Government of India
Ministry of Railways
(Railway Board)

No. 2009/R$G(3)/796/4 Dated 29-6-2011

The General Manager, All Indian Railways & PUs including NF(C).
The General Manager, CORE, Allahabad.
The General Manager, Metro Railway, Kolkata.
The Director General, RDSO, Lucknow & Railway Staff College, Vadodara.
The MD, RITES, RITES Bhavan, Sector-29, Gurgaon.
The MD, KRCL, Belapur Bhavan, 4th Floor, Sector-11, CBD, Belapur, Navi Mumbai.
The MD, MRVC, 2nd Floor, Church Gate Station Building, Mumbai.
The MD, CRIS, Chanakyapuri, New Delhi.
CAO/DMW, Patiala and COFMOW, New Delhi.
CAO/MTP, NBCC Place, Bhishma Pitamah Marg, Pragati Vihar, New Delhi.
CAO/MTP, Mumbai and Chennai

Subject: Settlement of disputes between one Government Department and another and one Government and a public Enterprise and one public enterprise and another.


The Committee on Disputes (COD) was constituted in compliance of the directions of Hon'ble Supreme Court (refer above O.M. dated 3.3.11 of Department of Legal Affairs). The Composition purpose and procedure for submission of cases for consideration by the Committee was laid down in Cabinet Secretariat Office Memorandum referred above.

Department of Legal Affairs, Ministry of Law and Justice vide its above referred O.M. dated 3.3.2011 has referred to the Hon'ble Supreme Court's Order dated 17th February 2011. Hon'ble Supreme Court has inter-alia stated in the order that "we hereby recall the following orders reported in (i) 1995 Supp (4) SCC 541 dated 11.10.1991 (ii) (2004) 6 SCC 437 dated 7.1.1994 (iii) (2007) 7 SCC 39 dated 20.7.2007".
In view of the judgement, there is no requirement of obtaining approval of the Committee on Disputes for pursuing litigations as was hitherto being done. All Railway units may now pursue their appeals in the respective Tribunals/Courts without obtaining clearance from the Committee on Disputes. Proposals which have already been sent to the Committee and no decisions have been taken till 17.02.2011 shall be deemed to be covered by the decision of the Hon’ble Court dated 17.02.2011, i.e. COD permission is not required in those cases.

You may proceed in cases under dispute as per the above guidelines.

(Santosh Mittal)
Dy. Director Railway Stores(G)-I
Railway Board

No. 2009/RS(G)/796/4
New Delhi, dated 29-6-2011

Copy to:

1. FA&CAOs, All Indian Railways & Production Units.
2. PCEs, All Indian Railways.
3. The ADAI(Railways), New Delhi (with 10 spares copies)
4. The Director of Audit, All Indian Railways.

(Santosh Mittal)
Dy. Director Railway Stores(G)-I
Railway Board

No. 2009/RS(G)/796/4
New Delhi, dated: 29-6-2011

Copy to:

1. The COSs, All Indian Railways & PUs including NF(C).
2. The COS, Metro Railway, Kolkata.
3. The COS, COFMOV, New Delhi.
4. The COS, CORE, Allahabad.
5. The COS, KRCL, Belapur Bhavan, 4th Floor, Sector-11, CBD, Belapur, Navi Mumbai-400614.
6. The, COS, MRVC, 2nd Floor, Church Gate station Building, Mumbai-400020.

7. The Directors:
   (a) Indian Railway Institute of Sig. Engg. & Telecom, Secunderabad.
   (b) Indian Railway Institute of Mech. & Elec. Engg., Jamalpur.
   (c) Indian Railway Institute of Elect. Engg., Nasik.
   (d) Sr.Prof. (Material Management), Railway Staff College, Vadodara. Indian Railway Institute of Civil Engg., Pune.
(e) Indian Railway Institute of Logistics & Materials Management, 
IDA House, Sector IV, R.K. Puram, New Delhi
8. Chairman, Railway Rates Tribunal, Chennai.
9. Director, Iron & Steel, 3, Koila Ghat Street, Kolkata.
10. Executive Director (Stores), RDSO, Manak Nagar, Lucknow.
12. ED(QA), RITES, RITES Bhavan, Sector-29, Gurgaon, Haryana-122001.
13. CPM, CRIS, Chanakya Puri, New Delhi.

(Santosh Mittal)
(Dy.Director Railway Stores(G)-I)
Railway Board

No. 2009/RS(G)/796/4
New Delhi, dated 29-6-2011

Copy to:
(1) The General Secretary, AIRQ, 4, State Entry Road, New Delhi-55.
(2) The General Secretary, NFIR, 3, Chelmsford Road, New Delhi-55.
(3) The Secretary General, IRPOF, Room No. 268, Rail Bhavan, New Delhi-1.
(4) The Secretary General, FROA, Room No. 256-D, Rail Bhavan, New Delhi-1.
(5) The Secretary General, AIPPA, Room No. 256-D, Rail Bhavan, New Delhi.

(Santosh Mittal)
(Dy.Director Railway Stores(G)-I)
Railway Board

Copy to:-
Sr. PPSs / PPS / P.S to:
(i) CRB, FC, ME, MM, MS, ML, MT, SECY., DG(RHS), DG(RPF)
(ii) All AMs and Advisor of Railway Board.
(iii) All Executive Directors of Railway Board.
भारत सरकार
रेल मंत्रालय (रेलवे बोर्ड)

सं. 2009/आरएस(जी)/796/4

नई दिल्ली, दिनांक: 2-9.06.2011

महामंत्री, सभी भारतीय रेलें एवं उत्पादन इकाइयां, पूर्वोत्तर सीमा (निर्माण) सहित।
महामंत्री, कोर, इलाहाबाद।
महामंत्री, मेट्रो रेलवे, कोलकाता।
महानिदेशक, अ.एच.मास. लखनऊ एवं रेलवे टैक्टिकल कॉलेज, बड़ोदरा।
प्रबंध निदेशक, राइट्स, राइट्स भवन, सेक्टर-29, गुड़गाँव।
प्रबंध निदेशक, कोकर रेल कोर्पोरेशन लिट., बेलापुर भवन, चौथा तल, सेक्टर-11, सी बी डी, बेलापुर,
नई दिल्ली।
प्रबंध निदेशक, मुंबई रेल विकास निगम, दूसरा तल, चौथे गेट स्टेशन बिल्डिंग, मुंबई।
प्रबंध निदेशक, किस्म, चाणक्यपुरी, नई दिल्ली।
मु.प्र.ए./डीजलआधुनिकीकरण कारखाना, पटियाला एवं कोकर।
मु.प्र.ए./म.प.प., एनवीसीसी प्लेस, भीष्म पितामह मांग, प्रगति विहार, नई दिल्ली।
मु.प्र.ए./म.प.प., मुंबई एवं चेन्नै।

विषय: एक सरकारी विभाग और दूसरे सरकारी विभाग तथा एक सरकारी और
सार्वजनिक उपक्रम एवं एक सार्वजनिक उपक्रम और दूसरे सार्वजनिक उपक्रम के
बीच विवाद का निपटान।

संदर्भ: 1. विधि एवं न्याय मंत्रालय के विधि विभाग के दिनांक 03.03.2011 का
कार्यालय जापन सं. एफ.34(4)/2011-जूडिसियल (प्रतिलिपि संलग्न)।

2. मंत्रिमंडल सचिवालय का दिनांक 13.12.91 का कार्यालय जापन सं.
53/3/6/91-कैब तथा दिनांक 24.01.94 का कार्यालय जापन सं.
53/3/6/91-कैब (प्रतिलिपि संलग्न)।

माननीय सर्वोच्च न्यायालय (विधि विभाग के दिनांक 03.03.2011 के उपरोक्त संदर्भित
कार्यालय जापन को देखें) के अनुदेशों के अनुसार में विवादों से संबंधित समिति (सीओडी) का गठन
किया गया था। इस समिति द्वारा विचार के लिए मामलों को प्रस्तुत करने हेतु संयोजन उद्देश्य और
प्रक्रिया उपयुक्त संदर्भाधीन मंत्रिमंडल सचिवालय के कार्यालय जापन में दी गई थी।

विधि विभाग, विधि एवं न्याय मंत्रालय के दिनांक 03.03.2011 के उपरोक्त संदर्भित पत्र में
माननीय सर्वोच्च न्यायालय के दिनांक 17 फरवरी, 2011 के आदेश का उल्लेख किया गया है।

इस निर्णय के दुस्तर गत मुकदमे चलाने के लिए विवादों से संबंधित समिति का अनुमोदन प्राप्त करने की आवश्यकता नहीं है, जैसा कि अब तक किया जाता था। सभी रेलवे इकाइयाँ अब विवादों से संबंधित समिति से किल्गर्ज प्राप्त किए बिना संबंधित अधिकारियों/न्यायालयों में अपनी अपील कर सकती हैं। वे प्रस्ताव जो समिति को पहले ही भेजे जा चुके हैं और जिन पर 17.02.2011 तक कोई निर्णय नहीं लिया गया है, को माननीय न्यायालय के दिनांक 17.02.2011 के निर्णय द्वारा कब्र समझा जाए अर्थात् उन मामलों में सीओडी की स्वीकृति की आवश्यकता नहीं है।

आप उपर्युक्त दिशा-निर्देशों के अनुसार विवाद के मामलों में कार्यवाह कर सकते हैं।

उप निदेशक रेलवे भंडार (जी)-1
रेलवे बोर्ड

सं. 2009/आरएस(जी)/796/4


प्रतिलिपि प्रेषित:
1. विव दलाहकार एवं मुख्य लेखा अधिकारी, सभी भारतीय रेल एवं उत्तराधिकारी।
2. पीसीआई, सभी भारतीय रेल एवं उत्तराधिकारी।
3. एडीएआई (रेलवे), नई दिल्ली (10 अतिरिक्त प्रतियां सहित)।
4. लेखा परीक्षक, सभी भारतीय रेल।

उप निदेशक रेलवे भंडार (जी)-1
रेलवे बोर्ड

सं. 2009/आरएस(जी)/796/4


प्रतिलिपि प्रेषित:
1. सीओएस/सभी भारतीय रेल एवं उत्तराधिकारी, पूर्वी रियास (निर्माण) सहित।
2. सीओएस, मेट्रो रेल कोलकाता।
3. सीओएस, कोकमो, नई दिल्ली।
4. सीओएस, कोर, इलाहाबाद।
न. सीआरएस, कॉर्पोरेशन लिमिटेड, भारत, चौथा तल, सेक्टर-11, सीबीडी, भारत, नवो मुंबई-400 614.
6. सीआरएस, मुंबई रेल विकास निगम, दूसरा तल, चचं गेट स्टेशन बिल्डिंग, मुंबई-400020.
7. निदेशक -
  क. भारतीय रेल सिग्नल इंजीनियरी एवं दूरसंचार संस्थान, सिकंदराबाद।
  ख. भारतीय रेल यात्रिक एवं बिजली इंजीनियरी संस्थान, जमालपुर।
  ग. भारतीय रेल बिजली इंजीनियरी संस्थान, नासिक।
  घ. वरिष्ठ प्रो. (सामग्री प्रबंधक) रेलवे स्टाफ कॉलेज, वडोदरा।
  ड. भारतीय रेल बिजली इंजीनियरी संस्थान, पुणे।
  च. भारतीय रेल लॉजिस्टिक्स एवं सामग्री प्रबंधन संस्थान, आईडीए हाउस, सेक्टर-4, आर.के. पूर्व, नई दिल्ली।
8. अध्यक्ष, रेल दर अधिकार, चेन।
9. निदेशक, लोच एवं इस्माइल, 3, कोयला घाट स्ट्रीट, कोलकाता।
10. कार्यालय निदेशक (भंडार), अ.अ. मा. सं., मानक नगर, लखनऊ।
11. मुख्य आयुक्त, रेल संस्थान, लखनऊ।
12. कार्यालय निदेशक (ब्यू ए) / राइटर्स, राइटर्स भवन, सेक्टर-29, गुड़गांव, हरियाणा।
13. सीपीएम, क्रिस, चाणक्यपुरी, नई दिल्ली।
14. महाप्रबंधक (परियोजना)-V, क्रिस, चाणक्यपुरी, नई दिल्ली।

रैल्वे बोर्ड
सं. 2009/आरएस(जी)/796/4 नई दिल्ली, दिनांक: 29.06.2011
नई दिल्ली, दिनांक: 29.06.2011

प्रतिलिपि प्रेषित:
1. महासचिव, एआईआरएफ, 4 स्टेट एंट्री रोड, नई दिल्ली-110 055.
2. महासचिव, एआईआरएफ, 3 चेंस्मवाड रोड, नई दिल्ली-110 055.
3. महासचिव, इसपोष, कमरा नं. 268, रेल भवन, नई दिल्ली-110 001.
4. महासचिव, कोआ, कमरा नं. 256 डी, रेल भवन, नई दिल्ली-110 001.
5. महासचिव, एआईआरएफए, कमरा नं. 256 डी, रेल भवन, नई दिल्ली।
Sub: Hon'ble Supreme Court's Order dated 17th February, 2011 in Appeal Civil No.1903 of 2008 between CCE Vs. BPCL -- recalling their earlier directions in the case of ONGC Vs. CCE and ONGC Vs. CIDCO, Maharashtra regarding non- insistence of CoD approval for pursuing litigation by PSU/Government Departments.

The undersigned is directed to state that Hon'ble Supreme Court while dismissing IA no. 4 in Civil Appeal no.1903/2008 filed by Bharat Petroleum Corporation Ltd., has recalled their earlier orders reported in (i) ONGC vs CCE [(1995 Supp)4 SCC 541 dated 11.10.1991], (ii) ONGC vs CCE [(2004) 6 SCC 437 dated 07.01.1994] and (iii) ONGC vs CIDCO [(2007) 7 SCC 39 dated 20.07.2007] wherein the Hon'ble Court had directed that prior approval of the "Committee on Disputes" need to be obtained before the filing of a case in the Court.

The text of the said order is reproduced below:-

"CIVIL APPEAL NO.1883 OF 2011
( ARISING OUT OF S.L.P. (C) NO. 2538 OF 2009)

Electronics Corporation of India Ltd. ... Appellant(s)
versus

Union of India & Ors. ... Respondent(s)

Civil Appeal No. 1903 of 2008

Coram: S.H. Kapadia, CJI, Mukundakam Sharma, K.S. Panicker Radhakrishnan, Swatanter Kumar and Anil R. Dave, JJ

ORDER

S.H. KAPADIA, CJI. - Leave granted.

2. Electronics Corporation of India Ltd. ("assessee" for short) is a Central Government Public Sector Undertaking ("PSU"). It is registered as a Government Company under the Companies Act, 1956. It is under the control of Department of Atomic Energy, Government of India. A dispute had been raised by the Central Government (Ministry of Finance) by issuing show cause notices to the assessee alleging that the Corporation was not entitled to avail/utilize Modval/Central Credit in respect of inputs whose values stood written off. Accordingly it was proposed in the show cause notices that the credit taken on inputs was liable to be reversed. Thus, the short point which arose for determination in the present case was whether the Central Government was right in insisting on reversal of credit taken by the assessee on inputs whose values stood written off.

Contd...
3. The adjudicating authority held that there was no substance in the contention of the assessee that the write off was made in terms of AS-2. The case of the assessee before the Commissioner of Central Excise (adjudicating authority) was that it was a financial requirement as prescribed in AS-2; that an inventory more than three years old had to be written off/deteriorated in value; that such derating in value did not mean that the inputs were unfunctional; that the inputs were still lying in the factory and they were useful for production and therefore they were entitled to Modvat/Cenvat credit. As stated above, this argument was rejected by the adjudicating authority and the demand against the assessee stood confirmed. Against the order of the adjudicating authority, the assessee decided to challenge the same by filing an appeal before CESTAT. Accordingly, the assessee applied before the Committee on Disputes (CoD). However, the CoD vide its decision dated 2.11.2005 refused to grant clearance though in an identical case the CoD granted clearance to Bharat Heavy Electricals Ltd. ("BHEL"). Accordingly, the assessee herein filed Writ Petition No. 28573 of 2008 in the Andhra Pradesh High Court. By the impugned decision, the writ petition filed by the assessee was dismissed. Against the order of the Andhra Pradesh High Court the assessee has moved this Court by way of a special leave petition.

4. In a conjunct matter, Civil Appeal No. 1903 of 2008, the facts were as follows. Bharat Petroleum Corporation Ltd. ("assessee" for short) cleared the goods for sale at the outlets owned and operated by themselves known as Company Owned and Company Operated Outlets. The assessee cleared the goods for sale at such outlets by determining the value of the goods cleared during the period February, 2000 to November, 2001 on the basis of the price at which such goods were sold from their warehouses to independent dealers, instead of determining it on the basis of the normal price and normal transaction value as per Section 4(4)(b)(iii) of Central Excise Act, 1944 ("1944 Act" for short) read with Rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In short, the price adopted by the assessee which is a PSU in terms of Administered Pricing Mechanism ("APM") formulated by Government of India stood rejected. The Tribunal came to the conclusion that the APM adopted by the assessee was in terms of the price fixed by the Ministry of Petroleum and Natural Gas; that it was not possible for the assessee to adopt the price in terms of Section 4(1)(b) of the 1944 Act; and that it was not possible to arrive at the transaction value in terms of the said section. Accordingly, the Tribunal allowed the appeal of the assessee. Aggrieved by the decision of the Tribunal, CCE has come to this Court by way of Civil Appeal No. 1903 of 2008 in which the assessee has preferred I.A. No. 4 of 2009 requesting the Court to dismiss the above Civil Appeal No. 1903 of 2008 filed by the Department on the ground that CoD has declined permission to the Department to pursue the said appeal.

5. The above two instances are given only to highlight the fact that the mechanism set up by this Court in its Orders reported in (i) 1995 Supp.(4) SCC 541 (ONGC v. CCE) dated 11.10.1991; (ii) 2004 (6) SCC 437 (ONGC v. CCE) dated 7.1.1994; and (iii) 2007 (7) SCC 39 (ONGC v. City & Industrial Development Corp.) dated 20.7.2007 needs to be revisited.
6. Learned Attorney General has submitted that the above Orders have outlived their utility and in view of the changed scenario, as indicated hereinafter, the aforesaid Orders are required to be recalled. We find merit in the submission made by the Attorney General of India on behalf of the Union of India for the following reasons. By Order dated 11.9.1991, reported in 1992 Supp (2) SCC 432 (ONGC and Anr. v. CCE), this Court noted that "Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court". Consequently, the Cabinet Secretary, Government of India was "called upon to handle the matter personally".

7. This was followed by the order dated 11.10.1991 in ONGC-II case (supra) where this Court directed the Government of India "to set up a Committee consisting of representatives from the Ministry of Industry, Bureau of Public Enterprises and Ministry of Law, to monitor disputes between Ministry of Finance and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation".

8. Thereafter, in ONGC-III case (supra), this Court directed that in the absence of clearance from the "Committee of Secretaries" (CoS), any legal proceeding will not be proceeded with. This was subject to the rider that appeals and petitions filed without such clearance could be filed to save limitation. It was, however, directed that the needful should be done within one month from such filing, failing which the matter would not be proceeded with. By another order dated 20.7.2007 (ONGC-IVth case) this Court extended the concept of Dispute Resolution by High-Powered Committee to amicably resolve the disputes involving the State Governments and their Instrumentalities.

9. The idea behind setting up of this Committee, initially, called a "High-Powered Committee" (HPC), later on called as "Committee of Secretaries" (CoS) and finally termed as "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee. [see : para 3 of the order dated 7.1.1994 (supra)] Whilst the principle and the object behind the aforesaid Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinafore. They indicate that on same set of facts, clearance is given in one case and refused in the other. This has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping jurisdictions between, let us say, SEBI and insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases...
grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various Orders reported as (i) 1995 Supp (4) SCC 541 dated 11.10.1991, (ii) (2004) 6 SCC 437 dated 7.1.1994 and (iii) (2007) 7 SCC 39 dated 20.7.2007.


11. For the aforesaid reasons, I.A. No. 4 filed by the assessee in Civil Appeal No. 1903/2008 is dismissed.”

III. All the Law Officers and incharge(Litigation) of Supreme Court and High Courts/Tribunals are requested to ensure compliance of the above Order of the Apex Court.

IV. This issues with the approval of Law Secretary.

(Ashok Kumar)
Joint Secretary & Legal Adviser to the Government of India

To
1. PS to Attorney General for India, Supreme Court, New Delhi.
2. PS to Solicitor General of India, Supreme Court, New Delhi.
3. All the Additional Solicitors General as per the list.
4. All Assistant Solicitors General as per the list.
5. Incharge, Branch Secretariats, Mumbai, Kolkata, Chennai and Bangalore.
6. Incharge, Central Agency Section, Supreme Court Compound and Incharge, Litigation (HC/LC) Sections, Delhi High Court Building, New Delhi.
7. All ILS officers of Department of Legal Officers.
8. Shri Braj Mohan, Deputy Secretary, Cabinet Secretariat, Sardar Patel Bhawan, New Delhi with reference to OM No.1/12677-C/10-LC dated 18th February, 2011.
9. NIC Cell with the request to upload this OM in the website of the Department under, ‘circulars pertaining to litigation’.

(Ashok Kumar)
Joint Secretary & Legal Adviser to the Government of India
New Delhi, the 41st December, 1991.

OFFICE MEMORANDUM

Subject: Settlement of disputes between one Government Department and another and one Government Department and a Public Enterprises and Public Enterprise and another.

The undersigned is directed to refer to this Secretariat O.M. No. 53/3/1/84-Cab. dated 12th March, 1985 and the O.M. No. 15/9/86-BPE(FAN) dated 30-3-89 issued by the BPE on the subject (copies enclosed for ready reference) and to say that inspite of these instructions there are instances where public sector undertakings have resorted to legal proceedings instead of complying with these instructions causing avoidable embarrassment to Government. In a recent Civil Appeals case between the ONGC and the Collector of Central Excise, Bombay, Hon. Supreme Court has taken adverse notice of Public Sector Undertakings pursuing litigations in Court by spending money on fees etc., and wasting public time notwithstanding Court’s repeated observations to the contrary in past cases.

2. In the aforesaid case, the Supreme Court has directed that a Committee under the control of Cabinet Secretary shall be set up to ensure that no litigation reaches the Court or a Tribunal without the matter having been first examined by the Committee.

3. Accordingly, it has been decided to constitute a Committee consisting of:

1. Cabinet Secretary.
2. Secretary, Department of Industrial Development.
3. Secretary, Department of Public Enterprises.
4. Secretary, Department of Legal Affairs.
5. Finance Secretary.
6. Secretary of the concerned Ministry/Department.

4. The instructions regarding settlement of disputes between one Government Department and another and one Government Department and a Public Enterprise and between Public Enterprises themselves as contained in this Secretariat Memo, referred to in para 1 above need to be strictly followed in all cases. If, however, no final decision can be arrived at following the said instructions, the concerned Ministry/Department or the concerned Public Sector Undertaking through their administrative Ministry/Department should refer such cases to the Cabinet Secretariat with a self-contained note for placing before the above constituted Committee for decision.

Further, it has to be ensured that no litigation involving such disputes is taken up in a a Court or a Tribunal without the matter having been first examined by the above constituted Committee and the Committee’s clearance for litigation is obtained.

5. The foregoing instructions may be brought to the notice of all concerned for guidance and strict compliance.

(Depak Das Gupta)
Joint Secretary to the Cabinet

To
Secretary, Department of Legal Affairs,
Secretary, Department of Industrial Development.
to Secretary,

May Department of Public Enterprises with the request that immediate
arrangements be made to all public sector enterprises to comply
with your specific direction.

Also Secretary of Additional Secretary to Government for Information

[(Signature)]

(Depal Dutta Gupta)

First Secretary in the Cabinet
SUBJECT: Settlement of Disputes between the Government Department and another and one Government Department and a Public Enterprises and Public Enterprises and another.

The undersigned is directed to refer to this Sech.O.M.No.31/3/69-1-Cab. dated 31st December, 1991 whereby a Committee was constituted to give clearance to the disputes between a Government Department and another and one Government Department and a Public Sector Enterprises and Public Enterprises themselves, before these are agitated in a Court/Tribunal. The Hon. Supreme Court had an occasion to go into the working of the Committee in the Civil Appeal Nos.2058-59/1988 (IA Nos.3 & 4 of 1992) between Oil & Natural Gas Commission Vs. Collector of Central Excise and has further directed vide its Order dated 7-1-1994 as follows:-

(i) All the pending matters before any Court or Tribunal should also be subject matter of the deliberations of the Committee. All the matters pending as on 7.1.1994 shall be included in the Union of India or any of the Public Sector Undertakings, shall within one month from the said date i.e. 7.1.1994 be referred by the appellant or the petitioner, as the case may be, to the High Power Committee.

(ii) There should be no bar to the lodgment of an appeal or petition either by the Union of India or by the Public Sector Undertakings before any Court or Tribunal, so as to save limitation. But, before such filing, every endeavour should be made to have the clearance of the Committee. However, as to what the Court or Tribunal should do if such judicial remedies are sought before such a Court or Tribunal, the Supreme Court's Order of 11th October, 1991 clarifies:-

"It shall be the obligation of every High Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceeding would not be proceeded with".

(iii) Wherever appeals/petitions etc., are filed without the clearance of the High Power Committee, so as to save limitation, the appellant or the Petitioner, as the case may be, shall within one month from such filing, refer the matter to the High Power Committee, with prior notice to the designated authority in Cabinet Secretariat (Under Secretary (Coordination)) authorised to receive notices in that behalf. The reference shall be deemed to have been made and become effective only after the notice of the reference is lodged with the Under Secretary (Coordination) in the Cabinet Secretariat. The reference shall be deemed to be valid if made in the case of Union of India by its Secretary, in the Ministry of Finance, Department of Revenue and in the case of Public Sector Undertakings. by its Chairman, Managing Director or Chief Executive, as the case may be. It is only after such reference to the Committee is made in the manner indicated that the operation of the order or proceedings under challenge, shall be suspended till the Committee resolves the dispute or gives clearance to the litigation. If the High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation.
4. Remember the directions of the Hon'ble Supreme Court, anybody who is engaged in the Ministry/Department of Government of India and Public Sector Undertakings should refer the dispute to the Committee in a self-contained note. It is also requested that while forwarding the requisite note (4 copies) to this Secretariat, the note may also be circulated to the Members of the Committee viz., Secretary, Department of Industrial Development, Secretary, Department of Public Enterprises, Secretary, Department of Legal Affairs, Finance Secretary, Secretary of the administrative Ministry/Department of Public Sector Undertakings and Chief Executive of the concerned Public Sector Undertakings viz. Public Sector Undertakings which are parties to the dispute or concerned in that matter.

3. The foregoing instructions may be brought to the notice of all concerned for guidance and strict compliance.

(B.K. Das)
Joint Secretary

To
Secretary, Department of Legal Affairs.
Secretary, Department of Industrial Development.
Finance Secretary.

Secretary, Department of Public Enterprises with the request that immediate instructions may be issued to all Public Sector Enterprises to comply with the Court's direction.

(B.K. Das)
Joint Secretary

All other Secretaries/Additional Secretaries to Government for information and necessary action.

(B.K. Das)
Joint Secretary

Copy to Secretary-General, standing conference of Public Enterprises (Shri M.A. Hakim), SCOPE complex, 7-Lodi Road, New Delhi, with the request to inform all Public Sector Enterprises to comply with Court's direction.

(B.K. Das)
Joint Secretary

25th June