118-1

- 4 FEB 1961

GOVERNMENT OF INDIA

No. WB - 20(1) Ministry of Labour & Employment

New Delhi Dated the 2nd Feb 1961

Subject :— Bonus Commission - time preference

The undersigned is directed to invite attention to the communication No. WB - 20 (1), dated 23/12/60 noted in the margin and to request ~~that the return of the file be expedited. enquiry how the case stands.~~ the favour of an early reply.

2/2/61

for Deputy Secretary

S. 10.

MFP—591 General—6772—(C-598)—27-5-57—5,000,000.

February 2, 1961

The Under Secretary
to the Government of India,
Ministry of Labour & Employment,
New Delhi.

Dear Sir,

Re: Bonus Commission Terms.

In response to your letter No. LC-9(41)/61 dated February 1, 1961, this is to inform you that the AITUC will be represented in the proposed meeting by the following representatives:

Shri S.A.Dange .. Delegate

Shri K.G.Sriwastava .. Adviser

Yours faithfully,

(K.G.Sriwastava)
SECRETARY.

2 FEB 1961

GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT

1st FEB 1961

EXPRESS LETTER

FROM: LABOUR, NEW DELHI.

TO : THE GENERAL SECRETARY,
ALL-INDIA TRADE UNION CONGRESS,
4, ASHOK ROAD, NEW DELHI.

NO.LC-9(41)/61 DATED NEW DELHI, THE 1ST FEBRUARY, 1961.

REFERENCE MINISTRY 'S LETTER DATED 28TH JANUARY 1961 (.) GRATEFUL EXPEDITE NAMES OF DELEGATE(S)/ADVISER(S) ATTENDING MEETING TO CONSIDER TERMS REFERENCE BONUS COMMISSION AT NEWDELHI ON TENTH FEBRUARY 1961 (.)

(T.C. GUPTA)
for Under Secretary.

30 JAN 1961

TELEGRAM

STATE EXPRESS

LC-9(41)/61 REFERENCE MINISTRY TELEGRAM TWENTYFIRST (.) MEETING CONSIDER TERMS REFERENCE BONUS COMMISSION WILL BE HELD NEW DELHI TENTH FEBRUARY (.) LETTER FOLLOWS (.)

LABOUR

Not to be telegraphed:

(T.C. GUPTA)
SECTION OFFICER.

No.LC-9(41)/61
Government of India
Ministry of Labour & Employment

Dated New Delhi, the 28th January'61.

Copy by post in confirmation to :-

The General Secretary,
All-India Trade Union Congress,
4, Ashok Road, New Delhi.

(T.C. GUPTA)
SECTION OFFICER.

30 JAN 1961

NO.LC-9(41)/61
Government of India
Ministry of Labour & Employment

From

Shri R.C. Saksena,
Under Secretary to the Government of India.

To

All Central Employers' and
Workers' Organisations.

Dated New Delhi, the 28th January, 1961.

Subject:- Meeting with employers' and workers' organisations - New Delhi - 10th February'61.

Sir,

I am directed to refer to this Ministry's letter dated the 6th January, 1961 and to say that the meeting of the representatives of Employers' and Workers' Organisations represented on the Standing Labour Committee to discuss and settle the terms of reference of the proposed Bonus Commission, fixed for the 30th January 1961, has had to be postponed at the request of certain Organisations. It would now be held at New Delhi on the 10th February, 1961. The meeting will commence at 11.30 A.M. in Committee Room 'A' North Block. The Labour Minister will also be meeting the employers' and workers' representatives informally on the 10th February, 1961 in Room No. 138, North Block as indicated below :-

Meeting with Workers	-	9.00 A.M. to 10.00 A.M.
Meeting with Employers	-	10.00 A.M. to 11.00 A.M.

Yours faithfully,

(R.C. SAKSENA)
UNDER SECRETARY.

STATE ORDINARY

(1) HINDMAZDUR BOMBAY (2) UNITED TRADE UNION CONGRESS 249 BOW BAZAR STREET CALCUTTA

(3) EMFERATION BOMBAY (4) AIMOR BOMBAY

LC-9(41)/61 REFERENCE MINISTRY TELEGRAM DATED FIFTH (.) MEETING EMPLOYERS' WORKERS' REPRESENTATIVES DISCUSS AND SETTLE TERMS OF REFERENCE BONUS ~~AND~~ COMMISSION WILL BE HELD NEW DELHI THIRTIETH JANUARY INSTEAD TWENTYSEVENTH (.) LETTER FOLLOWS (.)

LABOUR

Not to be telegraphed;

No.LC-9(41)/61
Government of India

Dated New Delhi, the 6th January 1961.

Copy also forwarded for information to:-

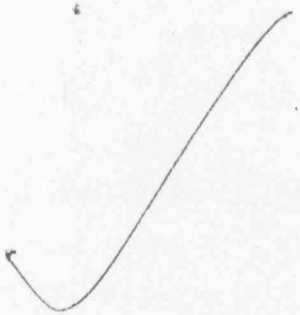
(1) The General Secretary, Indian National Trade Union Congress, 17- Janpath, New Delhi.

(2) The General Secretary, All India Trade Union Congress, 4, Ashok Road, New Delhi.

(3) The Secretary, All-India Organisation of Industrial Employers, 'Federation House', New Delhi.

(T.C. Gupta)
Section Officer.

PRINCIPLES OF BONUS FIXATION



AN INTUC PUBLICATION

PRINCIPLES OF BONUS FIXATION

BY
G. D. Ambekar

Published by
INDIAN NATIONAL TRADE UNION CONGRESS
(Rashtriya Mazdoor Congress)
17, Janpath, New Delhi

CONTENTS

s of Arjun Press), Naya Bazar, Delhi

FOREWORD

The INTUC periodically brings out booklets and brochures on various subjects connected with the trade union movement and on economic problems so that the trade unionists and the working class can equip themselves in organising and running sound, genuine and democratic trade union movement in India.

The present booklet, which deals with questions and principles of fixation of bonus, has been written by Shri G. D. Ambekar, a veteran trade unionist, who is well-known both at home and abroad for his depth and knowledge of various trade union subjects.

The question of bonus agitates the minds of millions of workers in the country and causes a lot of heart-burning and dissatisfaction affecting production to a considerable extent in the various sectors of our economy. The present booklet primarily deals with the history of bonus dispute in the city of Bombay and places a rational approach to the solution of the vexed problem of bonus.

I hope the booklet will prove useful to the trade union workers and to all those interested in understanding the concept of the most controversial subject of the principles of bonus-fixation.

S. R. VASAVADA
General Secretary

New Delhi
January 10, 1961.

AUTHOR'S NOTE

In this booklet an attempt is made to briefly trace the history of the bonus disputes, particularly in the Cotton Textile Industry in Bombay and to analyse the principles involved in the fixation of quantum of bonus. As it is the Full Bench Formula of the Labour Appellate Tribunal that is presently holding the field in regard to the principles of bonus fixation, special emphasis has been laid in this booklet on the various interpretations, and clarifications put on the provisions of this formula and to see how far the working of this formula has fulfilled its original intention of doing social justice to the workers and the industries.

G. D. AMBEKAR

Bombay
January 10, 1961.

I. INTRODUCTION

Bonus used to be paid at a uniform rate to textile workers in Bombay during and for few years after the First World War and thereafter it was stopped due to war boom being over. At that time it was recognized that a share had to be given to the workers in the improved conditions of the industry and, therefore, a uniform bonus was paid irrespective of the individual mill's capacity. The practice of giving a share to the workers in the improved trading conditions of the industry continued during the period of Second World War also and uniform bonus was declared by the Textile Industry in Bombay till 1945. In 1946 some of the objectionable conditions attached to the payment of bonus were removed by the Industrial Court and uniform bonus depending on the profits of the industry as a whole was declared for the years 1947 and 1948 also. Bonus was not only recognized as an industrial claim but was also recognized as a deferred wage till the workers reached a living wage standard. It was also recognized by the Industrial Court that only after the workers had attained the living wage, bonus would partake the character of profit sharing.

For the first time, the question of rehabilitation cost was raised by the mill owners in the bonus dispute for the year 1948. It was in the bonus dispute for 1949 that the Industrial Court for the first time exempted three mills from paying bonus on account of losses incurred by them. It was on this award both the parties went in appeal to the Labour Appellate Tribunal. The Labour Appellate Tribunal while confirming the award of the Industrial Court also evolved a formula for deciding the quantum of bonus which is now popularly known as the Full Bench For-

mula. Thus for the first time the award disturbed the well established practice, custom and tradition by departing from the principles of uniform bonus for the industry as a whole.

Ever since the Formula was evolved various Tribunals and Courts interpreted the said Formula in different manner on various 'prior charges' and in many cases particularly in Bombay when surplus left after providing for the prior charges did not justify the award of bonus, inspite of very high profits resulted in discontentment amongst workers. As a matter of fact, the nature of profit is such that a substantial portion of it accrues not as a result of the contribution of the labour or industry, but due to extraneous factors like Government policy, market conditions, law of supply and demand etc. The profits accrued as a result of the operation of latter factors is in the nature of unearned profits on which industry should not have a claim. Besides among the components of cost only the worker is not given the fair price of his labour and the profits therefore accrue as a result of not paying labour fairly. As such as long as the workers have not attained a living wage or till the lowest paid workers get the minimum wage as now accepted in the 15th Session of Indian Labour Conference the bonus should partake the character of deferred wage and must be determined on the general improved conditions of the industry as a whole. Simply because bonus is given a place in the LAT formula after the other prior charges it cannot change the fundamental character of bonus as a deferred wage. Moreover under the Bombay law also, bonus is wage (since it becomes payable) and is treated as an additional remuneration. Therefore from any point of view bonus has to be considered as a deferred wage and will stand above all other priorities. Just as wages cannot be determined on the individual mills' (units) capacity to pay and workers cannot be deprived of wages simply because the individual mills are not making profits or even making losses the workers' claim must remain a charge on the industry because the workers' needs have higher priority in the scheme of social justice at least till the workers get wage on the basis of minimum wage structure. Even the committee on profit-sharing recommended that to begin with profit sharing on an industry-cum-locality basis should be tried out in the textile industry in Bombay, Ahmeda-

bad and Sholapur. In a recent judgement (Ahmedabad Gratuity) even the Supreme Court has observed that even bonus disputes can be settled on an industry-wise basis and have been so settled.

No doubt, the Supreme Court has opined that the Labour Appellate Tribunal formula has on the whole worked satisfactorily and in the majority of cases, industrial disputes arising between employers and their workmen in regard to bonus have been settled on the basis of this formula but this opinion has been given without appreciating all the circumstances and full facts not having been placed before the Supreme Court. Most of the appeals which went before the Supreme Court were of the employers. Very few cases went in appeal before the Supreme Court on behalf of workers because of the delay and cost involved and the cases which have gone before the Supreme Court were not of an industry as a whole but the tribunals have applied the Supreme Court judgements in individual units to industrywise cases. Even so the Supreme Court had noted that the formula in its rigid form had become unworkable from the point of view of labour in Bombay.

Moreover, LAT formula was not evolved after hearing all the industries and their workmen but the same was made applicable to all the industries in the whole country. In this context it is relevant to quote the observation made by the Supreme Court on the question of the revision of the LAT formula. It observed that the, "plea for the revision of the formula raises an issue which affects all industries; and before any change is made in it, all industries and their workmen would have to be heard and their places carefully considered. It is obvious that while dealing with the present group of appeals, it would be difficult, unreasonable and inexpedient to attempt such a task. That is why we think that labour's claim for bonus should be decided by Tribunals on the basis of the formula without attempting to revise it." [(1959.1. LLJ 641 (662))]

Now coming to the merits of LAT formula it provides:—

1. Statutory depreciation.
2. Taxes at current rates.

3. Provision for rehabilitation.
4. Fair return on Capital.
5. Provision for fair return on Reserves employed as Working Capital.

After all these prior charges are met, claim for bonus would arise. In the textile industry in the past, the practice of the Tribunals and Courts was to award the whole surplus as bonus to the workers but the Supreme Court has now observed that after paying all these prior claims in full even at the present ideas of social justice, the industry should have a further share in the balance as against its earlier finding in the Muir Mills Case.

II. DEPRECIATION

No consistent policy has been followed in regard to depreciation charges. Originally, only the actual depreciation charged by the industry was taken into account. Subsequently the LAT allowed full depreciation on all counts such as normal and multiple shift depreciation, initial and additional depreciation and also the development rebate as allowed under the Income Tax Act irrespective of whether the industry charged full or any depreciation or not, or whether they diverted the profits into dividends or not. This was again changed by the Full Bench of LAT in the U.P. Electricity case where they held that initial or additional depreciation or development rebate should not be included for purposes of prior charges as these were granted on considerations other than of social justice and fair apportionment which formed the basis of the Full Bench formula. The controversy as to whether initial and additional depreciation should be allowed or not has been set at rest by the recent judgement of the Supreme Court but now a new idea has been incorporated as to what forms the normal depreciation as a prior charge and that is 'notional normal depreciation'. It might be a correct approach to charge only 'notional normal depreciation' provided the Income-Tax depreciation represents only normal wear and tear of the machinery which will come to roughly 2 to 4 percent on machinery depending upon whether the machinery works one shift or two shifts or more and 1½ percent to 2 percent on buildings also on similar considerations. But till now the employers have already been given depreciation on the basis of LAT formula and as such if the 'notional normal depreciation' has to be calculated and justice to be done now, it would

mean reopening of all the past bonus disputes. Moreover, it is not possible to work out the 'notional normal depreciation' of each unit in respect of machinery ever since the date of the purchase of that machinery. Therefore, only the normal depreciation on the written down value according to the Income-Tax Act excluding additional or initial depreciation or any other kind of extra depreciation including development rebate should be allowed. Moreover, if only the normal wear and tear and obsolescence are taken into consideration, the present rate of normal statutory depreciation would have to be reduced by half and rationalised on the basis of shifts worked provided this half is actually charged by the industry. In the case of these industries where depreciation of all kinds and development rebate has been allowed in the past such might be fit cases for denying depreciation as a prior charge at least for some years to come.

III. TAXES

The present practice of calculation of taxes at a uniform rate is not correct as taxes are not uniform for all levels of profits. Moreover, the notional formula till now being applied had resulted in allowance being made for taxes as a prior charge even though the company was not to pay taxes for the particular year. In this connection it may further be pointed out that taxes cannot be a prior charge before payment of bonus. Taxes can only be a prior charge after the proper bonus is ascertained and deducted from the gross profits and only on the balance taxes will have to be charged. Moreover, only such taxes should be allowed as to retain with the industry only the amount just sufficient for the payment of dividend and return on reserves. In addition even if taxes were allowed as a prior charge only the income-tax should be taken into account and not other taxes.

IV. REHABILITATION

The formula envisages that the rehabilitation requirements of the industry are to be met only by the present generation of workers during whose time the industry is going to be rehabilitated and not by anybody else. This has resulted in some employers putting forward inflated claims in the name of rehabilitation. A number of units have wiped out their reserves without rehabilitating the machinery and have ultimately become marginal or loss making units. Actually for the reasons stated below the whole of the requirements of the industry should not be allowed to be recovered only from the profits of the industry, as such a heavy burden will substantially diminish the quantum of bonus payable to workers and in many cases may even result in denying bonus to them.

(1) Second World War created conditions which not only pushed up replacement costs but also brought in extra-ordinary huge profits and it was expected that the profits would be set apart to rehabilitate the machinery. But this has not happened.

(2) Then there is another aspect of rehabilitation. No new machinery which is going to be replaced can be an exact replica of the machinery to be replaced. The new machinery which will be giving higher production or requiring reduced employment even for the same production. Therefore, the employers while bringing in new machinery will be saving in the wage cost for the future, at the same time the present workers who have extended their cooperation resulting in huge profits will not only face some inevitable unemployment but

will get further dissatisfied in consequence of due and proper bonus being denied to them because of the industry's requirements of rehabilitation being taken wholly from the profits of the industry and nothing being left for the future generation which is to reap the benefits of the rehabilitation. Thus the workers are likely to face some unemployment and loss of amount utilised as rehabilitation.

(3) The notional character of the formula does not enable the courts to compel the employers to utilise the money kept as reserves for rehabilitation. In practice rehabilitation reserves are utilised for other purposes and whenever the industry finds itself in need of money for rehabilitation, it has to take loans from out side. The loans carry with it liability to pay interest and repayment which in its turn diminishes the profit further.

(4) The contention that the entire amount required for rehabilitation should not be met from profits is supported by the economists who are of the opinion that the gap between the original prices and the replacement cost might be too big to be bridged by yearly provisions out of profits alone. The Working Party appointed for the Cotton Textile Industry and other Committees appointed by the Government have held similar views. Even the industry recognised this fact which is seen from its own attitude in practice and actions and their views expressed before various bodies.

(5) Moreover, for purposes of calculating the requirements of rehabilitation the percentage of the actual realisation of the resale value of the machinery which is rehabilitated to the value of the new machinery installed in its place should be taken as the basis for the estimate of the resale realisation and the percentage of the breakdown value as hitherto should not be the basis. Similarly, in calculating the rehabilitation requirements account should be taken of the 25 percent rehabilitation allowance which is given under the Income Tax Act. The rebate is given to be retained by the Industry without paying any tax on them and therefore to this extent it should be considered as a contribution by the Government for

the rehabilitation of the industry and the rehabilitation requirements should therefore be calculated at 75 percent of the total requirements.

(6) In the case of rehabilitation the behaviour of the industry in the past and the present is also a material factor for consideration. No claim for rehabilitation should lie if the industry has frittered away the huge profits made as a result of the very contingency creating the need for extra amount over depreciation for rehabilitation. If it has frittered away its resources even after it was forewarned, the industry does not deserve any sympathy for its needs of rehabilitation. The industry which has wiped away its reserves by mismanagement, inefficiency, fraud or by frittering away in huge dividend, need not be given any consideration for its needs of rehabilitation as its capacity to utilise such allocations for proper rehabilitation cannot be guaranteed. If inspite of the above considerations huge amounts can be deemed to have been allowed to be accumulated after payment of actual taxes and dividend as decided by the Supreme Court, that is 6 percent, on equity shares, and as per contract on preference and similar shares, such amounts should be taken into consideration while deciding any claim for rehabilitation.

V. RETURN ON RESERVES USED AS WORKING CAPITAL

Another item of prior charge mentioned in the LAT formula is the return on reserves used as Working Capital. The reserves are accumulated out of Company's past profits. These past profits have also come out of labourers' contribution and morally belong to labour. Therefore if any return is to be allowed on the reserves, such return should go to the workers. But legally it is the company's money used for the Company's own benefit. The idea of a fair return as understood in the Bonus formula is that some third party has to be paid his due share from the profit. There has to be for this purpose the relationship of a debtor and creditor, which is absent in respect of return on reserves. In view of this, interest on reserves used as Working Capital should not at all be paid.

Even if for the sake of argument it is assumed that reserves are entitled to interest in the name of return, the question is what should be that rate of interest? The idea of granting interest on reserves used as working capital arose out of the fact that if the company had invested all its reserves outside they would have earned interest. The position that now arises is that if the company had invested these reserves elsewhere then the company would have been required to borrow Working Capital at a higher rate of interest. Therefore what the Company actually loses is the difference between the interest which it would receive on its reserves if invested outside and the interest which it will have to pay on loans borrowed for Working Capital. Only to this extent of the difference the claim of the industry for a return on its reserves used as Working

Capital can be justified. This difference is normally 2 percent. But this return is granted after deduction of taxes. Thus a return of 2 percent free of income tax means a return of little over 4 percent. Ultimately the industry gets a return of 4 percent subject to tax which is not in consonance with the basis of granting return on reserves used as Working Capital. Further this interest should also be adjusted towards rehabilitation requirements and to that extent yearly rehabilitation quota should be reduced.

VI. RETURN ON DEPRECIATION FUND

Depreciation is already an item of cost being the value of wear and tear of the machinery and as such is free from tax. But as the wear and tear takes a long time and cannot be recovered in one year it is allowed to be retained with the industry for ultimate replacement when the machine or building is fully worn out. Therefore, it is not a reserve in the strict sense of the word. However, the Courts and Tribunals have generally treated depreciation fund when actually employed as working capital at par with other reserves and have opined that depreciation fund does not differ in any material respects from any other reserves. But to allow return on depreciation on the ground that it is being utilised as working capital is to allow a double return on an item of cost. Though depreciation is retained with the industry till it is utilised in replacing the machinery it cannot take away its character as an item of expense. Moreover, depreciation can never be regarded on any consideration as a reserve available for working capital because depreciation is built up against machinery. To the extent machinery is depreciated and not replaced it looks as if depreciation is free. But what actually happens in a proper balance sheet is that depreciation releases not the reserves but the paid-up-capital, debentures and loans making the block from being locked up in the block. Therefore the real function of depreciation is to release the original Capital or Debentures and loans which originally made up the block and not the reserves from being locked up in the block. The block is generally made up of paid-up capital, loans, debentrues etc. Therefore after freeing the loans and debentures, depreciation also releases the paid-up

capital for business purposes. And to allow interest on depreciation on the ground of its being utilised as working capital is to allow double dividend on that portion of the paid-up capital which is released by depreciation. One is regular dividend and the other by way of return on reserves used as working capital. For the above reasons no return should be allowed on reserves used as Working Capital, and that in any case, depreciation cannot be considered as a reserve entitled to a return as it would be clear from what has been stated above that depreciation cannot be utilised as working capital.

VII. DIVIDEND

Six percent dividend has been taken as a fair return on paid-up capital. This return is given before taking the workers to a fair wage level and therefore what the shareholders are given is not the real return and their share out of the profits of the industry but are paid before the workers have had their fair wages. Apart from these considerations 6 percent return on paid-up capital is after deduction of all taxes. Even if it is assumed that the Tribunals wanted 6 percent dividend to be paid tax-free which comes to over 9 percent to the shareholders subject to taxes, for the notional calculation of the bonus formula taxes at 51 percent were calculated. This means that the Industry was really given 12 percent return subject to taxes. No one can say that this 12 percent is not exhorbitent. Even taking into consideration the factors of risks involved, 12 percent subject to taxes is an exhorbitant rate of interest. Therefore ordinarily for a fair return on paid-up-capital the shareholders can claim only a rate slightly higher than that of the guilt-edged securities.

Then there is the question of dividend on bonus shares. Bonus shares came to be introduced as a result of public criticism of huge dividends and Government controls. It would outwardly appear that the industry is not paying huge dividends when bonus shares come to be issued as fully paid up. The combined effect of 6 percent on paid up capital and 2 percent on reserves used as Working Capital has been a very unhealthy one. Such of the good industrialists who refused to increase paid-up-capital disproportionately and did not want to over capitalise the industry and acted in the interest of the industry

are being penalised by being given only 2 percent on the reserves used as Working Capital. While such of the employers who have converted their reserves into bonus shares are entitled to get higher return by being allowed dividend on these bonus shares and are thus required to pay less bonus to the workers. This has resulted in discrimination in favour of over-capitalised industries. In fact, bonus according to the Full Bench formula thus depends on the manner in which the particular employer behaves and not on merits of the concern.

The working of the formula in the last few years however shows that on many issues the Courts have not evolved any definite principles though in some cases broad outlines have been laid down for fixing the quantum of bonus. The courts have also lost sight of the fact that in industrial arbitration there is scope for a wide element of discretion in view of the absence of established criteria for settling disputes and also the fact that they can take into consideration modern trends of social thought and be in the vanguard of legislation. The elasticity and flexibility that has been brought into the interpretation of the formula has done injustice to the labour and social justice if at all it is said to have given, is given to the industry both at the cost of society and labour. As the working of the formula has belied all hopes of ensuring and achieving industrial peace, it is high time that the formula is revised in the light of the foregoing analysis. It is hoped that the Bonus Commission appointed by the Government of India will consider the various aspects of Bonus including the industry-cum-region basis and will evolve a suitable and equitable formula, which is simple enough to be understood by the workers and works in the interest of both the Industry and Labour and gives a content of satisfaction to both.


INDIAN NATIONAL TRADE
UNION CONGRESS

118-3

30 JAN 1961

Grams:-"GIRANIKAMU"

Phone: 63674

Mumbai Girani Kamgar Union

Dalavi Building Parel.
BOMBAY 12

President:- S. M. Joshi M. L. A.

General Secretary:- S. A. Dange M. P.

Date January 28, 1961.

IRAF No 123/61

Dear Comrade Sriwastav,

I had sent you a letter by about the middle of December requesting you to give one information regarding Bonus Commission etc. Possibly you were too busy with the work of the annual conference at that time.

I am sending herewith a copy of my letter to the Central Minister for Labour. Please see if the contents of the letter are of any use to the A.I.T.U.C. representative on the Standing Committee which is to meet on 30th January, 1961 to consider terms of reference of the Bonus Commission.

Please send me a copy of the draft terms of reference circulated by the Labour Ministry. Please give us also a detailed report of what transpires at the Standing Committee.

We have not given up our idea to hold an all industries City Bonus Conference. On the contrary our decision has been reinforced by the appointment of the Commission. We hope to receive your help in the preparations of papers to be placed before the conference.

Yours fraternally,

Y. V. Chavan

/ Y. V. C h a v a n /
S E C R E T A R Y.

Com. K.G. Sriwastav,
Secretary,
All India Trade Union
Congress,
4 Ashok Road,
NEW DELHI.

Phone: 63674

PREPARATORY COMMITTEE OF BOMBAY CITY BONUS CONFERENCE

Convener:
Y.V. Chavan.

Care: Mumbai Girani Kamgar Union,
Dalvi Building, Parel, Bombay 12,
January 28, 1961.

Ref No 123/61

Hon. Shri G.L. Nanda,
Minister for Labour & Planning,
Government of India,
N E W D E L H I.

Subject: Terms of reference of the proposed Bonus Commission.

Sir,

We welcome the appointment of the Bonus Commission and with regard to the terms of reference of this Commission we make the following suggestion for your sympathetic consideration and for the consideration of the Standing Committee of the Tripartite Labour Conference:

SUGGESTIONS:

1. The terms of reference should contain a clear mention of the admitted fact that the minimum wages settled by the Wage Boards for Cotton Textile Industry, the Cement Industry and the Sugar Industry and also by the Second Pay Commission, fall far short of the minimum fair wage agreed upon at the 15th Tripartite Labour Conference. The terms of reference should further contain a clearn policy directive that in view of low wage level, it is thought fair in the interests of social justice that the workers' claim on the gross profits of the industry, in the form of annual Bonus should get higher priority.

2. The terms of reference should also contain a statement to the effect that the Commission was being appointed as a result of the extreme discontent expressed by labour against the very unsatisfactory bonus resulting from the present Bonus formula laid down by the Full Bench of the Appellate Tribunal and endorsed by the Supreme Court, and with a view to revise the formula in such a way as to increase the share of labour in profits and to give the labour claim of bonus

3. The terms of reference should also include a directive to the Commission to cover the employees of industrial and commercial undertakings in public sector, in their investigations.

4. The Commission should be asked to report within six months from the date of communication of the terms of reference to the Commission.

BRIEF NOTES ON THE SUGGESTIONS

Suggestions (1) and (2) are necessitated by the fact that the bonus demand has been subject of scores of decisions of the Supreme Court, the highest judicial tribunal of the country. The present ideas about the order of priority of various charges on profits and about labour's share in profits have become fixed to the point of rigidity as a result of repeated formulation and of being worked out in detail time and again. These ideas have been almost sanctified by repeated endorsements by the Supreme Court. Therefore, if any change in the Bonus Formula at present holding the field, is desired as a matter of social justice, the decision has to be a political one, on Governmental level.

With regard to the suggestion (3) it is submitted that as bonus has come to be by now recognised as a rightful claim of employees and as bonus is being paid in almost all the sizable undertakings in private sector and has thus come to constitute a part of existing wage level, the same can no more be denied to employees working in employments other than in the private sector. Especially strong is the case of employees of industrial and commercial undertakings owned by Governments or Semi-Government bodies. Refusal to pay bonus or to increase quantum of bonus to employees of undertakings which were formerly owned privately but were later nationalised, on the plea that the undertakings were not being worked for profits anymore, had given rise to discontent and disputes in concerns like Life Insurance Corporation, The State Bank of India, the Reserve Bank of India, the Bombay Electricity Supply and Transport. It is true that the right of employees working in public sector is already recognised.

The need for time limit has been demonstrated by the inordinately long time taken by all the Wage Boards and the Second Pay Commission to submit their reports.

Yours faithfully,

Y.V. Chavan

Convener.

Copies to:

1) Secretary,
Standing Committee,
Indian Labour Conference
(Tripartite)
N E W D E L H I.

2) Secretary,
All India Trade Union Congress,
N E W D E L H I.

3) Secretary,
United Trade Union Congress,

4) Secretary,
Hind Mazdoor Sabha.

February 2, 1961

Dear Com. Chavan,

Many thanks for your letter No.1237/61 dated January 28, 1961.

The meeting on February 10, (January 30) meeting was postponed, will discuss terms of reference to the Bonus Commission and also may take the question of personnel up for discussion.

The draft terms of reference is enclosed.

I have in mind calling of a meeting of representatives of unions in various States, specially those who deal with the question of bonus, after the terms of reference and other preliminaries are finally settled. In that meeting, we would discuss the issues and prepare a memorandum in detail. We will let you know the venue and date of the meeting.

With greetings,

Yours fraternally,

(K.G.Sriwastava)
SECRETARY.

Com. Y.V.Chavan,
Secretary,
Mumbai Girani Kamgar Union,
Dalvi Building, Parel,
Bombay 12.

BONUS COMMISSION

Terms of Reference - amended draft (AITUC)

....

1. To consider in relation to workmen (as defined in the Industrial Disputes Act) in industries and establishments of both private and public sectors, the question of payment of bonus on consideration of profits and losses and recommend principles for computation of bonus and methods of payment.

2. To determine the extent to which bonus based on profits should be influenced by the prevailing wage level.

3. To recommend how the prior charges should be calculated and to determine other conditions under which bonus payments based on profits should be made.

4. To consider whether the bonus due to workers, beyond a specified amount, should be paid in the form of National Savings Certificates or in any other form.

5. To consider whether there should be lower and upper limits for distribution in one year and, if so, the manner of carrying forward profits and losses over a prescribed period.

6. To suggest an appropriate machinery and method for the settlement of bonus disputes, and

7. To make such recommendations regarding the question of Bonus based on profits as the Commission deems suitable.

BOMBAY STATE BANK EMPLOYEES FEDERATION
Khandelwal Bhavan, 1st. Floor,
166, Dr. D. Naroji Road, Fort

BOMBAY, 29.6.1961

U R G E N T

To: ALL UNITS.

Dear comrades,

Bonus issue in banks - Private & Public sectors.

Units must have already received the Circular No.85/61 issued by the AIBEA on 25th Septr.1961 in respect of Bonus reference.

2. Units are aware that since the reference of bonus issue to the National Tribunal (Bank Disputes) is not linked to any particular year and also no quantum, and more particularly the reference does not include the State Subsidiary Banks and the State Bank of India, the bank employees all over the country observed a protest day on 18th November, 1960 against the kind of vague and meaningless reference by the Government.

3. The Central Committee of the AIBEA at its meeting held in Bombay on 14th and 15th instant considered the entire matter afresh in the revised context including the appointment of a Bonus Commission by the Government of India.

4. The Central Committee, after discussion, decided that the AIBEA should make all out efforts to see that the entire bonus issue in the banking industry - both public and private ssectors - should be referred to the Bonus Commission, and accordingly decided to move the Government of India in the matter.

5. The Central Committee has called upon all units to send telegrams and also write letters to the Labour Minister Govt. of India, requesting him to include the banking industry - public and private sectors - in the reference to the Bonus Commission. The Central Committee has also called upon units to write letters to the Central Trade Union organizations in respective States requesting them to support our demand at the ensuing 19th Tripartite Indian Labour Conference to be held at Bangalore.

6. The AIBEA has already addressed a letter to the Labour Minister in this connection a copy whereof has already been attached to the abovementioned circular of the AIBEA. The AIBEA has also written to the Central Trade Unions at their all-India headquarters to support the demand for inclusion of the banking industry - public and private sectors - in the Bonus Commission.

7. Our Federation has already sent the following telegram to the Labour Minister:-

" KINDLY INCLUDE BANKING INDUSTRY BOTH PRIVATE AND PUBLIC SECTORS IN THE REFERENCE TO BONUS COMMISSION

All our units are requested immediately to send similar telegram to the Labour Minister and send a copy of the same to us and to the AIBEA camp office at Bombay. We have also sent letters to the Labour Minister and the Central Trade Unions as per copy attached to this circular. All our units are requested to immediately write similar letters to the Labour Minister, and to the Central Trade Unions with a copy of each such letter to be forwarded to us and to the AIBEA camp office.

With greetings,

Yours comradely

Enc:

Gen. Secretary.

18. For the aforesaid reasons, inter alia, it is submitted that in any terms of reference to be fixed for the purpose of the proposed Bonus Commission, Banks should be excluded from its purview.

GMD:

eneral Secretary, Indian National Trade Union Congress
Mazdoor Manzil, Parel Village, PAREL, Bombay.
The General Secretary, Hind Mazdoor Sabha, (Bombay), Servants of
India Society Home, Prathna Samaj, Bombay.
The General Secretary, Maharashtra Rajya Trade Union Committee
of AITUC, Dalvi Bldg., Poibavdi, Parel, Bombay.
The General Secretary, United Trade Union Congress, Kavarana
Mansion, Frere Road, Bombay.

Dear friend,

Inclusion of banking industry - both private and public sectors - in the reference to the BONUS COMMISSION

We understand that the ensuing 19th Tripartite Indian Labour Conference, to be held at Bangalore in the 2nd week of October, 1961, will discuss ~~&~~ and finalise the terms of reference to the Bonus Commission and the industries to be covered by the reference.

2. In this connection we have to inform you that:-

(a) in the past although there were all India adjudications in the banking industry, the bonus issue in the banking industry was not adjudicated upon due to the anamalous provision in the Banking Companies Act;

(b) due to the tireless efforts of the bank employees and their national organization the All India Bank Employees Association, the Government brought in an amendment to section 10 of the Banking Companies Act whereby bonus would be considered as an industrial dispute;

(c) even after such an amendment was made, the Government, for a long time, did not at all refer the pending bonus disputes for adjudication;

(d) when the Sastry Award was terminated by the bank employees and fresh charter of demands were submitted on the Banks and the Government in the month of April ~~1960~~ 1959, the Government, instead of honouring the promise given by the Labour Minister to appoint a Commission, appointed a National Tribunal on 21st March, 1960, but the terms of reference did not include Bonus;

(e) Thereafter, due to the insistent pressure brought by the bank employees and their national organization the All India Bank Employees Association, the Governmentmade a reference to the same National Tribunal in respect of bonus in the following manner:-

"BONUS - Principles and conditions under which payable, qualification or eligibility and method of computation, after making provision for all matters for which provision is necessary by or under any of the Acts applicable to Banks or which are usually provided by the Banks".

Apart from the fact that the reference is itself very vague and does not cover bonus for any particular year and also the quantum, the Government did not include the State Bank of India and the various State Subsidiary Banks thus taking the entire public sector of bank employees out of the purview of the bonus reference.

(f) before making the above reference, the Government, with a view to frustrating the efforts of the bank employees to get proper bonus, effected an amendment to the Banking Companies Act by introducing a Section 34-A to the said Act whereby an inviolable right was given to any Bank Management not to disclose the profits and the real capacity of the Bank before a Tribunal and if the

.....2

Tribunal wanted to know such profits it may ask the Reserve Bank of India which, after considering sound banking principles and many other factors, may inform the Tribunal as to what amount out of the said secret reserves could be taken up into consideration to assess the capacity to pay or no amount to be considered also. The effect of this amendment is that even the figures that might be given by the Reserve Bank will not give a full picture of any Bank and the Tribunal cannot question the correctness or otherwise of the figure that may be supplied by the Reserve Bank of India.

(g) Thus it will be seen that by making such a vague and narrow reference to the National Tribunal and also excluding the public sector banks - the hopes of the bank employees to settle the long ~~standing~~ pending bonus dispute are being frustrated by the Government;

(h) All out efforts on the part of the bank employees and their organization even to get an amendment of the present Bonus reference to the National Tribunal and to get inclusion of the public sector banks were turned down by the Government without assigning any cogent reason whatsoever.

2. Recently the Government of India announced that the terms of reference to the BONUS COMMISSION will also include Public Sector Commercial Establishments, but so far the public sector establishments in the banking industry have not been included in the reference.

3. While all other industries will be included in the Bonus Commission, you will see that a section of the banking industry is being covered by a vague and narrow reference before the present Bank Tribunal and another section has not yet been included either before the Tribunal or before the Commission.

4. It is in this context and in the interest of having one forum with wider scope to decide the Bonus issue, that the bank employees' organization approached the Government of India with a request to include the BANKING INDUSTRY - public and private sectors - in the reference before the BONUS COMMISSION. The All India Bank Employees Association and its units have already written to the Labour Minister of the Government of India in this connection, stating that since the pending Bonus reference has not yet been heard by the Bank Tribunal, it would be in the interest of all concerned to include the entire banking industry before the Bonus Commission.

5. The All India Bank Employees Association has also written to the all India headquarters of all Central Trade Union organizations seeking their support in helping the bank employees of the country to take up their bonus problems before the Bonus Commission along with all other workingmen. The All India Bank Employees Association has appealed to the Central Trade Union organizations who will be meeting in the ensuing 19th Tripartite Indian Labour Conference at Bangalore on 7th October, 1961, to prevail on the Government and the employers for inclusion of the banking industry - both private and public sectors - in the Bonus Commission.

6. It may be noted that the Bankers are opposed to the inclusion of the Banking Industry before the Bonus Commission. This clearly shows that the Banks are not interested to get such an important dispute resolved.

7. We, therefore, request you kindly to see that your representatives attending the 19th Tripartite Conference support the demand of the bank employees of the country for inclusion of the banking industry - public and private sectors - in the Bonus Commission so that the long pending bonus dispute in the banking

issue of all workers.

8. Hoping to hear from you and thanking you in the meantime.

With greetings,

Yours fraternally,

Sd. P.K.Menon
General Secretary.

Copy of letter sent to the Labour Minister

Shri Gulzarilal Nanda, Minister for Labour & Employment,
Govt.of India, NEW DELHI.

Dear Sir,

re:Bonus Commission - inclusion of banking industry in the reference to -

We confirm having sent you the following telegram:-

" KINDLY INCLUDE BANKING INDUSTRY BOTH PRIVATE AND PUBLIC SECTORS IN THE REFERENCE TO BONUS COMMISSION"

2. In this connection, our national organization, the All India Bank Employees Association, has addressed you per letter of 16th September 1961 requesting you kindly to include the public and private sectors of the Banking Industry in the reference to the Bonus Commission appointed by the Govt.

3. You will appreciate that while the reference to the Bonus Commission will have very wide scope and will not be fettered by what is or is not settled by the Supreme Court of India, such are not the powers invested in a Tribunal, and, with the legal limitations that now exist, the interests of the bank employees could be better served only by giving them an opportunity to agitate their claims for bonus before the Bonus Commission.

4. The Bonus reference at present pending before the National Tribunal (Bank Disputes) does not cover the State Bank of India and the State subsidiary Banks; the reference is not in terms with the demand of the bank employees, since it does not cover payment of bonus for particular years or specific quantum. You are also aware that our national organization the All India Bank Employees Association had addressed letters in this connection to you requesting you to amend the reference accordingly, but so far the Government has not acceded to this request. From the recent reports in the press it is learnt that the Government are seriously considering the inclusion of the public sector commercial establishments in the reference to the Bonus Commission. This would entitle the inclusion of the State Subsidiary Banks and the State Bank of India in the reference to the Bonus Commission.

5. It is for the above reasons, therefore, we appeal to you to please include the entire banking industry - both public and private sectors - in the reference before the Bonus Commission appointed by the Government of India.

6. Since the hearings on the pending bonus issue before the National Tribunal (Bank Disputes) has not yet started, we would urge you to expedite the inclusion of the entire banking industry - public and private sectors - in the reference to the Bonus Commission at the forthcoming Indian Labour Conference at Bangalore.

Yours faithfully,

Sd/- P.K. Menon

COPY of letter addressed by AIBEA to the Labour Minister, Govt. of India, New Delhi on the 16th September, 1961.

****

Dear Nandaji,

I take the opportunity of congratulating you for the decision to include the Public Sector undertakings within the Reference to the Bonus Commission.

2. I understand that the Bonus Commission would be principally entrusted with the task of deciding the concept of profit sharing bonus and recommend a formula for the various industries referred to it. I also understand that the said Commission will not be fettered by any settled concept or formula and that the scope and jurisdiction of the Bonus Commission would be wide enough to go beyond the concept on which is based the full Bench Formula of L.A.T. 1 of 1950.

3. I am informed that the Government has decided to refer to the Commission all the important industries, together with all the Public Sector Commercial undertakings, excluding, however, specified Public utility services.

4. I wish to draw your attention that the Government of India by an order No. SO-2384 dated 22nd September, 1960 referred the Bonus dispute in the Banking industry to the National Industrial Tribunal and the terms of Reference read as under:

> "Bonus - Principles and conditions under which payable, qualification for eligibility and method of computation after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the Banks or which are usually provided by the Banks."

However, the State Bank of India and the State Subsidiary Banks have not been included in the said Reference before the National Industrial Tribunal.

5- My Organisation, the All India Bank Employees Association, approached your Ministry for inclusion in the said Reference to the National Tribunal, the State Bank of India and the State Subsidiary Banks by their letter No. 53(V)/60/5623 dated 8th Novr. 1960. In reply we were informed by the Government by their letter No. 10/153/60-LRIV dated 17th April, 1961 that the Government was unable to accede to the request of referring the issue of profit sharing bonus of any Public Sector undertaking.

6. You will agree that the scope of the present adjudication is circumscribed by the decided concept of profit sharing bonus on which is based the Full Bench Formula as approved and settled by the Supreme Court. I fail to understand why the workers in the Banking Industry should be subjected to the limitation of the concept of profit sharing bonus and thus be deprived of the benefit by the emergence of any new concept which the works of all other industries would be entitled to.

7. I draw your attention to another peculiar situation that will arise in Banking Industry as a result of your decision to incorporate the Public Sector Commercial Establishments before the Bonus Commission. The Private Sector Banking Companies would be before

the National Tribunal having limited jurisdiction. All other industries and other Public Sector commercial establishments will be before the Bonus Commission having a wider jurisdiction.

8. But the State Bank of India and the State Subsidiary banks will remain excluded from both the forums. Now the Government having decided to afford the workers of the Public Sector Commercial Establishments, an opportunity to agitate the issue of profit sharing Bonus before the Bonus Commission, the exclusion of the State Bank of India and the State Subsidiary Banks should not arise. In case you decide to include only the State Bank and State Subsidiary Banks in the Reference before the Bonus Commission, another anomoly will arise. Whilest the wage structure and service conditions of the employees in both the Public and Private Sectors in the Banking industry will be decided by one adjudicating machinery, in respect of Bonus, there will emerge two forums with different scope and jurisdiction.

9. Under these circumstances so as not to cause hardship to any section of the Bank employees, the Banking Industry including its public sector should be referred to the Bonus Commission. I may inform you that the hearing on the Bonus issue pending before the National Industrial Tribunal (Bank Disputes) has not yet started.

10. I am confident that you will very kindly accede to my request for the inclusion of the Banking Industry including its Public Sector the Bonus Commission.

With kind regards,

Yours truly,
(Sd) PRABHAT KAR,
General Secretary.

To
Shri Gulzari Lal Nanda,
Hon'ble Minister for Labour & Employment,
Government of India,
N E W D E L H I

Copy of the letter dated 22nd September 1961 addressed by The All India Bank Employees' Association, to the General Secretaries, of- All India Trade Union Congress, United Trades Union Congress, Indian National Trade Union Congress and Hind Mazdur Sabha.

"

Dear Friend,

We are glad that because of your earnest persuasion the Govt. of India has agreed for the appointment of a Bonus Commission with views to lay down certain formulae in respect of various industries. We are also thankful to you for having made the Govt. agree to refer within its scope the question of profit-sharing bonus in respect of Public Sector commercial undertakings.

We wish to bring to your notice a peculiar situation in the Banking Industry. The Govt. of India has referred the Bonus Dispute in the Banking Industry to a National Tribunal and the terms of reference read as under:-

"Bonus - Principles and conditions under which payable, qualification for eligibility and method of computation, after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the Banks or which are usually provided for by Banks."

Strange enough that the cases of State Bank and State Subsidiary Banks have not been included and the reference does not relate to Bonus for any particular year.

We understand that the Bonus Commission will be entrusted with the task of deciding the concept of profit sharing bonus and recommend formulea for various industries referred to it, and also it will not be fettered by any settled concept or formula and its scope and jurisdiction would be wide enough to go beyond the full Bench formulae of the L.A.T. We hope you will agree with us that there cannot be any reason why the Banking Industry should be deprived of such benefit. Secondly, as the Govt. has agreed to refer the cases of Public Sector Commercial undertaking why the employees of State Bank and State Subsidiary Banks should be excluded from the scope of any forum..

We have already made representation to the Honourable Labour Minister requesting him to include the Banking Industry with its public sector in the reference before the Bonus Commission. As the issue of the Bonus Commission and its terms of reference are going to be finalised in the 19th Indian Labour Conference to be held on 10th and 11th October 1961 at Bangalore we shall be much obliged if you will kindly see that the Banking Industry with its public sector is also referred to the Bonus Commission. We are confident that your organisation as usual will help us in this matter.

With greetings,

Fraternally yours,

Sd.-
(Prabhat Kar)
General Secretary. "

IMMEDIATE.

No.LC-9(49)/61
Government of India
Ministry of Labour & Employment

From

Shri B. R. Khanna,
Under Secretary to the Government of India.

To

All Central Employers and Workers' Organisations.

Dated New Delhi, the 27 SEP 1961

Subject:- 19th Session of the Indian Labour Conference - Bangalore- 9th and 10th October, 1961.

Sir,

I am directed to refer to this Ministry's letter dated the 11th August, 1961, and to say that the 19th session of the Indian Labour Conference will commence at 10.A.M. on the 9th October, 1961, in the 'Banquet Hall', Vidhana Soudha, Banaglore. The Labour Minister would also be meeting informally the Employers' and Workers' representatives attending the Conference in the 'Conference Hall' first floor, Vidhana Soudha, on the 7th October, 1961, as indicated below:-

Meeting with Employers.	3.30 P.M.
Meeting with Workers	4.30 P.M.

2. Arrangements for the stay of the employers/workers delegates and advisers will be made by the Mysore Government, if required. Their requirements, if any, with information whether vegetariam or non-vegetarian meals will be preferred, may kindly be intimated immediately to the State Government (Shri L. Lingiah, I.A.S., Labour Commissioner, 5-Infantry Road, Bangalore-I). If any asistance is required for the employers/workers delegates and advisers in the matter of booking of return journey by rail or by air, this may also be intimated to the State Labour Commissioner, Shri Lingiah.

3. It is requested that a copy of the communication addressed to the Mysore, Government may be forwarded to this Ministry also.

Yours faithfully

B R Khanna.

(B. R. Khanna)
Under Secretary.

118-6

Tele: Gram : BANKWORKER
Phone :

United Bank of India Employees' Association

REGD. No. 2316
(CENTRAL COMMITTEE)

ALL CORRESPONDENCE TO BE ADDRESSED TO GENERAL SECRETARY

20, STRAND ROAD,
CALCUTTA-1.

Ref. No. CC/O/1918/61 Dated October 5, 1961.

The General Secretary,
All India Trade Union Congress,
C/O. 19th Indian Labour Conference,
BANGALORE.

Dear Friend:

You are aware that the All India Bank Employees' Association has been urging on the Government of India on our behalf for inclusion of Banks both in private and public sector in the reference of the Bonus Commission which has been appointed for deciding on the Bonus Issue in respect of other Commercial undertakings.

The reference on Bonus made by the Government of India to National Industrial Tribunal (Bank Disputes) Bombay in respect of Banks from which the State Bank of India and the Reserve Bank of India has been excluded has been considered useless because of the vagueness of the Reference and arbitrary division between the Public Sector and the Private Sector in the Banking Industry.

We approach you to use your good offices and influence for a favourable decision for inclusion of the Bonus case of Bank employees in the reference of the Bonus Commission in the ensuing Indian Labour Conference at Bangalore and eventually acceptance of same by the Government of India.

Yours' truly,

GENERAL SECRETARY

UNITED BANK OF INDIA EMPLOYEES' ASSOCIATION
REGD. NO.2316
CENTRAL COMMITTEE
20, STRAND ROAD, CALCUTTA

Tele (Gram : BANKWORKER
(Phone : 22-1151

Dated, October 5, 1961

CIRCULAR NO.CC/46/61

TO ALL BRANCH & STATE UNITS.

(For favour of Circulation)

Dear Friend:

The AIBEA in course of the two meetings of its Central Committee held on 21.9.60 and October 1960 discussed the Bonus reference before the N.I.T. Bombay which was in the following language :

> "Bonus - principles and conditions under which payable, qualification for eligibility and method of computation, after making provision for all matters for which provision is necessary by or under any of the acts applicable to the Banks or which are usually provided by the Banks."

and expressed its complete dis-satisfaction against such general reference without mentioning for decision of the Tribunal the quantam payable for particular years by different Banks. The non-inclusion of the cases of the State Bank of India and the Reserve Bank of India was also considered as a glaring omission as that would create a cleavage between the Bank employees in the private sector and the public sector.

A Bonus Commission has in the meantime been appointed to decide the Bonus claims of employees in Commercial undertaking in the private and the public sector excluding Banks. In the context of the appointment of this Commission the AIBEA has already been moving with the government for inclusion of Banks both in private and public sector in the Bonus Commission. The final decision in this respect is likely to emerge from the 19th Indian Labour Conference to be held at Bangalore in the second week of October next.

With a view to create public opinion and bring necessary pressure on the government for inclusion of Banking Industry in the reference of the Bonus Commission the AIBEA has directed its units to take the following steps :

(1) Sending telegram to Labour Ministry, Government of India.

(2) Letter to the Labour Ministry with copies to AIBEA Camp office at Bombay.

(3) Letters to all Central Trade Union Organisations.

We give below the copies of telegram and letters sent by us in the above connection.

1. Copy of our Telegram to the Labour Ministry, Government of India, New Delhi.

P. T. O.

"BONUS REFERENCE N.I.T. UNACCEPTABLE SPECIALLY FOR ITS VAGUENESS AND NONINCLUSION OF STATE BANK AND RESERVE BANK URGING INCLUSION BANKS IN BONUS COMMISSION REFERENCE"

2. Copy of our letter to Labour Ministry, Government of India, New Delhi.

To
The Hon'ble Minister for Labour & Employment,
Government of India,
New Delhi.

Dated, October 5, 1961

Dear Sir:

We understand that the Government of India has appointed a 'Bonus Commission' and have decided to refer to it all the important industries together with all the Public Sector Commercial undertakings, excluding, however specified public utility services, to decide the concept and formulae of profit sharing bonus and recommend the same for the various industries referred to it.

In this connection we would refer that the Govt. by an Order in 1960 has referred the Bonus issue of the bank employees before the National Industrial Tribunal (Bank Disputes) but in the said reference the employees working in the State Bank of India and State Subsidiary Banks have been excluded from its' scope. Inspite of repeated representations by the A.I.B.E.A. the Govt. refused to include the State Bank and State Subsidiary Banks in the said Bonus Reference.

Now having the Government decided to appoint the Bonus Commission both relating to Industries in Public and Private Sector, we would urge upon you to withdraw the Bonus reference relating to Banking Industry before the National Industrial Tribunal (Bank Disputes) and include the Banking Industry to be referred before the Bonus Commission. We also urge upon you to include the State Bank of India and State Subsidiary Banks in such reference before the Bonus Commission and thus afford opportunity to the Workers in the Banking Industry as a whole to have the benefit of the formulae relating to profit-sharing bonus, jointly with the workers and employees in other Public and Private Sector industries.

We hope that you will accede to this reasonable request of ours and will do the needful as requested in the letter of A.I.B.E.A. dated 19th September, 1961 addressed to you.

Yours faithfully,

Sd: Tara Das
GENERAL SECRETARY

3. Copy of our letter to the Central Trade Union Organisations. *

Dear Comrades,

Dated, October 5, 1961

You are aware that the All India Bank Employees' Association has been urging on the Government of India on our behalf for inclusion of Banks both in private and public sector in the reference of the Bonus Commission which has been appointed for deciding on the Bonus Issue in respect of other Commercial undertakings.

The reference on Bonus made by the Government of India to

P.T.O.

to National Industrial Tribunal (Bank Disputes), Bombay, in respect of Banks from which the State Bank of India and the Reserve Bank of India has been excluded has been considered useless because of the vagueness of the Reference and arbitrary division between the Public Sector and the Private Sector in the Banking Industry.

We approach you to use your good offices and influence for a favourable decision for inclusion of the Bonus case of Bank employees in the reference of the Bonus Commission in the ensuing Indian Labour Conference at Bangalore and eventually acceptance of same by the Government of India.

* A.I.T.U.C.
U.T.U.C.
H.M.S.
I.N.T.U.C.

Yours faithfully,

Sd: Tara Das

GENERAL SECRETARY

We also give below the copy of letter sent by A.I.B.E.A. to the Labour Ministry, Government of India, New Delhi.

"Dear Nandaji: Dated, September 16, 1961

I take the opportunity of congratulating you for the decision to include the Public Sector undertakings within the Reference to the Bonus Commission.

2. I understand that the Bonus Commission would be principally entrusted with the task of deciding the concept of profit sharing bonus and recommend a formula for the various industries referred to it. I also understand that the said Commission will not be fettered by any settled concept or formula and that the scope and jurisdiction of the Bonus Commission would be wide enough to go beyond the concept on which is based the full Bench Formula of L.A.T., 1 of 1950.

3. I am informed that the Government has decided to refer to the Commission all the important industries, together with all the Public Sector Commercial undertakings, excluding, however, specified Public utility services.

4. I wish to draw your attention that the Government of India, by an Order No.SO-2384 dated 22nd September, 1960 referred the Bonus dispute in the Banking Industry to the National Industrial Tribunal and the terms of Reference read as under :

> "BONUS - PRINCIPLES AND CONDITIONS UNDER WHICH PAYABLE, QUALIFICATION FOR ELIGIBILITY AND METHOD OF COMPUTATION, AFTER MAKING PROVISION FOR ALL MATTERS FOR WHICH PROVISION IS NECESSARY BY OR UNDER ANY OF THE ACTS APPLICABLE TO THE BANKS OR WHICH ARE USUALLY PROVIDED BY THE BANKS."

However, the State Bank of India and the State Subsidiary Banks have not been included in the said Reference before the National Industrial Tribunal.

5. My Organization, the All India Bank Employees Association, approached your Ministry for inclusion in the said Reference to the National Tribunal, the State Bank of India and the State Subsidiary Banks by their letter No.53(V)/60/5623 dated 8th November, 1960. In reply, we were informed by the Government by their letter No.10/153/60-LRIV dated 17th April 1961 that the Government was unable to accede to the request of referring the issue of profit sharing bonus of any Public Sector undertaking.

p.t.o.

6. You will agree that the scope of the present adjudication is circumscribed by the decided concept of profit sharing bonus on which is based the Full Bench Formula as approved and settled by the Supreme Court. I fail to understand why the workers in the Banking Industry should be subjected to the limitation of the concept of profit sharing bonus and thus be deprived of the benefit by the emergence of any new concept which the workers of all other industries would be entitled to.

7. I draw your attention to another peculiar situation that will arise in Banking Industry as a result of your decision to incorporate the Public Sector Commercial Establishments before the Bonus Commission. The Private Sector Banking Companies would be before the National Tribunal having limited jurisdiction. All other industries and other Public Sector commercial establishments will be before the Bonus Commission having a wider jurisdiction.

8. But the State Bank of India and the State Subsidiary Banks will remain excluded from both the forums. Now the Government having decided to afford the workers of the Public Sector Commercial Establishments, an opportunity to agitate the issue of profit sharing Bonus before the Bonus Commission, the exclusion of the State Bank of India and the State Subsidiary Banks should nor arise. In case you decide to include only the State Bank and State Subsidiary Banks in the Reference before the Bonus Commission, another anomoly will arise. Whilst the wage structure and service conditions of the employees in both the public and Private Sectors in the Banking Industry will be decided by one adjudicating machinery, in respect of Bonus, there will emerge two forums with different scope and jurisdiction.

9. Under these circumstances, so as not to cause hardship to any section of the Bank employees, the Banking Industry including its public sector should be referred to the Bonus Commission, I may inform you that the hearing on the Bonus Issue pending before the National Industrial Tribunal (Bank Disputes) has not yet started.

10. I am confident that you will very kindly accede to my request for the inclusion of the Banking Industry including its Public Sector the Bonus Commission.

With kind regards,

Yours truly,

Sd: Prabhat Kar

GENERAL SECRETARY "

To
Shri Gulzari Lal Nanda,
Hon'ble Minister for Labour & Employment,
Government of India,
New Delhi.

Yours truly,

(Tara Das)
GENERAL SECRETARY

710, Ballimoran,
Chandni Chowk
DELHI - 6.
Camp: BANGALORE.
7th Oct.1961.

NOTE ON BONUS DISPUTE IN BANKING INDUSTRY.

The All India Bank Employees' Association has demanded inclusion of the Banking Industry, including its public sector in the terms of reference before the Bonus Commission. We have already made representation to the Government of India.

2. The Bonus dispute in the Banking Industry has not yet been adjudicated upon, although this issue was referred to various Tribunals since 1949. The Labour Appellate Tribunal which discussed this matter in the year 1953 came to the conclusion that:

> "The claims to the Bonus made for the relavent years have not been adjudicated upon."

3. The Banks challenged the right of the employees' claim for Bonus in view of the then wordings of Section 10(b)(ii) of the Banking Companies Act 1949 before the Supreme Court of India. The Supreme Court held in favour of the Banks. In the meantime, on our demand, the said section of the Banking Companies Act was amended, by the Government of India in the year 1956. Thus all the claims of bonus up to 1956 were negatived by the Supreme Court's decision. Since then the All India Bank Employees' Association was demanding a reference of the Bonus dispute in respect of claims for the years from 1957 onwards.

4. The Government of India on 22nd September 1960 referred the Bonus disoute in the Banking Industry to the National Industrial Tribunal (Bank Disputes) in the following terms:

> "BONUS - Principles and conditions under which payable, qualification for eligibility and method of computation after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the Banks or which are usually provided by the Banks."

While referring the said dispute to the National Tribunal, the Government of India excluded the Reserve Bank of India, State Bank of India and State Subsidiary Banks from its scope. On our representation, we were informed by the Government of India that the Government was unable to accede to the request of referring the issue of profit sharing bonus of any public sector undertakings and also to include the specific demand of Bonus for specific years. The Government did not think it necessary to refer the disputes - which remained unadjudicated for such a long time.

5. It will be seen that the above terms of reference is meant to lay down certain principles regarding payment of Bonus in the Banking Industry. The National Industrial Tribunal (Bank disputes) will be bound by the full bench formulea as approved

and settled by the Supreme Court of India. In this connection we have to inform that in the meantime the Government has amended the Banking Companies Act and Section 34-A of the said Act, as amended debars the Tribunal to recast or to recalculate the Balance Sheet, which is imperative to implement the Labour Appellate Tribunal's full bench formulea.

6. The proceedings before the said Tribunal has not yet started. In the meantime the Government of India decided to appoint a Bonus Commission and has also decided to include within its terms, some public sector undertakings. In view of this, - there cannot be any reason why the Banking Industry should be discreminated and should be left to the National Tribunal for the determination of the principles and conditions of the profit sharing Bonus, while all other Industrial workers will have the benefit of the Bonus Commission with much wider jurisdiction. While the Government has changed its stand and has agreed to include public sector before the Bonus Commission under no circumstance the employees of the Reserve Bank of India, State Bank of India and the eight State Subsidiary Banks should be left out. There cannot also be any reason to include only public sector of the Banking Industry in the terms of reference before the Commission and leave private sector before the National IndustrialTribunal (Bank Disputes). Therefore both the private and public sectors in the Banking Industry should be included in the terms of reference before the - Bonus Commission.

7. The present x reference before the National Tribunal will not entitle the Bank Employees to get any Bonus whatsoever. The principles, as will be laid down by this Tribunal will again have to be referred to another Tribunal to decide quantum of Bonus for different Banks in different years. Therefore, there is no reason why simultaneously two forum should decide the same issue separately.

8. We hope that all efforts will be made by all the Central Trade Union organisations to include the Banking Industry in the terms of reference before the Bonus Commission.

Yours faithfully,

(PRABHAT KAR)
GENERAL SECRETARY.

NSC/-.

No.172/K/61(BC)
October 16, 1961

Dr. B. R. Seth,
Deputy Secretary,
Ministry of Labour & Employment,
New Delhi.

Sub: Terms of Reference - Bonus Commission

Dear Sir,

In the meeting on Bonus Commission which the sub-committee had at Bangalore on 7th October 1961, I on behalf of the AITUC had raised the following points amongst others regarding item 1 of the draft terms of reference:

1) That the terms of reference should cover all workmen as defined under the Industrial Disputes Act, both in the Private and Public Sectors.

xx The Chairman had assured in the meeting that it was the intention and therefore necessary changes had to be made in Section 1 of the terms of reference.

However I find that the present terminology in the later draft terms of reference of Bonus Commission does not exactly clarify the position.

A categorical and express statement that those undertakings and establishments in the Public Sector which are not covered by the terms of reference, e.g., LIC, Kolar Gold Fields, Mazgaon and Garden Reach docks, etc., etc., which have been nationalised and where bonus has been paid will continue paying the same irrespective of the Commission is very necessary. There is a possibility of misunderstanding on this. This was also raised in the sub-committee meeting and the Chairman was pleased to give this assurance which is not found in the decision.

I hope that the decision of the 7th October meeting will be corrected before the next meeting of the sub-committee.

Yours faithfully,

(K.G.Sriwastava)
Secretary

MADAN G. PHADNIS,
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3706

Date 19th October 1961.

Dear Com. K.G.Shrivastav,

I am sending herewith a note on Bonus prepared by me. The same note is prepared for discussion in the proposed Bonus Conference which our M.R.T.U.C. is thinking to hold in the next month.

I think that at Benglore reference terms must have been finalised and shortly you will have to submit your statement before the Bonus Commission.

Considering the divergent view poinhs expressed by several delegates on Bonus in our A.I.T.U.C conference at Coimbtore, I humbly propose that for some time you may start an open forum in our Trade Union Record. It will be a good material for the A.I.T.U.C. to prepare its final statement before the Bonus Commission.

As a second part of the note attached, I have prepared a digest of various decisions on this issue from the judgements of the Supreme Court, High Courts and Industrial Tribunals. So far as Bombay City is concerned, an attempt is being made to collect Balance Sheets and Profit and Loss accounts of various Public Ltd. companies which can give us factual data about the rehabilitation position of various industries.

With greetings,

Yours comradely,

(Madan Phadnis)

Com. K. G. Shrivastava

NOTE BY COM. MADAN PHADNIS.

THE BONUS PROBLEM

Introduction

(No other issue in the field of industrial relations has been the subject matter of such severe scrutiny as the question of Bonus by the Highest Tribunal in this country.) The Bonus problem was not only considered by the Full Bench of the Labour Appellate Tribunal consisting of five members but also the Supreme Court had to constitute a Bench comprising five judges to consider the issue in all its aspects. Despite these efforts the problem could not be solved to the satisfaction of the working class. The history of the labour movement in this country also will show that during the last three years there were more disputes on Bonus than on any other aspect. Even the record of struggles will show they were more as regards Bonus than for any other issues. After the verdict by the Full Bench of the Supreme Court interpreting the various issues involving the question of Bonus, the question was not set at rest, on the contrary many more problems cropped up which gave rise to further discontent in the working class and precisely for this reason the Government of India thought it fit to institute an enquiry on this question by the Bonus Commission.

In its Note on the Supreme Court Judgements on the working of the Full Bench Formula the Planning Commission (Labour and Employment Division) states "There is no doubt that judgements have been reported which have sometimes reversed the previous decisions of the L.A.T. or the principles have been so interpreted as to sound a note of conservatism resulting in narrowing down the benefits awarded to workers in the matter of granting bonus...."

For a Fresh Approach

(The Bonus Commission will have to consider the entire problem not through the perspective of the various judgments, decisions and observations of the Supreme Court but it will have to hold de novo enquiry on this issue. If the Bonus Commission decides to base its enquiry and restricts its findings circumscribed by the judgments of the Supreme Court, the very purpose of the Commission will be defeated and discontent in the working class on this issue will not subside. The Supreme Court itself has observed: " It may also be possible to have the question comprehensively considered by a high powered commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and all bodies of workmen. The plea for the revision of the formula raises an issue which affects all industries; and before any change is made in it, all industries and their workmen will have to be heard and their pleas carefully considered....."(1959 I Labour Law Journal at pp.644).)

The Present Concept

That Bonus is not a deferred wage is the concept on which the decisions are given either by the Labour Appellate Tribunal or by the Supreme Court. In its First decision the Supreme Court laid down that Bonus is not a deferred wage, but one which arises out of profits of a year. Again on this concept the Supreme Court approved the formula of the Labour Appellate Tribunal which laid down that Bonus can be available out of profits to fill partly the cap between the living wage and the existing wage, if there is available surplus after meeting all prior charges. The entire litigation is, therefore, restricted as to what the surplus is, what the prior charges are and to what extent they should be allowed.

The Bonus Commission should take upon itself to lay down the basic concept of Bonus and investigate into the real nature of Bonus. Unless this is done, no material change can be envisaged in the present state of affairs.

P.T.O.

Despite enquiries by the various wage-fixing authorities such as Wage Boards, Industrial Tribunals, Labour Courts and Labour Enquiry Committees, none could quantify what is a minimum wage, a fair wage and a living wage. The result is as stated by Barbara Woolten "attempts have been made to find out the relationship between wages and profits in industry; however, in spite of the awareness of some relationship between these two most important shares of the industry output, the correlation has so far remained unexplained."

As stated by Dr. S.D.Punekar "when wage claims are referred to arbitrators, adjudicators, tribunals, labour courts and wage boards in India, the rates are laid down on a social and ethical, rather than a purely economic, plane."

A glance over wage-trends prevailing in the country even where the wages are fixed by judicial or quasi-judicial authorities will reveal that in the whole of India, barring a few cases, workers are denied even bare minimum wage. The wages fixed under the Minimum Wages Act are still worst. Since our country became Independent, the question of fair wage and the relationship between wage, price and profit became more important and especially since our country pledged to the living wage, two important Committees were constituted viz., Fair Wages Committee and Profit-Sharing Committee. The Fair Wages Committee while deciding what is fair wage recommended that while the lower limit of the fair wage must obviously be the minimum wage, the upper limit is set by the capacity of the industry to pay. Between these two limits the actual wages will depend upon productivity of labour, prevailing rates of wages, the level of national income and its distribution and the place of the industry in the economy of the country, The Profit-Sharing Committee observed the general economic policy of the Government is to prevent excessive profits by such measures as fixation of fair wages, regulation of prices and a suitable taxation policy. It further observed a fair wage to labour must be the first charge on the industrial production; wages must be paid whether the profits are made or not. After wages are paid, provision must be made for reasonable reserves for maintenance and expansion and for a fair return on capital employed in the industry. These can only be the first charge on profit after taxation.

In spite of the acceptance of these recommendations nothing has been done to actually pay fair wages, check rise in prices and halt excessive profits; on the contrary, wages have not moved beyond the subsistence level. As a matter of fact till Mr.Justice Gajendragadkar decided in his judgement in the Stanvac Refinery Appeal that Rs. 50/- to Rs. 55/- represented nothing more than the minimum wage at the pre-war level, this quantity of Rs.50/- to Rs.55/- in many cases was not accepted even as the floor level of the minimum wage.

The Second Plan is silent about profits while it admits failure in respect of fair wages.

BONUS - A DEFERRED WAGE.

Workers' demand for bonus, as it stands to-day, is, in fact, a demand for deferred wage. In no industry workers have been able to get fair minimum wages, not to talk of living wage. This together with the ever rising cost of living which constantly reduce the value of money wage gave rise to the demand for bonus from the profits. Becuase of this the Bonus issue has become important in industrial disputes and it must be viewed from this concept alone. The Supreme Court refused to accept this concept only for the reason that Bonus cannot take precedent over

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over dividends. In fact this should not be a ground for changing the concept of Bonus and placing it on a lower footing than the deferred wage. So long as living wage is not achieved in an industry, employer of that industry must try to fill up the gap from his profits of that year by paying share of his profits by way of bonus. The approach to this problem must be made basing that it is the liability of an employer to pay living wage to his employee and anything that is paid shorter than this living wage must be compensated by prior charges on the profits of a year and this compensation which is in fact bonus must not depend on 'available surplus' as at present and it should be second to no other prior charges.) The Bonus Commission should, therefore, view this issue from the angle that now more than 14 years have passed since our country gave to itself a Constitution of a Welfare State pledging therein attainment of living wage (Article 43) and the last decade could not fetch even a fair minimum wage to the workers and till it becomes a permanent contractual liability of an employer to pay a living wage he should not be absolved of the liability of paying a deferred wage by way of bonus as a prior charge from his profits of a year.

However, instead of treating it as deferred wage various authorities have interpreted the nature of bonus in different ways. Prior to the evolution of the L.A.T.formula bonus was treated as a wage payment in addition to contractual wages as a stimulus to extra effort arising out of profits, on an equitable claim of labour in the pfofit. For the first time the Labour Appellate Tribunal in the case of Bombay Textile Labour gave a rigid application to the bonus claim. Thereafter Industrial Tribunals being bound by the decision of the L.A.T. were compelled to follow rigidly the formula. Since the abolition of the L.A.T., Industrial Tribunals resorted to free tendencies of interpreting claims of bonus and its place in the industrial relations according to their own concepts of social welfare. When the Supreme Court was left to consider the place of bonus in industrial relations giving its first thought to the problem held that there are, however, two conditions that are to be satisfied before a demand for bonus can be justified and they are:

i) when wages fall short of living standard and

ii) the industry makes large profits part of which are due to the contribution which the workmen make in increasing production.

The demand for bonus becomes an industrial claim when either or both these conditions are satisfied.

But subsequently this decision of the Supreme Court was interpreted by stressing that both the conditions must be satis-

and not for giving a temporary relief to workers for a year out of profits for that year to fill up the gap between the living wage and existing wage. An employer who is able to pay dividends to his shareholders, set off depreciation as per law, get an interest on reserves used as working capital, pay government taxeswhether in fact he is required to pay or not and set off rehabilitation fund for modernisation and replacement, why should he be called upon to pay merely bonus from the surplus arising out of his profits after meeting all the abovesaid charges, he should be made to pay living wage to his employees. If it is found on an enquiry that his Balance Sheet and Profit and Loss Account shows a surplus after meeting all these charges including that of replacement and modernisation such an employer must be made liable to pay straightaway living wage and not merely bonus.

This is no way means that there should be no principles or formula for bonus nor does this mean that payment of bonus should be arbitrary. A formula or some principles must be applied to maintain uniformity and not leave employers to their whims and fancies. But any formula which may be evolved must be suitable and practicable.

The present formula defective.

(The Formula now in practice suffers from several lapses, difficulties and is impractical. It sets forth that bonus is payable out of profits which are due to the efforts of the employees if there is available surplus after meeting the following prior charges:

1. Notional Normal Depreciation(which in fact is statutory depreciation)
2. Income-tax at the statutory rate (whether payable or not)
3. 6% return on paid up capital
4. 4% return on working capital
5. Rehabilitation by adopting suitable multiplier and devisor

It is common knowledge now that by applying this formula except few commercial concerns in whose case the question of rehabilitation and depreciation(on machinery) does not arise, no industrial concern is required to pay bonus to its employees.)

Some Balance Sheet Manipulations.

Before dealing with the various aspects of the formula, the Bonus Commission should not lose sight of some of the important instances of the manipulation of Balance Sheets and the way in which the industries are run.

(Very recently the Government of Maharashtra which has undertaken to run the Seksaria Mills has declared a profit of 42 lakhs in one year. It is well known that the Seksaria Mills was running on losses and ultimately liquidation proceedings were taken against it in the High Court of Bombay,. Similarly Nursinjee Mills of Shahapur which went into liquidation was taken over by the Government of Maharashtra&has declared a profit of 13 lakhs for the financial year 1959. These two glaring examples show that how the industries are run by the private employers. Mundhra episode is another well-known instance. Some years ago Greaves Cotton & Co.Ltd. which is a public limited company had appointed Karamchand Thapar as the Managing Agents of that Company and within 14 months of the office of the Managing Agents, the Company terminated the Managing Agency with a compensation of 18 lakhs to Shri Karamchand Thapar. Karamchand Thapar is holding more than 50% shares in Greaves Cotton. This means Shri Karamchand Thapar sitting as a shareholder appointed

himself as the Managing Agent on a yearly remuneration of Rs.2 lakhs and after 14 months again sitting as a shareholder terminated the said Agency taking to himself compensation of 48 lakh rupees.

When Dalmia purchased Bennett Coleman & Co.Ltd., the said Company was making good profits and it had a building of its own worth Rs.100 lakhs. After some time Dalmia sold this building belonging to Bennett Coleman & Co.Ltd. to another company in the Dalmia complex and Bennett Coleman & Co.Ltd. was made to pay rent to Dalmia's said Company. Again after a few years, Bennett Coleman & Co.Ltd. was made to repurchase that building at a higher price. Thus in that dubious transaction only Dalmia controlling the vendor and vendee Companies was benefitted. Recently when the Government of India purchased Mazagaon Dock Ltd. a private limited company, which till recently was making profits, showed a loss of Rs.20 lakhs, when it handed over the Company to the Government of India. In the case of the East Asiatic Co.(India)Private Ltd., a foreign concern in bonus adjudications for the years 1958 and 1959 contended that no bonus was payable by the strict application of the L.A.T. Formula and on the face of the accounts shown in the Profit & Loss Account the said contention was not incorrect. However, when the Union filed an affidavit stating therein the ways in which the Company was depreciating its stock-in-trade the very Company came forward with a settlement of Bonus of 2½ months for each year. These are only a few examples of how the industries are run in the privat sector. Serious attention should be given to this state of affair. by the Bonus Commission.)

Criticism of the L A T Formula in detail.

This formula has received the seal of approval of the Supreme Court and has become a law of the land so far as Bonus is concerned. The Appellate Tribunal as well as the Supreme Court had time and again said that the formula is not a rigid one but flexible. But its flexibility never seems to have been used in favour of the labour.

Under this formula, the entire onus of proving that there is a surplus is put on the workmen. Not only are workmen required to prove the gap between the living wage and actual wage, but they must also prove that there is available surplus after meeting all prior charges.

On Rehabilitation

Its rigidity is acutely felt when the cost of rehabilitation is considered as a prior charge. Nobody will deny that in a country like ours question of replacement and modernisation must be given serious thought. However it is fantastic to expect that the entire cost of replacement and modernisation can be realised from the profits. Even in advanced countries like England and America, industries have never depended on profits for the purpose of replacement and modernisation. However the Bonus formula of the Labour Appellate Tribunal has insisted that replacement and rehabilitation must be treated as a prior charge on profits before employees could claim bonus. This, in other words, means that the entire burden of replacement and modernisation must be shouldered by the present generation of employees.

(Since the Supreme Court approved rehabilitation as a prior charge on profits before workers could claim bonus, very fantastic, inflated and exhorbitant claims are made by employers towards rehabilitation with the sole object to deprive bonus to their employees. By now there are certain industries which have had adjudications from year to year in respect of bonus and in each adjudication they have been allowed certain rehabilitation for each year but a very few of them (and it may not be an exaggeration to say that none of them) have utilised the rehabilitation allowance given to them by the Industrial Tribunals for replacement or modernisation. This clearly indicates that when employer makes a claim for rehabilitation he does so only with the intention of depriving bonus to his employees.) In this respect reference must be made to the observations made by Shri M.R. Maher, the Industrial Tribunal and

and the Chairman of the Bonus Commission in the case of Indian Oxygen & Acetylene Co., Ltd., in Bonus' adjudication as follows:

" 11. I now proceed to develop the point made above, that to treat deduction of charges for rehabilitation, replacement and modernisation as a first charge on the profits does not accord with the facts of industrial finance and involves, with respect, assumptions which are erroneous.....

" 12. Now, it is undeniable that plant and machinery must be kept continuously in good working order both in the interests of capital and labour. The Income Tax Act and Rules give liberal provisions for inducing businessmen to plough back profits for replacement and for purchasing new plant and machinery, but these have been found inadequate for purposes of rehabilitation and modernisation because of the spiral rising prices of machinery in the whole of the post-war period.....

" 14. If in a country which is industrially much more advanced than India it is recognised that the gap between the original costs of machinery, etc., and replacement costs (let alone modernisation) may be too big to be bridged by making annual provisions from profits, it is too much to expect with all respect to the Labour Appellate Tribunal, which gave the Full Bench decision referred to above, that in this country the costs not only for replacement but of modernisation also must come out of profits before the available surplus can be ascertained.....

" The Committee (the Working Party for the Cotton Textile Industry) is of the opinion that the money to be found for such replacement and renovation can only be found by a loan being granted by the Government and not by any outright grant either through a surcharge or otherwise. The Committee would, however, strongly recommend that the loan which we propose should be given by Government for such rehabilitation, should carry a low rate of interest not exceeding 4 per cent. The Committee would like to emphasise the need for rehabilitation of the Industry and therefore the need for making available such amount as is required by the Industry by way of loan. The process of rehabilitation or renovation, like the process of rationalisation, must be spread over a fairly long period; and by a long period the Committee means from 10 to 15 years."

" If in an industry, which has been established for a hundred years and in which more capital has been invested than in any other individual industry it has not been possible to finance requirements for rehabilitation, replacement and modernisation from the profits, can it be expected that in every industrial concern, the entire amount required for rehabilitation, replacement and modernisation must be deducted from the profits by equal annual instalments, as a prior charge before the available surplus is arrived at?

" 15. Now let us come to the sugar industry which has enjoyed prosperity for many years. Has it been able to provide from its profits for funds for "rehabilitation, replacement and modernisation of machinery?".....

...7.

" 16.....Therefore if in such industries rehabilitation charges are deducted as a prior charge from the profits, in many cases the bonus formula would not work at all and the workmen would get no bonus, even if a concern has made good profits.

"17 In the Full Bench formula of the Labour Appellate Tribunal the reasons given for providing from the profits a prior charge for rehabilitation, replacement and modernisation of machinery is that depreciation is only a percentage of the written down value, the fund set apart yearly for depreciation and designated under that head would not be sufficient for these purposes. It seems to me that the reason why depreciation allowances have not sufficed for the purpose of replacement is not because depreciation by the Income Tax Department is allowed only on the basis of a percentage of the written down value, but because of the circumstances detailed in paragraph 12 to 15 above.....

" So it is again evident that industries have found it difficult to finance replacement costs not because of inadequacy of depreciation allowances, but largely because of the great and growing increase in the prices of plant and machinery in the last 15 years...

"18.....(1952 L.A.O.p.273 at p.275) in which the Labour Appellate Tribunal clearly laid down:-

> " For the purposes of our formula we are not concerned with what the Company does with its money; we are only concerned to see whether by applying certain facts and figures in terms of our formula, an available surplus can be found out of which bonus might be paid to the workmen"

" With respect it is difficult to see why a Tribunal should not take into account realities and why the Tribunal is not concerned with whether the Company spends or intends to spend the amount claimed by it for rehabilitation or whether it gives away the amount in the shape of dividends to shareholders... If it is not feasible for a Tribunal to take an undertaking from a Company that the amount that it claims and is allowed for rehabilitation would be spent for that purpose in a reasonable time, I do not see why it should not be open to a Tribunal to reduce the allocation for rehabilitation, replacement and modernisation, if the estimated costs far exceed the amount that can reasonably be provided out of profits.".

Though the decision of the Tribunal was quashed by the Supreme Court, the strength and the soundness of the views have an important bearing in the context of the Bonus Commission.

These observations of the Chairman of the Bonus Commission are not unfounded. It is experienced that the allowed claims of rehabilitation in many cases were never used for replacement and modernisation. On the contrary it is experienced that many Companies have wiped out their reserves without replacing and rehabilitating their machinery and have ultimately become loss making units.

It also must not be forgotten that if the question of rehabilitation were of supreme importance, why it should be tackled

P.T.O.

only while dealing with the workers' claim for bonus? Why should it be considered as a prior charge over Bonus? Why should it not be treated as a prior charge over Income-tax? As a matter of fact if the question of replacement and rehabilitation of the old plant is so important from the point of view of the development of the indus' Parliament should consider this aspect while dealing with the Finance Acts and a rebate or allowance should be considered for the replacement cost in Income-tax payable by an industry, and so long as this aspect is not considered for the replacement cost in Income-tax payable by an industry, and so long as this aspect is not considered while dealing with the Finance Acts, rehabilitation cannot be considered as a prior charge. In fact the provisions of Income-Tax Act dealing with depreciation was amended in the post-war period and the Legislature had given some thought to the aspect of adequacy of depreciation and allowed initial and additional depreciation as a rebatable allowance for Income-tax.

That amendment was made after considering the aspect of replacement cost mainly, and if the legislature had felt that a replacement and rehabilitation cost should have been a prior charge, nothing would have prevented it from legislating accordingly. But as the legislature has not taken any step to treat replacement cost as a prior charge, it should not be treated so only for the purpose of Bonus.

(As observed by the Chairman of the Bonus Commission that it is undeniable that plant and machinery must be kept continuously in good condition. However, Bonus fixing authorities have given undue importance to the replacement cost. If replacement cost is to be treated as a prior charge on the profits of an industry it should be treated as a rebatable allowance for the purpose of computing Income-tax.

However, the matter does not end there. The way in which rehabilitation cost is computed by the Tribunals and the principles laid down by the Labour Appellate Tribunal are defective. Rehabilitation cost computations ultimately impose the entire burden of replacement cost on the present generation. The whole scheme under the Formula lays down that the entire Block of pre-war and the Block of the warperiod should be replaced in a period from 15 to 25 years and the entire burden is put on the present workmen.)

Calculations of the replacement cost is equally faulty. Since the Labour Appellate Tribunal laid down the replacement cost as a prior charge, there was a sudden spurt of rehabilitation consciousness among the employers and they started making fantastic, exaggerated and inflated claims under this item, and in order to prove their claims, they lead evidence of their engineers before the Tribunals. Their evidence in many cases goes unchallenged. Trade Unions are not in a position to rebutt the evidence of the employers because of lack of technical assistance and knowledge.

While computing rehabilitation cost, it is generally considered that the prices of the pre-war block have gone up by 3.5; of the block between 1940-44 by 2.40; of the block between 1945-47 by 1.50. The life of the plant and machinery is generally taken to be 25 years and that of buildings between 25 to 40 years. Employers always try to show that the prices of the machinery have gone up by 400 to 500% while the life of the plant is tried to be shown to be very short. The experience has proved that in the Textile industry which is the oldest industry in our country, machinery of 30 to 40 years old is still in working condition and is likely to be so for a considerable time. Similarly, the buildings of the textile mills are standing for more than 50 years. Even then in the Labour Appellate Tribunal Formula the life of the textile machinery was taken to be 25 years only and that of the buildings 35 years.

Recently in the case of the Associated Cement Companies Ltd Industrial Tribunal in bonus adjudication relying on the evidence

...

of the Company, laid down the life of the machinery as 25 years only. The Associated Cement Companies Ltd., is a pioneer in the cement industry. Some of its factories are in existence since 1913. In Bonus adjudication before Shri S.Taki Bilgrami, the Union proved from the History Sheets of each machine maintained by the Company that nearly 65 to 80 per cent of the old machinery of the pre-war Block is still in working condition. Some of the information about the life of the machinery of that Company is produced in the Award of Shri Bilgrami (The award is published in Maharashtra Government Gazette, Part I-L dated 24th August 1961 at pages 1995) and the same is reproduced here:-

Name of the factory with the year in which started.	Percentage of machinery still in use.
Porbunder - 1913	81 per cent
Katni - 1915	* 26 per cent
Lakheri - 1917	77 per cent
Mehgaon - 1920	* 7 per cent
Dwarka - 1921	57 per cent
Banmore - 1922	83 per cent
Kymore - 1923	63 per cent
Wah - 1923	65 per cent
Shahabad - 1925	39 per cent
Madukarai - 1934	87 per cent
Khalari - 1936	97 per cent
Rohri - 1938	96 per cent
Kistna - 1939	97 per cent

* Manufacturing of cement stopped

In this Award the Tribunal, however, held that the useful life of the machinery is only 25 years and spread over the replacement cost for that period only.

In all adjudications wherever rehabilitation claims of the employers are allowed they are mainly on the basis of the evidences tendered on behalf of the employers and the trade unions are unable to lead expert evidence to rebutt the evidence of the employers. If an expert is available to the trade unions, he has no access to full inspection of the machinery and plant, and in such state of affairs his evidence would not be taken as correct. These difficulties of the workers are never considered or realised uptill now and the employers, therefore, stand to gain in this respect.

The Bonus Commission will have to take this aspect also into consideration while dealing with the question of rehabilitation.

But for bonus purposes employers themselves are not serious at all to provide for the replacement and rehabilitation of their machinery. A major portion of the profits is spent on fabulous dividends to shareholders. Though in the Formula of L.A.T., 6% return is allowed on the paid-up capital which is adequate and reasonable return on the investment, no industry keeps its dividend payments at that level. In many cases, in order to satisfy the greed for dividends, general reserves are tapped and ultimately they are wiped out. In the Balance Sheet of the A.C.C. for 1959-60, Rs. 84.50 lakhs were taken from the General Reserves for the payment of dividends under the plea of inadequacy of profits. Messrs.Bennett Coleman & Company for the year 1960 has declared an interim dividend of 30%. The trend of dividends in leading business enterprises is as follows:-

		%
1. Hindustan Spinning	...	50T
2. Arvind Mills	...	45T
3. Century Spg. & Wvg.	...	31T
4. Shorock Spg.	...	30T
5. Glaxo Laboratories	...	27½
6. Hindustan Lever	...	24
7. Tata Oil Mills	...	23T
8. National Rayon	...	22T
9. Gold Mohur	...	21½
10. Morarjee Gokuldas	...	21.5T
11. Dawn Mills	...	20
12. Burmah-Shell	...	20
13. Tata Mills	...	20T
14. Ahmedabad Mfg. & Calico	...	16T
15. Jaymes Finlay	...	16
16. Standard Batteries	...	15
17. Bombay Dyeing	...	14T

Bonus Commission should not consider rehabilitation as a prior charge at all. On the contrary it should recommend that the question of rehabilitation should be considered by Government by amending Finance Act and Income Tax Act after going into all the aspects of the question of rehabilitation.

RETURN ON RESERVES.

Another item of prior charge in the Formula of the Labour Appellate Tribunal is of return on reserves used as working capital. This is another exaggerated claim of employers - a claim not considered in the principles of accountancy. It is not even recognised in the Income-tax or Company Law. Nor is it found in the Balance Sheet and Profit & Loss appropriation accounts. A claim for Return on reserves used as working capital is not even a Commercial practice. It is only brought into practice in the Bonus matter so as to reduce the available surplus for distribution as Bonus. This charge on profit is brought into practice on the plea that if an employer does not use his reserves as working capital, he will have to pay interest on such borrowings. This is no justification for charging a return on the reserves used as working capital. In Commercial practice, part of the reserves such as capital reserves are meant for being used as working capital and that is the purpose of such a reserve. When utilising reserve as working capital is a commercial practice no question of any return arises on such reserves. If such reserve, according to Bonus deciding authorities plays an important part as that of borrowings, why such reserves should not get any relief from taxation. It is inequitable and unjust to workers' claim to charge the profit on this count only for the purposes of bonus and not for the purposes of taxation. If these reserves play an important part when it is utilised as working capital, it would be more equitable that a due share must be borne by the State also by giving tax relief.

* borrow money from the banks and will have to

....11.

Apart from the maintainability of this item as a prior charge, another aspect of this item is that there is no uniformity about the rate of return. If bonus formula of the Full Bench of the Labour Appellate Tribunal is to be applied, the rate as laid down by the L.A.T., was 2%. Thereafter some Tribunals followed that rate but subsequently it was enhanced to 4%. It is finally suggested that the Bonus Commission should not treat return on reserves used as working capital as a prior charge at all.

Depreciation.

Yet another item in the Formula is Depreciation. There is no uniformity in calculating depreciation. A Full Bench of the Labour Appellate Tribunal once held that only normal depreciation should be allowed as a prior charge. Section 10(2)(vi) of the Income-tax Act provides that only normal depreciation should be written down from the Books. The Full Bench of the L.A.T., was, therefore, right in holding that only normal depreciation should be allowed as a prior charge. This was upheld by the Supreme Court in Shri Meenakshi Mills case. Subsequently, another Bench of the L.A.T., in Surat Electricity's case held that not only normal depreciation should be allowed as prior charge, but notional normal depreciation should be allowed as a prior charge. This decision of the L.A.T. changed the nature of depreciation. Instead of allowing only written down value (normal depreciation) as a prior charge the L.A.T. allowed initial, additional and shift allowance also as a prior charge. This decision of the L.A.T. also was subsequently upheld by the Supreme Court. This change in the depreciation further affected workers claim to Bonus. This decision of the L.A.T. approved by the Supreme Court results in that that a claim of initial, additional and shift allowance, which is not even admitted for the purposes of written down value in the Income-tax Act, is allowed only for the purposes of Bonus. It is therefore suggested that normal depreciation alone be a prior charge if any, and not the notional normal depreciation as suggested by the Supreme Court in its later decisions.

"Profits" for the purpose of the Formula.

Another feature of the bonus formula of the L.A.T. is that it starts with the enquiry as to what are profits, what items from the revenue are to be added back or to be subtracted to arrive at a gross profit for the purpose of bonus. This has arisen because the Supreme Court in the case of Muir Mills while laying down two conditions for the receipt of bonus held that profits must be due to the efforts of the workers concerned. In other words, the Supreme Court held that profits should not be extraneous. In their enquiry as to what are profits, industrial tribunals are not consistent and there is no uniformity. Sometimes it is held that a balance sheet cannot be split up, it is also maintained that capital invested which yields extraneous ~~xx~~ income is a part of the Company's capital and therefore totality of the profit should be taken into consideration. While on the other hand it is said that capital invested for such extraneous income is from the reserves of the Company and the workers cannot have any claim on that reserve and therefore if the income is not due to the efforts of the workmen it must be treated as extraneous income; and whenever such income is treated as extraneous income, it escapes every liability and charges on the profit. It does not take on the burden of any depreciation, rehabilitation charge, income tax, proportionate burden of dividends or a burden of return on working capital. All the prior charges in the industry are charged in such cases only on the profits which are due to the efforts of the employees and no proportionate burden of these charges is left to be borne by such extraneous income. The industry therefore gets the entire income without any charge on it. If such income is a part of the financial reserves of the Company it must bear proportionate burden on the prior charges. The practice followed by the industrial tribunals is that at the.

P.T.O.

first stroke such income is deducted from the net profit shown in the Profit and Loss Account and then they proceed to put prior charges on the remaining profit. This ultimately amounts to workers not being entitled to the entire profits earned by a Company but are subjected to the entire burden of the liability of the industry. (A consistency in this respect can be that if profits are to be divided under two heads viz. profits due to the efforts of the workers and profits not due to the efforts of the workers, then the entire burden of the industry must be proportionately shared by both the categories of profits or otherwise the entire profits should be taken into account for the purpose of bonus, irrespective of whether they are due to the efforts of the workers or not and charge the burden of the industry to them.)

Bonus Share in the Available Surplus

Though the formula has specifically laid down all the prior charges, it is silent on the question of what percentage of surplus in the profit after allowing all the admitted prior charges should be allowed as bonus. On this point too there is no clarity and uniformity. Each Industrial Tribunal administers his own discretion in this respect. In the first judgment of the L.A.T. which for the first time laid down bonus formula in the case of Bombay Textile Workers distributed practically the entire surplus left after allowing the prior charges. But instead of keeping in line with that decision the Industrial Tribunals subsequently started reducing the Bonus quantum from the available surplus. In the case of Tata Oil Mill, Supreme Court held that there are three shares in the available surplus, namely, the industry, shareholders and labour. This decision, in fact, means that though the industry was given all prior charges including that of rehabilitation and replacement charges an additional share is reserved to it from the available surplus. Similarly though a shareholder is paid 6% return he is also assured of a further share. Thus slowly and gradually bonus from the available surplus is reduced to 1/3.

There is a growing trend of putting a ceiling on the quantum of bonus and the trend is rather allergic to the number of months rather than to actual amount to be received by the workmen. The trends in the tribunals show that whatever may be the surplus, however wide may be the gap, generally bonus awarded from five to six months irrespective of the money content of it. In the case Firestone Tyre and Rubber Co., Industrial Tribunal, in a bonus reference for the year 1957, awarded bonus equivalent to 5 months basic earnings (1959 II LLJ p.124). Against that decision of the Tribunal the workmen as well as the Company appealed to the Supreme Court. The Supreme Court in deciding the appeals observed: "It is possible that if we were dealing with the question of quantum of bonus ourselves, for the first time, we may have been inclined to afford the workmen's claim for 6 months basic wages for the relevant year." In an adjudication for the subsequent year it was an undisputed fact that the Company had made higher profits, even then the Tribunal refused to award higher bonus than five months. The same Tribunal in the case of Goodyear Tyre Co. however awarded bonus equal to 2½ months total earnings(basic plus dearness allowance). The money receipt of this 2½ months bonus in Goodyear Tyre Company is more than the quantum of six months basic wages awarded to Firestone workers.

(Bonus is paid from the available surplus after meeting all the prior charges and as the law stands today, it is paid conditionally in cases where there is a gap between living wage and the actual wage. If this is the true concepts of bonus then the ceiling is illogical and inequitable.) In other words it means that if an employer is in a position after taking his share in profits, after meeting all the legal, equitable and fantastic charges on the profits he is not called upon to fill up the gap.(This further means when living wage is possible in an industry, if not permanently but for a year or some years then also it is denied to them.) Ceiling on bonus therefore is a most unjust and inequitable and

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and there should be no ceiling at all.

One more thing will have to be considered by the Bonus Commission in this respect and that is who are entitled to Bonus. When a workman raises a dispute he is called upon to establish a claim by fulfilling two conditions (a) there is a gap between livin wage and existing wage and (b) to fill up the gap there is availabl surplus. When once he does that, he is not entitled to the entire available surplus. Then the industry intervenes in the name of officers and claim bonus on the plea that the officers supply brains to the industry, with the result the bonus quantum is reduced to that extent for the sake of persons supplying 'brain' to the industry who also must have their prior charges. That brain may not languish from poverty. So far as an officer is concerned, his claim for bonus rests merely on the intellect, while the claim of worker does not depend only on his labour.

INCOME-TAX

Another item of prior charge is of income-tax. Income tax is generally allowed at a uniform rate for the purpose of the formula. Income-tax is a state's share in the profits and is payable as per statute and not in every case. Income-tax thus is not a notional payment. It can be ascertained and is payable at different rates applicable to the assessee. Income-tax in fact is exempted in certain cases. For instance if the statutory depreciation is not provided in the past years income-tax is not payable till the accumulated depreciation are provided. Similarly till the past losses are not wiped out income-tax is not payable by an assessee. However, for the purpose of bonus calculations income-tax is treated as a prior charge.) While dealing with this aspect the Supreme Court has held that the entire calculations of the formula are notional and income-tax also is calculated notionally. The Bonus Commission will have to go into this aspect to find out whether it is equitable and just to allow income-tax at a uniform rate as a prior charge when, in fact, different rates of income-tax are payable by an assessee and the payment is governed by certain other factors. The Bonus Commission should in fact not allow income-tax as a prior charge, till bonus is paid to the employees out of the profits of that year. This view of treating bonus as a first charge before the income-tax was taken by the L.A.T., in its first decision evolving the formula and even by the Supreme Court calculations were made accordingly. But subsequently that mode of calculation was dropped and principles were laid down that income-tax must be charged first to the profits before bonus is paid. This decision of the Supreme Court is a deviation from the Appellate Tribunal's formula and this has resulted ultimately into a loss to the working class. There are marginal cases where after allowing prior charges such as depreciation, return on paid-up capital, return on working capital and rehabilitation charges, there is available surplus to distribute bonus before income-tax is charged. But in such cases if income-tax is charged first no surplus will be apparent for the purposes of bonus. In such marginal cases the original formula of the Appellate Tribunal was beneficial to some extent but since that was modified by the Supreme Court, bonus is lost to the employees. Under the Income-tax Act bonus is an allowable item of expenditure and income-tax therefore cannot precede bonus; especially if bonus is in fact a deferred wage income-tax cannot and should not precede the bonus but it must follow bonus. Even though in law income-tax cannot precede over bonus it is given a precedent in the bonus formula.

For a long time no return was allowed on depreciation fund. This was so for the reason that the depreciation fund is meant for the purposes of replacement and rehabilitation and is not meant for being used as working capital. However, subsequently return was allowed on this fund too thereby providing additional relief to an employer and depriving bonus to the workers to that extent.

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(Thus slowly and gradually the original formula of the L.A.T. has been modified making it liberal towards the employers. Features favourable to the workers in the original formula were subsequently removed and liberal interpretations in favour of the employers were given with the result that day by day the quantum of bonus is being reduced. On the one hand the number of items under 'prior charges' are being increased under the formula ~~as~~ and are liberalised, the inflated claims of the employers are allowed and on the other hand the features favourable to the workers are removed under the one or the other plea.)

BONUS BOTH ON INDUSTRY-CUM-REGIONWISE AND UNITWISE

(History of bonus also reveals that not only it has taken different shape from time to time but certain conditions prevailing at the beginning have changeed. Textile industry in Bombay and Ahmedabad which are standardised industries were once upon a time paying bonus at one rate for all the units in the industry. For some time Industrial Courts have awarded one quantum of bonus to all the units irrespective of the financial position of the individual units.) However, subsequently that practice was changed by Industrial Courts and though at both the places, viz., Ahmedabad and Bombay and the entire industry with all the units therein were the subject matter of common reference, different rates were awarded which practice was further followed by the two famous five-year agreements entered into by the Bombay Textile Labour and Ahmedabad Textile Labour with Employers' Associations. The textile industry is one industry in our country which is a standardised industry in all its aspects. The working in all units is common, machinery used is the same, service conditions are the same, the wages paid in the industry are the same and such features will not be found in any other industry. Apart from the Textile industry, in no other industry service conditions are yet standardised. Except the Textile industry there has not been common enquiry in respect of all the service conditions, of all the employees in one industry. Only recently the Government of India appointed a Wage Board for certain industry and for the first time such enquiry was instituted. However, this was in respect of exceptionally few industries. Large number of industries are yet out of the fold of such enquiry. Under such conditions it will not be proper for the bonus commission to consider the bonus claim on an industry-cum-regionwise. (A suitable method will be that industries in the country should be classified on the basis of industry-cum-region and see which are the industries in which all the service conditions including wages are standardised. Only in such industries bonus should be determined on the basis of industry-cum-region. In other industries where service conditions are not common in two units of the same industry, determination of bonus should be unitwise and not on the basis of industry-cum-region. While considering the claim the industry of the first type, question of prior charges, if any, should be determined on the basis of industry-cum-region, while in the case of the latter, prior charges, if any, to be on the unit basis.)

MODE OF PAYMENT

(Whether bonus beyond a particular quantum should be paid in terms of money or in National Savings Certificates, or in any other form, is another problem.) No doubt any compulsory saving by workers will ultimately be beneficial to them and to their families especially in a country like ours where there is yet no security of service, no provision for pension and adequate old age benefits, but that is only one aspect of the matter. Ultimately with all profound theories bonus that is paid ~~xxx~~ is in limited quantity which hardly fills up the gap between the living wage and existing wage. In the case of large number of employees and particularly employees in the sweated industries, even with the additional bonus they are unable to satisfy their dire necessities. Number of such workmen in our country is much larger than employees who are in a position to save from their monthly or annual income. In respect of employees of the first category will it be just and reasonable to put in their hands a bond of compulsory saving telling him the importance of old age provision. Such employe...

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will prefer to fight for a suitable legislation for old age provision than to keep his money blocked in Reserve Bank and suffer from want of necessities.

Primarily it is the responsibility of the State, much more of a State which claims to be a welfare State to provide for the old age. It is therefore favoured to pay the entire bonus in cash. No doubt it can be argued that in good many cases there is likelihood of misuse of the extra money by the workers. For that social conditions in the State are responsible. Evils in the society should be eradicated and such evils cannot be checked by refusing money to a needy person simply because he is likely to misuse it.

BONUS TO BE FOR BOTH PRIVATE AND PUBLIC SECTORS.

Another aspect of the bonus issue which the Bonus Commission will have to consider whether the workers in the Private Sector should alone be entitled to Bonus or if the workers in the Public Sector too should get bonus. No doubt bonus is payable out of profits in a year. If that is so, the question will arise how the question of bonus in respect of public sector can be determined? Public Sector can be divided into two categories. There are industries and the departments of the Government which are profit-making and there are others which are only revenue collecting departments or departments which are of secretarial or administrative or executive type. In the case of the latter the question of profit does not arise. However, departments which are trading departments do make profits and good profits too. In such departments there will be no difficulty in straightaway answering the question in the affirmative. But the question will arise for those departments of the public sector which do not make any profit or in whose case the question of profit does not arise. But that should not be the way of looking at these departments. Even in the private sector such departments can be found in any industry - a publicity department, establishment department, legal departments, accounts departments do not make profits. These departments are either revenue collecting, administrative or executive. But these departments in private sector are never considered in water-tight compartment from the profit-making departments. These departments are the limbs of the same organ. If they are the limbs of the same organ and if they are entitled to bonus, there is nothing unreasonable or undue to consider administrative, secretarial and exerutive departments of the Government as the limbs of the same organ and they should also be entitled to a bonus share from the gross revenue collected by the Government.

In these days of sky-rocketing of prices, real value of the wages has been constantly steeply falling down, giving rise to a wide gap between money wage and real wage. With all tall-talk of welfare state, categorical advocacy of living wage in the Constitution and even after unanimous resolutions in the Tripartite Labour Conferences, the trend of wage-rise is not satisfactory. Under such conditions workers look to bonus as an interim relief but due to the rigid formula bonus has become scarce to the workers. The formula was evolved to guarantee bonus to the working class on the basis of uniformity and security. However, instead of taking the place of well-founded principles of uniformity, the formula has become a positive obstacle in the way of workers to their right to bonus. Bonus has become as scarce as living wage.

WHAT SHOULD BE THE NEW FORMULA ?

This does not mean that there should be no formula evolved for the fixation of bonus. But any formula to be evolved should be such as to fetch bonus to the workers when there are profits and such a formula should be on the basis of a direct link between the bonus and profits without bringing in the question of prior

P.T.O.

charges for the purposes of minimum bonus. No prior charge which has statutory sanction should be treated as a prior charge only for the purposes of bonus.

The formula that may be evolved by the Bonus Commission should will not be practised in a Court of Law, as Law relating to Bonus has already been sealed by the Supreme Court and that is still the last word on the question. Thus the Government will have to come with a statute in respect of the favourable recommendations of the Commission.

In a year, non-payment of return on working capital may not affect the industry, neither non-payment of rehabilitation charges nor non-provision of the depreciation fund is equally going to affect the industry. But postponment of bonus to the workers till the industry is able to meet the replacement costs, is certainly going to effect not only the working class but the economic conditions in the country also.

The Bonus Commission therefore must evolve a formula which will guarantee minimum bonus to the workers as the first prior charge before allowing any other prior charges to employers:

(1) We suggest one month's bonus should be considered as the first charge among prior charges on the profits.

(2) Bonus equivalent to above one month but up to three months should be treated as a prior charge after normal depreciation.

(3) Bonus equivalent to three but not more than four months should be considered as a prior charge after allowing normal depreciation and 6% return on paid-up capital.

(4) Bonus above 4 months should be treated as a prior charge after allowing normal depreciation, 6% return on paid-up capital, 2% return on working capital and 1/30% of the depreciated cost of the plant and machinery as rehabilitation cost.

----oooooOooooo----

October 21, 1961

Dear Com.Phadnis,

Thank you for your letter of 19th October and the note on bonus prepared by you. The terms of reference of the Commission ~~are~~ have been to be finalised in a meeting to be held here on 28th inst. the Joint Board has to be approved

Your idea of initiating a discussion on this issue in the TUR is welcome and we shall examine possibilities considering the question of space.

With greetings,

Yours fraternally,

(K.G.Sriwastava)

Com.Madan G.Phadnis,
Bombay.

Indian Coffee Board Employees' Association

(Registered under Indian Trade Union Act)

BANGALORE

Ref. 108

A. I. T. U. C.
I. R. N. 3829 Date 12 8 OCT 1961
D. No. Section

Date 25.10.1961.

The Chairman,
Bonus Commission,
C/O The Ministry of Labour & Employment,
Government of India,
NEW DELHI.

Subject: Inclusion of "Coffee Board" in the purview of the Bonus Commission.

Sir,

As per the Report of the various newspapers, we have come to know that the Tripartite Sub-Committee of the Bonus Commission is Meeting at Delhi, on the 28th October, 1961, under the Chairmanship of Sri. G. L. Nanda, Hon'ble Minister for Labour & Employment.

2. On behalf of the Coffee Board Employees' Association, we are submitting the following few lines for your kind consideration and to include the Coffee Board also in the purview of the Bonus Commission.

3. The Coffee Board is a statutory body constituted by an Act of Parliament under the Ministry of Commerce & Industry. Our Association, i.e., the Indian Coffee Board Employees' Association, Bangalore, is registered under the 'Indian Trade Union Act', bearing No.104.

4. The profits derived by the Coffee Board is not shown as profits, but it is distributed to the Planters as Bonus. But, the same benefit of bonus is not extended to the Employees of the Coffee Board.

5. A Basic Minimum Price for coffee has been fixed

and the Planters get their return according to the value realised. This is over and above the Minimum Release Price fixed by the Board. The Minimum return to the grower is always based upon the Cost of Production and thus it always constitutes a fair and adequate return to the grower. Whatever payments are declared over and above the Minimum return, may be taken as surplus or profits to the grower on his deliveries(of coffee) to the Board.

In the above circumstances, we request you kindly to consider to include our Industry, i.e., The Coffee Board, also in the Bonus Commission.

A detailed Memorandum will be submitted in due course.

Thanking you,

Yours faithfully,

N. Ramachandra Murthy

SECRETARY.

Copy, with compliments, to the General Secretary, A.I.T.U.C., No.4, Asoka Road, New Delhi.

Copy, with compliments, to the President, Indian Coffee Board, Employees' Association, Camp: Chikmagalur.

No.184-A/NM/61
October 27, 1961

IMMEDIATE

Dr.B.R.Seth,
Deputy Secretary to the Govt of India,
Ministry of Labour & Employment,
New Delhi.

Sub: Meeting of the Sub-Committee to finalise composition and terms of reference of the Bonus Commission

Dear Sir,

With reference to your letter No.WB-20(8)/61 dated 21st October 1961 on the above subject, we may inform you that Dr.M.K.Pandhe would represent our organistion at the meeting of the Sub-Committee to finalise the composition and terms of reference of the Bonus Commission. Dr.Pandhe's address is given below:

Dr.M.K.Pandhe,
All-India Trade Union Congress,
4 Ashok Road,
New Delhi 1

Yours faithfully,

for Secretary

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Immediate

No. B-20(8)/61
GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT
.....

From

Dr. B. R. Seth,
Deputy Secretary to the Govt. of India.

To

1. All State Governments and Union Territories.
2. All India Organisations of Employers and Workers.
3. The Secretary, The Bombay Exchange Banks' Association, C/O The Chartered Bank, P.O. Box-556, Bombay-1.
4. The Secretary, Indian Banks Association, 15, Horniman Circle, Bombay-1.
5. The General Secretary, All India Bank Employees' Association, 710, Ballimaran, Chandni Chowk, Delhi-6.
6. The General Secretary, All India Bank Employees' Federation, 26/104, Birhana Road, Kanpur.

Dated New Delhi, the 9.11.61

Subject:- Composition and terms of reference of the Bonus Commission - Finalisation of.

.....

Sir,

I am directed to forward herewith a copy of the conclusions reached at the meeting of the Sub-Committee held at New Delhi on the 28th October, 1961 to finalise the composition and terms of reference of the Bonus Commission for information.

Yours faithfully,

Seth 6.11.61
(B. R. Seth)
Deputy Secretary.

Copy, with a copy of the conclusions referred to above is forwarded to:-

1. All Employing Ministries of the Govt. of India, and Planning Commission.
2. The Chief Labour Commissioner (Central), New Delhi.
3. The Director, Labour Bureau, Simla.
4. The Press Information Officer (Shri U. C. Tewari), New Delhi.

for Deputy Secretary.

Copy, with enclosure, also forwarded to:-

1. LC. Section. 2. MD. 3. LRIV Section. 4. LR-II Section. P.T.O.
5. P.S. to L.M., P.S. to D.L.M., P.S. to DLM(E), P.S. to Secy. P.A. to JS(G); P.A. to JS(E), P.A. to LEA; P.A. to DS(L) and P.A. to DS(A).

for Deputy Secretary.

November 10, 1961

The Secretary,
India Coffee Board Employees' Association,
Bangalore.

Dear Friend,

Thank you for your letter of 25th inst. ' As per the Terms of Reference of the Bonus Commission just finalised, it has been agreed that the Commission's terms would cover all industries and employments, except those employees in the public sector which do not compete with the private sector.

With greetings,

Yours fraternally,

(K.G.Srivastava)
Secretary

No.WB-20(9)/61
Government of India
Ministry of Labour & Employment

- - -

From

Dr. B.R. Seth,
Deputy Secretary to the Govt. of India.

To

1. The General Secretary,
   Indian National Trade Union Congress,
   17, Janpath, New Delhi-1.

2. The General Secretary,
   All India Trade Union Congress,
   4, Ashoka Road, New Delhi.

Dated New Delhi, the

Subject:- Bonus Commission.

- - - -

Sir,

I am directed to enclose a copy of the conclusions reached at the meeting held on the 28th October, 1961, to finalise the terms of reference and composition of the Bonus Commission. It was agreed that, besides the Chairman and two independent members, the Commission will include two representatives of workers and two representatives of employers. It has been decided that one of the two members to represent the workers on the Commission may be appointed on the recommendation of your organisation. I am, therefore, to request that the name and address of your nominee may kindly be communicated to this Ministry at a very early date, after obtaining the consent of the person concerned.

2. No remuneration is payable to the members of the Commission. They will, however, be entitled to travelling allowance as admissible to non-officials appointed as members of Commissions/Committees set up by the Government of India.

Yours faithfully,

Deputy Secretary. 18/11/61

'D.O. REED.TO'
J.S.10/11/61.

No.172/A/61(BC)
November 14, 1961

Shri G.L.Nanda,
Minister for Labour & Employment,
Government of India,
New Delhi.

Sub: Composition and terms of reference of the Bonus Commission - Finalisation of.

Dear Sir,

We are writing this with reference to the copy of the conclusions reached at the meeting of the Sub-Committee held at New Delhi on the 28th October to finalise the composition and terms of reference of the Bonus Commission, circulated under cover of Union Labour Ministry No.WB-20(8)/61 dated November 9, 1961.

In para 4, it has been stated: "With reference to the first term of reference, it was mentioned by workers' representatives that there are certain undertakings, particularly under the State Governments, which though run departmentally compete with similar undertakings in the private sector. The Chairman mentioned that the question of Bonus in such undertakings as were not covered by the terms of reference could be considered separately if necessary . ..." The last two words, "if necessary" do not seem to be in line with the quite categorical statement made by you on this subject. As you will remember, the workers' representatives attach a good deal of importance to this question and appreciating our position, you were good enough to give a clear assurance, and you had made no reservations in your statement. We would therefore request that the words "if necessary" should be deleted from para 4 of the Conclusions.

Yours faithfully,

M K Pandhe

(M.K.Pandhe)
for Secretary

S. ...karni
Adviser
Jo... ...etary,
M. P. T... ...,
(AITUC).

Phone : 78072
BLOCK No. 9.
MOSHION MANSION
SANKHALI STREET
BOMBAY-8.

Dated: 19-11-1961.

To

The Editor, Secretary,
Trade Union Record,
N E W D E L H I.

Sub:- Bonus discussion.

Dear Comrade,

I am attaching herewith a copy of my note 'On Bonus' for bonus discussion in Trade Union Record.

With greetings,

Yours fraternally,

A. I. T. U. C.
I. R. No. 6463 Date 21 NOV. 1961

(P. S. Kulkarni).

N O T E O N B O N U S.

by Com. R.S.Kulkarni,

Bombay.

19-11-'61.

1) Concentrated, concerted and Timely Action by T.U. Movement.

2) Minimum Statutory Bonus.

3) Balance Sheets v/v Family Budgets.

4) Bonus Linked with Profit.

5) Economics of Bonus - Class Approach.

   a) Nature and source of Profit.

   b) Ambekar's Dangerous Theory of Unearned Profits.

   c) Price and value of Labour Power.

6) Spirit and Scope of Enquiry.

   a) Second Plan

   b) Supreme Court.

   c) Union Labour Minister.

   Scrutiny of present formula.

7) Profit for Bonus Calculation.

8) Prior Charges.

   a) Depreciation.

   b) Rehabilitation

   c) Return on Paid-up-Capital

   d) Return on Working Capital

   e) Income Tax.

9) New Order of Prior Charges.

10) Balance-Sheets.

"Major decisions regarding Production, distribution, consumption and investment- and in fact all significant socio-economic relation-ships must be made by agencies informed by SOCIAL PURPOSE." (page 22, SECOND GIVE YEAR PLAN).

I. Need for concentrated, Concerted and Timely Action by T.U. Movement.

(Wage rise and Price reduction are the two ways of maintaining and improving the standard of living. The present organised strength has proved to be insufficient to achieve both of these objectives. We have got wage increases no doubt, as a result of Awards or Wage Boards, but they are insignificant for appreciable or substantial improvement of standard of living. Real wages have increased negligibly.) This wage level which is settled by Second Pay Commission and Cotton, Cement and Sugar Wage Boards, is likely to rule for at least the period of Third Five Year Plan, unless there is sudden turn or change in corelation and balance of forces. As far as trend of prices is concerned we are no where to match in the race. Our only achievement on this front is the sliding scale D.A. linked up with the cost of living index only in major and organised industries. It is well settled and welknown that the improvement in standard of living is not commensurate with the increase in National Wealth or Production.

Under these circumstances the only front on which a battle for this purpose can immediately be fought is BONUS. Hence the need for concentrated, concerted and timely action by T.U. Movement. It may be noted that even after the Pay Commission and Wage Boards have rejected needbased wage, Shri Nanda, Union Labour Minister, while inaugurating the 19th Session of Indian Labour Conference reiterated the need for giving first priority to ensure need based standard.

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II. A case for Minimum Statutory Bonus.

(In the context of the industrial relations as obtaining to-day in our country, bonus is related to profits, whether we like it or not. Since it is one of our targets to see that the Bonus Commission takes up the De Novo inquiry into the question of bonus and does not restrict the same to the present narrow orbit, the first task will be to detach minimum bonus from profit. Our wage level being very low, sub-normal since need based wage according to 15th Labour Conference is denied, there is every justification for minimum statutory bonus to fill in the gap between the actual wages and the need based wages. Just as employer has to pay Leave Wages, Provident Fund contribution or E.S.I. contribution irrespective of capacity to pay or profit or loss, he must be compelled to pay a minimum bonus to the workers. As a result of this even the workers in loss making concern or in loss years will be entitled to minimum bonus. Moreover since workers are not responsible for lossess, there is no justification for penalising them by way of denying any bonus to them for none of their faults, except perhaps that they are employed with defaulting employers. Thus minimum statutory bonus can be said to be the first task in the fight for adequate bonus.)

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.....P6

III. Family Budgets v/s. Balance Sheets.

The main justification for this is not to be found from balance-sheets of the companies, but from the family budgets of the workers. If bonus linked up with profit is justified to fill in the gap between actual wage and living wage, statutory minimum bonus is more so justified to fill the gap between actual wage and needbased wage. The priority for need based wage in the present scheme of social justice is prime consideration for the justification of this claim for minimum statutory bonus. Thus it is to be supported on social, moral and ethical rather than economical and financial considerations. It may be noted in this respect that Shri G.L. Nanda, Union Labour Minister has reiterated as late as on 9-10-1961 the need for giving priority to need based minimum wage evolved by 15th Tripartite Conference even after the same has been rejected by Pay Commission and other wage Boards.

Shri Nanda says, "The first priorityshould be to ensure the need-based minimum standard as envisaged in a recommendation of the 15th Session of the Indian Labour Conference" (Inaugeral Address of the 19th Indian Labour Conference, Times of India, dated 10-10-1961).

It may also be noted in this connection that statutory bonus is not altogether a new element. At present there is , apart from its merit, a scheme of statutoty bonus in force in Coal Mines, under which 4 months (basic wage) annual bonus is given compulsorily, on certain minimum attendence.

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IV. Bonus Linked with Profit.

Apart from the minimum statutory bonus workers right and title to the bonus as share in profit is recognised. It is no more considered as ex-gratia or gratis or bakshis etc. i.e. a voluntary gift of the employers based on humanitarian considerations. Gone are those days by now. Now the employers have adopted an 'enlightened approach' of satisfying workers as a satisfied worker is an asset to them. They have reconciled to the position that profits are the product of joint efforts of capital and labour. Here-before according to them the workers had nothing to do with the profits, they are none of his concern and the only source of profit is capital, nack or skill of management and organisation. Workers were entitled to a wage actually earned and nothing beyond that. The wages were settled by sheer force of authority, individual contract or supply and demand of labour force. But with the hard won rights of organising into trade unions and collective bargaining the workers' contribution to profits slowly dawned on authorities and employers. As a result of this such charges on profits, as leave wages, provident fund contributions, E.S.I. contributions, retrenchment compensation, lay-ff compensation were admitted. So also bonus as of right, although not as deferred wage, was recognised. Now since it is related to profits we must understand the nature, causes and source of profits.

....P8

V. Economics of Bonus - Class Approach.

a) Nature and source of profit.

What is a profit? What is the source of it? Profit is wealth (value) produced minus wealth (value) spent on its production. Now how this additional wealth (value) is produced and who produces this added wealth? These are the key questions of Economics. According to the Economics of working class i.e. Marxist Economics the sole source of profit is the surplus labour (value) which is mis-appropriated by the capitalist. According to capitalist economics, it is the fortune, capital, skill or nack of management and organisation that yields profit for them and the worker has no contribution in it. It is none of his concern. This aspect requires thorough and detailed discussion and education. Here, the two fundamentally opposite concepts are only stated although they can be elaborately developed. It is due to the stark reality of life and working class struggles that the ~~most trusted guardian and custodian of the private property~~ rights, namely Supreme Court of India, has admitted of late that the capital and labour both jointly contribute to the profits. Thus the Supreme Court observes:-

"It is, therefore, clear that the claim for bonus can be made only if as a result of joint contribution of capital and labour the industrial concern has earned profit". (L.I.J. 1955-I - para.1 at page 4).

Earlier on the same page it approvingly quotes from L.A.T. decision as follows:-

"As both labour and capital contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges".)

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b) Ambakar's Dangerous Theory of Unearned profits.

The working class could bring home this reality at least partially to the Supreme Court. But it is yet to be dawned on I.N.T.U.C. or Ambekar. According to him substantial profits are UNEARNED PROFITS. Workers have no contribution in these profits.

Thus in his note on Bonus he observes:-

"As a matter of fact the nature of profit is such that a substantial portion of it accrues not as a result of contribution of labour or industry, but due to extraneous factors like Government policy, market conditions, law of supply and demand, etc. The profits accrued as a result of operation of latter factors are in the nature of unearned profits on which industry should not have a claim." (T.U.R. February 5, 1961).

According to him workers' claim for bonus out of these profits is based only on considerations of social justice and unfair price of labour. In the components of cost of production only the labour is paid unfair price. So the right of bonus is restricted to the difference between wages actually paid and the fair wage. He says,

"Besides among the components of cost only the worker is not given his fair price for his labour and thus the profits accrue." (T.U.R. February 5, 1961).

Now he claims bonus only because fair price is not given to labour. He does not base his claim on the values added by the Labour.

If this approach is accepted the bonus claim is nipped in the bud. Workers contribution in profits is flately denied by a trade union leader! Addition in wealth is denied. According to him substantial profits are unearned and fortuitous profits. Even the

.....P10

achievements so far made in bonus struggles are completely negated by this proposition.) We must do our best to see that none of the sections of the working class adopt this approach before Bonus Commission.

c) Price and Value of Labour Power.

In case of all the commodities the price may be monetary expression of value, or else there may be a little difference in the price and value. But in case of labour power the price of it is mush less than the value created by it (excluding that part which is contributed by constant or fixed assets). Living wage may be at best the fair price of labour power. But even then the labour's contribution is much bigger than living wage in the wealth created by it. Labour has a right over that part of it also and not merely the difference between the actual wage paid and the fair price of it. Similarly this part of additional surplus wealth is a profit. It is not an unearned or fortuitous profit to which labour has not contributed. It is a real and material additional wealth on which bonus is rightfully claimed.

There was a time when workers' contribution in profits was totally denied. ~~Not~~ Now it is partially recognised. We have to advance further the theory of surplus value as the source of profit and base our claim of bonus on this.

Thus the positions of I.N.T.U.C. and A.I.T.U.C. can only be poles apart, fundamentally opposed to each other.

Our basis of claim for bonus is that the surplus value which we have created with our blood and toil is the source of profit. The fruits of our labour are misappropriated by the employers because of the capitalist system of production based on private property rights

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on means of production. It is not a matter of mercy, grace or any thing like that. It is a question of establishing a right to the possible extent under the present capitalist structure. With this perspective only we must scrutinize each and every item of L.A.T. Bonus formula and change the order of priority of the prior charges. The assistances of other forceful arguments against the present priority order should be taken only as a second line of defence.

To cut short this discussion an illustration is given.

(A) (To be inserted on page. 11 at the end.)

Of course this does not mean that the rate, size, and volume of surplus value is uniform at all the times ~~xxxx~~ in all the industries. It is bound to differ industriwise and unitwise too depending upon the extravenous circumstances such as Govt. Policy, Market conditions supply and demand etc. We will have to take this aspect into consideration while pressing for a definate quantity of share in profits ~~xxxxxxxxx~~ as bonus in various industries. This is the matter of further and detailed study. None the less one thing is certain that as a result of the working of these factors or the variations in profits the substantial portions of the present day profits are not transformed into UNEARNED PROFITS as is made out by Shri. G.D. Ambekar. This is a matter of relationship between price and Value of the added wealth or surplus value in different branches and spheres of production. But it does not alter the fact of addition/values in by labour power actually spent on production of them.

VI. Spirit and scope of Enquiry.

The emphasis on social policy aspects of the Five Year Plans has got to be forcefully brought home to the Bonus Commission. Unless the Commission is imbibed with that spirit there will be little progress.

We have to see that the Bonus Commission identifies itself with the following spirit displayed by the Second Five Year Plan.

a) Second Plan.

"The task before an under-developed country is not merely to get better results within the existing framework of economic and social institutions, but to mould and re-fashion these so that they contribute effectively to the relisation of wider and deeper social values."

"These values or basic objectives have recently been summed up in the phrase 'socialistic pattern of society'. Essentially this means that the basic criterion for determining the lines of advance must not be private profit but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increases in national income and employment but also in greater equality in the incomes and wealth. Major decisions regarding production, distribution, consumption and investment and in fact all socio-economic relationships must be made by agencies informed by social purpose. The benefits of economic development must accrue more and more to relatively less privileged classes of society and there should be progressive reduction of the concentration of income, wealth and economic power. The problem is to create a mileau in which the small man who had so far had little opportunity of pereceiving and perticipating in the

....P13

immense possibilities of growth through organised effort is enabled to put in his best in the interest of a higher standard of life for himself and increased prosperity for the country. In the process he rises in economic and social status. Vertical mobility of labour is thus no less important than horizontal mobility for nothing is more destructive of hope and more inhibitive of effort than a feeling that the accident of birth or of a poor start in life is likely to come in the way of a capable person rising in life in terms of economic and social status." (page 22, 2nd Five Year Plan.)

"Within this broad approach the 2nd Five Year Plan has been formulated with reference to the following principle objectives:-

(a) a sizeable increase in national income so as to raise the level of living in the country;

(b) rapid industrialisation with particular emphasis on the development of basic and heavy industries;

(c) a large expansion of employment opportunities; and (d) reduction of inequalities in income and wealth and more even distribution of economic power.

These objectives are inter-related." (page 24, 2nd Five Year Plan).

Elaborating the fourth objective, viz., reduction of inequalities, Planning Commission says: "Economic development has in the past often been associated with growing inequalities of income and wealth. The gains of development accrue in the early stages to a small class of businessmen and manufacturers whereas the immediate impact of the application of new techniques in agriculture and in traditional industry has often meant growing unemployment or under-employment among large number of people. In course of time this trend

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gets corrected partly through the development of countervaling power of trade unions and partly through the State action undertaken in response to the growth of democratic idea. The problem before underdeveloped country embarking upon development at this later stage is so to plan the alignment of productive forces and of class relationships as to combine DEVELOPMENT WITH REDUCTION IN ECONOMIC AND SOCIAL INQUALITY; the process and the pattern of development has in essance to be socialised. There are existing inequalities of income and wealth which need to be corrected and care has to be taken to secure that development does not create further inequalities and widen the existing disparities."

(page 14).

"It may be conceded that there is some force in some of the arguments urged in support of the plea that the formula should be revised and its priorities should be rearranged and redefined .....".

all industries; and before any change is made in it, all industries and their workmen will have to be heard and their pleas carefully considered."
(1959 I Labour Law Journal at pp.644).

c) Union Labour Minister.

More over Shri Nanda, Union Labour Minister has given the idea of scope of the enquiry:- "The conclusion reached was that we may have a Bonus Commission, a Commission which will go into this question, try to evolve some norms so that what one expects in a particular industry and under particular

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conditions could be anticipated and there may not be any great deal of bickerings about it or conflicts developing". (Lok-Sabha Debates - 10th Session. p.11070: Speach on 11th April 1960).

Thus it is clear that the amphasis is on evolving new norms of bonus.

VII. Profit for Bonus Calculation.

(Now let us examine the broad aspects of present formula)

The first step is to acertain the profit for bonus calculation.

(At present only those profits are taken for bonus calculation to which workers efforts are directly related. There is a wide spread tendency to exclude the profits derived from alleged extranous incomes. Since the whole mechanism is indivisible and integral one this practice should be put an end to. The division of profits on that basis is impossible and unreal also. It leads only to reduce the quanturm of profits to be taken for bonus purpose and provides a device to deflate them.

It is therefore necessary that all the income and profit of a concern should be taken into account for the purpose of Bonus. Nothing should be left out as extraneous income and on any other ground. Moreover the saving on account of reserves used as working capital by way interest should be added back to the Profits for the purposes of bonus.)

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VIII. Prior Charges.

a) Depreciation.

Half of the statutory normal depreciation should be allowed as first charged on profit. Actual wear and tear is not to the extent of full normal depreciation, as

to be inserted on (page 17).

In fact there is a recent finding by Tarrif Commission on Sugar Industry that this industry has sufficient internal resources to meet the requirements for rehabilitation and there is no necessity of any further provision. The Commission observes -

> "It is therefore, beyond doubt that the industry had resources which could have been utilised for rehabilitation and modernisation of the old plant and equipment. The regionwise analysis of accounts has shown that some factories in North Bihar and East U. P., most factories in Western U. P. and almost all units in Southern and Bombay State have the necessary resources to carry out rehabilitation of their plant and equipment."

At the same time the present workers who have worked hard and gave huge profits will not only face some inevitable unployment but will get further dissatisfied in consequence of due and proper Bonus being denied to them because of the Industry's requirement of rehabilition

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being taken wholly from the profits of the Industry and nothing being left for the future generation which is to reap the benefits of the rehabilitation.)

The reasons for disallowing rehabilitation as a prior charge are given by Shri M.R. Mehar in his award in Bonus adjudication in Indian Oxygen and Acetylene Co Limited are as follows:

"11. I now proceed to develop the point made above, that to tract deduction of charges for rehabilitation, replacement and modernisation as a first charge on the profits does not accord with the facts of industrial finance and involves, with respect, assumptions which are erroneous...

"12. Now, it is undeniable that plant and machinery must be kept continously in good working order both in the interests of capital and labour. The Income Tax Act and Rules given liberal provisions for inducing businessmen to plough back profits for replacement and for purchasing new plant and machinery, but these have been found inadequate for purposes of rehabilitation and moderanisation because of the spiral rising prices of machinery in the whole of the post-war period.

"14. If in a country which is industrially much more advanced than India it is recognised that the gap between the original costs of machinery, etc., and replacement costs (let alone modernisation) may be too big to be bridged by making annual provisions from profits, it is too much to expect with all respect to the Labour Appellate Tribunal, which gave the Full Bench decision referred to above, that in this country the costs not only for replacement but of modernisation also must come out of profits before the available surplus can be ascertained.

"The Committee (the Working Party for the Cotton Textile Industry) is of the opinion that the money to be found for such replacement and renovation can only be

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found by a loan being granted by the Government and not by any outright grant either through a surcharge or otherwise. The Committee would, however, strongly recommend that the loan which we propose should be given by Govt. for such rehabilitation, should carry a low rate of interest not exceeding 4 per cent. The Committee would like to emphasise the need for rehabilitation of the Industry and therefore the need for making available such amount as is required by the Industry by way of loan. The process of rehabilitation or renovation, like the process of rationalisation, must be spread over a fairly long period; and by a long period the Committee means from 10 to 15 years.

"If in an industry, which has been established for a hundred years and in which more capital has been invested than in any other individual industry it has not been possible to finance requirements for rehabilitation, replacement and modernisation from the profits, can it be expected that in very industrial concern, the entire amount required for rehabilitation, replacement and modernisation must be deducted from the profits by equal instalments, as a prior charge before the available surplus is arrived at?

"15. Now let us come to the sugar industry which has enjoyed prosperity for many years. Has it been able to provide from its profits for funds for "rehabilitation, replacement and modernisation of machinery?".

"16.... Therefore if in such industries rehabilitation charges are deducted as a prior charge from the profits, in many cases the bonus formula would not work at all and the workmen would get no bonus, even if a concern has made good profits.

"17. In the Full Bench formula of the Labour Appellate Tribunal the reasons given for providing

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From the profits a prior charge for rehabilitation, replcement and modernisation of machinery is that depreciation is only a percentage of the written down value, the fund set apart yearly for depreciation and designation under the head would not be sufficient for these purposes. It seems to me that the reason why depreciation allowance have not sufficied for the purpose of replacement is not because depreciation by the Income Tax Department is allowed only on the basis of a percentage of the written down value, but because of the circumstances detailed in paragraph 12 to 15 above.

"So it is again evident that industries have found it difficult to finance replacement costs not because of inadequacy of depreciation allowence, but largely because of the great and growing increase in the prices of plant and machinery in the last 15 years.

"18..... (1952 L.A.C. p.273 at p.275) in which the Labour Appellate Tribunal clearly laid down:-

> "For the purposes of our formula we are not concerned with what the Company does with its money; we are only concerned to see whether by applying certain facts and figures in terms of our formula, an available surplus can be found out of which bonus might be paid to the workmen".

"With respect it is difficult to see why a Tribunel should not take into account realities and why the Tribunel is not concerned with whether the Company spends or intends to spend the amount claimed by it for rehabilitation or whether it gives away the amount in the shape of dividends to shareholders..... If it is not feasible for a Tribunal to take an undertaking from a Company that the amount that is claims and is allowed for rehabilitation would be spent for that purpose in a reasonable time, I do not see why it should not be open to a Tribunal to reduce the allocation for rehabilitation,

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replacement and modernisation, if the estimated costs far exceed the amount that can reasonably be provided out of profits." (I.C.R.1957 p. 466 at p.472 to 478.)

In this respect it should be brought forth that the working class is not opposed to extended or expanded reproduction or is conservative or orthodox in that respect. The question is who is to bear the cost of expanded and extended reproduction of wealth. The burden should not be on the ill-paid and ill-fed workers but on employers who have reaped huge profits in the past on the machinery which is to be rehabilitated.

c) Return on Paid-up-Capital.

Now coming to the return on paid-up-capital, it should be paid only on actually paid up capital and not on bonus shares also. Bonus share itself is a very big and disproportionate multiple dividend. Further return on it would mean dividend on multipul dividend. No return, therefore, should be allowed on Bonus shares.

As far as return on paid-up-capital is concerned that same should be allowed only after depreciation allowance both for machinery and human body is allowed. That is to say only the gap between the actual wage and need-based wage is filled. After these two charges are met with if any available surplus remains it should be equally distributed between labour and capital subject of course to taxation i.e. actually payable income tax, and ceiling at 6% return on actually paid-up-capital only.

d) Return on Working Capital.

Under the present formula in general 4% return on reserve used as working capital is allowed. The reason given is that if these reserves were not used

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they would have earned interest. But then there would have been borrowings for the purpose of working capital which would have carried higher rate of interest. In fact because the reserves are used there is actual saving. This aspect has been over-looked by the L.A.T. formula and on the contrary return is allowed on working capital used from reserves on erroneous assumptions. In fact there is a case for adding back this saving to the profit. So the difference between interest that would have been earned by the reserves used as workin capital and the interest on that such amount of loan should be added back to the profit for the purposes of bonus.)

e) Income Tax.

Allowance for taxation should be made only to the extent of actual Income Tax payable on profits and it should not be allowed even when it is not actually payable. Moreover, no taxation should be allowed on dividends from the Company's profits for shareholders.)

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IX. New Order of Prior Charges.

From the discussion of the present L.A.T. formula an entire new scheme and order of prior charges is emerged.

It can be enumerated as follows:-

1) Statutory Minimum Bonus.

2) Depreciation - ½ of statutory normal.

3) Bonus linked with profit.

4) Income Tax - actually payable.

5) Return on actually paid-up-capital, excluding bonus shares

X. A word about Balance-Sheets.

For working out the Bonus the audited Balance-Sheets should not be taken as a basis. The Unions must be allowed to go behind them. A number of cases of balance-sheet manupilations came to the light in bonus disputes can be cited. Only an authoritative view is sufficient to throw light on it. Whenever the Unions have doubt about the genuineness of the balance-sheets, even if they are audited ones, Unions should be allowed to go to behind them and the managements must be compelled to open all the cards.

This is what Mr. Nigam has to observe in this respect,

".... The student of accounting will know best how far the profits or the Balance-Sheet is a true index of company's position as there are various means by which real position may be observed. In certain cases, perhaps, income-tax authorities may well explain the unscruplous practices of employers to lower their profits artificially. The devices of watered capital,

....P24

the issue of bonus shares, the investment of gross profits in the capital improvement of the Company, etc. are some of the devicas to lower the amount of net-profit. Where a Company is jointly controlled with other allied countries, the shifting of profits from one to another is also a common and easy way of escape. There are thus numerous ways to deflate his profits and obtain a decrease in wages if the profit and loss test is adopted". (State Regulation of Minimum Wages - by S.B.L.Nigam page 156)

Contd. on 24 A

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Contd. from (page 24)

24 A

There are some observations of the Labour Appellate Tribunal on genuiness of Balance-Sheets -

"In my opinion, the contention of labour, though not entirely correct, is nearer the truth. If there are some individual mills which are not working with profit, it is more due to the mismanagement and greed of the managing agencies than to the inherent unsoundness of the industry ..... It is, therefore, not safe to base any conclusion, especially where losses are shown in the balance sheets, on accounts of the working of the sugar mills submitted by those mills."

(L.L.J.-1951-I, p. 615-623 478 to 484. Bihar Industrial Tribunal, Sugar Mills of Bihar v/s. their workmen).

"If it were possible to rely on the balance sheets submitted by the factories before us, we should have preferred to base our conclusions on them and should have decided the question of bonus unit-wise. But so far as the sugar industry is concerned it does not appear to be possible to rely on the balance sheets as depicting a true picture of the season's working under the prevailing system of accounts".

"We are, therefore, constrained to hold that the question of bonus in the sugar industry is not capable of being decided unit-wise under the existing conditions and the rule of linking bonus with profits as shown in the balance sheets can not be adopted."

(L.L.J.1952-I p. 615-623, U. P. Sugar Mills v/s. their workmen. U.P. Industrial Tribunal)

Ref Knitt —
19/11/61

No.184-A/(N)/61
November 20, 1961

Dr.B.R.Seth,
Deputy Secretary to the Govt of India,
Ministry of Labour & Employment,
New Delhi

Sub: Bonus Commission

Dear Sir,

We acknowledge receipt of your letter No.WB-20(9)/61 dated November 14, 1961, on the above subject. Our organisation desires that the Government may nominate Shri S.A.Dange, M.P., General Secretary, AITUC, as a Member of the Bonus Commission.

The address of Shri Dange is given below:

Shri S.A.Dange, M.P.,
General Secretary, AITUC,
4 Ashok Road,
New Delhi 1

Yours faithfully,

(K.G.Srivastava)
Secretary

R. S. Kulkarni
Trade Union Legal Adviser
Joint Secretary,
M.R.T.U.C.
(A.I.T.U.C.)

Phone : 78072
BLOCK No. 9.
MOSHIN MANSION
SANKHALI STREET
BOMBAY-4.

21st November 1961.

The Editor,
Trade Union Record,
New Delhi.

Dear Comrade,

I have sent a note on bonus for bonus discussion in T.U.R. Kindly insert the para attached herewith at the end of the slip pasted on page 11 of the same. That means this will be last para under sub-heading Price & Value of Labour Power.

Hoping to be excused for the troubles.

With greetings,

Yours fraternally,

R S Kulkarni

In this respect there still another aspect of the matter which is more important for practical solution of bonus problem. A part of added wealth or surplus value created in one industry is more often than not carried to other industries. It flows from industry to industry. It is distributed not only on productive activities and also non-productive ones. This flow depends again upon the same external factors such as Govt. policy, supply and demand market conditions etc.

(To be inserted on page 11 at the end after the slip attached thereto.)

No.WP-20(8)61
Government of India
Ministry of Labour & Employment

From

Dr. B. R. Seth,
Deputy Secretary to the Govt. of India.

To

The Secretary,
All India Trade Union Congress,
4, Ashok Road, New Delhi-1.

Dated New Delhi, the 13 DEC 1961

Subject:-Conclusions reached at the meeting held on the 28th Oct., 1961 to finalize terms of reference and composition of the Bonus Commission.

Sir,

I am directed to refer your letter No.172/A/61(BC), dated the 14th Nov., 1961, on the above subject. While dealing with the workers' point regarding bonus in departmentally run public sector undertakings which compete with similar undertakings in the private sector, the Labour Minister said that the question could be considered separately. It would not be correct to say that a categorical assurance to consider the matter was given by the Labour Minister. The intention was that the matter could be considered separately if such action was deemed necessary and on the merits of each case. The words "if necessary" in the conclusions only clarify this position.

Yours faithfully,

Seth
12.12.61
(B. R. Seth)
Deputy Secretary.

d.a.nil.
ksm-7.xii

No.WB-20(9)/61
Government of India
Ministry of Labour & Employment

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From

Dr. B.R. Seth,
Deputy Secretary to the Government of India.

To

1. All State Governments and Union Territories.
2. All India Organisation of Employers and workers.

Dated New Delhi, the
~~13.12.~~ 14.12.61.

Subject:- Appointment of the Bonus Commission.

....

Sir,

I am directed to enclose, for information a copy of the Government of India's Resolution No.WB-20(9)/61, dated the 6th December, 1961, constituting the Bonus Commission.

Yours faithfully,

Bseth 12/12/61

(B.R. Seth)
Deputy Secretary.

"P.A.Refd.to"
"DAYAL"

Copy, with a copy of the Resolution forwarded to :-

1. All Ministries of the Government of India; Planning Commission; Programme Evaluation Organisation; Committee on Plan Projects; and The Cabinet Secretariat.
2. Director, Labour Bureau, Simla.
3. Chief Labour Commissioner, New Delhi.
4. Research Division: and LR-II and LR-IV Sections.

for Deputy Secretary.

"D.A.Refd.to"
DAYAL

(To be published in the Gazette of India, Part-I, Section I)

GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT

New Delhi, the 6th December, 1961.

RESOLUTION

No.WB-20(9)/61: The Government of India have decided to set up a Commission to study the question of bonus to workers in industrial employments and to make suitable recommendations. The composition of the Commission will be as follows :-

CHAIRMAN

Shri M. R. Meher.

INDEPENDENT MEMBERS

1) Shri M. Govinda Reddy, M.P.

2) Dr. S. N. Ganguli,
Director, Delhi School of Economics.

MEMBERS REPRESENTING WORKERS

1) Shri S. R. Vasavada.

2) Shri S. A. Dange, M.P.

MEMBERS REPRESENTING EMPLOYERS

1) Shri N. Dandekar.

2) Shri D. Sandilya.

2. The terms of reference of the Commission will be as follows :-

(1) To define the concept of bonus and to consider, in relation to industrial employments, the question of payment of bonus based on profits and recommend principles for computation of such bonus and methods of payment.

P. T. O.

NOTE- The term "industrial employments" will include employment in the private sector and in establishments in the public sector not departmentally run and which compete with establishments in the private sector.

(2) To determine the extent to which the quantum of bonus should be influenced by the prevailing level of remuneration.

(3) (a) To determine what the prior charges should be in different circumstances and how they should be calculated.

(b) To determine conditions under which bonus payments should be made unit wise, industry wise and industry-cum-region wise.

(4) To consider whether the bonus due to workers, beyond a specified amount, should be paid in the form of National Saving Certificates or in any other form.

(5) To consider whether there should be lower limits irrespective of losses in particular establishments, and upper limits for distribution in one year and, if so, the manner of carrying forward profits and losses over a prescribed period.

(6) To suggest an appropriate machinery and method for the settlement of bonus disputes.

(7) To make such other recommendations regarding matters concerning Bonus that might be placed before the Commission on an agreed basis by the employers' (including the public sector) and the workers' representatives.

3. The headquarters of the Commission will be located at Bombay. Correspondence intended for the Commission may be addressed to Chairman, Bonus Commission, Old Secretariat Building, Bombay-1.

Sd/- K. N. Subramanian,
Joint Secretary to the Government of India.

No.WB-20(9)/61 Dated New Delhi, the 6th December, 1961.

ORDER: Ordered that a copy of the Resolution be communicated to :-

(i) All State Governments and Union Territories.
(ii) All Ministries of the Govt. of India, Planning Commission, Programme Evaluation Organisation and the Committee on Plan Projects.
(iii) All India Organisations of Employers and Workers.

Ordered also that the Resolution be published in the Gazette of India for general information.

Sd/- K.N. Subramanian
Joint Secretary to the Government of India.

LATEST ON BONUS COMMISSION

(Page 275, Column No.2 & 3 of Commerce, - 18th February 1961.)

So much has been said and written about the chairmanship of the proposed Bonus Commission that any further comment on it would be regarded as just another voice in the chorus. But, in view of the developments that have taken place since we last wrote on the subject, it is necessary to review the situation, as it obtains at present, so as to provide a background to the understanding of further developments that are in the offing.

As the employers had made known, in no uncertain terms, their disapproval of the proposed chairman of the Commission, the Standing Labour Committee to ascertain the views of the parties concerned, explain to them the Government's stand and to finalise the Commission's terms of reference. The Committee, which is a tripartite body, met in New Delhi on the 10th inst. Apart from mutual exchange of views, nothing tangible has resulted from the meeting. Mr. Gulzarilal Nanda made clear the Government's stand on the question and sought to justify and convince the employers that Mr. M.R. Meher, President of the Industrial Court, Bombay, was a good choice for the chairmanship of the Commission. He is understood to have urged the employers not to be obsessed with the issue of the composition of the Commission, as the latter was not a tribunal asked to give an award which was binding on the parties but only an advisory body called upon to study the bonus question and make recommendations. He also assured the employers that the Commission's recommendations would be accepted, only if they were unanimous or that only such recommendations as were unanimous would be implemented.

The Minister had no objection to making the Commission Tripartite in character by giving representation on it to employers and workers alike. But he firmly turned down the demand that Mr. Mehre should not be the chairman. Mr. Nanda pointed out that it was not possible to get a sitting judge of the Supreme Court to preside over the Commission and he was not in favour of appointing judge of the Supreme Court to preside over the Commission and he was not in favour of appointing a retired judge of that Court. The question of finding a suitable judge of a High Court was presumably not examined.

Employers' representatives are reported to have asked for some more time to give an answer whether a tripartite Commission would be acceptable to them. They are understood to have pointed out that they had no mandate to commit themselves either way and could do so only after consultation with the constituent members of the organisations which they represented. Accordingly, time-limit

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of six weeks has been given to them. The three central organisations of employers, namely, the Employers' Federation of India, the All-India Organisation of Industrial Employers and the All India Manufacturers' Organisation, are expected to consider the entire issue de-novo some time next week. It would appear that a section of employers is now opposed to the idea of boycotting the Commission, as it feels that such a course would only serve to antagonise both the Government and trade unions.

The workers' representatives have fully approved of the choice made by the Government. The spokesmen of the I.N.T.U.C. said at the aforesaid meeting that their organisation strongly objected to the employers starting a controversy over an appointment which the Government had a right to make. They argued that Mr. Meher was a man of considerable experience on the issue pertaining to the complex question of bonus, the chairman of the Commission simply because he had decided bonus disputes, then even Supreme Court judges, who had heard bonus cases, would have to be ruled out for this post. They made the further point that, if the Government were to change its mind in deference to the wishes of employers, the trade unions might have to change their attitude to the question.

The subject figured in Parliament on Wednesday this week during question hour. Mr. Nanda disclosed that the terms of reference of the Commission would be finalised only after the question of personnel was settled. A meeting of the representatives of employers and workers had been convened for April to consider the terms of reference. An indication of all the issues the Commission would be asked to examine was also given by Mr. Nanda. He stated that it would be open to the Commission even to suggest the elimination of bonus and its replacement by some other system. It would also be open to it, according to Mr. Nanda, to relate bonus to additional production or other factors. Asked whether the Government proposed to bring legislation to enforce the decisions of the Bonus Commission, Mr. Nanda said that, if the parties agreed to implement the decision, there would be no need for legislation. He said that legislation could not be ruled out altogether. This remark seems to contradict the assurances reported to have been given by him to employers' representatives to the effect that only the unanimous recommendations of the Commission would be enforced.

WIDE SCOPE FOR BONUS BODY

(Page No.11, Column No.6 of Times of India, February 16, 1961)

Nanda On Terms Of Reference: (New Delhi, February 15)

"Mr. G.L. Nanda, Labour Minister, told the Lok Sabha today, in reply to questions, that it would be open to the recently announced Bonus Commission to suggest the elimination of bonus and its payment in some other form to the workers.

In fixing the norms for the calculation of bonus it was also open to the Commission to relate bonus to additional production of other factors.

Mr. Nanda, who was replying to Mr. Barcocha and Mr. Brajraj Singh, said that both the employers and the employees had held that the method of rating bonus created confusion and tension. They were trying to find out whether there could not be a better way of rewarding the workers **thanx** than by payment of bonus. It was open to the Commission to deal with that matter.

LEGISLATION POSSIBLE

Mr. S.M. Banerjee asked whether the Government proposed to bring legislation to enforce the decision of the Bonus Commission and whether the Commission would go into the question of bonus to workers in public sector enterprises.

Mr. Nanda replied that the question of legislation would arise later depending on the situation then. If all the parties agreed to implement the decisions there might be no need for legislation but legislation could not be ruled out altogether.

The question of payment of bonus in public sector undertakings had been raised by some trade unions and States. It would be discussed first by the tripartite Standing Labour Committee.

Earlier, Mr. Nanda said that the employers had asked for six week's time to state their position as regards the Committee's terms of reference."

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By Com. Y. D. Sharma.

A NOTE ON THE QUESTION OF BONUS:

This note is confined only to criticism of the Bonus Formula of the Full Bench of the Labour Appellate Tribunal as finally approved by the Supreme Court. Other aspects of the bonus question will be dealt with after some more study and discussions.

The bonus formula was first laid down by the full bench of the Labour Appellate Tribunla in October 1950. Since then the Tribunals have generally followed this formula although there were some instances where the formula was departed from. Since, however, the Supreme Court has also endorsed this formula, it has now become manadatory on all Tribunals to follow this formula strictly in all Bonus disputes. During these last ten years, the formula has been interpreted and re-interpreted in such a way as to make it more and more unfair to the workers and advantageous to the employers. The Supreme Court itself has played a big part in interpretation which is prejudicial to the interests of the workers. These subsequent explanations, elaborations and interpretations of the original formula have made it worse than what it was in its original form and today it has become extremely difficult to secure a fair quantum of bonus forthe workers.

The main conclusions of the Full Bench of the Labour Appellate Tribunal (1950) are as follows:-

(1). "Now, Bonus is cash payment made to employees in addition to wages. It can no longer be regarded as an Ex-Gratia payment for it has been recognised that a claim for bonus, if resisted, gives rise to an industrial dispute. It differs from wages in that it does not rest on contract but still payments for bonus are made, because legally due but which the parties did not contemplate to continue indefinitely. Where the goal of living wages has been attained, bonus, like profit sharing would represent more as the cash incentive to greater efficiency and production. .....
But where the industry has not that capacity or its capacity varies or is expected to vary from year to year, so that the industry cannot afford to pay 'living wages', bonus must be looked upon as a temporary satisfaction, wholly or in part of the needs of the employee."

(2). "As both capital and labour contribute to the earnings of the industrial concerns, it is fair that labour should derive the same benefit, if there is a surplus after meeting prior or necessary charges."

Contd.. ... 2.

(3). "The gross profits are arrived at after payment of wages and Dearness Allowance to the employees and other items of expenditure which are not necessary for our present purposes to enumerate in detail ..... the first charge on the gross profits should be the amount of money that would be necessary for rehabilitation, replacement and modernisation of the machinery. As depreciation ~~xxxxxxxxxx~~ allowed by the income-tax authorities is only a percentage of the written down value, the fund set apart yearly for depreciation and designated under that head would not be sufficient for these purposes. An extra amount would have to be annually set apart under the heading of "reserves" to make up that deficit."

(4). "So far there can be no dispute, nor can it be denied that the paid up capital is entitled to a fair return. It is common ground that the fair return on paid up capital in this case should be 6 per cent. The Millowners' claim in addition a fair return on the reserves employed as working capital. The employees, however, dispute the right of the Millowners to any return on the reserve employed as working capital. This is a question of principle, and requires a decision."

(5). "The reserves which are carried over from year to year in law belong to the Company, and in our view the Company is entitled to some return for the money employed as working capital. The Company is entitled to deal with this return as it chooses, and neither the shareholders individually nor the employees can as of right claim any direct benefit accruing out of the employed capital; therefore this amount has to be credited to the Company. There cannot be any doubt that the employment of the reserves as working capital obviates the borrowing of money pro tanto from outside sources for the same purpose, and may be at higher rates of interest. The payment of higher interest would necessarily reduce the gross profits; to the extent the employment of reserve as working capital would be beneficial to the employees."

(6). "The paid-up capital, however, runs a double risk, viz. (1) normal trade risks and (2) risks incidental to trade cycles; whereas in the case of reserves employed as working capital which is ~~xxxxxx~~ more liquid than fixed capital the incidence of risk to which it is subject is rather small. So the fair return on reserves employed as working capital must necessarily be much lower than the fair return on paid-up capital. This has been recognised by the Tarrif Board in its Report on the Cotton Yarn and Cloth Prices in Bombay (1948)."

Although the L.A.T. did not discuss the question of income-tax in detail in their conclusions, they provided for income-tax at 6¼ annas per rupee on the balance left after the deduction of statutory depreciation and reserve for rehabilitation etc. from the gross profits. After providing for 6% return on paid-up capital and 2% return on reserves that have been employed as working capital,

After working out the residuary surplus in this manner, the L.A.T. discussed how to determine the quantum of bonus. The Full Bench stated as follows:-

> "After the aforesaid deductions there remains a surplus and the issue is whether the employees are entitled to any and, if so, to what bonus. The answer to this issue is not easy, for we have to consider in this context the needs of the employees, the claims of the shareholders, and the requirements of the industry. The subject is not readily responsive to any rigid principle or precise formula, and so far we have been unable to discover a general formula. This does not, however, mean that the answer to this issue is in any way fortuitous; nor xx are we in any doubt as to the considerations which must prevail in deciding what the amount of bonus should be. Essentially the quantum of bonus must depend upon the relative prosperity of the concern during the year under review, and that prosperity is probably best reflected in the amount of the residuary surplus; the needs of labour at existing wages is also a consideration of importance; but we should make it plain that these are not necessarily the only considerations; for instance, no scheme of allocation of bonus could be complete if the amount out of which a bonus is to be paid is unrelated to employees' efforts; and even when we have mentioned all these considerations we must not be deemed to have exhausted the subject. Our approach xx to this problem is motivated by the requirement that we should ensure and achieve industrial peace which is essential for the development and expansion of industry. This can be achieved by having a contented labour force on the one hand, and on the other hand an investing public who would be attracted to the industry by a steady and progressive return on capital which the industry may be able to offer. It goes without saying that if the residuary surplus is appreciably larger in any particular year it should be possible for the company to give a more liberal bonus to the employees."

It may be noted that out of an available surplus of 2.61 crores, the L.A.T. upheld the distribution of 2.16 crores as bonus, leaving a balance of 0.45 crores with the industry, i.e. the L.A.T. distributed roughly 83% of the available surplus as bonus to the workmen, leaving only 17% with the industry.

Since then, the formula has been considerably distorted. To give only some instances, the usual return allowed on reserves used as working capital is 4% instead of 2% in the original decision of the L.A.T. and out of the available surplus, not more than 50% is allowed to be distributed as bonus to the workmen and the other 50% is retained for the industry and shareholders. Of course, there are many other instances where the original formula has been distorted and made far more prejudicial to the workers' claim for bonus. These will be discussed under each heading separately.

The prior charges under the bonus formula as standing today are

1. Statutory Depreciation
2. Income-tax, Wealth Tax and Dividend Tax
3. Claim for rehabilitation
4. 6% return on paid-up capital
5. Return on reserves employed as working capital which varies from 2% to 4% but is in most cases 4%.

DEPRECIATION - INCOME-TAX ETC.

As depreciation is a well recognised item of cost, it is to be deducted from the gross profits. In the past, however, there have been numerous disputes regarding the rate of depreciation to be deducted as a prior charge. The employers have for a long time claimed that full statutory depreciation including initial or additional depreciation as development rebate should be allowed as a prior charge. This was successfully resisted by the Unions, and the Full Bench of the Labour Appellate Tribunal decided that only normal depreciation should be allowed. This decision was further modified and interpreted as meaning notional normal depreciation which had the effect of spreading the additional and initial depreciation or devlopment rebate over the entire life of the assets.

It may be stated that it will be very difficult to evolve any other basis for calculating depreciation, except the rate provided under the Income-Tax Act. If this item is left to be determined by the Tribunals on the basis of normal wear and tear of machinery, the chances are that the employers will succeed in getting in most cases a higher rate than the provision under the Income-Tax Act. In actual practice, it is found that the life of machine and buildings is much longer than what is visualised by law and a lower rate of depreciation would be sufficient. But this is a matter which should be taken up in relation to the provisions of the income-tax law. In any case, however, an employer should not be allowed a claim for depreciation for an amount higher than what is charged in the profit & loss account. In other words, where the actual depreciation charged to the profit & loss account is lower than the statutory normal depreciation, only the former should be allowed to be deducted from the gross profits.

After deducting the notional normal depreciation from the gross profits, the Tribunals deduct various types

of taxes, such as Income-Tax, Wealth Tax and Dividend Tax etc. on a notional basis. This deduction of taxes is open to most serious objections on the following grounds:-

The tax is calculated on a notional basis and has no relation whatsoever to the actual tax liability of a concern. It is a common knowledge that taxes are levied on nett profits and not on gross profit figures. Bonus is a legitimate item of expenditure and is allowed by the Income-Tax authorities. There is no earthly reason why tax should be calculated on a figure from which Bonus is yet to be paid. This deduction of tax as a very first prior charge, after depreciation, is a very big obstacle in the way of workers' claim for bonus. In the case of most of the concerns, the rate of income-tax has worked out to 51.5% for the rupee companies and a little over 60% for the non-rupee companies. Although in the original formula of the Labour Appellate Tribunal, tax was calculated only after deducting not only depreciation but also a claim for rehabilitation, but the present day practice followed by the Supreme Court and the Tribunals is to calculate tax on the amount of gross profits left over after statutory depreciation is deducted. In order to inflate the amount of tax as a prior charge, even the bonus which might have been already paid by the employer and which may have already been ~~deducte~~ debited to the profit & loss account and on which no tax is payable in any case is also added back to the figures of gross profits. Even in the case of charitable trusts which may be free from payment of income-tax or in cases where no income-tax is payable due to losses in previous years, this notional deduction of income-tax and other taxes is made. It should be noted that the return on paid-up capital at a rate of 6% is deducted after taxes have already been deducted. This has the effect of more than doubling the actual return on capital. The same applies to the return on reserves used as working capital. In other words, these return become a tax-free return of 6% and 4%. The Tribunals and even the Supreme Court are very fond of arguing that a 6% return on capital or a 4% return on reserves used as working capital is very fair in view of bank rate or the rate of interest payable on fixed deposits and chargeable on overdraft. They argued like this that if a concern were not to use its own reserves in business, it will have to borrow funds from the banks and pay a rate of interest which may be 5% or ~~6~~ x 5½% or conversly a

concern could put its reserves in Government Securities or fixed deposits and earn a rate of interest from 4½% to 5%. So, why should a return be not allowed on reserves used as working capital. Thus, they justify the 6% return on capital and 4% return on reserves by comparison with market rates of interest. But this sort of comparison ignores the fact that the return on capital and reserves allowed under the Bonus Formula is an income-tax free return as it is deducted after the deduction of notional income-tax. This point can be further illustrated by making actual calculations in hypothetical case.

In this connection, the Reports of the Tarrif Commissions should be looked into. For instance, the Tarrif Commission on rubber and tyre industry considered a 10% gross return on capital as quite liberal. The 6% return on paid-up capital under the bonus formula works out to a gross return of more than 12% in the case of rupee companies and over 13% in the case of non-rupee companies. All this clearly shows that taxes should not be deducted as a prior charge and in no case should a deduction of tax get priority over a deduction of return on capital and reserves. The tax should be taken into consideration only as a factor to be borne in mind while determining the quantum of bonus in the light of the available surplus.

There is no justification for deducting dividend tax as a prior charge. This tax is the result of declaring dividends at a rate higher than 5% and the policy of declaring high dividends should not be allowed to reduce the workers' share to the available surplus. The dividend tax should legitimately be paid out of the return on capital and reserves.

R E H A B I L I T A T I O N:

Provision of rehabilitation claim as a prior charge is the worst feature of the present bonus formula. This item has always been abused by the employers and continues to be so abused. The decisions of the Supreme Court on this item have made the matters worst. By a whole series of decisions, the Supreme Court has made it extremely easy for the employers to make inflated claims for rehabilitation and ~~dividend~~ defeat the workers' demand for bonus.

The Trade Unions are not technically or financially equipped to expose the bogus claims made by the employers in this behalf. There is manipulation of the balance sheets and its schedules in such a way as to keep old blocks of machinery in the books long after these have been discarded

in actual practice. Engineers and Architects in the service of the Company are brought to give evidence before the Tribunals as 'Experts' and it is not easy to disprove what they say. A building might be good for the next 30 years is proved by the so-called experts to be good only for say, 5 years with the result that a claim for its replacement reserve is to be ~~shortened only to~~ five years instead of the next 30 years. In the same way about the machinery. Quotations are procured from Indian and foreign concerns for supply of machinery at prices which it is difficult to challenge or refute. Even speculation by the so-called experts about the likely prices of a particular type of machinery is accepted by the Tribunals as fully reliable evidence. The Unions have no resources to get the services of such experts and even if they may be resources, it is doubtful if Architects, Engineers and firms of machinery suppliers would agree to give evidence for the workmen. The whole problem of the multiplier and the deviser in determining the amount of rehabilitation claim of a concern became entirely artificial and subject to manipulation according to the suitability of the employers (many actual illustrations can be given). The L.A.T. used to take into account the existing accumulated reserves of a concern, either depreciation reserves or general reserves etc., for the purposes of determining the claim for rehabilitation. Out of the total claim established for rehabilitation by the employer, the reserves already with him used to be deducted. Now in a judgment given recently, the Supreme Court has decided that the existing reserves should be ignored if these are already being used as working funds and the same is not allowed to be deducted from the amount claimed as rehabilitation reserve. The result of this decision has been that even if the industry has huge accumulated reserves, these cannot be used defeat its fictitious and inflated claim for rehabilitation reserve. It is very easy to prove that all the existing reserves are used as working capital because even the amount lying in a current account with the Bank is now-a-days treated as working capital. It is next to impossible to prove that any industry keeps its reserves in an idle state and does not use them as working funds in some form or the other. Numerous other instances of such wrong decision can be given. It will be interesting to note that even where the employers on their own pay 3 or 4 months bonus, the Tribunals come to the conclusion that

even one month's bonus is not payable according to the Full Bench Formula. This is due to the fact that highly inflated and fictitous claims are made in the name of rehabilitation with the result that even when there are enormous profits, it can be shown that there is no residuary surplus. There can be only one solution of this problem and this is that no claim whatsoever for rehabilitation be allowed beyond the provision of normal statutory depreciation. If the State is not prepared to allow such a claim under its Income-Tax Laws, there is no reason why the workmen's bonus should be denied by making such claims. If the statutory depreciation is inadequate to provide for replacement and rehabilitation of plant and machine and buildings, there may be a case for re-examination of the rate of statutory depreciation. But if the State considers a particular rate of depreciation to be adequate, the same rate should be considered adequate for the purposes of workmen's bonus also. If rehabilitation remains a prior charge, bonus will become more and more rare. It may be stated that in almost all cases, the Supreme Court has set aside bonus awards of Tribunals on account of rehabilitation claims.

RETURN ON PAID-UP CAPITAL:

6 per cent can be accepted as a fair return on paid-up capital, but it should a return subject to income-tax and not a income-tax free return, as is being allowed at present.

RETURN ON RESERVES USED AS WORKING CAPITAL:

There should be no return allowed on reserves used as working capital. The most important reason for this is that such reserves are built up out of the past profits earned by the workers. Denial of return on reserves used as working capital may lead to attempt to issue bonus shares. It, therefore, becomes necessary to insist that bonus shares must be treated on the same basis as reserves.

As it is very unlikely that such a proposition will be acceptable, we must insist that a return of 2% only is allowed on the reserves as was done in the original L.A.T. formula.

It is important to laid down the nature of reserves on which a return can be claimed. Today the Tribunals and the Supreme Court have lost sight of very important principles on this question. For instance, return is allowed on depreciation reserves which is an absurd proposition. Even when the depreciation amount has not been funded and not shown in the balance sheet

as a reserve, return is allowed on the total amount of depreciation which may have been deducted ever since the assets came into existence. The position has become anamolous that in order to claim a return on the total amount of depreciation, charged from the very beginning of the concern, the employer states on oath that all the amounts charged as depreciation are being used as working capital and any replacement of assets in the meantime has been done from borrowings. To allow a return on the amount of depreciation reserve is to allow a double return on paid-up capital and other reserves. After all, depreciation reserve is not a new addition to the reserves of a business is is only an account to offset the wear and tear of the assets. To allow a return on such an account is against all principles of accountancy and finance. But strangely enough, return is being allowed on depreciation reserves not only when it is shown as a reserve but even when it is not shown in the balance sheet and the figure is ascertained from the schedule of assets attached to the balance sheet.

Now return is allowed on all sorts of reserves, such as Taxes Reserve, Contingency Reserve, Bad Debts Reserve etc. etc. Theoretically, the employer is supposed to prove that all reserves have been used as working capital, but such a statement is always made by the Chief Accountant or the Director of a concern and in absence of access to the account books, it is very difficult to disprove such statements even when these are false. It should, therefore, be laid down that even if any return is to be allowed on reserves used as working capital, it should be only on such reserves as are clearly crystalised, such as General Reserve which does not fluctuate from

[illegible] It should also be considered whether a

When so many prior charges are deducted as is the case at present, there is no justification for reserving a further share for the shareholders and for the industry, for the shareholders have been given a return not only on the paid-up capital, but also on accumulated reserves,, and this in most cases is more than enough for a dividend rate of 15% to 30% free of income-tax. In this way, all the needs of the industry for depreciation and modernisation etc. have been provided for. Why then this further clamour for a share for the industry and the shareholders in the residuary surplus. The question of distribution of residuary surplus should be determined on the basis of the wage level of the workers. Till the living wage is reached, the workers should be entitled to the whole of this residuary surplus. After a living wage level having been attained, a portion can be kept for the industry. It may be recalled that the Full Bench of the L.A.T. distributed 83% of the residuary surplus as bonus to the workers.

The above are some of the points for discussions which may help to evolve an appropriate formula to be put forward by us.

Bonus discussion. - 5 .

New out look to Bonus.

(M.Kalyanasundaram,Salem).
Secretary, Salem-Erode Electricity Distribution Co.,Ltd.,Employees Union).

Thanks to T.U.Record for having started a discussion on bonus particularly at a time when it so ripe that the Bonus Commission is appointed by the Government.

The present L.A.T. formula which has got its approval from the Supreme Court is purely theoretical. It gives rise to all sorts of interpretations when it is put to test before the Labour Courts on bonus disputes.

It is due to persistent struggle of the working class, the old conception of regarding bonus as exgratia payment has vanished though not it is accepted as deferred wage. If an industry has shown good trading results in the bonus year, then the worker gets something as bonus. For loss year, for which the worker was not responsible, no bonus is payable and he has to go away with the big gap between the actual wage and the living wage unfilled.

Wage freeze and the price increase are the order of the day. Lakhs and lakhs of workers are yet to get the fruit of need-based minimum wage. Before approaching the question of bonus all these things should be borne in mind in order to get a new out look to Bonus.

L.A.T.Formula.

The present L.A.T.Formula is defective in many respects.

First of all the balance sheet is to be relied upon

to determine the net profit. After all the balance sheets are prepared by the company for the company and to the company. Of course the balance sheets are audited by the Company's auditors. There has always been attempts to reduce the profit. If the workers have any reasonable doubt to suspect the bonafide of the balance sheet, the books must be thrown open and the workers must have the right to scrutinise the accounts. If any such item of expenditure wrongly credited to Revenue is unearthed then that sum should be added back to the profit.

D e p r e c i a t i o n.

The first prior charge is depreciation. Under the L.A.T.formula notional normal depreciation as per Surat formula is allowed as the first prior charge. Depreciation should be determined independent of what is allowed by the Incometax authorities as normal depreciation. That depreciation should have no bearing for bonus formula. Suppose the actual life of a machinary is thirty years it will be in good condition for another fifteen i.e. half of the actual determined life period. Actual wear and tear do not have any relation to the depreciation allowed under the Incometax Act. Most of the machinaries are allowed 10% depreciation. In ten years the actual cost of the machinery will be realised by way of depreciation. Hence the basis of calculating the depreciation should have some reality as to the actual life period of the machinary.

Incometax.

Next charge on the profit is NOTIONAL incometax. It is calculated at 45% of the available profit after deducting the normal depreciation. Here also the formula is erroneous. It should not be forgotten that it is notional incometax which itself means it is unreal. Nearly half of the surplus is taken away from the hands of the workers under the plea of incometax. Actually a higher amount of tax is set apart under the formula whereas the Company is not called upon to pay. Only the actual incometax paid or payable by the company should be deducted as prior charge.

Return on paid up Capital.

Six per cent return on the actual subscribed share capital excluding bonus shares will meet the end of justice.

Return on working capital.

L.A.T. formula allows 4 per cent return on working capital. Tribunals have viewed that reserves which are ploughed back into the industry must have a fair return. This proposition may not be correct because ~~returns~~ reserves are created from the previous years profit. That profit was made possible by the hard labour put in by the workers on low wages. If the management is entitled to a fair return on working capital then the workers also are entitled equally for their share. The 4 per cent should be divided half and half and not more than 2 per cent should be allowed as return on working capital.

Rehabilitation Reserve.

This is a vast subject. The managements use this as their trump card to deny the workers for their full share of bonus. As observed by many labour courts, the managements are becoming more and more rehabilitation concious to deny bonus to workers. The Companies keep pre 1945 machinaries alive purposely to demand a higher multiplier and a lower divisor. They can swallow any amount of available surplus and bonus could be easily denied. There is one major lacuna in the formula. Let us see what it is.

Suppose the bonus year is 1960. Net value of assets are arrived at as follows:-

Value of assets multiplied by the multiplier less break down value and the balance deducted by the depreciation fund accrued up to 1959. After dividing the net value by the devisor comes the actual amount required to be set apart for the year in question. From that amount depreciation written off in the books for the bonus year is deducted and the balance is allowed as Rehabilitation Reserve.

For example if the devisor is 10 in 1960 it means the life of the machinery is up to 1970. The Company is going to get depreciation also till 1970. But that is not taken into account in this formula. The Company has the advantage of rehabilitation and depreciation for the future.

Just past depreciation is taken into account, future depreciation also should be taken into account.

Rehabilitation replacement and modernisation of machinery means to the management rationalisation and retrenchment. A modern machine does more production than the old one with less men. Under the formula the worker gives rehabilitation and he remains to be rehabilitated elsewhere. Hence bonus should have priority over rehabilitation reserve.

After awarding adequate reserve bonus from the available surplus whatever is left may be allowed as rehabilitation reserve.

These are the new out look on the L.A.T. formula. The bonus commission will be doing a good service to the nation if all the aspects are discussed thread-bear and a new practical formula is evolved without giving any room for unnecessary complications and interpretations.

(M. KALYANASUNDARAM)
Signature.

To

The Editor,
Trade Union Record,
4, Ashok Road,
New Delhi.

BONUS PROPOSAL FOR THE WORKERS IN NORTH EAST INDIA.

1. The workers representatives feel that so long as wages do not attain the living wage standard, Bonus must be regarded as a payment to enable a worker to make up for, at least to some extent, the gap between the wages actually paid and the living wage. In view of this and also from the point of view of the necessity of keeping the workers contented for industrial peace, bonus to plantation workers is to be justifiably regarded as a deferred wage which should have precedence over all other claims.

2. Keeping the above points in view the workers representatives first suggested for a minimum guaranteed bonus equivalent to one monthe's wages to each worker irrespective of profit or loss of a concern. This suggestion did not receive consideration from the Industry's representatives; although it was accepted by a section of the Industry. The second suggestion put forward by the worker's representatives was for the creation of a pool with profits earned by a group of Companies in a particular area from which a uniform rate of payment was proposed under the supervision and control of a Special Committee. This suggestion was made in order to obviate wide variations in payment of bonus on the basis of individual company's profits, which might defeat the purpose of payment of bonus. This was also not entertained by the Industry's representatives. Subsequently, the workers' representatives suggested that from the profit earned by individual Companies' 20% should be distributed to the workers as bonus and 5% contributed to create a company-wise pool for making minimum payments to workers in years of loss or inadequate profits. The industry's representatives however put up a proposal basing on the last suggestion of the workers representatives, but it was worked out in a manner in which it was found wholly unacceptable to the workers. The following proposal is made in the hope that the Industry's representatives will realise the necessity of the amendments suggested in the proposal in order to make it acceptable to workers.

3. This proposal known as North East India Bonus proposal covers workers employed in the Tea Industry in the Zone. The proposal, if accepted, will have force for three years namely 1959, 1960 and 1961, but by mutual consent of the parties the period can be further extended.

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4. The terms embodied in the proposal are defined as follows:-

"Area" means the area of respective States.

"Company" means a Tea Company or a Company's gardens within a State and includes Tea estate proprietors where there is no Company.

"Wages" means the total cash earnings of an individual worker.

"Worker" means members of clerical, medical, technical, supervisory, sub-staff, schoolmasters, and daily wage earners whether directly or indirectly employed in a Company for more than six months including domestic servants. Supervisors belonging to the Executive Staff are however excluded from the definition of workers.

"Profits" shall be gross profits of a Company minus depreciation but before deduction of Tax, Capital Expenditure, expenditure of capital nature, or any payment of bonus/comission in respect of any year in the past.

N.B. When a company has interests in more than one State the allocation of statewise profits together with statement of a/cs of each group of gardens should be supplied to the workers together with a copy of the published Balance Sheet of the Company.

"Working Capital" means the difference between the Current Assets and Current Liabilities and Provisions which is actually employed in running a company in the year in question.

"Year", means the year to which the bonus related and not the year of payment.

5. Out of the profits of a Company a sum equivalent to 20% shall be distributed to workers after reserving a return of 4% on paid up capital and 2% on working capital.

6. If the provisions made for paid up capital and working capital reduce the workers percentage of bonus, such reduced percentage shall be distributed, but in no case the payment in any one year shall fall below the minimum stipulated in paragraph 13 below.

7. The amount of bonus shall be distributed in proportion to wages earned by each worker in the year. The workers' share of bonus shall be divided between monthly and daily paid workers* at the rate of 5% and 15% respectively. If for reasons stated in paragraph 6, the percentage is reduced, such reduced percentage shall be distributed between the categories proportionately.

8. If any worker leaves the services of a company either before or after the acceptance of the proposal he shall be paid his due bonus in preferring a claim either by himself or by his legal heirs.

9. If any worker, previous to acceptance of the proposal, is paid any bonus or advance in lieu of bonus in r spect of the year of bonus under this proposal such payments shall be deducted from his dues, but advance bonus paid in respect of any of the previous years shall be adjusted against the Bonus Fund mentioned in paragraph 12 below.

10. If any worker dies his bonus shall be paid to his heirs upon identification.

11. The proposal shall not in anyway effect the customary payment of bonus in respect of Pagua and Durga Puja where it is used to be paid. It may however be adjusted against bonus payment or bonus Fund as the case may be.

12. For making payments to workers in years of loss or inadequate profits, each Company shall set aside in respect of each year of profit a sum equivalent to 5% of its profits, which shall constitute a Bonus Fund. But contributions to the Fund shall be made only after reserving returns to the paid up and working capital and meeting the dues of workers in r spect of bonus in the year in question.

13. A minimum bonus at the following rates shall be paid from the Bonus Fund in years of loss or inadequate profits.

    (a) To daily paid workers - not more than Rs.10/- to each adult worker whose wages do not fall below Rs.250/- in the year, with proportionately less payment with lower wages.

    (b) To monthly paid workers - a sum equivalent to ½ months wages of each individual employee.

14. If and when the amount in the Bonus Fund reaches a total equivalent to Rs.20/- for each daily paid and one month's wages for each monthly paid worker, further contribution to the Fund shall cease. Any amount left in the Fund after the expiry of the agreed period shall revert to the management, if it is not extended by mutual agreement.

15. In all cases before payment of bonus is made a company shall declare its profits. Such a declaration bearing the signature of the Manager shall be supplied to workers.

Contd..4..

15. In the event of workers asking for a copy of the published Balance Sheet with break-down figures of any items appearing in the Balance Sheets the company shall supply it to its workers within a reasonable time, preferably before payment is made.

16. Minors will receive half the amount to which an adult worker is entitled.

17. Worker who has not put in at least six months service in a Company shall not be entitled to receive any bonus.

18. For the resolutions of doubts and the removal of difficulties the interpretation of the Agreement shall be referred to a committee consisting of the Regional Labour Commissioner, Calcutta and the two representatives each from the employers and the workers.

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M E M O R A N D U M

Summary of Submissions on behalf of the Indian Banks' Association having a membership of 38 scheduled Banks including all the major Indian Banks (except the State Bank of India) representing the great majority of Banking business in India and the Exchange Banks' Associations representing all foreign Banks operating in India (except the National Bank of Pakistan).

The Associations have already represented to the Government of India (letter dated 9th January, 1961) that the Banks and the banking business should not be included in the propcsed Reference to the Bonus Commission set up by Government.

2. It is proposed to summarise in this Memorandum the reasons which would be advanced orally before the Sub-Committee and which impel the Banks to request that they be excluded from the purview of the deliberations of the Bonus Commission.

3. To the best of the information of the Associations, there have been no bonus adjudications between individual Banks and their employees except one before the Central Government Industrial Tribunal, Madras between the Indian Bank Limited and its workmen, which is still pending.

4. After the (abortive) Award of the All-India Industrial Tribunal presided over by Mr. Justice K.C. Sen which adjudicated upon service conditions in Banks, including bonus, a similar comprehensive Reference, including bonus, was made by the Government of India to another All-India Industrial Tribunal presided over by the late Mr. Justice Panchapagesa Sastry, popularly known as the Sastry Tribunal. The reference on bonus to this Tribunal read as follows :-

" Bonus including the qualifications for eligibility and method of payment. "

That Tribunal, in dealing with the bonus reference, expressed jurisdictional difficulties in view of Section 10 of the Banking

Companies Act referred to above. Ultimately the jurisdictional difficulty was confirmed by the Supreme Court which decided that Section 10 of the Banking Companies Act in turn prohibited the payment of bonus by Banks out of profits (1959 2 L.L.J.p.205) Section 10 of the Banking Companies Act was amended in 1956 to permit payment of bonus out of profits and on the expiry of the period of the operation of the Sastry Award as modified by the Labour Appellate Decision and as further modified by the Government of India and the Bank Award Commission (which latter Commission was presided over by the Honourable Mr. Justice P.B. Gajendragadkar), the Unions affiliated to the two major Federations of the Bank Unions in the country, namely, the All India Bank Employees' Association and the All India Bank Employees' Federation, submitted Charters of Demands on the Banks. It is significant to note that in these Charters of Demands the demand for bonus was expreseed thus :-

Unions affiliated to the All India Bank Employees Association.

" All employees should be paid bonus at the following rates for the years 1957 and 1958 :-

i) A Class Banks: An adequate Bonus with a minimum of 4 months pay.
ii) B Class Banks -do- 3 "
iii) C Class Banks -do- 2 " "

Unions affiliated to the All India Bank Employees Federation.

" It is to be linked with the dividend declared by the "
"Bank every year as follows :- "
"Upto 3 percent dividend of the Bank concerned, one month's "
"salary including all allowances and thereafter with every "
"increase of 1% in the dividend of the Bank concerned, "
"five days salary inclusive of all allowances should be paid."
"Every Employee should be paid minimum one bonus inclusive "
"of all allowances every year. "

5. Thus it will be observed that these organisations demanded a common quantum of bonus in the first case in accordance with the classification of the various Banks made by the Sastry Tribunal but in the second case linked to dividend.

6. The Government of India made three References of Disputes between Banks and their workmen, to a National Industrial Tribunal presided over by the present Chief Justice of the High Court of Gujerat, the Honourable Shri K.T. Desai. The first Reference being Reference No.1 of 1960 related to disputes between all Banks in India having offices or branches in more than one State and their workmen in respect of certain specified matters excluding bonus; the second Reference being Reference No.2 of 1960 dealing with disputes between the Reserve Bank of India and their workmen and the third Reference being Reference No.3 of 1960 relating to disputes between all Banks in India having offices or branches in more than one State (excluding the Reserve Bank of India, the State Bank of India and the eight Subsidiaries of the State Bank of I...) and their workmen. This third Reference was on the question of bonus and was made on 22nd September, 1960 and the Reference reads as follows :-

> " Bonus - Principles and conditions under which payable, qualifications for eligibility and method of computation, after making provision for all matters for which provision is necessary by or under any of the Acts applicable to banks or which are usually provided for by banks."

7. It must be borne in mind that this Reference was made after it had been decided at the 18th Sessions of the Standing Labour Committee (about April 1960) that a Bonus Commission be set up and after the announcement on 11th April 1960 of the Honourable the Labour Minister in the Lok Sabha of the decision to set up a Bonus Commission.

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8. The National Industrial Tribunal (Bank Disputes) has concluded hearings in respect of Reference No.1 of 1960 after about 195 days of hearing and the hearing of the Bonus Reference (Reference No.3 of 1960) is expected to be taken up in a fortnight's time. It should be obvious (a) from the terms of reference (copy enclosed) (b) from the lengthy pleadings and the number of exhibits in all over four hundred and (c) the length of time involved that an extremely thorough and detailed examination has been made by the National Industrial Tribunal of the wage structure and other service conditions in the banks before that Tribunal, which banks handle about 95% of banking business in India. One of the important points of difference between the parties is in connection with the classification of banks. The Sastry Tribunal had classified banks into "A" and "B" and "C" and "D" classes depending upon the quantum of working funds. The banks have insisted on retention of this classification whereas the All-India Bank Employees' Association have demanded abolition of the "D" Class and the All-India Bank Employees Federation have demanded that the Banks should be classified only into "A" and "B" classes. The question of profits made by Banks and their dividend paying capacity was also before the Tribunal. The resolution of these disputes in respect of which very elaborate arguments and materials have already been placed before the National Industrial Tribunal is of extreme importance to the bonus claims made by the several employees' organisations. The very same Tribunal which is to resolve these disputes will also be hearing the Bonus Reference and it is best suited so to do.

9. It should be clear from what is stated above that the banks were in the first instance prohibited from paying ~~profits~~ bonus out of ~~bonus~~ profits, that on this prohibition being removed a uniform quantum of bonus classwise or linked to dividends was demanded by the organisations of bank employees and a comprehensive reference has been made by the Government of India in terms analogous in the main to those proposed in the case of "Industrial employments" to

the Bonus Commission.

10. There is a definite and intimate link between the level of wages and the concept of bonus which link also finds recognition in the proposed terms of reference to the Bonus Commission. The Bank Award Commission presided over by the Hon'ble Mr. Justice Gajendragadkar also drew attention to a "logical, and if one may say so, arithmetical connection between the wage structure and a claim for bonus". The wage structure for Banks will be decided by the National Industrial Tribunal and that Tribunal will be in the best position to consider the "logical" and "arithmetical" connection between the wage structure and the problem of bonus in banks.

11. Adverting to the terms of the Bonus Reference to the National Industrial Tribunal which have already been quoted, it will be noticed that a reference has been made to the various Acts affecting banks and also to the matters usually provided for by banks. Banks are institutions of credit and the national economy to a very large extent will be influenced by confidence or the lack of it in such credit institutions. Consistent with banking practice in leading countries, banks in India are permitted by legislation not to disclose certain reserves and provisions in their published balance sheets. (See Companies Act, 1956 Sections 211 and 616 and Section 29 and the third Schedule of the Banking Companies Act, 1949). The most recent Parliamentary Legislation on this topic is the introduction of Section 34A, into the Banking Companies Act 1949 which permits a bank to claim privilege from disclosure of unpublished reserves and provisions in industrial adjudication proceedings and making it incumbent on an Industrial Tribunal

by bank employees and the Supreme Court has upheld the validity of the said Section after carefully examining the need for such provision.

12. In the course of the adjudication in Reference No.1 of 1960 the National Industrial Tribunal, acting pursuant to Section 34A, requested the Reserve Bank of India to certify how much, if any, of the undisclosed reserves and provisions could be taken into account by that Tribunal in assessing the financial capacity of the banks before that Tribunal. The Reserve Bank of India has issued certificates which the Tribunal will take into consideration for the purpose of its Award. The National Industrial Tribunal having been thus apprised by the Reserve Bank of India of the position in connection with the unpublished reserves and provisions is best suited to deal with the financial capacity of the various classes of Banks in the Bonus reference.

13. The position therefore is anomalous and embarrassing. On the one hand there is a reference to the National Tribunal on the matter of bonus, pending since September, 1960 at present on the board in which pleadings have been filed and which will be taken up for hearing within 2 or 3 weeks by the Tribunal best suited to deal with the question. The reference cannot be withdrawn, as held by the Supreme Court of India. (State of Bihar versus Ganguli and Others - 1958 II L.L.J. page 634). The Award of the National Industrial Tribunal on the question of bonus will be binding on the parties in terms of the Industrial Disputes Act 1947, subject to the rights of the parties under the law.

14. The submission is that it is this reference No.3 of 1960 which should proceed -

(a) for reasons of careful scrutiny of the affairs of a special business (which stands in a class by itself and cannot be mixed up with other businesses)

(b) for reason of expedition and ending uncertainty

(c) for compelling reasons of law.

15. It would be hardly possible for the proposed Bonus Commission to go into as detailed an investigation of the wage structure and the conditions of the Banking Business as has been done by the National Industrial Tribunal in Reference No.1 of 1960 under a specific provision of the Industrial Disputes Act 1947 in which its award (which is legally enforceable) is to come out shortly.

16. The same matters cannot be dealt with by the proposed Bonus Commission and the National Industrial Tribunal. The possibility of a conflict of decisionscannot be ruled out. If the same results are to be arrived at, the time and labour expended by the Bonus Commission and the parties before it will be of no avail. In fact there will be great hardship on both the Banks and the employees in representing before the Bonus Commission their cases on the wage structure, the terms and conditions of employment and on all matters relating to the business, dealt with in Reference No.1 and heard by the National Industrial Tribunal for well over a year as well as their cases on the Bonus question which will be dealt with in Reference No.3 of 1960. The costs incurred by the Exchequer and the parties will be enormous.

17. There would be considerable delay resulting in uncertainty, since the Bonus Commission would require time to formulate its proposals while the National Industrial Tribunal which has already been seized of all the relevant matters is at the end of its labours. The uncertainty would be ended in a short while by the National Industrial Tribunal. The National Industrial Tribunal's award on wages and terms of conditions in Reference No.1 as well as on Bonus in Reference No.3 would be made long before the Bonus Commission can take up any reference to it.

DELAY IN SETTING UP BONUS COMMISSION

AITUC CONDEMNS EMPLOYERS' TACTICS AND GOVERNMENT'S INACTION

The AITUC in a communication to the Union Labour Minister has demanded that there should be no further delay in finalising the terms of reference of the Bonus Commission and that the Commission should be constituted immediately, laying down a time-limit for submission of its report.

The AITUC stated that the employers and their organisations are seeking to delay the setting up of the Commission. In this, it was contended that the Union Labour Ministry is also becoming a party to the delaying tactics of the employers by agreeing to all their unreasonable demands.

The AITUC demanded that a meeting of the sub-committee to draft the terms of reference of the Bonus Commission should be called without any further delay.

Following is the text of the letter:

Suggestion: This term should be redrafted to include question of bonus payment in non-profit making concerns: consideration of bonus payment in concerns where workers do not even get minimum wages and other incidental questions.

It is further suggested that the Commission should be called upon to recommend a proper and adequate machinery or process through which remedy can be had in case of employers refusing to implement any decision or recommendation or settlement concerning payment of bonus.

For All-India Trade Union Congress,

(R.G. Srivastava)
Secretary

May 25, 1961

Cable : "AITUCONG" Telephones : [illegible]

अखिल भारतीय ट्रेड यूनियन कॉंग्रेस
ALL-INDIA TRADE UNION CONGRESS

T. U. LAW BUREAU :
R. L. TRUST BUILDING.
55, GIRGAON ROAD.
BOMBAY 4 (INDIA)

4, ASHOK ROAD,
NEW DELHI.

President: S. S. MIRAJKAR
General Secretary: S. A. DANGE, M.P.

~~October~~ November 11, 1961

Dear Com: Rama Rao,

Thank you for the postcard.

Please find enclosed a note prepared by Com. Y. D. Sharma. We could not send this note earlier as a summary was being prepared for Trade Union Record.

I [illegible] request you to [illegible] the note at an early date.

With Greetings,

Yours fraternally,

M K PANDHE

2. The question of banks was also discussed. The Chairman pointed out that there were legal difficulties in withdrawing the reference already made to the National Tribunal asking it to lay down principles for grant of bonus in banks. At the same time it would also not be desirable to have the matter considered simultaneously by two different bodies. The fact that a reference regarding the principles of Bonus determination in Banks is pending before the National Tribunal can be brought to the notice of the Bonus Commission. It was, however, not necessary specifically to exclude Banking from the purview of the Bonus Commission and no change in the terms of reference to the Commission was necessary. This was agreed to.

3. As regards the Commission's composition, it was agreed that there should be two representatives of Employers (one from the private sector and the other from the public sector) and two representatives of Workers.

4. With reference to the first term of reference, it was mentioned by workers' representatives that there are certain undertakings, particularly under the State Governments, which though run departmentally compete with similar undertakings in the private sector. The Chairman mentioned that the question of Bonus in such undertakings as were not covered by the terms of reference could be considered seperately if necessary, but not by this Commission. Exclusion of certain classes of public sector undertakings from the purview of the Commission did not, by itself, rule out the payment of any kind of bonus or similar payment in such undertakings.

5. A suggestion was made by an employers' representative that it should be permissible for the parties to arrive at agreements concerning Bonus even if legislation was undertaken after the Commission's recommendations were received. The general view was that such agreements are always permissible if their terms are not less favourable. The point did not arise in connection with the terms of reference.

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