been making improvements in the pensionary benefits of various categories of government employees. The benefits of such improvements were from a prospective date.

10.2 The Supreme Court judgement is a landmark in the evolution of pension structure for past pensioners and has laid down the law of the land in this regard. In terms of this judgement some improvements in pensionary benefits have already been extended by government to pensioners, including those who retired prior to the date from which the improvements became effective.

10.3 Government has also extended in the past the benefits of minimum pension to existing pensioners.

10.4 Apart from improvements made by government in the pensionary entitlements based on the recommendations of pay commissions or on its own, merger of full dearness allowance with pay has been done from time to time since the pay scales recommended by the First Pay Commission came into force.

10.4 Personal pension was introduced for the first time for a number of employees who retired after March 31, 1985. It does not qualify for grant of any graded relief.

10. In Department of Pension and Pensioners' Welfare Office Memorandum No. 42 (4)-P&PW/86 dated March 3, 1986 while granting graded relief to pensioners with reference to index average 608 with effect from January 1, 1986 it has been stipulated that the amount of pension plus graded relief in the case of those governed by tables I and II will not exceed Rs. 1938/- and in the case of those governed by table III it will not exceed Rs. 1863/-.

10.8 Employees retiring from broadly comparable posts at different points of time are receiving different amounts of pension on account of merger of dearness allowance with pay and due to graded relief granted from time to time.

10.9 Pensioners' associations and individual pensioners have drawn attention to the disparities in pension of broadly comparable retirees and suggested that a method should be devised for equalisation of pensions. Retirees from armed forces have suggested that they should get the same rank pension as would be admissible to future retirees.

10.10 The amount of pension undergoes changes as and when the pay scales are revised. Any attempt to equalise pension with reference to the revised scales of pay would amount to retrospective application of these scales of pay. It is difficult to accept the suggestion for equalisation of pension with reference to that admissible in the revised scales of pay.

10.11 The application of any one formula is not likely to benefit all categories of past pensioners. The matter is to be viewed from a perspective which not only confers benefits to the pensioners who deserve it but is also simple and easy to administer. Whatever relief is to be provided it should be such that it is easily given to those who retired long ago by the pension disbursing authorities without requiring any detailed recalculation of pension by the pension sanctioning authorities and processing through various channels.

10.13 The scheme recommended for grant of relief to pensioners for price rise over index average 608 is to apply both to existing pensioners and those who retire in future. It is necessary that the pension structure for existing pensioners is rationalised and simplified. Under the existing government orders there are four tables presently being used by all pension disbursing authorities for determination of graded relief on the pensions being disbursed by them. Any additional relief to the existing pensioners should therefore be based on these tables with which the disbursing authorities are fully conversant.

10.13 As a result of pegging the amount of graded relief to pension of Rs. 500/-, those drawing pension above Rs. 500/- have not been given adequate relief against price rise in the past. This situation needs to be rectified while evolving a proper pension structure for existing pensioners.

10.14 Both civil and defence pensioners drawing pension upto Rs. 500/- per mensem including family pensioners and persons in receipt of extraordinary pension may be granted additional relief at rates recommended.

10.15 The relief in the case of both civil and defence pensioners drawing pension above Rs 500/-, may be recalculated in the manner indicated.

10.17 The recommendation for recalculating pension at 50 per cent of pay instead of the slab system should apply to all existing pensioners and the ceiling on pension plus graded relief should not apply to those who retired prior to March 31, 1985.

10.17 The benefit arising out of recalculation of pension at 50 Per cent should not be counted for computation of additional relief recommended

10.18 Minimum pension for pensioners including family pensioners may be fixed at Rs. 300/- per mensem. In case of existing pensioners, where the total amount of existing pension plus relief plus additional relief recommended falls short of Rs. 300/- the same may be raised to Rs. 300/- per mensem. This minimum shall also apply to future pensioners.

10.19 The reliefs now admissible and those recommended should be consolidated with the pension in every case and the total amount so arrived at should be deemed as pension in the rationalized structure proposed with effect from January 1, 1986. The consolidated amount of pension should be the basis for grant of future relief.

10.19 The additions to pensions recommended in Chapter 10, will not qualify for any additional commutation for existing pensioners.

10.20 Government may consider paying a lump sum amount in lieu of the personal pension on a basis considered appropriate so that this does not continue as a separate element in the rationalised pension structure.

11.7 Dearness relief in future should provide full neutralisation of price rise to pensioners drawing pension upto Rs. 1750/- per mensem, 75 per cent to those getting pension between Rs. 1751/- and Rs. 3000/- and 65 per cent to those getting pension above Rs. 3000/-. The price rise for purposes of grant of relief to pensioners in future should be worked out in the same manner as recommended for serving employees in Part I of report may be given twice a year.

11.8 So far as the existing pensioners are concerned their pensions may be rationalised at index average 608 (1960=100) in the manner recommended. Relief at the revised rate recommended may be given on the consolidated pensions in future for price rise over index average 608.

12.3 It is not desirable to encourage the present tendency to continue provisional pension to retiring employees. Government should adopt suitable measures to tone up the administration and ensure that every retiring employee gets his pension payment order on the day of his retirement. Appropriate interest should be paid to the pensioner for any delay in sanctioning pension beyond three months from the date of his retirement.

12.4 The Department of Pension and Pensioners' Welfare should try to build up a detailed and easily accessible data bank about pensioners of various categories in different organisations of the Government of India.

12.5 The government should evolve a simple system of payment of pension through banks all over the country, particularly for members of all India Services.

12.6 Government may examine the feasibility of introducing a pension book for pensioners. A beginning towards mechanisation can also be made by introducing modern filing and indexing system and by use of electronic calculators. Suitable facilities should also be provided to pensioners while they wait at pension disbursing office to draw their pension.

12.7 A change of attitude on the part of bank personnel is also required and pension disbursement should not be treated by the banks as a routine activity. This work should be viewed as an obligation which the banks discharge on behalf of the government. Pensioners should be treated as respected senior citizens. Special counters should be opened for them to expedite payment of pension.

12.8 It may be examined if pensioners could be allotted identification numbers so as to facilitate computerisation of data. This will be a first step towards computerisation. The Department of Pension and Pensioners' Welfare should set up an expert body to

study pension disbursement system and streamline all the existing procedure for disbursement. This should be a continuing effort so as to provide maximum satisfaction to the pensioners.

13.8 The existing system of standard rate of pension for commissioned officers may be modified and the retiring pension calculated for each officer based on his pay and the actual qualifying service rendered by him after adding the weightage of service presently admissible.

13.9 In case of personnel below officer rank, the existing system of standard rate of pension separately for each rank in the various pay groups may continue with the existing weightage of 5 years.

13.14 The retiring/service gratuity may be paid at a uniform rate of one month's pay for every completed year of service.

13.14 There may be no reduction in the service gratuity irrespective of whether the retirement is on compassionate grounds or on personal reasons.

13.15 Weightage of 5 years may be added to the actual qualifying service for determining death-cum-retirement gratuity for armed forces personnel.

13.20 The revised rates of disability element for 100 per cent disability may be fixed at Rs. 600/- for officers and honorary commissioned officers and Rs. 450/- for JCOs, personnel below officer rank and non-combatant (enrolled).

13.20 The revised rates of disability element may be extended to all existing disability pensioners of armed forces

13.21 Where disability is assessed as permanent and the serviceman is retained in service, 100 per cent commuted value of disability element may be paid.

13.24 Constant attendant allowance both for battle and non-battle casualties may be increased to Rs. 300/- and may be extended to existing disability pensioners also.

13.27 The existing rates of special family pension, children allowance, children education allowance may be replaced by consolidated rates of special family pension.

13.36 The terminal gratuity for short service commissioned officers may be equal to one month's pay for each completed year of service.

14.17 The office of the Director General Resettlement may be upgraded to enable the Director General Resettlement to liaise effectively with the State Governments/Union Territories/Public Sector Undertakings.

15.5 Central Government Health Scheme facilities may be extended to all retired civilian government employees including those of Union Territories even if they were not covered by it while in service, wherever such facilities are provided.

15.6 Government may examine the question of introducing a special comprehensive medicare scheme for all pensioners. The scheme should be simple and easy to administer and provide facilities similar to those available under CGHS.

15.7 Department of Railways may examine the improvements that will be necessary in extending further facilities of medicare to retired railway employees.

15.8 Government may review the position from time to time and extend such additional facilities to defence pensioners as may be feasible taking into account all relevant factors.

15.9 Government may examine the possibility of providing facilities of reading room, library, recreation, etc. in major metropolitan centres having substantial number of pensioners preferably in the same complex where a CGHS dispensary is located so as to serve the social needs of the pensioners. Such a place will also provide opportunity for exchange of information.

15.10 There are many government and quasi government agencies engaged in house building with substantial financial assistance from government and/or public financial institutions. A certain percentage of houses constructed by them may be reserved for allotment to retired central government employees.

16.4 Government may review the existing rules and procedures relating to commercial employment after retirement so as to enable the concerned ministries to deal with these cases as well as identify specific posts for which prior permission should be necessary.

16.6 As the retirement benefits of the employees will improve with the revised scales of pay government may review the entire question of fixation of pay on re-employment including the amount of pensionary benefits which should be ignored on such re-employment and issue revised guidelines.

16.10 No change is proposed in the existing rules governing grant of relief on pension and family pension to central government employees absorbed in public sector undertakings.

16.12 Government may examine broad-basing the objectives of Standing Committee of Voluntary Agencies so as to highlight the various problems of pensioners like medical and housing needs, their utilisation in social welfare schemes like adult education, rural development, urban improvement, etc. While doing so Secretaries of the concerned Ministries/Departments, representatives of State Governments (by rotation) may also be included in the Committee.

MISCELLANEOUS

Some members have written that we have possibly started soft-pedaling the matter of amendment of the Rent Control law. This is not correct. It is unfortunate that this matter has become the preserve of vested interests of politicians who are concerned only with counting votes and are not bothered about the extreme difficulties that operation of the existing law is causing to the owners as well as tenants. Rents have soared exorbitantly; it has become impossible for a person of normal means to get any accommodation on rent; owners prefer to keep the premises locked; disputes between owners and tenants are reflected in mounting cases in courts and are becoming law and order problem. We recently wrote to Mrs Mohsina Kidwai, the new Minister of Urban Development. The reply received is mere repetition of same old words which are being used for the last many years: the matter is under the "active consideration of the Government". Our letter to her:

Dear Mrs Kidwai,

Since you have assumed charge of the important portfolio of Urban Development people have been looking forward to an early and satisfactory solution of the problem of amendment of rent control law. This problem has been festering for long. It has vitiated the atmosphere in towns, embittering the relations between tenants and houseowners, hampering construc-

This will serve as a forum to deal with all problems of pensioners. The Standing Committee may be presided over by the Cabinet Secretary, or Secretary Department of Personnel

17.2 Recommendations regarding death-cum-retirement benefits for central government employees including personnel of union territories, all India services and armed forces may be given effect from January 1, 1986.

17.3 In the implementation of our recommendations hard cases, if any, may be dealt with on merits by government.

17.5 The immediate additional expenditure on the recommendations is estimated to be about Rs. 300/- crore per annum. About 90 per cent of the expenditure is in respect of rationalization of existing pension structure and much needed relief for past pensioners and retirees and this expenditure will be justified in meeting genuine needs of pensioners.

tion activity, burdening the courts with mounting litigation. Government has earned a bad name by dithering in relation to this problem. Every Housing Minister has, over the years, been promising to "soon" bring the amending bill before the Parliament. It is now openly being said everywhere that the politicians have their own vested interests, and they are therefore blocking this essential piece of legislation from being brought before the Parliament. An excuse is being built up by them that amendment of the law will lose votes for the ruling party. The fact is that the houseowners, who constitute the vast numbers in the urban areas, have been badly alienated on account of this dithering.

We stand for harmonious solution of this problem, for the small owners as well as the tenants. Concrete suggestions have emanated on this subject from various commissions and committees. It is for the Government to come to grips with these without further delay.

People are laying wagers whether you will rise to the occasion, to bring about amendment of this law. We earnestly hope that you will rise above the demands of petty politicians and deal effectively and urgently with this problem in the interest of the country.

Yours sincerely,
H D. SHOURIE