

PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM & CULTURE ONE HUNDRED AND TWENTY THIRD REPORT

ON

THE SEAMEN'S PROVIDENT FUND (AMENDMENT) BILL, 2007 (PRESENTED TO THE RAJYA SABHA ON 05.09.2007) (LAID ON THE TABLE OF THE LOK SABHA ON 05.09.2007)

RAJYA SABHA SECRETARIAT

NEW DELHI

AUGUST, 2007/ BHADRAPADA, 1929(SAKA)

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COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE (2007-2008)

1. **Shri Sitaram Yechury** - *Chairman*

RAJYA SABHA

2. Prof. Ram Deo Bhandary
3. Shri Naresh Gujral
4. Shri Vedprakash P. Goyal
5. Prof. Alka Balram Kshatriya
6. Shri Janardhana Poojary
7. Shri M.V. Mysura Reddy
8. Shri Satish Kumar Sharma

9. Shri Shahid Siddiqui
10. Shri Shatrughan Sinha

LOK SABHA

11. Shri Anandrao Vithoba Adsul
12. Shri Sukhbir Singh Badal
13. Shri Joachim Baxla
14. Shri Sartaj Singh Chhatwal
15. Shri N.S.V. Chitthan
16. Shri Adhir Chowdhury
17. Dr. K. Dhanaraju
18. Smt. Priya Dutt
19. Shri Dip Gogoi
20. Shri P. Karunakaran
21. Shri Vijay Kumar Khandelwal
22. Dr. P.P. Koya
23. Dr. Ramkrishna Kusmaria
24. Shri Samik Lahiri
25. Shri Alok Kumar Mehta
26. Shri Hemlal Murmu
27. Shri Madan Lal Sharma
28. Shri Akshay Pratap Singh
29. Shri Dushyant Singh
30. Shri Suraj Singh
31. Shri Pralhad Joshi

SECRETARIAT

1. Shrimati Agnes Momin George, Joint Secretary
2. Shri Jagdish Kumar, Joint Director
3. Shri Swarabji B., Deputy Director,
4. Shrimati Subhashree Panigrahi, Assistant Director

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this One Hundred and Twenty-Third Report of the Committee on the Seamen's Provident Fund (Amendment) Bill, 2007*.

2. The Bill was introduced in the Rajya Sabha on the 3rd May, 2007. In pursuance of rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha, referred** the Bill to the Committee on 10th May, 2007 for examination and report within three months. On the request being made by the Chairman of the Committee, Hon'ble Chairman had granted extension of time till the first day of last week of the Monsoon Session of the Parliament for the presentation of the

report of the Committee on the aforesaid Bill.

3. The Committee took oral evidence of the representatives of the Department of Shipping, DG (Shipping), Commissioner, Seamen's Provident Fund and Ministry of Law and Justice at its meetings held on the 29th May, 2007.

4. In order to get wider views on the subject, the Committee invited the views of individuals, organisations and institutions on the subject through advertisement in all major national dailies and vernacular newspapers all over the country. The advertisement evoked response from the stakeholders and the Committee received memoranda on the subject for consideration of the Committee. The Committee during its visit to Mumbai from 17th to 20th June, 2007 also heard the views of the representatives of the National Union of Seafarers of India (NUSI), Bhartiya Navik Sena, Maritime Seafarers Union of India and Seamen's Welfare Fund Society on the provisions of the Bill. Under the mandate, the Committee has examined the Bill and finalised the Report.

5. The Committee also considered the draft Report on the subject and adopted the same with minor modifications on 31st August, 2007.

6. The Committee wishes to express its thanks to the Secretary and other officers of the Department of Shipping, Commissioner, Seamen's Provident Fund and Ministry of Law and Justice for the assistance and inputs provided during deliberations on the provisions of the Bill. The Committee also acknowledges the contribution of Dr. Shanti Patel, President, National Union of Seafarers of India (NUSI) and other stakeholders who submitted their valuable suggestions on the provisions of the Bill.

NEW DELHI ;

August 31st, 2007

Bhadrapada 9, 1929 (*Saka*)

SITARAM YECHURY

Chairman

*Department-related Parliamentary Standing
Committee on Transport, Tourism & Culture.*

* Published in the Gazette of India Extraordinary Part II, Section-2, dated 3.5.2007

** Rajya Sabha Parliamentary Bulletin Part II, No.44095
dated 11.05.2007.

REPORT

The Seamen's Provident Fund (Amendment) Bill, 2007, was introduced in the Rajya Sabha on 3rd May 2007. On 10th May 2007, the Hon'ble Chairman, Rajya Sabha referred the Bill to the Committee for examination and Report. Under the mandate, the Committee has examined the Bill and finalised the Report after hearing the views of the nodal Department, *i.e.*, Department of Shipping, Commissioner, Seamen's Provident Fund and the Stakeholders. The Seamen's Provident Fund (Amendment) Bill, 2007 proposes to incorporate a new section 4A in the Principal Act with a view to make the Board of Trustees responsible for any loss caused to the Seamen's Provident Fund and to dissociate the Government from any responsibility with regard to compensation or indemnification of any loss caused to the Seamen's Provident Fund by deposit in an approved Bank or investment in securities or due to mismanagement, misappropriation or otherwise by the Board, any of its trustees, its employees or any other person. Thus, the new provision makes the Board responsible for any loss caused to the Seamen's Provident Fund.

(Annexure-I)

2. In the Statement of Objects and Reasons of the Bill, the Government has enumerated the objects to be achieved by this legislation.

3. In order to have wider consultations, the views of individuals, organizations and institutions, on the subject matter of the Bill, were invited through advertisement in all major dailies and vernacular newspapers in the country. The advertisement evoked response from the Stakeholders and the Committee received memoranda on the subject for consideration of the Committee. The Department of Shipping furnished various background notes on the subject matter of the Bill. The Committee in its meeting held on 29th May, 2007 heard the views of the Department of Shipping on the Bill. The Committee during its visit to Mumbai from 17th to 20th June, 2007 heard the views of various stakeholders on the Bill.

4. In their background note, the Department of Shipping furnished the details of the constitution of the Seamen Provident Fund.

4.1 The Seamen's Provident Fund Scheme, 1966 framed under the Seamen's Provident Fund Act, 1966 was introduced retrospectively w.e.f. 1st July, 1964 to provide for institution of a Provident Fund for all Seamen, in view of the obvious need to provide old age retirement benefit to all seamen engaged in the shipping industry (Merchant Navy) and their family members in the event of death.

BOARD OF TRUSTEES

4.2 The Seamen's Provident Fund Organisation is governed by the tripartite Board of Trustees consisting of the Government appointed Chairman, three nominees of the Central Government, three representatives of Employers and three representatives of Seamen under Section 5 of the Seamen's Provident Fund Act, 1966 to administer the Fund. The Director General of Shipping is the Ex-officio Chairperson of the Board of Trustees. The Seamen's Provident Fund Commissioner, who is Chief Executive Officer of the Board, is the Secretary of the Board. All the trustees are appointed by the Government for a tenure of five years.

OFFICE OF SEAMEN'S PROVIDENT FUND COMMISSIONER

4.3 To administer the Provident Fund Scheme, the Office of the Seamen's Provident Fund Commissioner was established on the 9th July, 1966 in Mumbai. In accordance with Section 7 of the Seamen's Provident Fund (SPF) Act, 1966 the Government shall appoint a Seamen's Provident Fund Commissioner who shall be subject to the general control and superintendence of the Board. The Government may also appoint as many Deputy Commissioners as it may consider necessary. As per Section 7(3) of the SPF Act, the Board may appoint such other officers and employees, as it may consider necessary for the efficient administration of the Scheme.

SEAMEN'S PROVIDENT FUND ORGANISATION (SPFO)

4.4 The Seamen's Provident Fund Organisation is self-supporting. The Government provides no financial support. The establishment expenditure of SPFO is met through the administrative charges, which are levied @ 4.5% w.e.f. 1st April 2006 on Provident Fund contribution remitted by the employer and seaman.

PROVIDENT FUND CONTRIIBUTION

4.5. Every seaman employed under the Article of Agreement, unless excluded by the definition of a 'Seamen' under the Act or exempted by a specific order as provided under the Act, is entitled and is required to become a member of the Scheme. This is a contributory Provident Fund and the employers are required to deposit the provident fund contribution in respect of seamen employed by them with their matching contribution with Seamen's Provident Fund Organisation after termination of each voyage. The prevailing rate of contribution is 12% of the wages w.e.f. 22.9.1997 as laid down in the Seamen's Provident Fund Scheme, 1966.

RATE OF INTEREST

4.6. The rate of interest on the provident fund account of members is to be determined by the Government in consultation with the Board. As per para 51(4) of SPF scheme, 1966, in determining the rate of interest, the Government shall satisfy itself that there is no over-drawl on the interest suspense account as a result of the debit thereto of the interest credited to the accounts of the members.

INVESTMENT PATTERN

4.7. The investment pattern of SPFO is as per the guidelines prescribed by the Ministry of Finance as under:

(i)	The Central Government Securities	-	25%
(ii)	State Government	-	25%
(iii)	PSU Bonds	-	25%
(iv)	Discretion of Trustees	-	30%
	(in any or to distribute among categories mentioned at (i) to (iii) above)		
(v)	Equities / Mutual Funds	-	5%

4.8. The Ministry of Finance has further decided to invest the 5% instruments earmarked for equities/ mutual funds also in high yielding PSU bonds, so as to further reduce the risk to the capital. The present system for the discretionary quota of investment is being recommended by the Finance Sub Committee and is finally approved by the Board for investment.

IRREGULARITIES IN THE INVESTMENT OF SPF

4.9. Giving the details for the scam, which led to loss amounting to approximately of Rs.92.78 crore to Seamen's Provident Fund, the Department of Shipping informed the Committee that the RBI carried out the work relating to the investment of the accretion to the Fund from the beginning. The Special Deposit Scheme Account of the Funds was also maintained in the RBI. During 1995-96, the Board decided to accede to the request of the RBI, to take over the work relating to investment of the money of the Fund and in the context passed a Resolution in November 1996 i.e. work of investment, to sell, purchase, transfer, negotiate, sign letter of indemnity and receive interest and principal, endorse, etc. shall be done by Seamen's Provident Fund Commissioner. As authorised by this Resolution, Shri AK Gond, the then Commissioner, SPF had been carrying out the activities of investments, keeping in mind the directions of the Department of Economic Affairs in respect of pattern of investment to be maintained on the last day of the financial year. To assist the Commissioner, Seamen's Provident Fund in matters of investment, the organization took the advice of some Brokers, who provided advice in

all matters of investment. Initially, one M/s. Darashaw and Co., a Broker, registered with the Bombay Stock Exchange handled the portfolio. Subsequently, sometime in 1998-99, Shri Ketan Seth, and Shri Sanjay Agarwal, two brokers listed on the Bombay Stock Exchange took over the same. The Seamen's Provident Fund investments comprised of Government Securities and Special Deposits Scheme Funds, which were pre-existing when Shri Ketan Seth and Shri Sanjay Agarwal started the investments of the Seamen's

Provident Fund. In the process, existing securities, which had been transferred from the RBI, were being sold and fresh securities were bought with the objective of increasing the income. During this period, Shri Ketan Seth and Shri Sanjay Agarwal introduced the following four companies based in Kolkata, as brokers, for transaction in Government Securities:

- (i) M/s Dalhousie Securities Pvt. Ltd., Kolkata.
- (ii) Ms/ Hooghli Trading & Investment, Kolkata.
- (iii) M/s Pacific Finance, Kolkata.
- (iv) M/s Poddar Trading Co., Kolkata.

5. The Seamen's Provident Fund Commissioner's Office later learnt that 3 of the said companies were fictitious and did not exist at all.

5.1. The Committee has been further informed that in the case of Government Securities, once a security is purchased, an entry is made in the Securities General Ledger (SGL) maintained by the Reserve Bank of India. In this case alternatively, physical delivery was granted. In this case, Shri Ketan Seth and Shri Sanjay Agarwal, in conjunction with and in connivance with the then Commissioner, Shri A. K. Gond, purported to purchase Government securities, amounting to approximately Rs. 92.78 crore. On receiving the brokers note for the said purchase, the then Commissioner issued a cheque for the said amount in the name of the concerned Broker, who would then purport to purchase the said security and at the end of the transaction, a computer generated statement was issued showing such alleged purchase of security. Interest on the said securities were also purported to be credited to the said account.

5.2. There was no physical delivery of Government securities or the PSU bonds to S.P.F.O. Dealing in Government securities was kept within the prescribed pattern of investment. But this was applicable only to the securities, which were not physically delivered. The interest accruing on these securities was purported to have been credited to the SP Fund, but only in the form of fresh securities, which were not physically delivered. So, it turned out to be a vicious circle. On 4th May 2002 Shri A.K. Gond, Ex- Commissioner (SPF) informed the Chairman of the Board and D.G. Shipping that Government securities and PSU bonds worth Rs.92.78 crore belonging to the SPF were not available because they were not physically delivered over a period of time. The DG (S) had ordered for immediate inquiries and a special audit of S.P. Fund was conducted by M/s S.S. Nayak & Co. in consultation with M/s Wadia Gandhi & Co. and Ministry of Law, Branch Secretariat, Mumbai on 07.05.02. The audit report dated 08.05.02 reveals that the total cost of the missing securities was Rs.90.15 crore, whose face value was Rs.91.07 crore. It was also noticed that similar securities had also been purchased in the Forfeiture Account of the Provident Fund, the cost of such security was being Rs.1.69 crore and the face value of such securities was being Rs.1.71 crore. The total cost of missing securities were therefore Rs.91.85 crore, and face value of such securities were Rs.92.78 crore.

ACTION TAKEN BY GOVERNMENT/CBI AGAINST SHRI A.K. GOND, EX-

COMMISSIONER

5.3. The DG Shipping filed a complaint on 10th May, 2002 with the CBI. The CBI arrested the then Commissioner, SPF in the night of 11/12th May 2002 and was remanded to CBI custody. Shri Gond was released on bail after the expiry of mandatory custody period. The Court has attached the property worth Rs.96,96,232.84 of Shri Gond. He was placed under suspension w.e.f. 12th May, 2002 i.e. the date of his detention. Thereafter, he was repatriated to Ministry of Railways w.e.f. 5.9.2002. The CBI has completed its enquiry on 10.11.03 and filed the charge sheet in the court at Mumbai against 15 persons. The Case is pending in the Court of Special Judge (CBI, ACB) Greater Mumbai. A Civil Suit No. 633 of 2004 for recovery of Rs.92.78 crore along with interest has been filed on 26.02.04. The matter is pending before Mumbai High Court. The following persons were named in Charge Sheet in CBI Case No. RC 4 (E) 2002, CBI, BS & FC, Mumbai in the Hon'ble Court of Special Judge for CBI, Greater Mumbai:-

Sr. No.	Name of Accused Persons.
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- | | |
|-----|----------------------------|
| 1. | Shri Sanjay Agarwal |
| 2. | Shri Ketan Seth |
| 3. | Shri Anup Kumar Gond |
| 4. | Shri Chandulal Thadani |
| 5. | Shri Nandkishore S.Trivedi |
| 6. | Shri Subodh Bhandari |
| 7. | Shri Mahendra Agarwal |
| 8. | Shri Jiterndra Agarwal |
| 9. | Shri Sriprakash Poddar |
| 10. | Shri Nandkishore Prasad |
| 11. | Shri Pallav Ved |
| 12. | Smt. Suman Prasad |
| 13. | Arunkumar Surekha |
| 14. | Shri Omprakash Salecha |
| 15. | Shri Vijayan Doshi |

6. The Committee in its meeting held on 29th May, 2007 heard the views of the Department of Shipping on the Bill. The representatives of the Department of Shipping submitted before the Committee that through the Amendment Bill it is sought to make an entry, Section 4A, to say that subject to the provisions of the Seamen's Provident Fund Act, 1966 and the scheme, the Board shall be responsible for management of the funds. Secondly, the Central

Government shall not be liable to compensate or indemnify any loss caused to the fund by deposits in an approved bank or investment in securities or due to mismanagement, misappropriation or otherwise by the Board, any of its trustees, employees or any other person at any time. The purpose of this Amendment is to make explicit what was already implicit in the Act when it was first promulgated. Because there in section 4, it says that the Fund shall vest in the Board and section 5 goes on to say that the Board is a body corporate with a separate seal and in perpetual existence. Basically, the direction of the Cabinet was that the whole scam or the defalcation occurred because there were no controls, and there were no systems in place. So, with the systems being introduced, with the reform process also in position and frequent checking and physical verifications, The Department is hopeful that this sort of a misdemeanour or a defalcation should not occur. That is why it is, in a sense, just making explicit what was already there.

7. The Committee was informed that the Government is not linking the proposal for recoupment of Fund with the amendment of Seamen's Provident Act. The Government is certainly trying to dissociate one part of it, saying that it should not be held responsible, if the whole thing like the scam were to

happen. It is not restricted to just Seamen's Provident Fund. The Ministry of Finance in fact, advised all the Ministries and Departments which are operating or may be operating funds of this nature to have a clause like this. So, basically, it is that the Government recognises at one level its moral and fiduciary responsibilities but wants to distance direct responsibility because that is the function of the Board.

8. The Department of Shipping identified the following shortcomings, which led to loss of fund:

- (i) Dealing with such companies whose credential was not verified.
- (ii) Outflow of money without proper documentation.
- (iii) After outflow of money physical deliveries of securities were not received.
- (iv) No follow up was done for non-receipt of such securities.
- (v) Handing over of cheque to third party without proper authority.
- (vi) Investment registers not maintained properly viz., detail of securities was not recorded.
- (vii) No physical verification of securities was done during CAG audit.
- (viii) Lack of internal/concurrent audit.
- (ix) Securities not kept in Demat form.

9. As regards, the remedial measures taken to remove the shortcomings in the future, the Department of Shipping informed that after these irregularities came to notice, the following steps to remove the shortcomings in future have been taken:

- (i) The Resolution of 28.11.1996, authorizing the Commissioner as a sole authority to do the investment has been rescinded.
- (ii) M/s S.S. Nayak & Co. (Chartered Accountants) has been appointed as Internal Auditors who submit quarterly report, which are placed before the Board in its subsequent meetings.
- (iii) All physical securities required to be converted into Demat form have been converted. State Bank of Indore has been appointed as Depository Participants for the purpose.
- (iv) A Finance sub-Committee has been constituted, consisting of Commissioner and 2 Trustees for considering investment proposals and recommendations. The recommendations are placed before the Board subsequently for final approval.
- (v) The Commissioner and one of the Trustees have been made authorized signatory.
- (vi) M/s IDBI Capital Services Ltd. has been appointed on 21.12.2004 as Portfolio Manager of SPF.

10. The Committee enquired from the representatives of the Department of Shipping whether these remedial measures set-up a foolproof mechanism to prevent such scam to recur in future in the functioning of the SP Fund. The representatives of the Department of Shipping submitted before the Committee that:

“The kind of scam that occurred is despite dealings in Government stocks and that of PSUs. Actually those instruments were never physically present. Now, since controls are in place, and have been in place for the last few years, we are seeing that investments are actually made, payments are being made out and the corpus is continuing to grow. So, we are hopeful that such events will not recur. That’s the only thing we can say at this stage.”

11. The Committee wanted to know from the Department of Shipping whether the Principal Act made it obligatory for the Government to be responsible for any mis-appropriation. It was clarified to the Committee that the Government was not responsible because the whole money is invested in the Board. The Government has moral responsibility to recoup the fund and the Board should also be held responsible for occurrence of irregularity.

12. The Committee wanted to know the details of measures taken by the Department of Shipping for recoupment of shortage of Rs.92.78 crore in the Seamen’s Provident Fund. In response the Department of Shipping submitted that the money lost in the instant case belongs to the seamen. Under the SPF Act, 1966, the seamen have no choice but to keep the money in this Fund. It is difficult to make them suffer for a loss, which is not attributable to them. The Cabinet in its meeting held on 22.12.2005 considered the matter and decided that the matter may, in the first instance, be considered by a Group of Ministers (GoM). The GoM in its first meeting held on 3.1.06 desired that various alternatives should be worked out in order to select the best option to provide recoupment subsidy to SPF. Accordingly, the Ministry of Finance recommended providing one time grant of Rs.92.78 crore. The GoM accordingly considered the proposal on 8.8.2006 and recommended that the exact amount of recoupment to be decided by the Ministry of Finance should be indicated in the note to be placed before the Cabinet for their consideration and approval. GoM also recommended that the proposal to amend the Seamen’s Provident Fund Act, 1966 for dissociating the Government from any responsibility in regard to compensation or indemnification of any loss caused to the Seamen’s Provident Fund by investment in securities by mismanagement, misappropriation or otherwise by the Board, any of its Trustees, its employees or any other person at any time should also be placed before the Cabinet for their consideration and approval. Following the recommendation of GoM, Ministry of Finance considered the proposal and has supported the grant of a one time recoupment subsidy of Rs.92.78 crore to SPF provided the SPF Act, 1966 is amended to make the Board responsible and for dissociating the Government from any responsibility in regard to compensation or indemnification of any loss caused to the Seamen’s Provident Fund by investment in securities by mismanagement, misappropriation or otherwise by the Board, any of its Trustees, its employees or any other person, at any time. The Cabinet considered the proposal regarding recoupment of lost funds of SPFO, Mumbai to the extent of Rs.92.78 crore and amendment to the Seamen’s Provident Fund Act, 1966 on 30.11.2006 and approved the Department proposals with the following directions:

§ Drafting changes be carried out in section 4A of the Bill in consultation with the Ministry of Finance; and

§ Steps are taken by all concerned Ministries/Departments to prevent such

mismanagement and ensure that Government does not incur any liability in such class of cases.

13. As per the Cabinet directions, drafting changes were carried out in section 4A of the Bill in consultation with the Ministry of Finance and the Ministry of Law. The Bill has accordingly been introduced in Rajya Sabha on 3.5.2007. Further, to recoup the shortage of Rs.92.78 crore in the Seamen Provident Fund the Department of Economic Affairs has taken a view that the said grant could be released only after the proposed amendment of SPF Act, 1966 is introduced. In the meantime, the Forward Seamen's Union of India (FSUI) had given a strike notice against lowering of interest rate and delay in recoupment of Seamen Provident Fund money. Indian National Ship-Owners' Association (INSA) has filed a Writ Petition No. 2707 of 2005 in High Court of Mumbai praying *inter-alia* to restrain FSUI from going on strike. The case was heard on 10th April, 07. The Hon'ble High Court of Mumbai has granted time upto 31.8.2007 to credit entire amount of Rs.92.78 crore to Seamen Provident Fund.

14. The Department of Shipping *vide* their OM dated 6th July, 2007 informed the Committee that the Ministry of Finance, Department of Economic Affairs has granted an advance of Rs.92.78 crore from the Contingency Fund of India to be paid to the Seamen's Provident Fund. Accordingly, the Funds to the extent of Rs.92.78 crore have been released to Seamen Provident Fund Organisation *vide* sanction NO. ST-14018/5/2002-MT dated 29.06.2007.

15. The Committee during its visit to Mumbai from 17th to 20th June, 2007 heard the views of the DG (Shipping), Commissioner, Seamen's Provident Fund and the representatives of the National Union of Seafarers of India (NUSI), Bhartiya Navik Sena, Maritime Seafarers Union of India and Seamen's Welfare Fund Society on the provisions of the Bill in its meeting held on 18th June, and 20th June, 2007 respectively. The stakeholders who have participated in the meeting of the Committee were Dr. Shanti Patel, President, NUSI, Sh. Abdul Ghani Serang, General Secretary, NUSI, Sh. Ajit Yashwant Rao, Secretary, Bhartiya Navik Sena, Sh. C.C. Babu, CAO, Seamen's Welfare Fund Society and Sh. L.B. Singh, President, Maritime Seafarer Union of India. The representatives of Unions opposed the Bill on the following grounds:

- (i) The proposed amendment to the Seamen's Provident Fund Act, 1966 changes completely the complexion and objective of the Bill. There was no consultation leave aside, the agreement with the National Welfare Board representing the Shipowners, Seamen and Government, a statutory body under the Indian Merchant Shipping Act, which, had originally suggested the enactment of the SPF Act, 1966.
- (ii) The same responsibility also exists under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, applicable to any establishment onshore. Strangely, this original Act is not sought to be amended. Therefore, the Government's move is highly discriminatory and is also unconstitutional.
- (iii) Even to our country, Government runs to the rescue of the people and helps them monetarily whenever there is natural calamity or any other similar situation and rightly so. The

old age or death is also an identical event and hence the Government cannot get out of the direct responsibility of reimbursement of the loss due to mismanagement, misappropriation or otherwise by the Board, any of its trustees, employees or any person at any time.

(iv) The appropriate action must be taken against any person or persons defaulting the non-recovery of lost amount. But it is not at all possible to recover the amount lost through fraud or scam or otherwise, and, particularly, when the amount is large. The Government should expedite action for reimbursement of lost funds to SPFO.

(v) The recent amendment has been moved without any reference whatsoever or consultation with the National Welfare Board for Seafarers (NWBS). Thus, the introduction of Bill without even consultation with the NWBS is highly improper, unfair and likely to disturb the existing industrial harmony.

(vi) The Seamen's Provident Fund Bill, 2007 does not follow the pattern of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which was followed in enacting the Seamen's Provident Fund Act, 1966. The present Seamen's Provident Fund amendment is discriminatory and hence uncalled for.

(vii) The non recoupment of loss by the Government will result in the penalty for the innocent seamen for no fault of theirs. The Government should be jointly held responsible in cases of frauds.

(viii) The SPF Act should be amended to make it absolutely clear that the Government of India should reimburse the financial loss for the reasons stated in the Amendment Bill.

16. The Committee enquired from the representatives of the Department whether there is any proposal for the option of merger of Seamen's Provident Fund Organization (SPFO) with the Employees Provident Fund Organization (EPFO). The Department of Shipping informed the Committee that Director General of Shipping had consulted Ship-Owners and Union's representatives on 31.10.2002. Both Ship-Owners representative and Union's representative agreed that per-se they did not have any reservation on restructuring of SPFO if this was being done at the time when other Provident Funds and especially EPFO also undergoes a change. The option of merger of SPFO with EPFO does not look feasible keeping in view the rationale for the establishment of separate Seamen's Provident Fund. The Rule, Regulations and service conditions of seamen are totally different from those of workers covered by the Employees Provident Fund. The Department further submitted that the seamen working on ships are engaged on contract basis. The members of Employees Provident Fund Organization are on regular establishment of the industries (ANNEXURE-II).

Observations and Recommendations

17. The Committee notes with great satisfaction that the Ministry of Finance has finally granted an advance of Rs.92.78 crore from the Contingency Fund of India to be paid to the Seamen's Provident Fund and the amount has been released to Seamen's Provident Fund Organization for payment to the Seamen. The Committee also appreciates the role of the unions, which persistently pursued the matter of recoupment of the losses to the Seamen Provident Fund. The recoupment of shortage of funds will give relief to the Seamen by providing them their own dues.

18. The Committee is of the view that the proposed Bill is only a step to dissociate the Government from bearing any responsibility with regard to compensation or indemnification or any loss caused to the Seamen's Provident Fund by deposit in an approved Bank or investment in securities or due to

mismanagement, misappropriation or otherwise and therefore this legislation would indirectly aggravate the problems of Seamen's instead of going deep into the roots of it. The Committee does not approve the contention of the Department of Shipping that the whole scam or the defalcation occurred because there were no control or system in place. The Committee feels that the Government cannot absolve its responsibility for the losses including misappropriation that took place in the Seamen's Provident Fund and is bargaining in exchange of one time recoupment to avoid responsibility in future. The Committee strongly disapproves the idea of linking the proposal for recoupment of Rs.92.78 crore with the amendment of the Seamen's Provident Fund Act because misappropriation of the amount belonging to the seamen's was due to faulty rules/policy of the Government due to which such a situation arose and the poor seaman was made to suffer because of no fault of him.

19. The Committee notes that under Section 5 of the Seamen Provident Fund Act, 1966, the Government appoints the Chairman and three nominees of the Central Government to the Seamen's Provident Fund Organisation. Moreover, the Director General of Shipping is the ex-officio Chairperson of the Board of Trustees. The Seamen's Provident Fund Commissioner who is the Chief Executive Officer of the Board is the Secretary of the Board. All these trustees are appointed by the Government for a tenure of five years. The Committee notes that the Government has full control over the Seamen Provident Fund through its own nominees in the Board of Trustees and administrative set up. All its functions are carried out according to the guidelines issued by the Government. Therefore, the Committee finds no justification on the move of the Government to dissociate the Government from any responsibility with regard to compensation or indemnification of any loss caused to the Seamen's Provident Fund by investment in Securities by mismanagement, misappropriation or otherwise by the Board, any of its Trustees, its employees or any other person. This is simply not acceptable in a democratic set up. The Government has the ultimate duty to save and secure a Fund, which is meant for the welfare of a section of the society. The Committee, therefore, recommends that the Government should withdraw the Bill in its present form.

20. The Committee is distressed to note that the Seamen Provident Fund had lost Rs.92.78 crore due to the fraudulent investments made by some of the functionaries. Now the matter is Sub-judice. The Committee, however, desires that the Government should take all possible steps to recover the money from the culprits and the Government may vigorously pursue the case in the court.

21. The Committee notes that in order to ensure that such scams would not recur in future, the Government has initiated sufficient administrative controls in the system and as such quarterly audit and physical verification of the securities are taking place. These safeguards have resulted into growth in the Corpus Fund. However, the Committee is of the opinion that irregularity had happened due to improper system of investment of Seamen's Provident Fund and the Government machinery *i.e.* the Commissioner, Director General (Shipping), Comptroller and Auditor General of India and internal auditor have failed to detect irregularities in the management of the fund in time. The Committee, therefore, recommends that the Government should scrupulously follow the norms issued by the Ministry of Finance for investment of funds in the portfolios and under no circumstances the provident fund money should be exposed to risk or invested without considering the safety and security of the fund.

22. The Committee notes that the Provident Fund Scheme is essentially a welfare measure and it is the direct responsibility of State to ensure that the Seamen get their Provident Fund dues when they retire from the employment or when they become unfit for the job due to age or sickness. The Committee also notes that the Provident fund is the only reliable source of income for the Seamen or his family as there is no Pension Scheme for the Seamen. However, the Committee is constrained to note that the proposed Amendment Bill does not protect the interest of Seamen and Government is making them more vulnerable by dissociating itself from the obligations to recoup the money in case any future scam happens in the Seamen Provident Fund Organization. The Committee feels that some Social Security Scheme should be introduced to protect the interests of the retired Seafarer and their families and recommends that the Government should amend the Seamen's Provident Fund Act, 1966 in line with Employees Provident Fund and Miscellaneous Provisions Act, 1952, which is applicable to any establishment onshore.

OBSERVATIONS/CONCLUSIONS/RECOMMENDATIONS/ -- AT A GLANCE

The Committee notes with great satisfaction that the Ministry of Finance has finally granted an advance of Rs.92.78 crore from the Contingency Fund of India to be paid to the Seamen's Provident Fund and the amount has been released to Seamen's Provident Fund Organization for payment to the Seamen. The Committee also appreciates the role of the unions, which persistently pursued the matter of recoupment of the losses to the Seamen Provident Fund. The recoupment of shortage of funds will give relief to the Seamen by providing them their own dues.

(Para 17)

The Committee is of the view that the proposed Bill is only a step to dissociate the Government from bearing any responsibility with regard to compensation or indemnification or any loss caused to the Seamen's Provident Fund by deposit in an approved Bank or investment in securities or due to mismanagement, misappropriation or otherwise and therefore this legislation would indirectly aggravate the problems of Seamen's instead of going deep into the roots of it. The Committee does not approve the contention of the Department of Shipping that the whole scam or the defalcation occurred because there were no control or system in place. The Committee feels that the Government cannot absolve its responsibility for the losses including misappropriation that took place in the Seamen's Provident Fund and is bargaining in exchange of one time recoupment to avoid responsibility in future. The Committee strongly disapproves the idea of linking the proposal for recoupment of Rs.92.78 crore with the amendment of the Seamen's Provident Fund Act because misappropriation of the amount belonging to the seamen's was due to faulty rules/policy of the Government due to which such a situation arose and the poor seaman was made to suffer because of no fault of him.

(Para 18)

The Committee notes that under Section 5 of the Seamen Provident Fund Act, 1966, the Government appoints the Chairman and three nominees of the Central Government to the Seamen's Provident Fund Organisation. Moreover, the Director General of Shipping is the ex-officio Chairperson of the Board of Trustees. The Seamen's Provident Fund Commissioner who is the Chief Executive Officer of the Board is the Secretary of the Board. All these trustees are appointed by the Government for a tenure of five years. The Committee notes that the Government has full control over the Seamen Provident Fund through its own nominees in the Board of Trustees and administrative set up. All its

functions are carried out according to the guidelines issued by the Government. Therefore, the Committee finds no justification on the move of the Government to dissociate the Government from any responsibility with regard to compensation or indemnification of any loss caused to the Seamen's Provident Fund by investment in Securities by mismanagement, misappropriation or otherwise by the Board, any of its Trustees, its employees or any other person. This is simply not acceptable in a democratic set up. The Government has the ultimate duty to save and secure a Fund, which is meant for the welfare of a section of the society. The Committee, therefore, recommends that the Government should withdraw the Bill in its present form.

(Para 19)

The Committee is distressed to note that the Seamen Provident Fund had lost Rs.92.78 crore due to the fraudulent investments made by some of the functionaries. Now the matter is Sub-judice. The Committee, however, desires that the Government should take all possible steps to recover the money from the culprits and the Government may vigorously pursue the case in the court.

(Para 20)

The Committee notes that in order to ensure that such scams would not recur in future, the Government has initiated sufficient administrative controls in the system and as such quarterly audit and physical verification of the securities are taking place. These safeguards have resulted into growth in the Corpus Fund. However, the Committee is of the opinion that irregularity had happened due to improper system of investment of Seamen's Provident Fund and the Government machinery *i.e.* the Commissioner, Director General (Shipping), Comptroller and Auditor General of India and internal auditor have failed to detect irregularities in the management of the fund in time. The Committee, therefore, recommends that the Government should scrupulously follow the norms issued by the Ministry of Finance for investment of funds in the portfolios and under no circumstances the provident fund money should be exposed to risk or invested without considering the safety and security of the fund.

(Para 21)

The Committee notes that the Provident Fund Scheme is essentially a welfare measure and it is the direct responsibility of State to ensure that the Seamen get their Provident Fund dues when they retire from the employment or when they become unfit for the job due to age or sickness. The Committee also notes that the Provident fund is the only reliable source of income for the Seamen or his family as there is no Pension Scheme for the Seamen. However, the Committee is constrained to note that the proposed Amendment Bill does not protect the interest of Seamen and Government is making them more vulnerable by dissociating itself from the obligations to recoup the money in case any future scam happens in the Seamen Provident Fund Organization. The Committee feels that some Social Security Scheme should be introduced to protect the interests of the retired Seafarer and their families and recommends that the Government should amend the Seamen's Provident Fund Act, 1966 in line with Employees Provident Fund and Miscellaneous Provisions Act, 1952, which is applicable to any establishment onshore.

(Para 22)

MINUTES

**MINUTES OF THE MEETING OF THE DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON TRANSPORT,
TOURISM & CULTURE (2007-08)**

**I
FIRST MEETING**

The Committee met at 3.00 P.M. on Friday, the 31st August 2007 in Committee Room A, Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. **Shri Sitaram Yechury – *Chairman***

RAJYA SABHA

2. Prof. Ram Deo Bhandary
3. Shri Naresh Gujral
4. Shri Vedprakash P. Goyal
5. Shri Janardhana Poojary
6. Shri M.V. Mysura Reddy
7. Shri Shahid Siddiqui

LOK SABHA

8. Shri Adhir Chowdhury
9. Shri Samik Lahiri
10. Shri Hemlal Murmu
11. Shri Madan Lal Sharma

SECRETARIAT

Shrimati Agnes Momin George, Joint Secretary

Shri Jagdish Kumar, Joint Director

Shri Swarabji B., Deputy Director

Shrimati Subhashree Panigrahi, Assistant Director

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT):

Shri S.R. Dhaleta, Joint Secretary & Legislative Counsel

Shri K.V. Kumar, Assistant Legislative Counsel

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REPRESENTATIVES OF THE NATIONAL AVIATION COMPANY OF INDIA LTD. (NACIL):

Shri V. Thulasidas, CMD

Shri S. Mukherjee, Executive Director-Corporate Affairs

Shri D.S. Kohli, Executive Director-Northern Region

Shri S.K. Kundra, Executive Director (F)

Shri H.S. Grover, Executive Director (Coop.)

REPRESENTATIVES OF THEJET AIRWAYS:

Capt. K. Mohan, Vice-President, Flight Operations

Shri A.K. Sivanandan, Senior General Manager, PR

REPRESENTATIVES OF THE TRAVEL AGENTS ASSOCIATION OF INDIA:

Shri Jagdeep Rikhy, Managing Committee Member

Shri Sanjay Nirula, Managing Committee Member

REPRESENTATIVES OF THE TRAVEL AGENTS FEDERATION ASSOCIATION OF INDIA:

Shri Praveen Chug, President

Shri P. Sampath Kumar, Committee Member

REPRESENTATIVES OF THE AIR CARGO AGENTS ASSOCIATION OF INDIA:

Shri Vipin Vohra, President

Shri Deepak Dadlani, Past President

Shri Sunil Arora, Chairman, Northern Region

2. At the outset, the Chairman welcomed the Members of the Committee especially Shri Naresh Gujral M.P. who was nominated to the Committee first time. The Committee then took up for consideration and adoption of draft Report on the Seamen's Provident Fund (Amendment) Bill, 2007. After some discussion, the Committee adopted the Report with minor modification. The Committee also decided to present the Report to the Parliament on 5th September, 2007 and authorized the Chairman, and in his absence Shri Vedprakash P. Goyal and Shri Naresh Gujral to present the Report in the Rajya Sabha and S/Shri Samik Lahiri and Adhir Chowdhury in the Lok Sabha.

3. Thereafter, the Committee heard the views of the above-mentioned stakeholders on the Carriage by Air (Amendment) Bill, 2007. The Members raised queries on various provisions of the Bill and the stakeholders explained their position thereon.

4. A verbatim record of the proceedings of the Meeting was kept.

5. The meeting of the Committee then adjourned at 4.15 p.m.

New Delhi

31st August 2007

**Swarabji B.
Deputy Director**