

ANALYTICAL STUDY

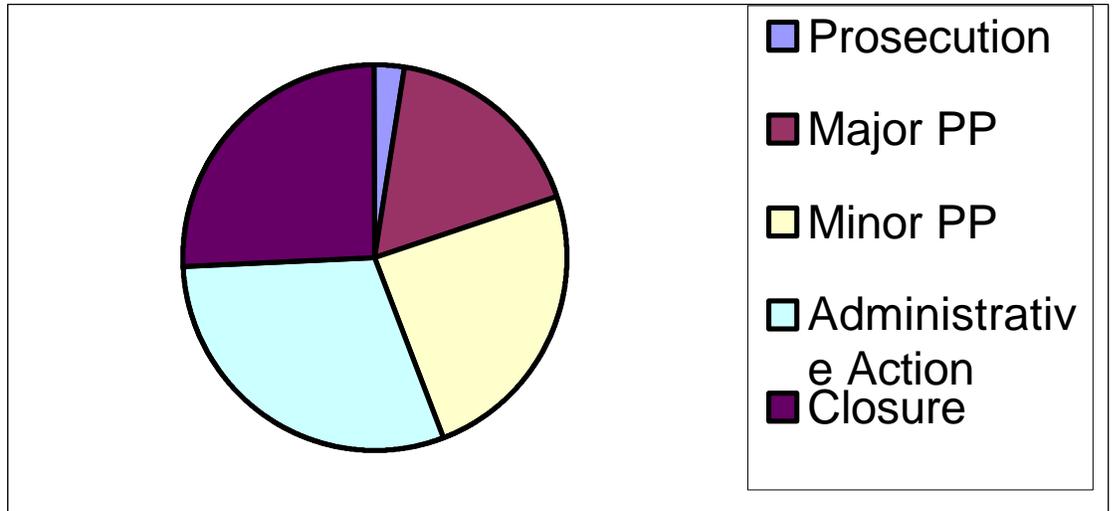
[TRENDS/FEATURES NOTED IN CASES RELATING TO RAILWAYS]

In terms of the sheer size of the Organization, the total work force on its pay-rolls etc, the Indian Railway is unquestionably the largest Public Sector Enterprise in the Country. Naturally, therefore, Railways also account for quite a large number of complaints, allegations and vigilance cases. In fact, as a single unit, the Railways continue to be the Organization/Sector' which gives rise to the maximum no. of vig. cases and, in that sense, the Railways, as a single entity, is the biggest "client" of the Commission. This, in fact, has been the fact always. [Although the Banking Sector as a whole may account for the largest number – in terms of intake of vig. cases – fact is that each Bank is a separate/independent entity with its own individual vig. set up, its own CVO etc].

2. This study is based on a critical and intensive scrutiny of all the first stage advice cases (totaling about 340) handled by the Commission during the year 2000, including cases investigated by the CBI. Out of the said 341 cases, no individual names (of the accused/defaulting officials) figured in about 40 cases where the allegations were of general/sweeping nature. In the remaining cases (i.e. about 300), the number of officials (accused) involved was around 800. The action advised by the Commission against these officials is as under:

Prosecution	– 19
Major pp	– 142
Minor pp	– 192
Administrative Action	– 243
Closure	– 207

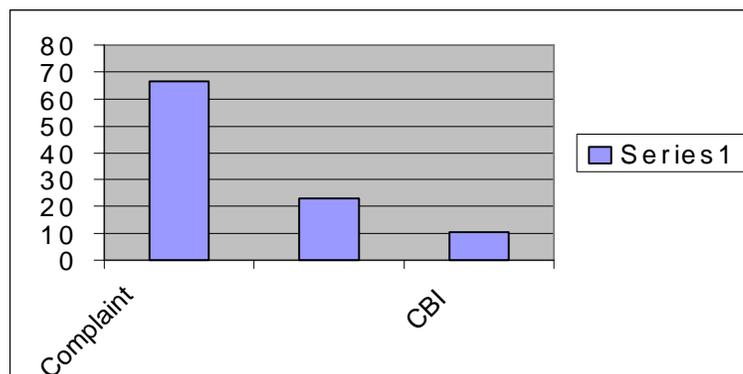
[Note : ‘Administrative action’ included counseling/warning, issue of recorded warnings, issue of Govt. displeasure (in the case of retired officials) – and the like].



3. Of the total cases in question, 227 emanated from complaints and 78 from ‘preventive checks’ undertaken by vig. units or from suo-moto investigations carried out by the deptt. on receipt of information/intelligence of commitment of irregularities. The remaining cases (36) were those booked and investigated by the CBI.

4. The common allegations/irregularities which have figured in the cases under study are as below:

- (i) Manipulations in award of tenders/contractors.
- (ii) Irregularities in recruitments/appointments, promotions – etc.
- (iii) Irregularities in Purchases.

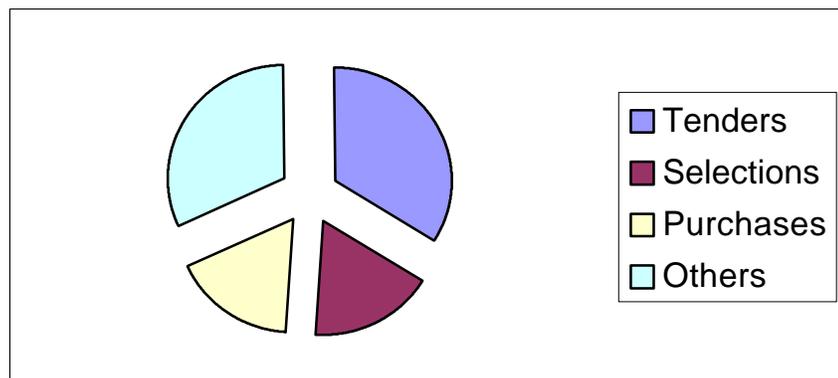


In the remaining cases, the allegations included, inter alia,

- (a) Malpractices in Stores, Commercial & Traffic Branches.
- (b) Misuse of office and official facilities (like vehicles, telephones etc.) for private/personal purposes.
- (c) Misappropriation of money, materials etc.
- (d) Demand/acceptance of bribes.
- (e) Misuse of Railway pass – facilities.
- (f) Preferring false/inflated claims (like TA, Medical bills and the like).
- (g) Carrying out medical tests (by doctors) perfunctorily, resulting in unfit candidates being declared as fit. Sometimes, money also changes hand in the process.

5. Percentage-wise, the cases taken up for analytical study fall under the following categories in terms of ‘misconduct’ alleged:

- | | | |
|-------|----------------------------------------------|-------|
| (i) | irregularities in award of tenders/contracts | : 34% |
| (ii) | -do- selections/appointments, promotions etc | : 17% |
| (iii) | -do- purchases | : 17% |
| (iv) | others (miscellaneous) | : 32% |



6. The number of cases relating to the Engg. discipline – and involving Engg. officials at various levels – accounted for, roughly, 34% of the total cases subjected to analytical scrutiny. This, it has been observed, is in ‘tune’ with the general pattern/trend which has emerged over the years. One might also say that there is nothing unusual about this because construction and engg. activities are, understandably, a permanent feature of Railways.

7. The common allegations/irregularities observed in the cases relating to award of contracts for execution of works, for procurement of materials etc. were as follows:

- (i) Award of contracts at exorbitant rates.
- (ii) Execution of substandard works.
- (iii) Acceptance of substandard supplies.
- (iv) Over payments – i.e. payments made for works not executed.
- (v) Failure to carry out quality – checks.
- (vi) Misappropriation of materials by contractors and/or officials, in conspiracy with each other.
- (vii) Manipulations at the tender – processing stage with a view to favour a particular contractor and/or to eliminate a more deserving/eligible one.

8. Irregularities & manipulations/manoeuverings in the award of contracts are the most commonplace allegation involving Engg. officials. Such allegations are targeted, naturally, against the Tender Committee Members and, at times, against the Tender Accepting Authorities (TAA). Railways have, broadly speaking, three systems of tenders. These are: (i) the open tender system, (ii) the limited tender system and (iii) the single tender system. In the open tender system, the tender notice is given due publicity through prescribed channels/media and anyone (any individual or firm) who is desirous of taking up the contract is eligible to bid for the work. Under the limited tender system, tender notices are issued only to select-

firms/entities which are short-listed in advance on the basis of their credentials, expertise and specialization vis-à-vis the kind of work in question. In other words, such agencies are those who are supposed to be borne on the 'approved list' being maintained by the Deptt. Single tender system, on the other hand, is taken recourse to only in emergencies and exceptional cases – where the other tender-routes cannot be followed on account of exigencies of the given situation.

9. The procedures governing the open tender and limited tender system are, no doubt, well defined. At the same time, it is still possible to manipulate the system to benefit/favour a particular tenderer at the cost of a more deserving one – and, thus, at the cost of the Deptt. itself. In fact, if the Tender Committee is bent upon patronizing a particular bidder, things can be twisted, manipulated and managed to project the said bidder as the most 'suitable' one. The TAA is, many a time, left with no option but to endorse the TC's recommendations, more so when the subject matter (i.e. the kind of work/project in question) does not fall within his own discipline/specialization: and when the recommendations of the TC are unanimous. In fact, only in very rare instances a TAA may reject, reverse or modify the TC recommendations.

10. From a critical study of the cases involving allegations about irregularities in the processing & award of tenders/contracts, it has been observed that it is the TC which turn out (predictably) to be the villain of the piece – i.e. when the allegations are proved to be correct. By the very nature/scheme of things, a TC can resort to twistings, suppressions, exaggerations, manipulations and half truths with the object of 'projecting' a particular bidder as the most suitable and depicting a better-placed bidder as unsuitable or less suitable. The various modus operandi adopted by the TC in this regard are commonly as under – as noted from the history of the cases under review:

- (a) Exaggerating the ‘track record’ of the ‘favourite’ bidder.
- (b) Suppressing and/or down-playing his past failures.
- (c) Exaggerating the past failures of his main rival.
- (d) Ignoring/suppressing the otherwise satisfactory credentials of the main rival.
- (e) Projecting, falsely, that the lower rates offered by the main rival are “unworkable” on the basis of the estimated cost which, in the first place, was exaggerated deliberately.
- (f) Projecting undue/artificial “urgency” and then bypassing the lower offer on the ground that the party already has some works on hand and that, therefore, it may not be trusted to complete the subject-work within the stipulated time-frame. [In reality, it has been observed, once the tender is awarded to the other party on these premises, the party is merrily granted extension after extension (of time) either with token penalties or with no penalties even].
- (g) Certifying, falsely, that the quality of the product/material offered by the ‘favourite’ contractor is okay (vis-à-vis the specifications)
- (h) Painting, deliberately, the quality of the product offered by the better placed bidder (who has quoted lower rates) as unsatisfactory/unsuitable.
- (i) Exaggerating the capacity/resources of a favourite contractor and down-playing that of his rival (lower bidder).

11. Normally, a TC consists of three Members. The first of these who is designated as the Convenor Member is an officer from what could be called the user-Department. He is also expected to be an expert in the given subject. The 2nd Member is the representative of the Finance Deptt. and the ‘3rd Member’ is an officer drawn from any other discipline.

12. Cartel formation amongst the bidders is another feature which has been noted in many cases relating to award of contracts - whether it is for execution of works or supply/procurement of machineries and stores. Technically, one might say that the officers/engineers concerned cannot be blamed for the ring formation of the contractors. This might be true at times: but fact of the matter, it has been noted, is also that in a majority of cases this ring formation is done by contractors in active collusion with the concerned engineers/officers. Needless to say that such ring formations lead to elimination of competition and award of the works/procurement orders at exorbitant rates at the cost of the deptt. Of course, it is next to impossible to prove the un-wholy nexus between the officials and the contractors which, therefore, has to be inferred from the totality of circumstances of the given case.

13. It has also been found that irregularities are resorted to, deliberately, in the disposal of costly items like scrap items, old wagons and the like. In such cases, the minimum price is fixed, very often, at unreasonably low rates. Instances have also been noted where the bidders join hands together and form cartels in connivance with the officials concerned, leading to disposal of the items at throw away prices.

14. The common irregularities noted in the processing & finalization of tender cases and contracts are as follows:

High-pitching of estimates

(i) It is imperative to mention, in the tender notice (called the NIT- i.e. Notice Inviting Tender) the estimated cost of the given work/project. And this is supposed to be arrived at by collecting all relevant data and information carefully and intelligently. Normally, this is the responsibility of the Convenor-Member (to be) of the TC. However, many a time the estimates turn out to be high-pitched. In most of the cases, this is done deliberately (for obvious reasons) by : (a) picking up

“comparable works” selectively, (b) by picking up, for comparison, incomparable works, (c) by willfully over-looking really comparable works – i.e. works awarded at competitive rates in the immediate past within or adjoining the particular area, (d) by ‘assuming’ unreasonable rates towards labour cost, transportation, local taxes and such other variables – etc. In some cases, the high pitching of estimated cost could also be because of sheer apathy/callousness (i.e. not necessarily on a/c of motives) on the part of the official(s) entrusted with the job. At the same time, since such callousness and apathy eventually result in the award of the given work at unreasonably high rates, the concerned official(s) cannot be let off scot-free simply on the ground that there was no malafide behind his/their act of omission or commission. After all, when the act of omission/commission of a public servant, though bereft of malafides, cannot be condoned if it has resulted in monetary loss to the Organization.

‘Doctored’ Briefing Notes & Comparative Statements

(ii) Briefing Notes and Comparative Statements are prepared for the perusal, guidance and benefit of the TC Members (i.e. to facilitate the TC’s job) by an officer of the user-Deptt. who is normally a subordinate of the Convenor-Member (to be) of the TC. This is also an area which is prone to manipulations, if the officer concerned (who prepares these) has his own axes to grind and/or is under pressure from the higher-ups. It has been observed, for example, that these documents are doctored and tailor-made with a view to ‘projecting’ a particular party/contractor as the most ‘suitable’ one – by resorting to twistings, suppressions, exaggerations and half-truths: and for depicting a more deserving party as inferior or less suitable.

Manoeuverings in TC minutes

(iii) It goes without saying that it is the TC which decides, practically speaking, the outcome of a tender, because as noted earlier, many a time the TAA is guided and carried away by the TC's recommendations – right or wrong. And even amongst the TC members, it is the first Member (i.e. the Convenor-Member) whose role is most pivotal. If the TC Members have no 'hidden agenda', they may differ in their views/assessment and recommendations. This is NOT TO SAY that when the recommendations are unanimous it is an indication of any unholy "nexus" amongst the TC members & contractors. All the same, in majority of the cases the TC's recommendations turn out, invariably, to be unanimous. This unanimity may not always be on account of a genuine consensus amongst the Members. On the other hand, the same is attributable, many a time, to : (a) either a "meeting of minds" amongst the TC members or (b) sheer absence of application of mind, independently, by the Finance-Member and 3rd Member of the TC who have a tendency, very often, to sign blindly on the dotted lines as drawn by the Convenor-member. In fact, when irregularities/maneuverings are detected subsequently in the processing of the tenders, the common refrain of the 2nd and 3rd members (of the TC) is that their own accountability in the matter is 'nil' since they have only endorsed the views of the Convenor – Member who was the 'authority' on the subject. Sometimes, the Deptt. also tend to support this view – more so in the case of the 3rd member. The Commission had occasions to point out, in this regard, that this argument (which in effect amounts to saying that the 3rd Member is only a rubber stamp) is an unacceptable proposition even if his own culpability may not to be equated with that of the Convenor-Member and the Finance Member. In fact, if the so-called 3rd Member's role is wholly peripheral, it will be totally redundant to associate him with the TC proceedings. Surely, the 3rd Member also is expected to apply his mind carefully, independently and dispassionately into the merits of the case and to bring own record his own considered views, regardless of the recommendations of the other two. If, on the other hand, the 3rd

Member is supposed to be only a mute spectator, one might as well say that there is simply no need for a 3rd member in a TC.

Non application of mind by Tender Accepting Authorities (TAA)

(iv) As mentioned earlier, the recommendations of the TC members are almost always unanimous. Dissenting notes are, in fact, exceptions. As such, a TAA is almost often presented with a “fact-accompli” where he is induced to okay the TC proposals: more so when he is himself not an expert/authority on the work/product/project/equipments in question. Whenever irregularities are detected in the award of a tender, the common defence of a TAA is that he had only approved, in good faith, the unanimous recommendation of the TC. This is, in the Commission’s view, an untenable argument. Even if the TC recommendations are unanimous, a TAA is certainly expected to apply his mind carefully and independently and take decisions prudently and in the best interest of the Deptt. In fact, if the TAA’s job is merely to endorse, mechanically, whatever the TC has suggested, there is no need for a TAA. Even where the TAA may not be an expert in the given subject (which may pertain to another discipline), he can as well obtain, in his own way, opinion and views of other authorities on the subject with a view to satisfying himself about the fairness of the TC’s recommendations.

15. These are, as mentioned already, only illustrative modus operandi adopted [of maneuverings resorted to by the TC which goes about its job with a pre-determined agenda] with a view to ensuring award of the tender to a less deserving bidder at the cost of a more deserving one. Fact of the matter, quite simply, is that the TC is in a very commanding position, many a time, to “doctor” everything the way it wants – i.e. when it processes the tenders with a hidden agenda.

15.1 Instances have been noted in several cases where the TAA had also acted with malafides, i.e. with a view to favouring a particular bidder at the cost of a more deserving one, by reversing/modifying the TC's recommendations, by applying pressure – overtly or covertly – on the TC members to modify their proposals and so forth.

16. Local Purchases is another area which has generated quite a few cases. An analysis of such cases has shown that rampant irregularities are resorted to, many a time, in local purchases. The most common type of irregularities noted in this area are as under:

- (i) Generating artificial 'demand' for materials to justify purchases.
- (iii) Splitting up of demands/quantities with a view to bringing each case under the financial powers of the local purchase officer like the ACOS, DCOS etc.
- (iv) Projecting artificial urgency to the purchase although no such urgency actually exists.
- (v) Obtaining "supporting quotations" from fictitious/non existent entities where the quoted rates are invariably higher vis-à-vis the rates of the pre-determined supplier.
- (vi) Effecting redundant purchases at exorbitant rates.

17. In purchase/procurement cases, the quantum of items proposed to be procured is invariably to be specified in the NIT. True, at times it may not be possible to assess with accuracy the exact requirement: and in such cases the quantity is indicated as 'approximate'. It has been observed in many cases that when the requirement is huge, the idea/intention is to split the quantity amongst several eligible bidders at the rate quoted by the L-1 bidder (by making counter-offers to the other bidders at the rate quoted by the L-1) provided, of course, the L-1 bidder's rate is acceptable to them. While this is okay, this 'intention' of the Deptt. (of splitting the quantity amongst all valid bidders) is

many a time not indicated in the NIT. This leads to a situation where every bidder quotes his rates under the presumption that the entire order is meant to be given to the lowest valid tenderer – and he quotes his rates accordingly. It is a matter of common knowledge that the rate quoted is, many a time, w.r.t. the quantity involved : i.e. the higher the quantity, the lower the rates and vice-versa. When a successful bidder is told, subsequently, that he will be given order for only a certain percentage (of the total quantity), disputes arise about the rates and sometimes he may even withdraw his offer. Needless to say that such difficulties/problems can easily be avoided if it is clearly mentioned in the NIT itself that the order is proposed to be split amongst all valid/eligible bidders and, accordingly, rates are solicited w.r.t. slabs of quantities.

18. The common irregularities noted in the Traffic & Commercial disciplines are briefly as under:

- (i) Preferential treatments (favouritism and/or discrimination) in the matter of allotment of rakes and wagons.
- (ii) Waival of demurrage and wharfage charges with a view to benefiting, at the cost of the Deptt., pvt. parties.
- (iii) Violation of norms/guidelines in the matter of allotments of vending stalls
- (iv) Favouritism in the allotment of catering stalls.
- (v) Irregularities in the procurement of catering items.
- (vi) Irregularities in fixation, periodical revision, recovery etc. of license fees from vendors and contractors
- (vii) Malpractices in the booking of goods like underweighing, over-loading, wrong classification of the nature of goods, wrong calculation of distance, booking of goods under 'paid traffic' (where a concession of 15% is allowed) by showing, falsely, that the party had made payment in advance etc.

- (viii) Manipulations in the handling of parcels like surreptitious transportation of unbooked parcels, charging of lower rates, violations of priority & the like.
- (ix) Permitting unauthorized vendors to sell their wares on platforms and other restricted areas.
- (x) Permitting vendors to sell unauthorized items.

19. Recruitments/appointments, promotions (on the basis of departmental tests) etc. are also areas which generate sizable number of vigilance cases. True, direct recruitments are mostly limited to Group C and D staff. While Group D staff (watermen, casual labours, Khalasis etc.) is recruited at Zonal Railway level, direct appointments to Group C posts are made by RRBs, i.e. Railway Recruitment Boards. True, every recruitment is made by a duly constituted selection committee consisting of senior officials who carry out/finalize the selections on the basis of prescribed written tests, physical tests, viva-voce and the like: but despite all these, complaints are made alleging favouritism and/or discrimination in the matter of such recruitments. A close study of the cases falling under this category has shown that such complaints/allegations are attributable, inter alia, to the following factors/irregularities:

- (a) Screening of applications. When recruitments are made on mass scale, the number of applications will be, obviously, quite huge. It is therefore essential to have a preliminary scrutiny/screening of the applications with a view to rejecting those which do not fulfill the eligibility criteria. This job is normally entrusted to a duly constituted Screening Committee. It has been observed, in several cases, that this Committee goes about its job in a casual manner, many a time, with the result that quite a few number of ineligible applications get into the list of eligible applications and vice-versa. Since this is the elementary stage of the selection –

exercise, malafides may be ruled out behind such inept handling/scrutiny of the applications. But, all the same, one cannot also totally condone such lackadaisical approach, which may ultimately result in the selection of ineligible candidates and or rejection of otherwise eligible candidates in the very first round itself.

- (b) Irregularities in the conduct of written test. This is an area which gives rise to the maximum number of allegations, complaints and vigilance cases. Here, the evaluator (examiner) is accused of double standards, lack of uniformity etc. in the evaluation job and in the award of marks. It has been observed in many a case that such allegations very often turn out to be true. In fact, when it is found that there is absolute lack of uniformity on the part of the Examiner in the matter of award of marks, one has to conclude, per se, that his evaluation was subjective with a view to favouring certain select candidates at the cost of more deserving ones. Malafides and quid-pro-quo in such situations are only a matter of natural inference. The common refrain of the accused officials caught in such situations is that they had to undertake/complete the evaluation job in addition to their normal duties, that the time available (for completing the job) was too inadequate and the like. Although there might be some substance in such submissions, one cannot straight away absolve the officials concerned of malafides by accepting such defences/excuses at its face value.

While there are strict instructions/guidelines relating to evaluation of answer sheets (The 'do's and 'donts' of it), it has been seen that these are violated in gay abandon by many of the Examiners. For example, instructions stipulate clearly that an Examiner should not be revising or enhancing the marks already allotted by him, that he should not be resorting to over

writing/erasing (of marks) and the like. However, it has been noted in a number of cases that such instructions are openly violated. When confronted with such irregularities, the officer concerned tries to take shelter under the shield of ignorance of rules/instructions. Normally, such a plea cannot be accepted at its face value because Examiners are fairly senior level officers who are expected to know, whatever discipline they may belong to, the fundamentals and the basic 'do's and 'don'ts' to be observed by an Examiner. Even granting that a particular officer may truly be not conversant with the impugned instructions, he is supposed to acquaint himself with the instructions at least after he is entrusted with the job of evaluation in a particular case. And hence, in short, wide variations/discrepancies in evaluation/allotment of marks, absolute lack of uniformity, manoeuverings and manipulations in the award of marks etc. have to be construed, ordinarily, as instances/evidences of ulterior motives on the part of the concerned Evaluator.

- (c) Malpractices in viva-voce tests. Manoeuverings have also been noted in the conduct of the viva-voce proceedings as well. It is true that in a viva-voce test, marks are allotted to the candidates on the basis of the subjective evaluation/assessment of the members of the interview committee: and that, naturally, there will be an element of subjectivity in it. However, it has been observed that candidates who get through the written examination with the barest minimum marks manage to score unbelievably high marks in the viva. Since such a thing is normally not possible and not believable, it gives rise to suspicions of malafides on the part of the interview committee members.

20. Promotions made on the basis of departmental tests and interviews also give rise to complaints/allegations of favouritism/discrimination etc. Here again, it has been found

that the Examiners concerned resort to irregularities in the assessment of the answer papers relating to the written tests and in the award of marks with a view to favouring select candidates. It is only a matter of common knowledge that many a time money does change hands in such matters. However, it is next to impossible to have 'solid' evidences in this regard for obvious reasons. As such, when blatant irregularities (manoeuvrings and manipulations) are detected in the conduct of the written test, awarding of marks and the like, an inference is inescapable that it was a case where the officers concerned acted with malafides and ulterior motives.

21. Mass recruitments are made to Group 'C' posts by the RRBs (Railway Recruitment Boards) functioning under various Zonal Railways. Large scale irregularities used to be reported and detected in the past in the selections finalized by the RRBs also. One of the main reasons for this was that the Boards used to be headed by political appointees. Sometimes, a good number of the Members of the Board also were political appointees. Obviously, such political appointees were beyond the purview of any disciplinary rules of the department and this provided them with a sort of impunity with the result that they could get away with almost everything. Resultantly, complaints and cases of selections based on monetary considerations were galore. However, the system of appointing politicians in the RRBs has since been dispensed with – and RRBs are now being manned exclusively by serving officials of the department. This has, no doubt, resulted in appreciable reduction in the various irregularities which used to take place, in selection exercises, in the past, obviously because the officers are aware that in case they are caught resorting to maneuverings, they can be taken up under the disciplinary rules and brought to book appropriately.

22. It goes without saying that medical fitness of the operating staff is extremely important from the point of view of safety of the Railways. As such, recruitments are made against

such posts only after the candidates are subjected to due medical checks and after they are found/declared to be fit in all respects. In addition, such officials are also required to undergo periodical medical tests at regular/prescribed intervals. It has been found in many cases that such medical tests are carried out rather perfunctorily many a time. Cases have also been noticed where unfit candidates are declared fit in return for considerations. Again, although periodical medical checkups are mandatory for such staff, the instructions are not adhered to quite often. Needless to say that this is an extremely vulnerable area. The imperative of ensuring total rigidity and objectivity in the conduct of the medical tests of the operating staff can hardly be over emphasized. Similarly, it also needs to be ensured that instructions relating to periodical medical examinations are adhered to unfailingly.

23. Irregularities have also been noted, in several cases, in the issue of “sick” and “fit” certificates. Many a time, such irregularities are committed, it has been noted, in return for monetary considerations. Here, the employees who want to avail of leave for some reason or the other report to the nearest health unit and request to be placed on the sick list for a given number of days. The officials in the Health Unit (including the Medical officer) readily oblige the so-called ‘sick’ man for a prescribed fee. The amount to be paid for the purpose is pre fixed and the total amount would depend on the number of days the employee desires to be placed on the sick list. True, this is an example of what could be called petty corruption or small-time corruption but, all the same, this practice has become institutionalized almost everywhere in the Railways.

24. Speaking about vigilance cases emanating from the Railways, a word of appreciation is due to the vigilance set up of the Railways also. As a matter of fact, Railways have a very good and well organized vigilance set-up. At the apex level (i.e. in the Railway Board) it is headed by an Additional Secretary level officer designated as ‘Advisor (Vig.)’ He is assisted by two

Jt. Secretary level officers (designated as Executive Dir./Vig.), about half a dozen Director – level officers, followed by Jt. Directors, Dy. Directors etc. At the level of the Zonal Railway, the vigilance set up is headed by an SAG level officer (designated as Sr. Deputy General Manager) and he is assisted by one or two officers of equal rank plus other officers and subordinate staff. It has also been observed that the quality of the investigations reports received from the Railways is, generally speaking, upto the mark. More importantly, fact also is that almost every case receives due and adequate attention at the level of Sr. functionaries in the deptt. both at the zonal level and also at the level of the Railway Board. It is heartening to note proper application of mind even at the level of the General Managers of the Railways in the processing/examination of vigilance cases. An equally important feature of the Railway cases which goes to the credit of the vigilance department of the Railway Board is that while seeking the Commission's advice in every case, the case is examined and presented in a proper manner, where all relevant aspects of the case are discussed and incorporated and the case is presented to the Commission through a self contained and detailed reference.