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GOVERNMENT OF INDIA

MINISTRY OF LABOUR & EMPLOYMENT

REPORT

OF

The Bonus Commission

1964

PRINTED IN INDIA BY THE MANAGER GOVERNMENT OF INDIA PRESS
NASIK AND PUBLISHED BY THE MANAGER OF PUBLICATIONS DELHI-8
1964

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CHAPTER I

APPOINTMENT OF THE BONUS COMMISSION AND THE TERMS OF REFERENCE

1.1. The Bonus Commission was constituted by the Government of India (Ministry of Labour and Employment) by the following Resolution dated 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. B. 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.

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-regionwise.

(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 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.

1.2. The first meeting of the Commission was held on 4th January, 1962 when the draft questionnaire was discussed. On account of the then impending general elections,

the questionnaire could not be finalised till 27th March, 1962, as three Members of the Commission were contesting the elections. The questionnaire was printed and issued on 10th April, 1962 to the following Institutions and Organisations:—

(1) All employing Ministries of Government of India other than Posts and Telegraphs and Railways.

(2) The Planning Commission.

(3) All State Governments.

(4) Federations of Chamber of Commerce.

(5) Chambers of Commerce.

(6) Federations of Employers' Associations.

(7) Employers' Associations in various industries.

(8) Federations of trade unions of employees and All India or National Trade Unions.

(9) Units in the Public Sector.

1.3. The questionnaire, which is reproduced at Appendix A to this Report, was in two Sections: Section 1 was concerned with the general issues related to the problem of bonus; and Section 2 was factual and intended to be answered by representative units in the various industries, so that the Commission would have the requisite information about capital structure, the profits after deducting depreciations, the profit position for the previous three years, bonus paid in each of the years, etc. This statistical information was sought so as to give the Commission a fair idea of the financial position and progress of the various industries in the country as well as to enable it to study how any formula that may be proposed would work out.

1.4. The response to the questionnaire from Employers' Associations, Trade Unions and individual employers was good, and the Commission are glad to say that they received from all concerned the fullest co-operation at every stage. The table at Appendix B gives the number of replies received.

1.5. The Commission held sittings at Bombay, Calcutta, Madras, Ahmedabad and Delhi to hear the views of Employers' Associations, some individual employers and Trade Unions. A list of representatives of Associations and Unions and others who were heard in person is given at Appendix C.

1.6. In December 1962, Shri D. Sandilya, one of the two Members representing employers, resigned the Membership of the Commission on account of ill health. The Government of India, Ministry of Labour & Employment by Resolution No. WB-20(3)/62 dated 4th January, 1963 appointed Shri K. B. Mathur, Chairman, Heavy Electricals (India) Ltd., in place of Shri D. Sandilya.

CHAPTER II

HISTORICAL BACKGROUND—EVOLUTION OF THE FULL BENCH FORMULA OF THE LABOUR APPELLATE TRIBUNAL

2.1. In India bonus was originally regarded as a gratuitous payment by an employer to his employees. However, in industrial law, it has now acquired the meaning of an annual payment which the employees may claim as a matter of right on two main considerations, *viz.* (1) that there is an "available surplus" out of the profits from which bonus can be paid, and (2) that there is a gap between the present wages and the living wage which bonus is intended to shorten. It has been observed in some decisions of Courts that bonus partakes of the character of the employees sharing in the prosperity of the concern to whose profits they have contributed. This conception is scarcely distinguishable from profit sharing.

Period of the First World War

2.2. The practice of paying bonus as *ex-gratia* payment to employees had its early roots in the textile industry in Bombay and Ahmedabad. The first world war gave a fillip to the textile industry which made good profits. Consequently in July 1917 an increase of ten per cent. in wages was granted as "war bonus" to the cotton textile workers by their employers. This was increased to 15 per cent. in January 1918. At the end of that year a strike commenced at the Century Mill and soon became general. The dispute was ultimately settled, the employers agreeing to increase the war bonus from 15 per cent. to 35 per cent., to be termed a "special allowance" on account of the high price of food stuffs.

2.3. On the lst December 1919, the employers sanctioned the payment of bonus to all operatives on the muster roll on 31st December 1919 at rates varying according to the length of service. In October 1920 the Committee of the Bombay Millowners decided to recommend to the member mills payment of bonus equal to one month's pay, as in the previous year. A similar bonus was declared in November 1921 and again in November 1922. When these bonuses were paid it was not, however, made clear to the workmen that such payment depended entirely upon the results of the preceding year's working and that it would not be continued if it could not be justified by the profits earned.

2.4. Towards the end of 1922 trading conditions deteriorated as there was absence of demand for cloth and yarn. The millowners announced on 23rd July, 1923 that owing to bad trade the Millowners regretted that they would be unable to pay bonus for 1923. As the bonus was not paid a strike began which became general towards the end of January 1924. Consequently on 22nd February, 1924, a Bonus Dispute Committee headed by Sir Norman Macleod, Chief Justice of Bombay, as Chairman, was appointed by the Government of Bombay. The Committee was asked; (1) to consider the nature and basis of bonus which had been granted to the employees in the cotton textile mills of Bombay since 1919 and to declare whether the employees had established any enforceable claim, customary, legal or equitable; and (2) to inquire into the profits made in each year since 1917 with a view to comparing these profits with the profits made in the year 1923 and to report on the contention of the millowners that the grant of bonus such as had been paid in previous years was not justified by the profits of the mill industry as a whole in 1923. The Committee was not to make any award or recommendation but merely to record finding of facts.

2.5. It was argued before the Committee that because the increase in the wages allowed from the year 1917 owing to "war conditions" was called "war bonus" and owing to the payment of bonus for five consecutive years, the workmen looked upon the annual bonuses as really part of their wages and they considered that they had a just claim against the millowners.

2.6. But the Committee came to the conclusion that the mill workers had not established any enforceable claim,—customary, legal or equitable,—to an annual payment of bonus which could be upheld in a court of law.

2.7. The Committee found that for the year 1923 out of 75 mills, 32 mills made profits and 43 mills made losses (figures for seven mills were not furnished). The Committee further found that the total profits before allowing depreciation amounted to Rs. 53 lakhs (or Rs. 119 lakhs if the income-tax on the profits for the year 1923 only was debited), that the amount required for depreciation amounted to Rs. 170 lakhs, and that

the result of the working of the cotton textile industry as a whole showed that there was justification for the contention of the millowners that the profits did not admit of payment of bonus.

2.8. In the cotton textile industry in Ahmedabad, a dispute about bonus which arose in 1921 was settled through the mediation of Pandit Madan Mohan Malaviya, who observed:

> "When a mill has made handsome profits the workers who have by their faithful co-operation enabled the mill to earn such profits, should as an ordinary rule be given at the end of each year a bonus equal to one month's salary. When the profits have been extraordinarily handsome, millowners might very properly and wisely give a larger bonus to the workmen."
>
> [Labour Gazette, November 1921, p. 22].

2.9. The years that followed were years of depression and no major dispute about bonus arose, although bonuses were given on *ad hoc* basis by a few industrial undertakings.

Period of the Second World War

2.10. During the Second World War, industries in general began to make large profits, part of which were mopped up by the Excess Profits Tax.

2.11. In March 1940 there was a general strike in the textile mills in Bombay on the question of dearness allowance as the workers were not satisfied with the dearness allowance of As. 2 per head per day announced by the Millowners' Association, Bombay, consequent on the report of the Rangnekar Board of Conciliation. The Government of Bombay which was closely watching the progress of the dispute came to the conclusion that although the dispute had arisen on the question of dearness allowance, a contributory factor was the desire on the part of the workers to share in the profits which would accrue to the industry in consequence of war conditions. Being of the view that it was a legitimate expectation of labour the Government of Bombay took up the question with the Millowners' Association, Bombay, and inquired of it whether the millowners would be willing to give an undertaking to Government that they would be prepared to give "war bonus" to their workers if increased profits were made by the industry as a result of war conditions. The Millowners' Association on its part after mentioning the difficulties of its members gave an assurance that the industry would consider sympathetically any reasonable proposal for the grant of a war bonus or allowance under certain conditions. The Government pursued the matter further with the Millowners' Association as a result of which the Association decided that its cotton mill members in the City and Island of Bombay should grant to their workers a cash bonus equivalent to 12½ per cent. or two annas in the rupee of their actual earnings (exclusive of dearness allowance) in the period from 1st January to 31st December, 1941. In the Press Note issued by the Government of Bombay dated 3rd December, 1941, the Government recorded its appreciation of the readiness of the Millowners' Association, Bombay, to recognise its obligations to labour and expressed its own view that the bonus then announced was fair and reasonable. Government further observed in the Press Note that labour would reciprocate the gesture of goodwill on the part of the employers in the same spirit which prompted the employers to make it (*vide* Labour Gazette, December 1941, pp. 363-64).

2.12. In the following year the Millowners' Association, Bombay, voluntarily decided to grant a bonus equivalent to one-sixth of the total earnings, exclusive of dearness allowance. In another Press Note the Government of Bombay recorded its appreciation of the action taken by the Millowners' Association, stating that the bonus announced was fair and reasonable (*vide* Labour Gazette, October 1942, p. 71).

2.13. In this way, till 1945 the millowners in Bombay voluntarily paid bonuses. Following the example of the Bombay millowners, the employers of other industrial concerns in the City and elsewhere also voluntarily paid bonuses. It was expedient for them to do so with a view to keeping labour contented, so that the war effort might not be hampered and production not curtailed by strikes.

2.14. At the outset of the Second World War the Government of India promulgated the Defence of India Act, and the Defence of India Rules framed thereunder. Rule 81-A of the Defence of India Rules provided for compulsory reference to adjudication of trade disputes or industrial disputes.

2.15. In the dispute between the General Motors (India) Ltd., and the workmen adjudicated under the Defence of India Rules, Mr. Justice Chagla stated,

> "It is almost universally accepted principle now that the profits are made possible by the contribution that both capital and labour make in any particular industry, and I think it is also conceded that labour has a right to share in increased profits that are made in any particular period. But the distribution of increased profits among workers is better achieved by the giving of an annual bonus than by a further increase in wages. Wages must be fixed on the basis of normal conditions."
>
> [Labour Gazette, June 1942, p. 1030 at p. 1033]

2.16. In a similar dispute between the Standard Vacuum Oil Co. *vs.* its employees, which was referred to Mr. E. M. Nanavutty for adjudication, he observed in the Award as follows:—

> "Industrial peace at this juncture is of supreme importance; and if, as a result of these abnormal war-conditions, some of these concerns, like the Standard Vacuum Oil Company and the Caltex (India) Ltd., are making large profits, it seems but fair to me that an infinitesimal fraction of these profits may well be given, by way of bonus, to the workers in these Companies, without whose labour and co-operation these unusually large profits could not have been made available to these Companies."
>
> [Labour Gazette, 1942-43, p. 99 at p. 107]

On examining the statements of accounts of this Company he came to the conclusion that the employees of the Standard Vacuum Oil Company on whose threat to go on strike the proceedings were initiated, should each be granted bonus equal to one month's basic wages.

2.17. For a long time, however, the claim to bonus was not considered as a legal right but was awarded on principles of justice, equity and good conscience, with a view to keep labour contented; and this position continued till the Bombay High Court laid down in the case of the Indian Hume Pipe Co. *vs.* E. M. Nanavutty (48 Bom. L.R. 551) that payment of bonus could be demanded by the workmen as of right that is to say as a payment which should be made by the employer as extra remuneration for work done by the employees under a contract express or implied.

2.18. The first bonus case which came up to the Industrial Court, Bombay, pertained to the year 1946. There were disputes about standardization of wages, bonus, etc. between the Rashtriya Mill Mazdoor Sangh and the Millowners' Association, Bombay, all of which were referred to the arbitration of the Industrial Court by the Government of Bombay under Section 49-A of the Bombay Industrial Disputes Act. In that case the Court observed as follows:—

> "The Millowners' Association's contention that bonus is an *ex-gratia* payment is true from the standpoint of civil law which can only enforce the terms of a contract between the parties but in the domain of industrial relations between employers and workers the rights and duties of the parties are not governed merely by a civil law but by collective bargaining in the settlement of disputes arising out of demands made by one on another for more earnings, better conditions of work and increased production. The justification for such demands as "industrial matter" arises especially when wages fall short of the living wage standard and the industry makes huge profits part of which are due to the contribution which the workers make in increasing production. The demand for a bonus is therefore an industrial claim when either or both these conditions are satisfied. In the present case there is no doubt that both these conditions are satisfied.".
>
> [1946-47 Industrial Court Reporter, p. 386 at p. 390]

It also observed:—

> "It is to be remembered that "adequate wages and dearness allowance", if any, for increased cost of living are a first charge on the industry, but the workers may reasonably ask for a bonus when there are enhanced profits, when dividends are paid out after providing for taxation and depreciation—especially when their wages are below the living wage standard.".
>
> [1946-47 Industrial Court Reporter, p. 386 at p. 391]

2.19. Soon after the attainment of Independence in August, 1947, the Government of India convened an Industries Conference in which representatives of the Provincial Governments, leading industrialists and labour leaders participated. The conference was called to consider the steady deterioration of the economic situation, particularly the fall in most spheres of production and to devise measures for improvement. The conference arrived at a general agreement which was embodied in what is known as the Industrial Truce Resolution. We reproduce below the first part of the Resolution:—

> "This Conference considers that the increase in industrial production which is so vital to the economy of the country cannot be achieved without fullest co-operation between labour and management and stable and friendly relations between them.....The system of remuneration to capital as well as labour must be so devised that while in the interests of the consumers and that primary producers excessive profits should be prevented by suitable measures of taxation and otherwise, both will share the product of their common effort after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking."

2.20. The Government of India agreed with the views expressed at the Conference. Its Resolution dated 6th April 1948 on Industrial Policy provided for constituting a Central Advisory Council the main function of which was to advise Government on the principles to be followed for determination of—

(a) fair wages to labour;

(b) fair return on capital employed in the industry;

(c) reasonable reserves for maintenance and expansion of the undertaking; and

(d) labour's share of the surplus profits, calculated on a sliding scale normally varying with production after provision has been made for (b) and (c) above.

As the subjects under (b), (c) and (d) were of such complex nature as to require preliminary study by experts, the Government appointed a Committee on Profit Sharing in May 1948. The Committee consisted of 14 members including representatives of employers, employees and of Government.

2.21. The Profit Sharing Committee was of the view that it was impossible to devise a system in which labour's share of profits could be determined on a sliding scale varying with production. It is worth while quoting here the observations of the Committee, as they still hold good generally in regard to proposals to link profit bonus with production.

> "For one thing, profits made by Industry depend on many factors besides labour, and to that extent, do not bear any measurable relation to what labour does or does not do. An undertaking in which labour has performed its full part might fail to make any profits because of other reasons while large profits might be made in spite of irregularities or slackness of labour. Conditions of production vary from industry to industry and from undertaking to undertaking within each industry. The productivity of labour is dependent, among other things, on the nature of the equipment and the efficiency of organisation and supervision. Then, again, the measurement of total production in terms of a common unit is a very difficult task. Even the final products of an industry or undertaking are not always uniform and easily measurable. To prescribe a norm of annual production is even more difficult. Further the basic conditions in any one year may be quite different from the conditions on which the norm has been determined. The production equipment might have increased or diminished or improved or deteriorated in the meantime. The size and composition of the labour force might similarly have changed. There may be involuntary interruptions for which no one is responsible. To compare actual production in any given year with the norm would, therefore, be extremely unscientific and unsatisfactory. To compare total production in any industry with the normal total production of that industry would be an even more unsatisfactory basis, as the number of working units in the industry might itself vary from year to year."

The Committee was of the view that giving labour a share in the profits of industry apart from wage, would create psychological conditions favourable to the restoration and maintenance of industrial peace. It recommended that profit sharing should be tried out in the first instance for a period of 5 years in the following well-established industries:—

(a) Cotton textile.

(b) Jute.

(c) Steel (main producers).

(d) Cement.

(e) Manufacture of tyres.

(f) Manufacture of cigarettes.

The Committee observed that, ex-hypothesi, profit sharing could only be unitwise but profit sharing on industry-*cum*-locality basis should be tried out in the textile industry in Bombay, Ahmedabad and Sholapur.

2.22. The Committee recognised that putting back profits into industry is one of the most useful forms of capital investment and this should be encouraged and it recommended that a figure of 20% for reserves should be generally aimed at, though it considered that as a first charge 10% of the net profits should be compulsorily set aside for reserves, leaving it to the good sense of the management to allocate the balance or more out of their own share of surplus profits. Having regard to the conditions prevailing in the industries selected for an experiment in profit-sharing the Committee was of the view that labour's share should be 50% of the surplus profits after allowance for depreciation, reserves and fair return on capital employed.

Evolution of the Full Bench Formula of the Labour Appellate Tribunal

2.23. In the dispute for bonus for 1948 in the textile industry in Bombay, which was referred to a Full Bench of the Industrial Court, Bombay, the Court awarded bonus equivalent to 4½ months' basic wages (or 3/8ths of the annual basic earnings) after adopting the following formula for allowing "prior charges" mentioned below:—

	Rs.
Gross Profits	20.36 crores.
Less Depreciation	1.30 ,,
Balance	19.06 ,,
Less bonus to workmen	4.32 ,,
Balance	14.74 ,,
Less bonus to clerks and other staff	0.45 ,,
Balance	14.29 ,,
Less taxes at 7½ annas in the rupee	6.70 ,,
Balance	7.59 ,,
Less reserves	2.95 ,,
Balance	4.64 ,,
Less dividend	2.25 ,,
Balance	2.39 ,,

[1949 I.C.R. Supplement, p.178]

The Court observed:—

> "Labour as well as the working capital employed in the industry both contribute to the profit made and both are, therefore, entitled to claim a legitimate return out of the profit, and such legitimate return, so far as labour is concerned, must be based on the living wage standard. It is, however, to be remembered that a claim to bonus might be admissible even if the living wage standard were completely attained. It may, therefore, be stated that so long as the living wage standard has not been attained the bonus partakes primarily of the character of the satisfaction, often partial and temporary of the deficiency in the legitimate income of the average worker in an industry, and that once such income has been attained it would also partake of the character of profit sharing. Owing to this dual character of bonus it would be a mistake to regard a demand for bonus as a demand for profit-sharing pure and simple."
>
> [1949 I.C.R. Sup., p. 173]

2.24. In the dispute about bonus for 1949 the Industrial Court awarded bonus equivalent to 1/6th of the basic earnings to employees in the cotton textile industry in

Bombay on the same principles as were enunciated in the previous award referred to above, providing for the following prior charges:—

	Rs.	
Gross profits	9.96	crores
Less depreciation	1.88	,,
Balance	8.08	,,
Less bonus to workmen equal to 1/6th of the basic earnings during the year	1.86	,,
Balance	6.22	,,
Less bonus to clerks and other staff as above	0.30	,,
Balance	5.92	,,
Less taxes at 6½ annas in the rupee	2.40	,,
Balance	3.52	,,
Less reserves (4.15 minus 1.88)	2.27	,,
Balance	1.25	,,

[1950 I.C.R., p. 1173]

The Court observed that the balance was sufficient to provide for dividend on the paid-up capital of Rs. 20.9 crores.

2.25. While deciding the disputes for 1948-49, the Industrial Court excluded loss making mills from the liability to pay bonus. In the award for bonus for 1949, the Court observed:—

> "It may well be expedient from the point of view of industrial peace and progress to determine the quantum of bonus industrywise in a given locality; but in the absence of any legislative provision entailing upon us the obligation to direct even those mills that have not made profits but have suffered losses instead to pay bonus alike with those that have made profits, we do not think we would be adjudicating equitably in relation to the former if we direct them to pay bonus."
>
> [1950 I.C.R., p. 1164 at p. 1174]

2.26. Before this decision the Industrial Court had awarded bonus at a uniform rate for all the mills irrespective of the fact that the mills had made different profits and that some mills had made losses.

2.27. Similarly in a dispute for bonus for 1949 in the Ahmedabad textile industry the Industrial Court awarded bonus equivalent to 1/6th of the annual basic earnings in respect of 53 mills making profits; 10 loss making mills were excluded from the direction to pay the bonus (1951 I.C.R., p. 811).

2.28. Against the award in regard to the Bombay textile mills relating to bonus for the year 1949, the parties went in appeal to the Labour Appellate Tribunal (Appeals Nos. 1 and 5 of 1950). The Labour Appellate Tribunal while confirming the decision laid down the following propositions on the question of determination of bonus:—

(1) As both Capital and Labour 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.

(2) Where industry has the capacity to pay, or has been so established that its capacity to pay may be counted upon continuously, payment of living wage is desirable; but where the industry has not the capacity or its capacity varies or is expected to vary from year to year, so that the industry cannot afford to pay a "living wage", bonus must be looked upon as temporary satisfaction, wholly or in part, of the needs of the employee.

(3) Where the goal of living wage has been attained, bonus like profit sharing would represent more the cash incentive to greater efficiency and production.

(4) Essentially, the quantum of bonus must depend upon the relative prosperity of the concern during the year under review, and the prosperity is best reflected in the amount of residuary surplus of profits.

(5) The first charge on gross profits should be the amount of money that would be necessary for rehabilitation, replacement and modernisation of the machinery. As depreciation allowance by 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.

(6) The next charge on gross profits is a fair return on capital (normally 6%).

(7) Reserves employed as working capital are also entitled to a return. The Labour Appellate Tribunal observed:

"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 .....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 that extent the employment of reserves as working capital would be beneficial to the employees.

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 the reserves employed as working capital which is 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 Tariff Board in its Report on the Cotton Yarn and Cloth Prices in Bombay (1948)."

[1952 L. A. C., pp. 444-446]

(8) As regards the distribution of the surplus after the aforesaid deductions, the Tribunal observed that the needs of the employees, the claims of the shareholders and the requirement of the industry had to be considered. It further observed:—

"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 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 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."

2.29. The Labour Appellate Tribunal, in upholding the quantum of bonus awarded by the Industrial Court, made a computation as follows—

	Rs.	
Gross profits	9·96	crores
Depreciation	1·88	,,
	8·08	,,
Taxes*	2·40	,,
	5.68	,,
Reserves for rehabilitation etc. (3·19 less 1·88)	1·31	,,
	4·37	,,
Return of 6 per cent. on paid up capital	1.30	,,
	3·07	,,
Return on reserves employed as working capital	0·46	,,
	2·61	,,
Bonus to clerks and other staff	0·30	,,
	2·31	,,
Bonus to employees	1·86	,,
Balance	0.45	,,

[1952 L. A. C., p. 450]

*The tax calculated was after deducting bonus.

2.30. This formula came to be known as the "Full Bench Formula" of the Labour Appellate Tribunal, although the origin of the formula is to be traced to the decisions of the Bombay Industrial Court, referred to above. The formula of the Labour Appellate Tribunal was followed in deciding the bonus disputes by all Tribunals throughout the country. Whenever the working of the formula disclosed an amount of "available surplus", labour was awarded a reasonable share in this amount by way of bonus for the year. The formula was generally approved by the Supreme Court in the case of the Associated Cement Companies Ltd. (1959 L.L.J. Vol. I, p. 644) and in the case of the Muir Mills Company Ltd., (1960 L.L.J. Vol. II, p. 586).

2.31. It may be noted that in the Full Bench formula of the Labour Appellate Tribunal the return on reserves was given at 2%. In subsequent decisions the usual return on reserves used as working capital was given at 4%. It has also to be noted that in the Full Bench decision a very large proportion of the surplus was allocated to labour (Rs. 2.16 crores) as compared to the balance left with the Company (Rs. 45 lacs). The trend in subsequent decisions of the Labour Appellate Tribunal was not to award such a large proportion of the surplus to labour. In the case of the Jawahar Mills Ltd. and others *vs.* Their workmen (1960 A.I.R. S.C. 1323) the Supreme Court observed that while no inflexible rule could be laid down as regards the distribution of the available surplus, a workable rule, where the available surplus was not considerable, would very often be that where no other evidence as regards the relevant factors is available, the distribution should be such as to leave to the employer and the industry, on the one hand, and the workmen on the other, approximately equal benefits.

2.32. Mention might be made here of the principles laid down by the Labour Appellate Tribunal in the case of Burmah Shell and other Oil Companies (1953 L.L.J. Vol. II, p. 246 at p. 251) that excessive bonus was not to be awarded. The Tribunal observed,

> "There is no dispute that the concerns before us have a large 'available surplus', and may be the 'available surplus' is so large that it could bear the grant of a very heavy bonus. The question naturally arises as to whether in such circumstances a tribunal is in any way fettered as to the quantum of bonus which it may award in an exceedingly prosperous concen.....Bonus must therefore have some relation to wages; it is intended to supplement wages and not to double or multiply it, for wages are not fixed solely on the capacity of a concern to pay. Care must also be taken to see that the bonus which is given is not so excessive that it creates fresh problems in the vicinity, that it upsets emoluments all round or that it creates industrial discontent and the possible emergence of a privileged class. Furthermore we must not be unmindful of the impact of an unduly high bonus on the community as a whole. As has been observed by the Royal Commission on Labour it is obviously possible to raise the standards of living of sections of industrial workers by methods which would involve the diminution of the national income that is available for other sections of the community; and taking note of this the Report of the Committee on Fair Wages observes that in adopting measures for the betterment of industrial workers the interests of the community as a whole should not be overlooked."

2.33. In the case of the Associated Cement Companies Ltd., Bombay and others *vs.* workmen respectively employed under them (1957 I.C.R., p. 586), the Tribunal (the late Shri S. H. Naik) considered the question to what extent the charges for rehabilitation, replacement and modernisation should come out of the profits and observed that where the requirements of rehabilitation are so large as to be out of tune with the profits, it would be open to an Adjudicator to revise the formula so as to allow only a reasonable provision to be made out of the profits and to leave the industry concerned to tap other resources to make up the balance. This decision was challenged by the employers in the Supreme Court on the ground that the entire claim for rehabilitation should have been allowed. On the other hand, the employees contended that employers were becoming increasingly rehabilitation conscious, that though in this case the concern had made large profits, it had made such a tall claim for rehabilitation that if the claim was allowed the working of the formula would leave no available surplus from which bonus could be given to labour. The Supreme Court rejected the plea for revision of the formula, observing:

> "If the legislature feels that the claims for social and economic justice made by labour should be redefined on a clearer basis, it can step in and legislate in that behalf."

and went on to say,

> "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 would have to be heard and their pleas 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."
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> [1959 L.L.J. Vol. I p. 644 at pp. 661-662.]

2.34. In the case of the Ahmedabad Miscellaneous Industrial Workers' Union *vs.* Ahmedabad Electricity Co. Ltd. (1961 L.L. J. Vol. II p. 377) a plea was made to the Supreme Court to alter the formula in regard to depreciation in its application to electricity companies and to allow depreciation according to Schedule VII to the Electricity (Supply) Act. Here, too the Supreme Court expressed its unwillingness to disturb the Full Bench formula, observing:—

> ".....it appears to us that this is not the time to disturb that decision which has now been followed throughout the country for the last six years, for the whole question of bonus is under reference to a high powered commission which will go into the matter afresh and will necessarily consider the question of the revision of the Full Bench formula. As this court pointed out in the Associated Cement Companies case (1959 I. L.L. J. 644) (supra) the problem raised by the question of the revision of the Full Bench formula is of such a character that it could only be considered by a high powered commission. That is now being done and it seems to us in the circumstances that we should not disturb the decision arrived at by the Appellate Tribunal in the Uttar Pradesh Electric Supply Company case (1955 L.L. J. Vol. II p. 431) (supra) on this question."

2.35. At the second and third meetings of the 18th Session of the Standing Labour Committee (Government of India), held at New Delhi in March and April 1960, it was agreed that a Commission should be appointed to go into the question of bonus and evolve suitable norms. The terms of reference were finalised towards the end of the year 1961 and have been reproduced in Chapter I.

Bonus Pacts

2.36. From time to time there have been pacts between individual companies and Unions, providing for bonus at a certain rate over a course of 3 to 5 years. There have also been pacts on an industrywise scale between the Associations of employers and trade unions. Of this latter class of pacts special mention may be made of the 5-year bonus pact between the Ahmedabad Millowners' Association and the Textile Labour Association for the years 1953-57, (*vide* Appendix 'D') and the 5-year bonus pact in Bombay between the Bombay Millowners' Association and the Rashtriya Mill Mazdoor Sangh for the years 1952-56. These pacts provided for a minimum bonus equal to 15 days' basic wages and a maximum equal to three months' basic wages in every mill, with a provision for (a) carrying forward to the succeeding year or years by way of 'set off', of the minimum bonus in a year when there was loss or no adequate profit after providing for prior charges to give minimum bonus to the succeeding year or years, and (b) for carrying forward, by way of 'set-on' to the succeeding year or years when there was a surplus after meeting the prior charges and payment of maximum bonus, to the succeeding year or years. Similar pacts were adopted by the textile industry in other centres, for example by the Madhya Bharat Millowners' Association and the Indore Mill Mazdoor Sangh, by the Modi Spinning & Weaving Mills, Modinagar, and the Union there, by the cotton mills at Surendranagar, Sidhpur, Kolal, Viramgaon, Nadiad, Petlad (all in the present State of Gujerat). Similar pacts with minor variations were also adopted by the Silk Industry in Bombay (for a period of three years), by the plantation industry in Madras whereby the employers agreed to pay a certain bonus "regardless of profits or losses". It must be conceded that these pacts not only promoted industrial peace but saved the time and expenses of the parties in conducting prolonged adjudications of bonus disputes before Tribunals and higher courts. Unfortunately, however, the bonus pacts both in Bombay and Ahmedabad were not renewed after they expired in 1957. There were long drawn out negotiations between the parties on the question of renewal of the pacts, and both in Ahmedabad and Bombay the negotiations broke down. The bonus dispute in the Ahmedabad mills for the year 1958 resulted in protracted litigation before the Industrial Court and in the Supreme Court, and the bonus dispute in the

Bombay mills also resulted in protracted litigation. In Ahmedabad, however, the Mill-owners' Association and the Textile Labour Association signed, as an interim measure, pending the recommendations of the Bonus Commission, a four-year bonus pact for the years 1959, 1960, 1961 and 1962 providing for bonus on the basis, roughly, of the average bonus paid in the previous 5 years. In Bombay the bonus dispute for the year 1959 was settled only in 1962 after the intervention of the Chief Minister of Maharashtra. At his suggestion an *ad hoc* settlement of bonus was made for the years 1959, 1960 and 1961. These *ad hoc* and improvised arrangements show the difficulty felt by the parties in coming to an agreement even on bonus for the interim period, on the basis of the Full Bench formula of the Labour Appellate Tribunal.

2.37. Mention might also be made here of the bonus formula adopted by some individual companies in agreements with the Unions concerned, under which modes of determining bonus were provided, quite different from the Labour Appellate Tribunal formula, which latter they found unsatisfactory. The Tata Iron & Steel Company had a five year agreement with the Tata Workers' Union for the 5 years ending 31st March 1957. The agreement provided for bonus being computed at 30% of the annual net profits. The net profits were to be computed after making the following deductions: (a) all taxes payable (b) depreciation at 3% of the gross block (c) losses if any carried forward from the previous year (d) a sum equal to the fixed dividends on preference shares and 5% tax free on other issued share capital (including premium received by the Company on issues of capital made at a premium). Any adjustments resulting from subsequent calculations of taxes by Income Tax authorities had to be made by credits or debits to subsequent years' accounts and dealt with in accordance with the bonus distribution for such year. The agreement was not renewed after its expiry and since then bonus has been determined by *ad hoc* agreements with the Union.

2.38. The Management of the Delhi Cloth Mills and Swatantra Bharat Mills entered into agreement with the Unions concerned providing for bonus for the 4 years ending 31st June 1962. The bonus provided was 31% of the gross profits computed as follows:—

> "Net profits as per audited accounts of the two mills after deducting bonus paid for the previous year, Managing Agents' Commission and other items of expenditure for the current year, adding back amount of depreciation provision made in the accounts".

2.39. Under the profit sharing bonus scheme for the employees of the Indian Iron & Steel Co. Ltd., for the four years 1959-60 to 1962-63, brought into effect by agreement with the Union concerned, the bonus provided is equivalent to 25% of the money distributed to equity shareholders or a certain specified sum whichever is greater, subject to a certain maximum. The bonus works out to 80 to 85 days basic wages for 1961-62 and 85 to 90 day's basic wages for 1962-63. There is a clause in the agreement that in the event of reorganisation of capital, the Company reserves the right to revise the scale of the agreed profit sharing bonus. Similarly, in the event of any fundamental change affecting the intention and spirit of the settlement the Union reserves the right to represent accordingly. It has to be noted that only those employees who have been in continuous service throughout the financial year during which the profits have been earned are eligible.

CHAPTER III

PROPOSALS OF SOME EMPLOYERS' ASSOCIATIONS TO ABOLISH BONUS AS LONG TERM OBJECTIVE—EXPERIENCE OF PROFIT-SHARING SYSTEMS IN OTHER COUNTRIES—THE CONCEPT OF BONUS IN INDIA—DIVERGENT VIEWS OF EMPLOYERS' ASSOCIATIONS AND UNIONS—VIEWS OF THE COMMISSION

3.1. Some Employers' Associations have suggested that since bonus based on profits is a system peculiar to India, and has been a constant source of industrial unrest, it should be abolished or, at any rate, the Commission should keep in view the long term objective of abolishing it. We quote here some of the views expressed.

The Council of Indian Employers representing the Employers' Federation of India and the All India Organisation of Industrial Employers has, in the memorandum submitted to the Commission, stated:

> "It is a wellknown fact that no single issue has been so much responsible for industrial strife as the demand for bonus which has become a hardy annual. The Bonus Commission must tackle this fundamental issue, and it has accordingly been charged by its terms of reference to define the concept of bonus. The Commission, in our opinion, need not rest there. It should consider whether bonus, as defined by it, is an appropriate method of remuneration and, if not, what other system should take its place.....If it is admitted, as it ought to be, that there can be no appreciable increase in emoluments without a corresponding increase in productivity, we have to concern ourselves with measures and incentives that will increase productivity. Now, it cannot be argued that payment of bonus based on profits will realise this objective. Payment of such bonus has in most cases failed to improve industrial relations. On the contrary, it has become a source of industrial strife, and—stimulated interunion rivalry in an endeavour to claim more membership by perpetually flogging and exploiting the issue of bonus quantum. Without any prejudice on our part, it is fair to say that Bonus, by and large, has failed to serve any useful purpose. The aim should, therefore, be to replace it wherever possible by a system of bonus related to productivity/efficiency in a period of two years but not exceeding five years."

The Engineering Association of India has, in its reply to the questionnaire, stated:

> "The system of payment of bonus based on profits is a unique practice obtaining only in India, as in no other country of the world such an institution has been found to exist."

The Bengal Chamber of Commerce has stated:

> "Although the principles for payment of bonus have been laid down by various industrial tribunals, the Labour Appellate Tribunal and the Supreme Court of India, the interpretation and application of these principles give rise to doubts and difficulties and lead to constant friction between management and labour. It is therefore urged that the Commission should seriously consider whether the present system of profit bonus should be replaced by progressive wage structures introduced by industrial tribunals, wage boards and collective agreements or some other method of remunerating workers on the basis of productivity, attendance, etc., which will not only provide a genuine incentive to further efficiency but would also be conducive to the industrial progress of the country."

3.2. The terms of reference to this Commission appear to imply that the payment of bonus to workmen in industry must be regarded as an established system which has come to stay; and that bonus can therefore no longer be a matter of question or argument and that only the principles of its computation, its quantum and the limits, the method of its payment, and such other matters alone are referred to the Commission. Nevertheless, we propose to examine the question of principle raised by the employers, for if the system of profit bonus is really undesirable or detrimental to the public interest, and if the Commission were of the opinion that the abolition of bonus as a long term objective should be kept in view, it should not hesitate to state its views to that effect.

3.3. The concept of profit-sharing is an old one. In countries like the United States of America there has been a steady increase in the number of concerns adopting profit-sharing schemes, though their number is still small in relation to the total number

of businesses and industrial concerns in that country. In these cases, the formula of profit-sharing is—determined beforehand, in some cases by the company unilaterally, in others by agreement between the companies and the unions concerned. In this respect the system differs from the system in India, where the determination of bonus is a justiciable issue to be determined on the basis of the year's profit and loss account.

3.4. In 1889 an International Conference defined profit-sharing as applying to "those cases in which an employer agrees with his employees that they shall receive, in partial remuneration of their labour, and in addition to their wages, a share fixed beforehand, in the profits realised by the undertaking to which the profit-sharing scheme relates." According to this definition, systems of payment by results, or bonuses given voluntarily as a gift are not profit-sharing. Some employers in Western countries are enthusiastic advocates of profit-sharing. A number of them are members of organisations which have profit-sharing as their main objective; in Britain, the Industrial Co-partnership Association which has existed for over 75 years; in France, the U.C.E.A.C.T. (Employers' Association for Capital Labour Co-operation); in Holland, the Central Social Werkgevers-Verbond; in Austria, the Bund Fuer SozialeWirtschaft; and inWestern Germany, the A.G.P. (Association for the Promotion of Co-partnership within Industries).

3.5. As regards profit-sharing in Japan, the following extract from an article published in the issue of the Industrial Co-partnership Association of October, 1960 at page 16 gives some interesting information:—

> "The paying of substantial bonuses to employees at mid-year and year-end has become a standard Japanese practice, which, in effect, is a form of profit-sharing. This year, bonuses reached record levels. Prosperous companies paid employees bonuses equivalent to between three and six months' salary. Even Govt. workers—traditionally paid limited bonus—received 1·5 months' salary. (Financial Times quoted in Co-partnership, Oct., 1960 I.C.A. p. 16)*

3.6. In the United States of America there are two types of profit-sharing plans. One is known as the "current distribution" plan, under which a portion of the profits is paid to the employees in cash, usually in proportion to their earnings. Under the other type of plan, known as the "deferred distribution" or "deferred profit-sharing" plan, a portion of the profits is credited to the employees' accounts, but the actual distribution is deferred well into the future, at retrenchment or retirement, or in the event of death, disability or termination of employment. There are also plans where the employee also contributes; these are called "profit-sharing and saving plans". In the "current distribution" plan the proportion of the profits to be distributed to the employees, or the formula governing the portion payable to the employees, is determined beforehand.

3.7. A survey of experiences in profit-sharing was made in the United States of America by a Committee under the authority of a Resolution of the Senate and its report was published in 1939. The Committee observed that "the economic life of America is beset by a series of extremely complex problems, of which a fair and equitable distribution of the fruits of industry is one. It would be unreasonable to assume that profit-sharing could either be standardised or solve all of the problems confronting industry. That it is a very real step in the right direction is indicated by the reports of companies employing a successful plan as contrasted with the experience of business concerns, having no profit-sharing plans, which have been afflicted by recurring labour disorders".

3.8. In the report of the survey by the Staff to the Sub-Committee of the Committee on Finance of the U.S. Senate, appended to the report of the Sub-Committee of the Senate, we find the following views which are thought provoking:

> "The cause of practically all conflicts between capital and labour has been the "wage system". It always has been and always will be the cause of contention between employer and employee until we create a system whereby profits are equitably divided among those who produce them, thereby providing a differential which will eliminate a wage scale as the sole basis of worker compensation. So long as wages are the only link connecting the interests of employer and employee, just so long will conflict continue. Allowing the relationship to rest upon wages or hourly wage rates is likely to perpetuate the conflict—an issue never settled—a succession of concessions, truces, temporary peace pacts, but always dissatisfaction, unrest, and continued "collective bargaining".

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*A reference was made to the Consulate General in Japan at Bombay about the percentage of concerns having profit-sharing schemes. The reply received was that the information is not available, but that the extract quoted above is quite correct. The reply goes on to say: "There are instances of firms in Japan having paid their employees bonuses equal to ten months' salaries in the year".

3.9. At the end of 1955 there were about 9,379 "deferred profit-sharing" plans actually operating in the United States of America. The total at the end of 1961 had risen to 29,000, the rate of growth being steady but not spectacular.

Year	Plans approved	Terminations	Cumulative total (minus terminations)
1956	2,055	110	11,324
1957	2,885	171	14,038
1958	3,062	179	16,921
1959	3,396	200	20,117
1960	4,936	256	24,797
1961	4,450	360	29,247(*)

3.10. In addition, there were in operation about 10,000 plans of the "current distribution" variety for which the approval of the U. S. Inland Revenue is not required. It might be mentioned, however, that the number of businesses and concerns in which there are profit sharing schemes in operation in the United States is still very small in relation to the total number of businesses and industrial concerns in that country.

3.11. We may now refer to the conception of profit-sharing in England and to the progress of profit-sharing schemes in that country. Mention may be made of the views of the eminent economist, the late Professor Pigou, who said in a lecture in 1921: "Among the policies for bettering the fortunes of manual wage earners, which may be expected to expand the aggregate heap of our national income, a high place is held by co-partnership. That system, even in its elementary form of mere profit-sharing, smooths out friction, promotes good feeling and stimulates wage earners to an interest in their work, all which things make for enhanced production".

3.12. In England, in 1956, the Ministry of Labour published the result of an inquiry into the extent of profit-sharing and co-partnership in British industry at the end of 1954. At that date there were 421 schemes embracing 3,90,000 workmen or about 2% of the working population. Generally in these schemes, after the shareholders have received a reasonable return in the shape of dividends, and after making proper allowance for depreciation and reserves, the workers are given an additional payment out of the balance. The Ministry's inquiry showed that in 1954 the average annual bonus credited in profit-sharing schemes amounted to £ 31-6s, which represented an addition of 6% to earnings. Bonuses varied from 3% of the annual earnings in certain industries to a maximum of 16% in certain others.

3.13. In the British Parliament, on 8th December, 1955, the then Prime Minister Sir Anthony Eden was asked what proposals he had to give effect to the policy of Her Majesty's Government that profits should be more widely shared. He replied that Government welcomed the development of schemes of co-partnership and profit-sharing and was glad to see the increasing interest in them. The adoption of such schemes was essentially a matter for industry, because the Government believed that they should not be imposed from without, but adopted with the willing co-operation of all concerned. Sir Anthony also referred to profit sharing at the annual luncheon of the National Union of Manufacturers, when he appealed to British Industry, and to small firms in particular, to adopt systems of profit-sharing wherever possible. Britain's future, he said, depended on the developing of partnership in industry. By partnership he meant joint consultation, keeping employees fully informed about the affairs of the firm for which they worked, and also profit-sharing in a number of forms, "especially those which offer opportunities for employees to hold shares and so acquire a real stake in the enterprise in which they work".

3.14. We now proceed to outline very briefly the systems of profit-sharing made compulsory by legislation in some of the Latin American countries. In Chile, under the Labour Code as amended from time to time, industrial and commercial establishments showing a net profit are required to pay bonus equal to not less than 20% of the net profit. The net profit is deemed to mean the profit subject to a deduction of 8% for interest on the employers' capital plus a further 2% on the said capital for business contingencies. In Columbia every commercial undertaking with a capital of over a certain amount and

(*) The figures are taken from an article on 'Growth of Profit Sharing in the United States' in 'Co-partnership', the Journal of Industrial Co-partnership Association, July 1962.

having over 20 permanent employees is required to distribute among the employees a part of the profits in excess of a fixed rate of yield on capital. The share is in all profit in excess of 12% of the capital. The employees' share of the profits is on a graduated scale, varying from 5% of the profits when the excess profits are greater than 12% but less than 45%, to 25% of the excess when the excess profits are greater than 45%. When the workers' share in the profits under the formula falls short of the total pay-roll for the month, the employers are required to give each worker a month's wages instead of a share in the profits. Undertakings having a capital below a certain amount are required to pay a fortnight's pay. In Ecuador employees share 7% of the net profits of the undertakings in which they are employed. In Peru employees share in the profits of undertakings of a certain financial standing. The share is 30% of the net profits. The net profits are computed after deducting 10% interest on capital. In Venezuela the employees are entitled to a share in the net profit in a proportion laid down by the Federal Executive after consulting committees appointed for the purpose. The Federal Executive has to fix the maximum percentage of the share which is not to exceed 2 months' salary or wages in large-scale undertakings.

3.15. Having referred to the systems of profit-sharing in a number of industrialised countries, we now proceed to deal with the concept of bonus in India. Our terms of reference require us "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". In Chapter II we have dealt with the historical evolution of the bonus concept and of the existing bonus formula known as the Full Bench Formula of the Labour Appellate Tribunal. We shall now further consider the current conception of bonus in India and then proceed to state our views.

3.16. One of the prevailing concepts is that bonus is paid to fill the gap or shorten the gap between the actual wage and the living wage. The Indian National Trade Union Congress has stated that the so-called "profit" of a industry contains an element of unpaid wages rightly due to the workmen but not paid to them because of the uncertainty as to the financial position of the industry due to fluctuations in profits. The INTUC goes on to say:

> "It is an accepted position that the worker has got the right to a living wage and where something less than the living wage was paid, as it invariably was, and still is, in most cases, the so-called profits contain unpaid wages equal to the difference between the living wage due and the actual wages paid. Wages being an item of cost, the correct method of arriving at the profit would be after deducting from the gross realisations the entire cost including the living wage due to the workers. But if the wages at less than the living wage was paid, and only that part of the wage which was paid was deducted from the gross realisations, the unpaid part of the wages due is also contained in the profit. And when a part of that unpaid wages is paid at the end of the year, the size of that part depending upon the size of the so-called profit, labour naturally calls it a deferred wage.....Workers in India whose wages are far short of living wage look upon the annual profit bonus as part of wages so as to partially fill the gap between the existing wage and living wage. They further believe that annual profit bonus partakes the character of pure profit-sharing when they receive the share from the profits after reaching the living wage.....Where the wages are below the living wage, the claim for bonus should receive priority over all other charges. For a living wage should be treated as an item of cost."

The All India Trade Union Congress while not saying that profits arise from unpaid wages lays stress on labour being the source of all values. It says:

> "It will be seen that in our line of thinking, profits do not arise out of the thriftiness, sacrifices, risks, intelligence or efforts of the owner of capital. They are a form of surplus value originating from labour power of the worker and the price of his labour power, that is wages....The only legitimate charge that can be allowed deduction before bonus is the factor of depreciation and the remuneration of the Managing Director or Agency. After the bonus claim is met, share the surplus in any way you like."

The Hind Mazdoor Sabha has put the case for profit bonus more moderately. It has stated:

> "Whenever an industrial concern earns profits, such profits are the result of the contribution made by the workers as well as the employers toward the running of the concern. It is, therefore, considered to be fair and reasonable that a part of such profits should go to the workers also in the form of bonus."

The United Trade Union Congress supports the view that to the workmen getting less than the living wage, bonus represents additional remuneration payable as "deferred wage" so as to bridge the gap between the workmen's actual earnings and the living wage. The Bombay Labour Union, appreciating the objection that the living wage is an illusory conception, has stated that bonus should not necessarily be treated as an additional remuneration to fill the gap between the existing wages and the living wage, but it should be regarded as a share in the gains of industries, on the same basis as the share accruing to shareholders, in any industry.

3.17. Turning now to the views of employers, the concensus of opinion among them is to discard the proposition that bonus represents additional remuneration payable to workmen as deferred wage so as to bridge the gap between the workmen's actual earnings and the living wage. To cite a typical exposition of this view, the Council of Indian Employers has stated:

"Briefly stated, the reasoning of the INTUC proceeds on the following assumption:

(1) that the proper wage should be a living wage;

(2) so long as a particular industrial unit is unable to pay a living wage, the difference between the actual wages paid and the living wage must be regarded as a wage, payment of which is deferred until profits are earned;

(3) hence, as soon as profits emerge (after charging depreciation), the wages so deferred must first be paid even before taxation and in priority over all other prior charges.

"Wage is a contractual right of a workman arising from his terms of employment. It is the first charge on production, and is paid irrespective of whether profits are made or not. Bonus, on the other hand, is a contingent payment depending on certain levels of profits.....It is true that Article 43 of the Constitution lays down as a Directive Principle of State Policy that the State shall endeavour to secure a living wage for workers. It may, however, be pointed out, firstly, that such a 'living wage' has to be secured for "all workers agricultural, industrial, or otherwise" and not only for a section of workers. It is not intended that organised workers in a few profit making units should be singled out for the beneficence of a living wage. Secondly, achievement of a living wage standard should be made on a systematic basis for the working population as a whole, and not on a year-to-year basis for a few workers in some industries as is implied in the labour's demand. Thirdly, the Directive Principle does not say that the difference between the living wage and actual wage shall be bridged by means of a first charge on the available surplus.

The Council submits that much confusion exists on the question of the so-called living wage. The living wage concept is itself nebulous and is unattainable as it is not a static concept. The Supreme Court has said more than once that the living wage standard has an idealistic and expanding character. The Court has, therefore, deliberately refused to quantify the concept, although it declared, in the case of the Standard Vacuum Refining Co. of India Ltd., that even the highest average wage of Rs. 370·11 nP. per month paid by the Company to the clerical staff was much below the standard of the living wage. With due respect, it is submitted that this particular conclusion of the Supreme Court, if acted upon, would mean that, for an indefinite period, the entire profits of industry will have to be utilised to meet the demands of labour. This would lead to situation in which investors and others will receive no returns at all.

The sole purpose of running industries in the country would then be to try and earn profits for distribution to labour as deferred wage.....The present widespread system of compulsory profit-sharing has already discouraged investment. Not only does it reduce the surplus available for the distribution of dividends and so make investment less attractive to the public, but it is fundamentally unfair to investors in that it gives labour the same title to share in the profits without any corresponding risk of loss if no profits are made. If, on top of this, labour is to take away all or most of the surplus on the ground that their living wage standard must be reached first, the potential investor would be discouraged from putting money into industry. Such a trend would be most prejudicial to rapid economic development.

The INTUC theory would also deprive an industrial undertaking of the funds necessary to consolidate and improve its position. It should be realised that the long-term interests of labour are bound up with the stability and expansion of the undertaking itself. If, however, the "payment of annual bonus to labour is to have precedence over industrial rehabilitation and expansion, this stability and expansion would be in jeopardy. To impose a so-called living wage on all industrial enterprises without providing for rehabilitation or return to the investor, would, in practice, drive the weakest to the wall, as it is extremely unlikely that, after paying this living wage, even a few units, whether in the public or private sector, would be able to meet these other prior charges. If the theory propounded by the INTUC is to be accepted, it would mean that till such time as a living wage is reached the entire profit or a large portion of that profit will have to be paid over to labour, irrespective of the legitimate claim of the State by way of taxes, of the industry by way of maintenance and rehabilitation of its machinery, and of capital by way of fair return.

If it is contended that labour's share from the revenue of the business (that is, wages) is unduly low in relation to the actual contribution made by labour towards production, the proper remedy lies in the adjustment of wages according to generally accepted principles. We submit that wages paid in most organised industries represent a fair return for the work done and labour, therefore, has no claim, in principle, to a share in the profits. In any case, the fixation of wages is the function of Wage Boards. The authority of the Wage Boards should not be bypassed by twisting the concept of bonus in the manner suggested by the INTUC.

The Commission must be aware that the Government of India appointed Wage Boards to fix the wages of workers in several industries. Wage Boards are contemplated to be formed in the near future in respect of other industries as well. These Wage Boards have fixed Wages after taking into account the Report of the Committee on Fair Wages and have granted increases to workmen commensurate with the capacity of each industry to pay. In industries where wages have been so fixed, no question of a deferred wage can or should arise nor should a share in the profits be claimed by workers as a matter of right.....The INTUC theory lays undue emphasis on the right of labour presently employed in industry and minimises the equally legitimate rights of the investors, the State and the community. In a growing economy, there should be an every expanding industrial base and this expansion has to be sought in a large measure from the income generated by the industry and from savings. It will, therefore, be wrong in principle to accept the contention that all profits should be distributed as deferred wages without any consideration of the legitimate interest of the industry itself, of the investing-public who should get fair return for its capital and of the State who should get its share as taxes in the larger interests of the community."

3.18. The Indian Engineering Association, Calcutta, has stated:

"The claim of labour to share in profits has come traditionally from the claim that labour makes an important contribution towards profits. The latter claim is true to the extent that if the employees in a particular unit are enthusiastic, industrious and efficient, the business tends to be more profitable (or less unprofitable) than if the employees are slack and inefficient. It does not follow from this, however, that labour has a valid claim to a share of the profits. It may be said, for example, that if the supply of raw materials, fuel and power to a particular unit is regular and reliable, the business tends to be more profitable (or less unprofitable) than if the supply is irregular or unreliable. Yet it would be considered strange if the suppliers claimed a share of profits on this account. It is therefore necessary to examine the nature of profits and the role of labour more closely. Labour's contribution can only be in the sphere of production and productivity. Other factors which may be equally, if not more important, are the state of the market, efficient buying and stock control, production planning, work study, process improvement, sales organisation, the activities of competitors, the invention of substitutes, the supply and cost of fuel and power, taxation, import or export controls, the weather, and a host of other factors, all of which are outside the control of labour and many of which are outside the control of management as well. Any one of these factors could offset the entire efforts of labour in a particular year and involve the unit in a loss. Experience

has in fact shown that labour's enthusiasm for profit sharing is invariably shaken when losses occur. It is significant that the trade unions in more industrialised countries are generally sceptical of the long-term value to labour of profit-sharing schemes. Collective bargaining in these countries has been directed not towards securing a share of profits for labour but towards securing good wages and improving working conditions. Likewise, if the trade union movement in India is to develop on sound lines it would seem undesirable for unions to be distracted from their main task by disputes over profit sharing bonus."

The Indian Chemical Manufacturers' Association, Calcutta has stated:

"The experiment of payment of bonus to workers was introduced into the country, during the last World War. At that time, two major factors considerably weighed in favour of such an *ex-gratia* payment: (a) it was hoped that such a payment, over and above the normal wages, would enthuse workers to take a higher strain necessary for stepping up war-time production; and (b) by and large, industries were making larger profits during the period, and they could afford to give workers a part of these in the shape of an *ex-gratia* payment, without impairing to any appreciable extent, their capacity to meet other liabilities.....

"The quantum of profits in an industry is governed by various factors such as fluctuations in the cost of raw materials, market conditions influencing the sale of finished products, introduction of modern equipments and machinery, improvements in methods, processes and techniques, control of overheads etc. Especially in the case of the chemical industry, which is highly capital intensive, production essentially depends upon chemical reactions and the variety and quality of equipments provided. Processes are often continuous and automatised and there may be only a few workers in a whole plant erected at a great cost. In such a case, workers' contribution to the profits of the industry is negligible and the concept of sharing profits with them has a very weak foundation."

3.19. The Government of Mysore has pithilly given its views as follows:

"It is well known that wages in this country are not high; hence payment of bonus becomes almost a necessity wherever profits justify."

And the Government of Punjab as observed as follows:

"Bonus does not represent additional remuneration payable to workmen out of the available surplus so as to bridge the gap between the workmen's actual earnings and the living wage, for it is not additional remuneration but only a share in profits."

3.20. In our view, the concept that bonus is designed to fill the gap between the actual wage and the living wage is beset with difficulties. It is true that Article 43 of our Constitution lays down as one of the Directive Principles of State Policy that "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities....". But the aim is to secure this for *all* workers, agricultural, industrial or others. To attempt to secure this for workers in a particular industry or concern in circumstances in which it may have undesirable repercussions on other industries or concerns and on the consumer (and the workmen are also consumers) would not be within the spirit of Article 43. The gap theory would also imply that the bonus would diminish as the living wage is approached and would cease when the living wage is reached and that an industry which pays the living wage need not pay bonus. Actually the highest bonuses are paid, under Awards and agreements, to workemen in industries where the wages are high; and since bonus is ordinarily paid at a uniform rate no distinction is made between workmen drawing a low wage and those who may be drawing what may be considered, in the circumstances of a particular time and place, to be already a living wage. The gap theory also implies that if an industry or concern can afford to pay the living wage, it should do so as a wage rather than as bonus.

3.21. The concept of bonus is difficult to define in rigid terms, but it is possible to urge that once profits exceed a certain base, labour should legitimately have a share in them. In other words, we think it proper to construe the concept of bonus as sharing by the workers in the prosperity of the concern in which they are employed. This has

also the advantage that in the case of low paid workers such sharing in prosperity augments their earnings and so helps to bridge the gap between the actual wage and the need based wage. If it is not feasible to better the standard of living of all the industrial and agricultural workers as aimed at in Article 43 of the Constitution, there is nothing wrong in endeavouring to do so in respect of at least those workers whose efforts have contributed to the profits of the concern in which they have worked.

3.22. The validity of such a conception of bonus is not affected by the difficulty of determining or quantifying precisely the 'living wage' or even the 'need-based' wage at any given time and place. The need based wage, according to the norms laid down by the Fifteenth Tripartite Labour Conference is stated in the following terms:

(1) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

(2) Minimum food requirements should be calculated on the basis of a net intake of calories as recommended by Dr. Akroyd for an average Indian adult of moderate activity.

(3) Clothing requirements should be estimated at a *per capita* consumption of 18 yds. per annum which would give for the average worker's family of four, a total of 72 yards.

(4) In respect of housing, the rent corresponding to the minimum area provided under Government's Industrial Housing Scheme should be allowed for in the minimum wage.

(5) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage.

Having set forth these norms for the guidance of Wage Boards and wage fixing authorities, the Conference recognised the existence of difficulties which might be experienced in implementing these recommendations and incorporated a clause to the effect that where the minimum wage fixed for any industry went below its recommendations it would be incumbent on the authorities concerned to justify the circumstances which prevented them from adherence to the norms prescribed.

3.23. It appears to us that a properly conceived bonus system that is linked to profits also imparts a measure of desirable flexibility to the wage structure. The workers are enabled to share in the prosperity of the concern, without disturbing the underlying basic wage structure. In this connection we may refer to the brochure on Profit-sharing by Mr. P. S. Narasimhan, published by the International Labour Office, Geneva in which it is stated, at page 8:

> "Profit-sharing plans have also had a special appeal to managements which desire to avoid rigid wage scales. Granting labour a share in the profits, it is considered, enables a firm to increase the total remuneration to labour during periods of high prices and profits without burdening itself with a permanently higher wage level which would handicap it during a subsequent slump. Labour will automatically share in increased prosperity by securing a larger profit bonus and will not be forced to fight for a wage rise every time prices go up; management, on the other hand, will not have to contend with extra difficulties when prices fall and profits decline."

3.24. It would not be feasible nor desirable to require industries to incorporate existing schemes of varying bonus payments into the wage structure permanently with a view to eliminate bonus, for while profits are variable, wage rates are fixed on the industry-*cum*-region basis and not on the basis of the particular unit's ability to pay. This is not peculiar to this country.

3.25. We may now refer to the veiws of the Employers' Associations and Federations of Unions on the question whether: (a) bonus acts as an incentive to workmen to greater effort (b) whether it creates among the workmen a sense of partnership in the industry. The Federations of the Unions generally support this view.

3.26. The large majority of Employers' Associations and individual employers have replied in the negative. The Indian Engineering Association, Calcutta, has stated:

> "The general experience of members of this Association is that the payment of bonus irrespective of the amount, has not created any tangible incentive to further efficiency. An annual payment made several months after the end of the company's financial year and related to its profits cannot act as an incentive to production. Such incentives have to be given immediately after the achievement which they are rewarding.....The general experience of Association members is that the payment of bonus has failed to foster a spirit of partnership. This is shown by the general tendency to demand bonus irrespective of whether an insufficient profit or even loss has been made. On the contrary the annual bonus question has become the most frequent source of unrest in the industry."

The Southern India Millowners' Association, Coimbatore, has observed:

> "We do not subscribe to the view that annual bonus acts as an incentive to efficiency because financial incentives for improving efficiency should have a direct and immediate relation to efficiency and the incentive should become payable as soon as the efficiency is assessed. Secondly, incentives for efficiency should not be dependent upon factors unrelated to efficiency for bonus paid once a year has no direct relation to efficiency."

According to the Employers' Federation of Northern India, Kanpur:

> "The Association is of the opinion that in the present method of the payment of bonus it does not generate a sense of partnership in the labour. At present any workman who has worked for merely 30 days in a given year is entitled to bonus declared in that year. Sense of partnership can only come when a person has worked in a concern for sufficiently long period and has developed during this long period a sense of loyalty towards it."

Caltex (India) Ltd. has stated:

> "We feel that this concept (*viz.* that bonus gives labour a sense of partnership in the industry) is rather fallacious. A sense of real participation can only be generated if the party concerned has some stake in the business. Bonus is only a one-way traffic and while the workers are prepared to have a share in profits, they have never agreed to share the losses along with entrepreneur. There is no evidence so far to show that grant of bonus has either increased productivity or sense of partnership amongst the workers. In fact the right of contesting bonus granted to workers has resulted only in yearly disputes and considerable discontentment amongst the workers."

And according to Tata Engineering & Locomotive Co. Ltd.:

> "The very existence of innumerable disputes centering round bonus, should make it clear that bonus does not create any sense of partnership in the industry."

The Neyveli Lignite Corporation Ltd., a major enterprise in the public sector, is equally frank in stating:

> "The incentive value of bonus is questionable, for most workers apparently tend to regard the periodic payments of bonus based on profits as "so much gravy". This is largely because workers could not see any direct relation between their individual work and company profits. Furthermore, when profits decline, as general business conditions become worse, they resent the drop in profit sharing bonuses to which they became accustomed and it does not give any sustained interest."

A few individual employers have expressed a more favourable view, for instance, Hindustan Steel Ltd. has stated:

> "Profit-sharing bonus cannot be considered as a direct incentive for increasing efficiency. However, there might be an indirect contribution due to a contented labour force with reasonable standard of living and better morale. As a portion of increased profits goes to the employees, such a bonus might help to make the employees more cost-conscious and lead to better efficiency and reduction in costs. In this sense, the employees may be said to have greater sense of partnership in the industry."

3.27. Our view is that the profit bonus system has little direct incentive effect. Bonus is usually paid to all workmen at the same rate in terms of monthly basic wages, or in some cases in terms of consolidated wages. The efficient as also the inefficient worker gets bonus at the same rate. As was observed by the Tripartite Profit Sharing Committee 1950 which recommended experiments in Profit Sharing:

> "The efficient worker who has the misfortune to be employed in an undertaking which makes no profit must remain content with his ordinary wages; while an inefficient worker who has the good fortune to work in a profit-making concern will, nevertheless, share in the prosperity of that concern."

An annual but uncertain bonus, varying from year to year and paid long after the close of the financial year can hardly act as an incentive to greater effort. Incentives, to be effective, have to be given soon after the effort which it is sought to reward. Besides, the best incentives are those applied to results achieved by individuals or small groups of workmen; the incentive becomes weaker when applied to large groups; and when the factory is treated as a unit, the incentive is too weak to have any influence on the quantity or quality of work turned out by the individual worker. Profit bonus is in reality a very different thing from incentive bonus, for incentives to efficiency operate only under properly conceived production bonus schemes which establish a direct relationship between better productive efficiency and higher earnings.

3.28. In this connection the observations of Professor J. Henry Richardson in his book on Industrial Relations (at page 118) are pertinent:

> "The main value of profit-sharing and co-partnership is indirect, by promoting better industrial relations, and there is some evidence that firms with schemes have less labour trouble. To share in the prosperity of the undertaking gives to the workpeople a greater sense of justice, a better status, and often leads to a more co-operative attitude towards the management. It strengthens the common interests of capital and labour. Workpeople also tend to become more interested in and to have a better understanding of the economic problems of the undertaking. Profit-sharing employers have been willing to sacrifice part of profits in the hope of securing such intangible benefits as better co-operation, less suspicion of management and less resistance to changes which will increase efficiency."

3.29. To conclude, having taken into consideration the role that profit bonus has played in the past and is playing at present in the industrial system in India, we are unable in the present circumstances to support the proposal of some Employers' Associations and individual employers that we should recommend the abolition of bonus altogether. If bonus disputes have led to strife and litigation it should not be overlooked that industrial disputes on other subjects have also led, unfortunately, to industrial strife; and it cannot therefore be an argument for denouncing the bonus system which has served and is serving a useful purpose. The remedy is to evolve a satisfactory bonus scheme. The worker is habituated to this system by which he receives a lump sum payment every year. It suits the workers' pattern of consumption for spending, at least once in a year, on some articles of additional and diversified consumption and on needs which cannot be conveniently met from the monthly wage packet. In any event, we do not think it feasible or advisable to abolish this long standing system by attempting to merge bonus in wages.

3.30. In our opinion the formula for computing bonus need not, however, be perfectly logical or aim at giving mathematical justice; it would be futile to attempt to do so. It should be a formula which is not complicated, which is easy to understand and broadly just and fair to all concerned. In making our recommendations we have kept these aims in view.

CHAPTER IV

PROPOSAL OF SOME EMPLOYERS' ASSOCIATIONS TO LINK BONUS BASED ON PROFITS WITH PRODUCTIVITY/PRODUCTION CONSIDERED

4.1. In this chapter we propose to examine the specific proposal of the Indian Council of Employers and some other Associations of Employers that the existing profit bonus system should be replaced by bonus based on productivity (or production). We have referred in paragraph 2.21 above to the views of the Committee on Profit Sharing and have observed that the objections set out by this Committee to the proposal to link profit bonus to production still hold good generally. A number of Employers' Associations and individual employers have also not supported the proposal.

4.2. We give below some of the views expressed:—

The Employers' Association of Northern India :

> "In the opinion of the Association, Bonus can be linked with production in only those industries where the principal items of cost structure and the selling prices are controlled by the Government and where the goods manufactured are of a specialised nature and form the articles of necessity. In such industries a moderate profit is more or less assured every year. But in industries which work under a highly competitive economy it will not at all be advisable to link the quantum of bonus with production. Higher production does not mean profit which in a competitive economy depends on a number of factors including sufficient finances, timely purchase of raw material, skill of the management in selling the goods at remunerative rates, etc."

In a covering letter sent to us with their reply to the questionnaire it is further stated:

> "To re-emphasise one important point which we have thoroughly dealt with in our replies at relevant places, *the Association is strongly opposed to linking of bonus with productivity.* The Association is firmly of the view that profits should continue to form the chief basis for the claim of bonus and its distribution should be governed by the L.A.T. Formula which, of course, can be modified to suit the change in circumstances and in the light of the experience gained during its functioning for about the last 12 years. In the Association's opinion, it would not be advisable to link bonus with productivity as profits in a competitive economy depend on several extraneous factors which are beyond the control of the management.....The Association, therefore, is of the opinion that it would not be a wise step to do away with Profit Bonus and institute in its place some novel method of compensating workers as such a substitution would not satisfy workers and would instead aggravate the problem."

The Bombay Millowners' Association is of the same view :

> "Bonus should not be linked with production because production depends on several factors distinct from the effort of workmen such as, unhampered and adequate supply of raw materials, coal or power, continuous and smooth working of a machinery, market demands, the level of managerial efficiency, installation of new machinery etc. Moreover, when an undertaking is producing goods in several qualities, it will be difficult to measure one quality against the other. This is the position in the cotton textile industry where various sorts of cloth are woven in almost every unit in the industry.
>
> It does not appear wise to relate bonus to production because bonus which is paid once a year will not encourage labour productivity. Any scheme of payment by results can be successful only when the reward immediately follows upon the effort. Workmen are not likely to co-relate higher bonus to increased production of previous year. Moreover, the reward will be comparatively small and, therefore, unattractive to the workmen from the point of view of increasing production."

The Ahmedabad Millowners' Association has emphasised the difficulties and complexities inherent in any attempt to link the annual bonus with production :

> "The problem is full of difficulties and a complicated system will have to be introduced if the annual bonus is to be linked with production. The first difficulty will be that it will not be possible for the Employer to forecast in a previous year what would be the bulk of gross profit for the next year and the

size of the surplus that would be available from it. In absence of such data, the Employer cannot fix the rate of bonus to be paid for a unit of production in the next year. This difficulty could be surmounted by either fixing initially a lower rate of bonus for a unit in the light of past performance of the concern or to avoid altogether payment of bonus for each period and leave the actual payment at sometime after the end of the year when the figure of available surplus would be available. The main difficulty, however, will be how to determine the share of each individual employee in the total available surplus on the basis of his performance translated into units of efficiency and production particularly *e. g.* in an industry like the Cotton Textiles. This could be achieved by fixing standard of performance for each occupation in the industry or concern and then allocating points for each unit of increase in efficiency and production over the standard. These will be plus points which would be totalled up at the end of each wage period and then in turn for the whole year for each individual employee. If all the points of all the employees of the concern are aggregated at the and of the year and then a ratio is struck between the aggregate of points and the total available surplus to be distributed as bonus (excluding that part of surplus which is left in the hands of the Employer for expansion and/or higher dividend), it will be possible to work out how many points will earn one rupee as bonus. Once this ratio is arrived at, it will be easy to work out amount of bonus due for each worker on basis of the total plus points earned by him in the year. The plus points will be affected no doubt by the minus points earned by a worker in relation to his sub-standard performance at any time during the year. On the face of it, the task appears to be herculian but it is not altogether unmanageable as by application of modern methods of efficiency measurement a scheme can be evolved which would be workable."

4.3. We are not in favour of introducing any such complicated system, still less could such a system be recommended as a substitute for profit bonus.

The same view is expressed by the Southern India Millowners' Association, Coimbatore :

"In our opinion, it would be impracticable in the Cotton Textile Industry to link bonus with production because any payment made once a year can have little relation to the production of a Textile Mill."

The Bharat Chamber of Commerce, Calcutta, observes :

".....higher production does not necessarily mean better financial results. In many industries, and particularly in the case of consumer goods industries, the financial results are influenced by circumstances such as the position of market, course of trade, shift in consumer tastes and preference, change in fiscal policy and so many other factors. The Chamber therefore, considers that no profit or surplus can be computed only with reference to production for the purpose of sharing."

The Indian Paper Makers Association states :

"The Association does not consider that bonus based on profits provides any tangible incentive to efficiency. In the first place, the efficiency of workmen is only one of a number of factors contributing to profits. Other factors which may be equally if not more important are general economic and financial conditions, the state of consumer demand, the availability and cost of raw materials, fuel and power, the cost of transport, production planning, stock control, sales organisation, the activities of competitors, the introduction of substitutes or of new processes, import controls, Government taxation, excise duties, and so on. All these factors are outside the control of workmen and could easily offset their entire efforts in any year and involve the unit in a loss."

Bombay Industries Association :

"It is indeed extremely desirable that not only bonus but wages also should be linked with production. But having regard to the nature of work in diverse industries, units and even in departments it is diffiult, if not impossible to implement the proposal at the present stage of the various industries. It may be necessary to adopt new methods of production and fix norms of production on scientific basis, lay down rate of labour's share in profit earned by its efforts etc. At the present state this does not appear to be practicable."

The West Coast Industrialists' Association :

"The present economic conditions, uncertainty of continuous supply of raw materials, etc., make it difficult, if not impossible, to arrive at a good working formula of 'production bonus' in a large number of industrial undertakings."

The Madhya Pradesh Millowners' Association :

"We do not agree to the linking of bonus with the production, in view of the practical difficulties which would be in its application. Detailed principles will have to be evolved which can be conveniently applied to different units working under different circumstances and with different patterns of production. The increase in production may not be necessarily due to the increased efficiency, but may depend upon modernisation and rehabilitation of the existing plant and machinery. It would be difficult to evolve principles to determine the increased production attributable to the efforts of the workers and to the plant improvements. This would give rise to disputes which the Government seeks to avoid through the appointment of Bonus Commission. The increased production may not necessarily result into increased profits, particularly in this industry where the extraordinary factors play a great part. The industry would like to pay the bonus when there are profits. Since the increased production would be reflected in the ultimate periodical profits, the linking of bonus with the profits should prove satisfactory."

The Bombay Chamber of Commerce :

"Linking bonus to production does not appear to be feasible in the present industrial atmosphere."

The Madura-Ramnad Chamber of Commerce :

"We do not agree that bonus should be linked with production. Although normally more production should mean more profits and therefore a greater surplus for bonus purposes, still there may be occasions when owing to depression in the trade, or due to markets ceasing to exist, production may have to be cut down. Linking bonus to production therefore will not be practicable as it will be difficult to convince labour on the need to reduce production when circumstances warrant."

The Consultative Committee of Tea Producer Associations :

"The productivity factor is indirectly inherent in any bonus system based on a percentage of profits whereby a total distributable quantum for the company concerned is to be arrived at. Since this total quantum has to be divided amongst the total labour force, large or small, there will be a measure of productivity in the quantum of bonus distributable to the individual, if distribution is based on attendance and on productivity.

For bonus to be linked with production, we understand the Commission to suggest that a productivity bonus might or might not be desirable in the case of the tea industry. It is our considered opinion that such a system is not capable of application to any of the functions normally performed by the estate labour except that of plucking. Although there is no general wish that a production bonus as such should be paid for plucking and there might be some risks of careless work if this were done, it is to be noted that an incentive wage is paid throughout the North East Indian tea districts varying with the weight of leaf plucked. That amount which is earned over and above the basic wage and dearness allowance may for purposes of this study be deemed to be a productivity bonus and this practice should continue."

The Tata Engineering & Locomotive Co. Ltd. :

"Since the principle that the remuneration of labour should be related to productivity has been almost universally accepted, it has been suggested that the present system of bonus payments should be replaced by a bonus based on productivity. It is submitted that such a proposal is not feasible. A productivity bonus by its very nature is not entirely paid for by the employing unit but is at least partly earned by the increased efforts and efficiency of the workmen. To suggest that the workmen should give up their existing right to participate in the profits of the undertaking in which they are employed without receiving any benefit in exchange except the opportunity partly through their own efforts to earn higher remuneration is not realistic or practical. Productivity bonuses of all kinds are highly desirable but they cannot be suggested as a

substitute for profit sharing bonus.....The suggestion has also been made that bonus should be based on output. Apart from the fact that this would require bonus to be paid even in years of loss, the proposal is not practicable for three reasons :—

(a) Except in a few industries e.g. petroleum, steel, fertilizer etc. output cannot be easily and readily measured because of the changes in products mix, variation in quality etc.

(b) Output on which bonus should be paid would have to be revised and reviewed whenever there is a change in the methods of production, major changes in capital equipment installed, technological alterations, etc.

(c) The rate of bonus would have to be determined unitwise and would lead to a great many disputes between management and labour."

Esso Standard Eastern Inc. and Esso Standard Refining Co. of India Ltd. :

"Because the industry is a capital-intensive industry, in our opinion, bonus cannot be linked with production."

The Burmah-Shell Oil Storage & Distributing Co. and the Burmah-Shell Refineries :

"In our view a "profit-bonus" should not be linked to production. In any case, in so far as the Petroleum Industry is concerned, there is hardly any scope for realistic "payment by results" schemes. To give an example, neither the input nor the output in any of the processing operations in a Refinery is decided by the employees directly engaged on operative work."

The Imperial Chemical Industries (Private) Ltd :

"In our opinion it is not right to link bonus with production. Increased production may or may not result from increased efforts.

We believe that in the present context of economic situation in this country, there is the urgent need to raise productivity. In order to achieve this in addition to profit sharing, suitable incentive schemes must be provided which both Management and workmen would regard as equitable."

The Andhra Pradesh Mining Corporation Ltd., a Unit in the public sector :

".....final profits can never depend upon labour contribution alone, and as such the sliding scale depending on production is impracticable and the conclusion therefore seems inescapable that labour share of the surplus profits can only be determined in an arbitrary way. When once the total share of labour in surplus profits is ascertained, distribution of the share among individual workers should be in proportion to their total earnings, in any given previous period. Such a method would link in some measure indivisible effort to individual reward. It would encourage more attendance. More attendance normally means more production."

Mr. E. A. Walker, Managing Director, Manganese Ore India Ltd., has stated :

"As most of the workmen employed by the Company are piece rated workers, it can be contended that the existing bonus scheme is linked with production as increased attendance results in increased production."

As any mining industry is governed by rigid mining regulations these limit the scope for the introduction of any incentive bonus scheme in that workmen may be inclined to ignore regulations in their effort to obtain a greater bonus. For this reason alone a bonus directly linked with production and or profits would not be desirable."

Shri B. C. Mukherji, the Managing Director of the Fertilizer Corporation of India Ltd., has in his reply to the questionnaire stated :—

"I do not think that it would be logical to link profit sharing bonus witn production, for profits and production are not necessarily interdependent. There can conceivably be large profits despite relative inefficiency and low production; *per contra* there may be no profits at all despite maximum efficiency and full production upto rated capacity. Profit-sharing bonus should not thus be confused with a reward for efficiency and good output. There is of course a case for the latter but it has no relationship with profits or a profit-sharing bonus. The payment of a profitsharing bonus may act, at least in some measure,

as an incentive to workmen's efficiency, particularly if it varies from year to year depending on a concern's net financial results; and it may also give them some sense of partnership in the industry in which they are engaged. I would, however, regard these as incidental gains, and not as basic reasons for the grant of a profit-sharing bonus. To the extent that the payment of a profit-sharing bonus accelerates efficiency and thereby increases the surplus available for distribution, the consequence is welcome; but it would be confusing to lose sight of the fact that the one and only reason for granting a profit-sharing bonus is that there is a profit and workers engaged in the concerned industry can legitimately expect a fair share of it."

The Commonwealth Trust Ltd., a Sterling Company dealing in tiles in Kerala, has stated :

"We hold the view that in the long run linking bonus with production will be ruinous to the concern, as once the production bonus is fixed, workers do not give allowance for improvement in the methods and means of production and would insist on the continuance of the original production bonus even in cases where the increase in the production is almost entirely resulting from improvements in the methods and means of production than the efforts of the workers."

4.4. We may now refer to the views of the Unions. The Unions are also opposed to the proposal. We quote the view of Indian National Trade Union Congress as typical of the views of the Unions. The Indian National Trade Union Congress has stated that linking bonus to production cannot substitute the annual bonus. It goes on to say :

"If the annual bonus is made to depend upon the total production, taking some earlier year as the base year, it would mean that for every increase in production over the base year's production, there should be an increase in bonus even though any increase in production need not always mean increase in profits, much less corresponding increase in profits. It may be more. It may be less. We are aware that in spite of the workers putting in their best efforts and increasing production, they may not get a square deal by way of bonus since profits, which are the results of various other factors operating simultaneously, may not be proportionately higher. For these reasons we would not like annual bonus to be linked with production. Any incentive for increasing productivity can be provided by a well-planned scheme of production allowance and/or piece-rate wages given to the workers on the basis of their individual performance."

4.5. Mention must be made here of the agreements made between Indian Aluminium Co. Ltd. and the Unions representing the workmen in its factories. In some of the bonus agreements we find the following clause:—

"The payment of bonus on Company's earnings or profits is not considered a sound or satisfactory principle by either party in this concern. It is felt by both the parties that relating bonus to production which is directly linked up with workers' efforts is a better and more satisfactory principle. In consideration of the above, it is agreed that bonus will not be related to Company's profits or earnings but will only be related to and paid on plant efficiency and output."

The figures supplied by the Company show that the bonus paid amounted to 47% of the wage bill of the workmen in 1960 and 50% in 1961. It is evident, therefore, that in this Company the production bonus is high, and it appears to have successfully displaced the annual profit bonus. But this is an isolated case and we would not be justified in giving undue importance to the principle enunciated in the clause quoted above.

4.6. In view of the objections to the proposal by large sections of employers as well as by almost all the Unions, and the practical difficulties inherent in any such proposal, we are unable to recommend that the concept of bonus based on profits should be replaced by an annual bonus linked with production or productivity. It is doubtless true that properly devised incentive systems in manufacturing concerns form a useful part of the wage structure and would help to increase production; but they cannot be suggested as a substitute to replace the annual profit sharing bonus. Where in particular Companies, as in the case of Indian Aluminium Co. Ltd., the employer and the Union have adopted or, in future, opt for such a scheme in substitution of bonus based on profits, it would be a different matter; and our recommendations would then have no application to such cases.

CHAPTER V

SOME FORMULAE PROPOSED BY UNIONS CONSIDERED

5.1. Our terms of reference require us, *Inter alia*, to recommend principles for the computation of bonus and to determine what should be the "prior charges" in different circumstances and how they should be calculated.

5.2. The Indian National Trade Union Congress has stated that any formula that may be recommended by the Commission for the computation of bonus should be simple, readily understood and easily applied. It has proposed that the net profit *i. e.* the balance of gross profit after providing for wear and tear depreciation and reasonable (notional) remuneration to the managing agent and directors, but before providing for taxation, should be taken as the basis and an appropriate percentage of such net profits should be distributed as bonus among the workmen. It must be observed that the "wear and tear" depreciation as proposed by the Indian National Trade Union Congress is not the same as depreciation computed according to the Income Tax Act, but on a different basis altogether; and that the formula proposed involves determination of "reasonable remuneration to managing agents and directors". The formula, assuming for argument that it is sound, would not be easy to apply. It would require determination of remuneration to managing agents or directors on a scale different from the remuneration permitted under the Indian Companies Act and under the Articles of Association of the Company or the Resolution of the Company, as the case may be. There would be disputes about calculations of the special type of depreciation proposed. The difficulties felt in determining "notional normal depreciation" under the present bonus formula and the litigation which has not infrequently attended it, are a sufficient deterrent to recommending any new type of depreciation, not recognised either by the Income Tax Act or the Companies Act.

5.3. The remuneration of the Managing Agents and Directors is regulated by the relevant provisions of the Companies Act, 1956. They have to be within the limits laid down by the Act; and authorities like Industrial Tribunals or arbitrators cannot interfere with what the law has permitted and what the shareholders of the Company have considered proper, often with the approval of the Central Government.

5.4 In the questionnaire sent out by the Commission, the following was one of the questions :—

> "Q.12: Please give your opinion on each of the following formulae :—
>
> (a) From the gross profits before tax after allowing managing agency commission, deduct depreciation allowed under the Income-tax Act (without taking into account development rebate), and from the balance a certain percentage to be allocated as bonus (subject to a maximum), the percentage to be determined for each industry after taking into consideration whether the industry is capital-intensive or labour-intensive, the proportion of the bonus amount to the total profits in the past, and other relevant factors. Also please state what should be the percentage to be allocated as bonus in the industry in regard to which your reply relates, and when and under what circumstances should the percentage once fixed be altered."
>
> (b) , (c), (d) and (e) not reproduced here.

We deal below with the replies received to the above question. They have a bearing on the formula proposed by the Indian National Trade Union Congress and some other Federations of workers.

5.5. The Indian National Trade Union Congress supports the formula suggested in the question with the modifications referred to earlier, and states that the percentage once fixed should ordinarily be subject to review, only once in 5 years. The All-India Trade Union Congress has, in its reply, proposed the following alternative formula:—

(a) bonus to the extent of 10% of the gross annual earnings should have first priority against the gross profits; (b) after this the normal depreciation should be allowed; (c) from the balance, additional bonus equal to a further 10% thereof should be allowed; (d) thereafter should come the provision for taxation; (e) this should be followed by a further bonus equal to 10% of the balance; (f) thereafter, there should be allowed 6% return on paid-up capital and 2% on working capital; and (g) the balance should be shared equally between workers by way of a further bonus and industry.

5.6. The Hind Mazdoor Sabha supports the formula suggested in the question with the modification that the Managing Agency Commission should not be deducted, and that no distinction should be made in fixing the percentage of bonus : between capital-intensive and labour-intensive industries and that there should be no ceiling on bonus. The United Trade Union Congress supports the formula proposed in the question with the modification that only reasonable managerial expenses should be deducted. The All India Bank Employees' Federation supports the formula proposed by the Indian National Trade Union Congress.

5.7. As regards the reaction of the employers, we give below typical views of the Employers' Associations and individual employers on the above question :—

The Indian Merchants' Chamber, Bombay, have stated :—

"The above method provides a simplified basis for determining the quantum of bonus and while doing away with the intricate calculations narrows down to the minimum the scope of difference between the employers and the employees on the content and interpretation of the items usually taken into account in deciding upon the amount of Bonus.

The main crux of the problem is the fixation of a particular percentage for each Industry. The corelation between bonus amount paid in the past and the total profits as worked out on the above basis may provide useful guidance for determining the rate of percentage for determining the amount of Bonus.

My Committee do not however commend the above method for the following reasons:—

(a) The corelation between bonus amount and total profits over past years may reveal wide disparity between different units in the same industry.

(b) The corelation so established lacks the scientific approach: Bonus may have been paid in the past on extraneous, a priori consideration and cannot therefore provide conclusive guidance of fruitful value.

(c) The capital employed for units of identical capacity may be different and to apply a uniform percentage for determining bonus does not take account of the said disparity in the quantum of Employed Capital. The composition of capital represented by proportions of owned capital and borrowings may further vitiate the treatment.

As pointed out earlier, the method has the advantage of providing a simple criterion, short of involved calculations and sophisticated reasonings and the Commission may analyse data called from the different units to ascertain if an acceptable norm could be worked out in the light of the said analysis."

The Southern India Millowners' Association, Coimbatore, has stated:—

"This formula is inadequate because it oversimplifies the method of arriving at the available surplus. We consider it essential to make all necessary adjustments to Accounts Profits *before* arriving at the Distributable Surplus. We also consider it dangerous not to make these adjustments and leave these matters for decision when the proportions in which the surplus is to be divided are being considered. If the balance is arrived at in the manner suggested in the question, we do not consider it possible to arrive at any equitable fixed percentage of the balance to be paid as bonus which would be universally applicable even to any one industry."

The Southern India Millowners' Association,

The Employers' Federation of Southern India has stated:—

"The method suggested in the question has the danger of the percentage for bonus being fixed arbitrarily and without taking into account the rights of the other parties.

Further more, this system would still necessitate a separate examination of each unit to establish the equitable percentage because a single rate for each industry is wholly impracticable, as we have already emphasised in reply to earlier questions."

The Shivrajpur Syndicate Ltd., has stated that the formula is quite unacceptable as it over-simplifies the problem and ignores the great differences with regard to the capital structure, etc. in different units within the same industry.

The Imperial Tobacco Co. of India Ltd. has offered the following criticism on the proposed formula:—

"(1) The formula makes no provision for a return on capital or reserves used as working capital or for rehabilitation, etc.

(2) The calculation of the "percentage" (bonus) is complicated by too many factors, such as—

(a) whether the industry is capital or labour intensive,

(b) the proportion of bonus to profits in the past,

(c) the type of industry concerned,

(d) the circumstances under which the percentage should be varied."

5.8. Having considered the various views on this matter we are unable to recommend that bonus should be determined at a certain percentage of the gross profit after deducting only depreciation, for the following reasons:—

(1) It is not possible to work out a percentage satisfactorily for each industry. The proportion between bonus paid in the past and the gross profits (after depreciation) in the relevant years may reveal wide disparity between various units even in the same industry.

(2) The formula would also necessitate a separate examination of each unit, as a single rate for the whole industry would be impracticable; a percentage acceptable to labour would be quite unacceptable to the Companies in the Industry and *vice versa*.

(3) The calculation of the percentage is complicated by too many variable factors such as the type of industry, whether the industry is capital-intensive or labour-intensive, the proportion of bonus paid by different units to the profits made by them in the past etc. The capital employed for units of identical capacity may be different; and to apply a uniform percentage for determining bonus would not take account of disparities in the quantum of employed capital and the composition of the capital *i.e.* the proportion of owned capital and borrowings.

(4) The formula gives the highest priority to bonus without regard to the claims of capital for even a minimum return or to the needs of the industry.

Our colleague, Shri S. A. Dange, does not agree with our assessment of the formulae suggested by trade unions. However, he does not want to press his views at this stage in view of the common understanding on the formula arrived at by the Commission.

5.9. We appreciate that it may be feasible for particular concerns to enter into long term agreements with the unions concerned on the basis of percentage of bonus to the profits after deducting depreciation and after taking into consideration the proportion of bonus paid in the past years, the prospects of the concern and other relevant factors; but the Commission cannot recommend any such formula for general application as it is quite impracticable to determine bonus as a certain percentage of the profits applicable to all units in the different industries.

CHAPTER VI

PRINCIPLES OF BONUS—WHETHER BONUS SHOULD BE UNITWISE, INDUSTRYWISE OR INDUSTRY-CUM-REGIONWISE

6.1. Our terms of reference require us to determine the conditions under which bonus payments should be made unitwise, industrywise or industry-cum-regionwise.

6.2. The Indian National Trade Union Congress has proposed that bonus should generally be determined industrywise. It goes on to say that in an industry in any region where the conditions of work and rates of wages are standardised, and the prices of raw materials and finished goods more or less regulated, the various units in the industry should show more or less the same results, with minor variations, and in such cases the industry-cum-regionwise basis is the only reasonable basis for bonus, for if some units show loss or very different results there must be something wrong with the management and the workers should not suffer. In brief, it is urged that in deciding the quantum of bonus the performance of the industry in the region, and not that of any particular unit, should be the only basis. The Indian National Trade Union Congress goes on to say that in certain types of industries and services the industry-cum-regionwise basis may not be suitable, and in such cases bonus would have to be determined unitwise.

6.3. The All India Trade Union Congress has urged that bonus should generally be determined on industry-cum-regionwise basis and distribution should be equal in all units. The Hind Mazdoor Sabha says that wherever possible bonus should be industry-cum-regionwise, and that where wages and prices of products are standardised and the products more or less similar, the industry-cum-regionwise basis is feasible. It adds that though these conditions may be satisfied in certain industries like mining and sugar, industry-cum-regionwise determination would not be possible in them. The United Trade Union Congress is in favour of industry-cum-regionwise bonus, depending on the general profit conditions of the industry; only where this is not feasible it should be unitwise.

6.4. The conception of industrywise, or industry-cum-regionwise basis is understood in a two-fold sense. One is that of determination of bonus at a uniform rate for the whole industry in the region, such bonus to be paid by each unit from its own resources. The other conception is that while bonus should be determined at a uniform rate, it should be paid from out of a pool of the contribution derived from only the profit-making units, each contributing according to the profits made; and the bonus pool is to be distributed on an equal basis to workers of loss-making as well as profit making units, including those making inadequate profits. In respect of the second conception the Indian National Trade Union Congress has the following proposal:—

> "Apart from the Bonus Equalisation Fund which would be on the unit basis, we have also a suggestion to make for a fund, which is more or less of the same character, but on the industry basis, *i.e.* the pooling of the amount available for payment of bonus on industry-cum-region basis at a uniform rate among employees in the industry in the region. We are aware that there may be technical and legal difficulties in the creation of such a pool out of which equal bonus can be paid to the workers in an industry in the same area. But the existence of technical and legal difficulties should not stand in the way of introducing progressive reforms which will not only help the workers to be content but contribute to healthy industrial relations. It will also help the industry with a certain force of internal correction *i.e.* the units which may not be properly managed will have the advantage of being corrected and put on its legs by the progressive section in the industry and this will be a welcome feature. Considering the advantage of such a pool for both the workers and the industry, it will be useful to recommend a suitable legislation to overcome any technical and legal difficulties in the way."

6.5. We may now refer to the views of the Employers' Associations and some individual employers on the subject. It is to be noted that some of the replies refer to the one conception of industry-wise bonus, and some to the other.

The Bengal Chamber of Commerce & Industry:—

> "Bonus based on profits or productivity should be determined on the company-wise basis, although the general principles for assessing the quantum of profits or production norms, as the case may be, may be evolved on an industry-wise basis taking into consideration the special features of the industry."

The Employers' Federation of Southern India:—

"As in our opinion the present conception of bonus should represent a share in profits partly attributable to the efforts of the workmen, the determination of bonus should necessarily be unit-wise. If bonus is to be determined on an industry-wise or industry-*cum*-region-wise basis there is bound to be dissatisfaction when workmen in profitable units find that they are subsidising bonus payments to workmen in unprofitable units. Experience shows that units in any industry do not make uniform profits or losses. Further, trading conditions in modern production line units differ so greatly from those in units operating jobbing shops that no comparison can be valid. If it is desired to develop in workmen a sense of participation in the enterprise which employs them they must necessarily accept the burdens with the benefits, and although workmen may not be asked to make good the loss which an enterprise may suffer they should be prepared to forego bonus if the results of the enterprise's trading do not show a distributable surplus."

The Consultative Committee of Tea Producers Association:—

"Bonus should be paid company-wise, provision for separate treatment being made where the company operates in different geographical areas. In cases other than Companies, bonus should be paid in respect of estates in the same ownership."

The Madhya Pradesh Millowners' Association:—

"The bonus should be determined only unit-wise as we have stated above, in defining the concept of bonus. It should be not determined industry-wise or industry-*cum*-region-wise. As is well-known the different units of this Industry spread all over the country do not manufacture the same type of cloth or yarn. Some are composite mills having spinning, weaving and also processing departments, while at the other extreme there are some mills having only spinning sections. Even the composite mills manufacture different types of cloth, such as Coarse, Medium, Higher Medium, Fine and Superfine etc. Further the different mills do not have similar processing sections."

The Federation of Gujarat Mills & Industries:—

"The bonus which is to be paid out of surplus profits should relate to the individual units which has earned those profits. If by industry-wise, it is meant that the profits of all the units are pooled together and bonus at a uniform rate is paid to all the workers in a particular industry in a region, it would amount to units which have not made profits having paid bonus from the profits made by other units. This, however, would result in injustice to workers who have contributed to the earning of larger profits by their units. Further, equalised burden of bonus on industry would assume a character of a standardised charge which ultimately would increase the cost of production and the selling prices of the commodity would be inflated to that extent In a normal competitive conditions, the quantum of profit does not control the selling prices but the supply and demand forces determine the selling prices to the consumer. This industry-wise bonus quantum payable to workers would be a reactionary step and would amount to a general rise in wage level of employees in that particular industry without any reference to the profitability or productivity of a particular unit. We feel that the quantum of bonus should be determined unit-wise only."

The Indian Paper Mills Association:—

"The Committee are of the considered opinion that in the case of the paper industry where all the units are not on the same footing and where selling prices of paper and board are fixed by reference to Tariff Commission but the manufacturing costs differ from unit to unit, the determination of payment of bonus should certainly be on unit-wise basis."

The Bombay Exchange Banks' Association:—

".....There could be no question of profit bonus being determined other than unit-wise, as there could be no question of an employer paying a profit bonus based not upon his own profits but upon the profits of other concerns in the industry and/or region as the case may be".

The Employers' Association of Northern India:—

> "The principles should be enunciated on Industry-*cum*-region-wise basis but the quantum of bonus should be determined on the availability of 'available surplus' in a particular unit."

6.6. Having set out some of the representative views of the Employers' Associations and Unions we proceed to state our own views. We shall first deal with the bonus-pooling proposal. In Bombay some years ago there was a proposal for pooling of bonus in the cotton textile industry, but it was not pursued. There is a system of pooling bonus to a limited extent in the Tea Industry in North East India, but it is by agreement. We are not in favour of such schemes being introduced by legislation. Most employers are strongly opposed to any such pooling arrangement. Typical of their views is that of Shri Lalchand Hirachand, President of the Maharashtra Chamber of Commerce who stated to us at the hearing at Bombay:—

> "The conception of pooling bonus is completely wrong. It my factory has made more profit my workmen should be benefited, not some one else's workmen."

6.7. We think there is force also in the objection that a bonus pooling system puts a premium on inefficiency by requiring the profits of an employer who has made profits to be distributed to workmen of loss making units. This may not also be welcome to the workmen of the profit making units. If one of the aims of a profit bonus system is to create in the workers a sense of belonging to the concern, to have a stake in the industry and its continued prosperity, this cannot be achieved if bonus is unconnected with and disassociated from the profit made by the concern, and is payable, in case of loss, from the profits of other concerns.

6.8. It is true that in the Tea Industry in North East India there are industry-wise agreements involving a limited amount of pooling, in which bonus is payable on the bais of a certain percentage of the profits. There is also a minimum bonus in those cases where there is a loss or only a small profit. In the tea estates in West Bengal, Assam and Tripura the bonus payable according to the agreements produced before us, by a unit which has made a loss or inadequate profits is Rs. 10·00 to a male worker who has worked for not less than 240 days in a year, and to a female worker who has worked for not less than 175 days in a year. The bonus is proportionately less for those who have worked for a lesser number of days and for minors. In the case of the clerical and medical staff the minimum is Rs. 25·00 for those who have worked for not less than 8 months in a year, with proportionately lesser sums for lesser periods. The bonuses paid by units which have made loss or inadequate profits are treated as advances and recoverable from subsequent bonuses, or if the subsequent profits are also inadequate, from the bonus pool. It seems to us doubtful, however, whether a bonus scheme on those lines acceptable to employers and workmen could be worked out for other industries.

6.9. We proceed now to examine the conception of industry-wise or industry-*cum*-region-wise bonus, which does not involve any pooling of bonus, or subsidising of loss making units or of those making inadequate profits, from out of the profits of the prosperous units. In the plantations in South India bonus is paid at a certain percentage of the annual earnings and this arrangement appears to have worked satisfactorily. But even in respect of this system the Government of Madras has stated as follows:—

> ".....in practice, in industries such as plantations where workers look upon themselves as belonging to one unit it has been found necessary to have industry-wise arrangements which, while limiting the bonus payable in the prosperous units to the standard bonus, step up the bonus payable in poorer estates also likewise to the standard. But eventually unitwise basis would come to be adopted as the workers in prosperous units begin to insist on their full rights."

6.10. At the hearing before us at Madras Shri Ramanujam on behalf of the Indian National Trade Union Congress submitted that bonus should be paid at a uniform industrywise rate in the Cotton Textile Industry in South India. In support of the proposal he argued that the textile mills in Coimbatore had standardised wages and workloads; their products were sold in the same markets; the raw materials, power, fuel, etc. were obtained under the same conditions. But despite these basic uniformities the trading results of different units showed great variance and he expressed the view that the difference was due to the quality of the management. He submitted that as labour was not responsible for differences in the quality of management, bonus should be paid at a uniform rate to workers in all the cotton textile mills in the area. In reply to this argument the Southern India Millowners' Association, Coimbatore, pointed out instances in which the mills

run by the same management with no difference in the type of products showed different results and this could not, therefore, be attributed to the difference in the quality of the management. Differences in the results were mainly due to market demand or customer's preference for the type of products produced over which the management had no control. Mills geared to one type of products could not suddenly switch on to different types to meet sudden market changes. The Association goes on to say:—

> "Indeed, if the contention put forward by Shri G. Ramanujam on behalf of the INTUC that in the same area in the same industry workers ought not to be penalised for the losses made by certain Managements is carried to its logical conclusion, it would follow that workers should have no claim for a share of the profits made by certain Managements in any area in which other Managements have made a loss. Workers cannot disclaim responsibility for losses and take full credit for profits. In our view, in the running of any industry, there are many factors over which neither Management nor Labour have any control. For example, forward trading is a recognised and accepted business practice which is applicable to the purchase of raw materials and also to the sale of finished goods. In this process, Mills in the same area might make varying profits and some Mills might even suffer losses in the same year even though all of them are manufacturing the same type of goods. These variations are due to market fluctuations over which industry has no control. The effect of such factors on the trading results of the industry will have to be shared by the Management and Labour. It is precisely for this reason that we submitted before the Commission that bonus should come out of the trading profits of the year and that it should be determined unitwise."

6.11. It may be noted that the argument that differences in profits are due to differences in the quality of the management also involves the assumption that all the units have identical types of machinery. In the cotton textile industry there are some units which are modernised, particularly those which have been started more recently, while others have not done so to any appreciable extent. The cost of production and the profit-making capacity of these different types of units would therefore vary, even if it were assumed that they produced identical specifications of goods, which is not generally the case.

6.12. Having given consideration to the matter we are of opinion that ordinarily the computation and payment of bonus should be unitwise in accordance with the formula recommened by us in the succeeding Chapters. We are unable to recommend a formula for a uniform rate of bonus for all Industries generally, or for the Cotton Textile Industry in Southern India or for the Plantations. Where industrywise arrangements already exist the parties are at liberty to renew the agreements, with such modifications, if any, as may be agreed to by them. If the Employers' and Employees' Associations can agree to make or continue industrywise arrangements on a basis acceptable to them, the formula proposed by us in our recommendations in the succeeding Chapters will not apply. The formula proposed by us would also not apply during the currency of any industrywise or unitwise agreements, except where such agreements stipulate that the formula recommended by the Bonus Commission should apply in modification or substitution of existing arrangements.

CHAPTER VII

PRINCIPLES OF BONUS (CONTINUED)—WHETHER BONUS SHOULD BE SUBJECT TO A MINIMUM AND MAXIMUM—WHETHER PROFIT OF THE PARTICULAR YEAR SHOULD BE TAKEN AS THE BASIS, OR THE AVERAGE OF TWO OR THREE YEARS.

7.1. The Indian National Trade Union Congress has proposed that there should be a minimum bonus equivalent to one month's total pay and a maximum equivalent to six months' total pay "depending on the level of wages respectively", that the minimum should not be adjustable against subsequent year's claims, that if, however, there is to be adjustment such adjustment should be limited to a period of five years. The All-India Trade Union Congress has proposed that the minimum bonus should be equivalent to 10% of the total annual earnings and that there should be no maximum. The Hind Mazdoor Sabha suggests a minimum equivalent to one-twelfth of the total annual earnings and no maximum. The United Trade Union Congress is in favour of a minimum equivalent to a month's total wages as bonus and a maximum equivalent to six months' total wages. It further states that there should be no adjustment of minimum in subsequent years, but in case of maximum the extra profit should be adjusted against the subsequent year's profit. Among the Unions which have filed a reply to the questionnaire the Bombay Labour Union is the only Union that recognises that bonus may not be payable in certain circumstances. It has stated :—

> "In any case it is clear that if the unit concerned is at a loss, there will be normally no case for bonus unless there is an industry-wise conception of payment of bonus."

7.2. The Employers' Associations are, generally, against any minimum bonus, and in favour of a maximum bonus. The Bengal Chamber of Commerce & Industry has stated :

> "The suggestion that bonus payable in a particular year should be subject to a maximum of 25% of the annual basic pay has been made for the following reasons :—
>
> (1) to minimise the inflationary effect of a large bonus payment.
>
> (2) to avoid creating a privileged class in an area or in a particular unit of an industry.
>
> (3) to avoid discontent among workers which a highly fluctuating rate of bonus depending on profits, might create."

The Federation of Gujarat Mills & Industries has stated :

> "There should be a maximum bonus of three months and a minimum of 15 days (even in the case of loss) of the basic wages with a provision of set-off of the minimum bonus in the succeeding year only. In the case of consolidated wages a deduction should be made on account of Dearness Allowance on the basis of the D. A. rate prevailing in the simliar industry and/or in the region."

At the hearing at Bombay the representatives of this Association stated before us:

> "15 days' basic wage is a "must" and even loss making concerns pay that much to keep up the morale of the workmen."

7.3. The Bombay Millowners' Association has stated that bonus should be payable only out of profits; however as workers in the industry have been accustomed to a minimum bonus equivalent to 15 days' basic wages, and a maximum equivalent to 3 months' basic wages, the Association is willing to consider continuing this system together with its concommitant of set-off and set-on on certain conditions, one of which is that the minimum should be equivalent to not more than 5% of the year's basic wages and the maximum to not more than 25%.

7.4. The Rajasthan Textile Mills Association, Jaipur, has stated as follows :

> "If bonus will be allowed or required to be paid even when there are losses then the word 'bonus' will become a misnomer and it will in fact cease to be pure bonus. It will be a 'deferred wage' if paid irrespective of losses according to the suggestion in the question."

7.5. The Bengal Millowners' Association, Calcutta, has stated as follows :—

"Provision for payment of a minimum bonus of 15 days' basic wages, without taking into account the part of dearness allowance merged under the Cotton Wage Board's recommendations, with set-on and set-off, somewhat on the lines of the Five Year Agreements of Ahmedabad and Bombay, may be made."

7.6. The Tata Engineering & Locomotive Co. Ltd. has expressed the view that "setting of minimum and maximum limits to bonus payments can arise only if there is simultaneously a provision for carrying forward profits and losses or surpluses and deficits. Unless such provision for carry forward exists, the minimum bonus becomes a charge on the undertaking almost in the nature of a deferred wage."

7.7. Having set out some of the representative views on the question whether there should be a minimum and maximum bonus we proceed to state our views and conclusions.

7.8. First as to the maximum : There can be no doubt that bonus should be subject to a reasonable maximum. We agree in this connection with the view taken by the Labour Appellate Tribunal quoted in paragraph 2.32 above. We may also refer to the observations of Mr. Justice Mack in the dispute between Amalgamations Ltd., Madras and its workmen (Fort St. George Gazette dated 17th February 1954 at page 18) which were as follows:

"An aspect which struck me forcibly as regards a flat rate of bonus, is that under section 10(x) of the Indian Income-tax Act payment of bonus or a commission for services rendered is one of several allowances made before taxable profits or gains of a business are computed. A generous grant of a flat rate of bonus to all workers therefore is one made substantially at the cost of the Union Exchequer and is a burden, really on the consumer-taxpayer."

7.9. However, if there is a maximum so that however high the profits in a year the workers cannot be given more bonus than at a certain rate expressed in terms of wages, it stands to reason that there should be a minimum also. Labour cannot be expected to accept as reasonable a formula which provides for a ceiling on bonus without also providing for a floor. An arrangement of minimum and maximum would have the added advantage of evening out bonus payments over the years and thus avoid the obvious disadvantages of widely fluctuating bonus, with years in which there may be no bonus at all and others in which the bonus would be very large. In some industries there have been agreements providing a formula for bonus with a minimum and maximum and a set-off and set-on arrangement. If a reasonable minimum and maximum are fixed, linked with a system of set-off of deficiencies and set-on of excesses in the succeeding years, it would be a satisfactory arrangement both from the point of view of employers and labour. An exception would however have to be made in the case of new concerns upto a certain period. Our exact recommendations on what should be the minimum and maximum bonus, the precise arrangement proposed for set-off and set-on and the provisions in regard to new concerns are contained in Chapter XII.

7.10. It would be convenient to deal here with one other aspect of the existing bonus formula to which some Employers' Associations have drawn attention *viz.*, that under the existing bonus formula, the profits of the particular year for which bonus is claimed or paid are taken in isolation without taking into account any losses that may have been incurred in previous years. This has been criticised by some Employers' Associations as an undesirable feature. The Employers' Association of Northern India, Kanpur, has stated :—

"At present bonus under the L. A. T. formula is calculated on the working results of a unit for a particular year, irrespective of losses or profits in the immediate preceding years. Such a practice, in the view of the Association, is not a very healthy one, as it tends to hit both the industry and the workers. To the industry in the form of exclusion of past losses, when the quantum of bonus is determined unbridled on the profits of one year alone despite heavy losses in the preceding years. To the workers in the form of absence of any bonus in a particular year due to inadequacy of profits or losses, inspite of good profits in the preceding years. In the opinion of the Association this uncalled for anomaly in our bonus system can be removed if bonus in respect of a particular year is determined on the basis of the results of several preceding years, say 5 or 3. This would mitigate the incidence of past losses on the industry and would enable the labour to receive bonus even in a year of loss, if the profit position in the immediate 5 or 3 preceding years happens to be encouraging. Averaging of profits and losses over a number of years will prove to be more beneficial both to labour and industry for the purpose of bonus. the Association would, therefore, strongly urge the Commission to give a serious thought to this suggestion."

So also the Tata Iron & Steel Co. Ltd., has stated:

> "The present system of considering each year's accounts in isolation and independently is highly undesirable, particularly when viewed in the light of restrictions such as those imposed by the Companies Act that distribution of dividends can be made only after arrears of depreciation have been fully covered. Under the system of computing bonus as prevalent today, a company which has made losses for several years in succession but due to any reason, whether accidental or otherwise, makes a large profit in one year may be required to distribute a substantial proportion of this profit as bonus even though it may have no amount available for payment of dividends or even for clearing up arrears of depreciation. In such circumstances, when accounts of each (year) are taken independently, bonus tends to become almost a prior charge on profit. The system of considering each year's accounts in isolation leads to wide fluctuations in bonus payments. The basis of computing bonus must be simple and realistic and, at the same time, adequate weightage must be given both to the level of earnings in the unit as well as to any special benefits which the workmen in the unit enjoy."

7.11. At the hearings we inquired from a number of Employers' Associations whether they would prefer to base bonus on the cumulative average profits of two or three years, but the opinion was generally in favour of continuing the present practice of taking the profits of the particular year as the basis. The Unions were also not in favour of taking the average of two or three years as the basis. In the circumstances we think it would be best that bonus for any particular year should be related only to the profits of that year.

CHAPTER VIII

RECOMMENDATIONS ON THE FORMULA FOR BONUS COMPUTATION OF PROFIT FOR THE YEAR

8.1. In making our recommendation concerning a formula for the computation of bonus we have given careful consideration to the written and oral representations made before us by representatives of Employers' Associations and Unions. We have also carefully studied the working of the present formula, as well as existing industrywise agreements on bonus and also a number of unitwise agreements on bonus. We called for figures for 3 years relating to capital structure, profits, bonus paid, basic wages and dearness allowance, income-tax, depreciation and other relevant statistical material from representative units in the various industries, and have examined how the bonus formula recommended by us and the variations thereof considered by us before arriving at our conclusions would work out.

8.2. The first step in the formula must necessarily be the ascertainment of the gross profit of the accounting year for the purposes of the bonus formula. And in that connection we may first consider the question whether extraneous profits, *i.e.* profits unrelated to the efforts of workmen, should be excluded from the computation of profits for the purposes of bonus. Some Employers' Associations and individual employers have suggested that extraneous profits should be excluded but extraneous losses should not be ignored, while others have stated that since extraneous profits are to be deducted from the profits extraneous losses would have to be added back. In actual practice the question of extraneous profits has led to much controversy and litigation as to what should be considered as extraneous profits, whether income from investments, income from direct commission earned by companies in the case of import agency companies, income from rent of properties, profits on purchase and sale of exchange, etc. are extraneous income.

8.3. The Hind Mazdoor Sabha has submitted that profits should be computed as per the provisions of the Companies Act for calculating Managing Agency Commission. This would eliminate controversy about any profits or losses being extraneous.

8.4. The Imperial Chemical Industries (India) Private Ltd. has stated that no adjustments should be made for the so called extraneous profits or losses, but profits should be computed as per provisions of the Income-tax Act, after allowing for losses and unabsorbed depreciation which may have been carried forward, and capital gains and losses.

8.5. The Tata Engineering and Locomotive Co. Ltd. has stated :

> "While it is desirable that extraneous profits unrelated to the efforts of employees should be excluded, such extraneous profits should be strictly defined. Clearly, the income or capital gains on investments in other companies should be excluded. At the same time, we do not think that profits arising from sale of capital assets used in the business should be excluded The more numerous the exclusions the greater the scope for disputes and differences. We agree that if extraneous profits are excluded extraneous losses arising from similar causes should also be excluded."

8.6. The practice of excluding extraneous profits had its origin in a decision of the Labour Appellate Tribunal that profits unrelated to the workers' efforts should be left out of account in computing the available surplus (Shalimar Rope Works Mazdoor Union, Howrah *v.* Messrs. Shalimar Rope Works Ltd., Shalimar, Howrah—1956 L.L.J. Vol. II p. 371). But it has to be borne in mind that profit bonus is not paid according to the direct contribution of each workman to the profits. In the same company workmen working in lines of business which have made a profit and in those which have made a loss get bonus without distinction; and bonus is paid at the same rate to inefficient, workmen as well as efficient workmen. To attempt to scan too closely profits unrelated to the efforts of workmen serves little useful purpose. We are of the opinion that only the following items should be excluded from the profit computed for the purposes of the bonus formula:— (a) profit or loss from the sale of immovable property or fixed assets of a capital nature (other than those on which depreciation has been allowed) comprised in the undertaking, unless the business of the company consists, wholly or partly, of buying and selling such property or assets; (b) income, profits and losses from businesses outside India; (c) income of a non-Indian conern from investments outside India; and (d) refund of income-tax paid for previous years and any excess provision for income-tax for previous years written back to the profit and loss account.

8.7. The Southern India Millowners' Association, Coimbatore, has made the following special submission regarding the mode of computing profits followed in the present bonus formula:—

> "As the Accounting Year of various companies is not the same and as the provision for taxation at the time of closing the accounts has to be made on the basis of the Finance Act then in force, it is possible as a result of subsequent amendments to the Finance Act for the rate of Corporate Tax in respect of the year for which the accounts have already been closed to be varied and this may result in a saving or additional cost to the company. It is, therefore, necessary for adjustments to be made in the Accounting year in which such saving or additional cost occur as a result of the amendments to the Finance Act even though the saving or the additional cost may relate to a year in respect of which the accounts have been closed. Similarly companies have often to incur additional expenditure in respect of a particular year after the accounts of that year are closed as, for example, retrospective increase in wages payable under and award, bonus payable to cane ryots in the sugar industry, etc. It is just and fair that such additional expenditure relating to a previous year, though incurred in a subsequent year, should be allowed to be adjusted in the accounts of the year in which the additional expenditure is incurred."

8.8. We are of opinion that there is some force in the submissions of the Southern India Millowners' Association made above and that additional expenditure relating to a previous year such as retrospective increase in wages affected by an Award, should be allowed to be adjusted in the accounts of the year in which the additional expenditure is actually incurred. This would, however, not apply to bonus or Income-tax for any preceding year or years included in the accounts of the subsequent year for which bonus has to be calculated. These are dealt with specifically in our formula.

8.9. The subject of donations needs to be specifically considered. It has been usual in awards of Tribunals to add donations to the profit, so that the amount of donations is included in the surplus available for allocation of bonus. The employers who have referred this point in their replies to the questionnaire have urged that such items should not be added back to the profits and we think that there is some force in this. It is usual for companies and firms to make donations to charities, both to maintain the goodwill of the public and also to make a contribution through the exercise of reasonable charity towards the public welfare, which to some extent is to be expected of every prosperous concern or individual in the country. We have not heard that shareholders have objected to such reasonable donations to charities, and we do not believe that workmen are as a rule averse to it. The Income-tax Act allows donations to charities as expenditure within certain limits. Such donations have sometimes to be made to help flood relief and for other laudable objects, and a large number of companies have contributed according to their mite to the Defence Fund. It would be unreasonable to add back such amounts to the profits and consider them notionally available for bonus. But donations in excess of the amount admissible under the Income-tax Act stand on a different footing and cannot be allowed as expenditure for the purposes of the bonus formula.

8.10. We now tabulate below the manner in which, in our opinion, the gross profit of the accounting year should be computed for the purpose of the bonus formula, in the case of companies. For proprietory and partnership concerns the same mode of the computation would be applicable, *mutatis mutandis*.

COMPUTATION OF GROSS PROFITS (BEFORE DEPRECIATION AND TAXATION) FOR PURPOSES OF BONUS

Accounting Year ending.....

Item No.	Particulars	Amount of Sub-Items	Amount of Main Items	Remarks
1	2	3	4	5
		Rs.	Rs.	
1	*Net profit* as per audited Profit and Loss Account.			
2	*Add back* provision for :			
	(a) Bonus			
	(b) Depreciation			
	(c) Direct taxes, including the provisions (if any) for previous years			See footnote (1)
	(d) Development Rebate Reserve . . .			See footnote (2)
	(e) Any other Reserves			See footnote (2)
	Total of Item (2) Rs.			

1	2	3	4	5
		Rs.	Rs.	
3	*Add back* also :			
	(a) Payment of Bonus, if any, relating to previous years			See footnote (2)
	(b) Donations in excess of the amount admissible for Income tax			
	(c) Capital Expenditure and Capital Losses (other than losses on sale of capital assests on which depreciation has been allowed for Income-tax)			See footnote (2)
	(d) Losses of, or Expenditure relating to, any business situated outside India . . .			
	Total of Item (3) Rs.			
4	*Add also* Income, Profits or Gains (if any) credited directly to Reserves, *other than* :			
	(i) Capital Receipts and Capital Profits (including Profits on the sale of Capital assets on which depreciation has not been allowed for Income-tax)			
	(ii) Profits of, Receipts relating to, any business situated outside India.			
	(iii) Income of non-Indian Companies from Investment outside India.			
	Net Total of Item (4) Rs.			
5	Total of Item 1 plus 2 plus 3 plus 4. . . .		Rs.	
6	*Deduct* :			
	(a) Capital Receipts and Capital Profits (other than profits on the sale of assets on which depreciation has been allowed for Incom-tax. .			See footnote (3)
	(b) Profits of, Receipts relating to, any business situated outside India			See footnote (3)
	(c) Income of non-Indian Companies from Investments outside India			See footnote (3)
	(d) Expenditure or Losses (if any) debited directly to Reserves, *other than* :			
	(i) Capital Expenditure and Capital Losses (other than loss on sale of capital assets on which deprectation has not been allowed for Income-tax) . . .			
	(ii) Losses of any business situated outside India.			
	(e) In the case of non-Indian concerns proportionate Administrative (overhead) expenses of Head Office allocable to Indian business. .			See footnote (4)
	(f) Excess provision, if any, of previous years relating to Bonus, Depreciation, Taxation or Development Rebate if written back. . .			See footnote (3)
	Total of Item (6) Rs.			
7	Gross Profit for purposes of Bonus [Item (5) minus (6)]		Rs.	

Foot-notes :

(1) This includes Income-tax, Super-tax, Corporation Tax, Super Profits Tax and other Taxes on Income.

(2) If, and to the extent, charged to Profit and Loss account.

(3) If, and to the extent, credited to Profit and Loss account.

(4) In the proportion of Indian Gross Profit (Item 7) to Total World Gross Profit (as per consolidated Profit and Loss Account, adjusted as in Item (2) above only).

N.B.—The computation of Gross Profit for purposes of Bonus as above should bear a certificate as to its correctness by the Company's auditors.

CHAPTER IX

OUR RECOMMENDATIONS ON THE FORMULA FOR BONUS (CONTINUED)

9.1. Our terms of reference require us to determine what should be the "prior charges" in different circumstances and how they should be calculated. By prior charges is meant those deductions which should be regarded as a "charge" against the gross profits in order to ascertain whether there is an "available surplus" by reference to which the amount payable as bonus can be determined. In this Chapter we proceed to consider what should be the prior charges for the purposes of the bonus formula.

Depreciation

9.2. In our opinion depreciation should be the first prior charge on the gross profits. In fact it can be said that the real profit of the accounting year is ascertained only after deducting depreciation. As has been observed by one writer, "All machinery is on an irresistible march to the scrap heap". Depreciation is an estimated sum representing the loss incurred by wear and tear of an asset and must be written off to keep the capital intact.

Depreciation under the Income Tax Act is allowed on the "written down value" system *i.e.* at the prescribed rates of depreciation applied to the full cost of the assets in the first year and to their reducing values in subsequent years (that is to say, the value as reduced by the amount of depreciation). If this is understood as the "normal" depreciation, then under the Labour Appellate Tribunal formula it is the "notional normal" depreciation that is to be allowed as a deduction for purposes of Bonus. How the notional normal depreciation is calculated is explained in the case of Surat Electricity Company's Staff Union and Surat Electricity Co. Ltd. and others (1957, II L.L.J. 648).

Since that decision, the "initial" depreciation and "additional" depreciation allowances which were admissible under the Income Tax Act on assets installed after March 31, 1948, which necessitated the concept of "notional normal" depreciation have been abolished. The initial depreciation has been replaced by the development rebate. Meanwhile, the concept of notional "normal" depreciation in bonus computation has, in practice, led to much litigation, though, fortunately, in the case of machinery installed after the abolition of the additional depreciation allowances referred to above, the notional normal depreciation and the Income Tax normal depreciation would be the same.

We have given much thought to the question of the mode of computing depreciation and, in particular, to the alternatives suggeted *viz.* straight line depreciation, and a formula of "wear and tear" depreciation suggested by some Unions. We are not in favour of imposing a new type of depreciation and requiring employer to maintain separate books and accounts for calculating such depreciation. Even if the straight line method were now adopted for the purposes of the bonus formula, it could only be adopted in respect of new Companies; and in the case of old Companies, it could readily be adopted only in respect of plant installed after the coming into effect of our recommendations, for otherwise a portion of the depreciation which has been already written off would have to be written back after laborious calculations. The formula would also work out unevenly as between new Companies and old Companies, and as between old Companies some of whom may instal considerable new machinery and others who get on with the bulk of the old machinery. The straight line basis requires keeping a separate record of each asset and each addition to an asset, while the reducing balance method is simple of calculation and has been increasingly followed in this country.

Having given careful consideration to the matter we are in favour of allowing as prior charge only the normal depreciation admissible under the Income Tax Act (including multiple shift allowance). Though in the initial years of the life of assets, such depreciation is higher than on a straight line basis, in later years the expenditure on repairs and maintenance increases as the plant becomes older, and so the increasing charge on repairs offsets, to some extent, the diminishing charge for depreciation. Besides, in the case of existing Companies, while the Income Tax depreciation in the case of new plant will be higher in the initial period, it will be much lower on the older plant, so that the sum total of the normal depreciation admissible under the Income Tax Act, (including multiple shift depreciation) is, on the whole, a likely to be a more appropriate prior charge for the purposes of the bonus formula than depreciation calculated in any other alternative way. We recommend therefore that the normal depreciation including multiple shift allowance admissible for Income Tax should be a prior charge both for existing and new Companies.

6—3 L. & E./63.

9.3. There are, however, cases in which bonus has been determined and paid in the past after deducting from the profits the "notional normal" depreciation. In such cases if a switch over is now made to the normal depreciation admissible under the Income Tax Act the Company may not get the benefit of the entire depreciation of certain assets for the purposes of the bonus formula and a portion of the depreciation would lapse. We, therefore, recommend that in any case where bonus has been paid in the past under an Award or agreement after allowing "notional normal" depreciation from the profits, the depreciation to be deducted from the profits for the purpose of the bonus formula should, at the option of such Company, continue to be the "notional normal" depreciation.

Taxation

9.4. The next prior charge to be deducted should be the Income Tax and Super Tax. In the case of Companies these should be deducted at the current standard rate applicable for the year for which bonus is to be calculated. In the case of plantation Companies Agricultural Income Tax would also have to be deducted on the portion of income taxable as agricultural income.

9.5. We have recommended in the previous Chapter, that the present practice of determining bonus on the basis of the profits of the particular accounting year for which bonus has to be determined should be continued. Since this involves that losses or arrears of depreciation of previous years are not taken into account, it stands to reason that the concession given in income tax on account of previous years' losses or arrears of depreciation should not also be taken into account in deducting the Income Tax and Super Tax at the standard rate from the profits. This is equitable and also secures indirectly to the Company some degree of replenishment of previous losses and arrears of depreciation.

9.6. As stated above the tax should be deducted at the standard rate; but when the rate is less on account of double taxation *e. g.* investment income from shares in Companies, income from Subsidiary Companies, the tax leviable on that portion of the income would be at the lower rate applicable. In deducting tax we would, however, leave out of account rebate in Tax given by the Finance Act in respect of income from articles exported, as the saving in tax is specifically intended as an inducement to export. So also the concession given in the Income Tax Act in respect of certain new undertakings should not be taken into account.

9.7. We now come to the question of development rebate and the saving of tax on account of development rebate. Under the Income Tax Act development rebate is not part of the depreciation allowance and is granted over and above the depreciation allowances. It is a special allowance to encourage Companies to instal new machinery. In a year in which installations of machinery are very large, the inclusion of the whole of the development rebate together with the statutory depreciation, as prior charge, might wipe off or substantially reduce the available surplus, even though the working of the concern may have resulted in very good profit. Sometimes Companies while transferring the required portion of the profit to the development reserve to get the tax concession, at the same time also transfer some portion of other reserves to the appropriations account for declaring dividends. Development rebate has not been treated as a prior charge under the Labour Appellate Tribunal formula and we are also of the view that it should not be deducted as a prior charge.

It has, however, to be borne in mind that the concession in tax on development rebate is not admissible unless 75% of the amount admissible as development rebate is transferred to the development rebate reserve. This amount would not be available for distribution to the shareholders; and if distributed to shareholders within a period of 9 years the concession is withdrawn and the amount becomes liable to the tax which would have been payable if the concession on account of development rebate was not admissible at all. It seems to us that if development rebate is not allowed as a prior charge it is fair that the concession in tax on account of development rebate should not be taken into consideration in deducting Income Tax and Super Tax in the bonus formula. This means that in effect a portion of the development rebate is allowed as a prior charge, for tax on a portion of the profit on which tax is not really payable is deducted. At the current standard rate of Income Tax and Super Tax applicable to Companies, which is 50% the saving of tax on development rebate would be 50% of the amount. Therefore, in effect, the Company would get, by way of additional deduction for tax, a benefit equivalent to 50% of the development rebate as a prior charge for the purposes of the bonus formula.

*9.8. The next question for consideration under the general heading of taxation is whether the Super Profits Tax introduced by the Finance Act of 1963 should be deducted as a prior charge. We are of the opinion that in the calculations for the purposes of the bonus formula no deduction need be made on account of Super Profits Tax. Our reasons

*Subject to a Minute of Dissent by Shri Dandekar.

are these. In the first place it has to be borne in mind that bonus paid up to a reasonable amount is allowable as expenditure under the Income Tax Act. Income Tax and Super Tax are deducted in the bonus for mula to ensure a minimum return on capital and reserves after allowing for these taxes. The Super Profits Tax has been notified by Government as a tax on excess or abnormal profits, under Section 349 (4)(d) of the Companies Act. Super Profits Tax is leviable on the "Chargeable Profits" as defined in Section 2(5) of the Super Profits Tax Act, read with the First Schedule to the Act. Chargeable profits is defined to exclude a number of heads of income amounting to twelve. These include, in addition to particular items such as dividends from companies, 10% of the total income computed under the Indian Income Tax Act, as reduced by three items of which the principal one is capital gains, and this is again subject to certain provisions. The balance of the income is reduced by the amount of Income Tax and Super Tax payable by the Company under the provisions of the Income Tax Act, after excluding from such amount the tax on capital gains and certain other items. The Super Profits Tax is chargeable at certain rates on so much of the chargeable profits as exceeds the standard deduction. Standard deduction is defined as 6% of the capital, computed in a certain manner. The capital is computed according to the Second Schedule to the Super Profits Tax Act, 1963 as "the sum of the amounts, as on the first day of the previous year relevant to the assessment year, of its paid up share capital and of its reserve, if any, created under the proviso (b) to clause (vib) of sub-section (2) of section 10 of the Indian Income Tax Act, 1922 or under sub-section (3) of section 34 of the Income Tax Act, 1961, and of its other reserves in so far as the amounts credited to such other reserves have not been allowed in computing its profits for the purposes of the Indian Income Tax Act, 1922, or the Income Tax Act, 1961, diminished by the amount by which the cost to it of the assets the income from which in accordance with clause (iii) or clause (vi) or clause (viii) of Rule 1 of the First Schedule is not includible in its chargeable profits, exceeds the aggregate of—

(i) any money borrowed by it which remains outstanding, and

(ii) the amount of any fund, and surplus and any such reserve as is not to be taken into account in computing the capital under this rule.

There are certain other provisions relating to the computation of capital which need not be reproduced here. There is a provision for carrying forward a deficiency when there are no chargeable profits or the chargeable profits fall short of the standard deduction, upto a period of 3 years. If Super Profits Tax is allowed as a prior charge, since the amount paid as bonus would not be liable to Super Profits Tax, and Super Profits Tax is in effect a tax on excess profit, it would be necessary to add the saving in Super Tax on account of bonus to the amount allocated as bonus, but the addition of this would be rather difficult because the calculation of the Super Profits Tax itself is beset with complications. It is desirable not to make the bonus formula unnecessarily complicated. Another reason for not deducting the Super Profits Tax as a prior charge is that the tax would be payable only if the surplus left to the company is sufficiently large, for only the portion of income over the standard deduction is liable to tax.

9.9. In the case of Companies in which the public are not substantially interested, according to the definition given in Section 2(18) of the Income Tax Act, the additional tax payable under Section 104 is payable only in certain circumstances and if certain conditions are not complied with. In the case of such Companies, too, the deduction of tax should be only at the standard rate applicable to Companies in which the public are substantially interested.

In the case of non-resident Companies chargeable to tax at a higher rate tax should be deducted at the chargeable (higher) rate. As in such cases the available surplus would be greatly reduced by the higher rate of tax, while the saving on tax on bonus paid would be larger, we are of the opinion that in the case of such Companies the percentage of the available surplus allocated as bonus should be increased by 7% so that it should be 67% instead of 60% in the case of other Companies as recommended by us in paragraph 12.1.

9.10. In the case of Cooperative Societies income tax should be deducted from the tax profit, at the rate if any, at which the Society is liable to pay tax according to the provisions of Section 81 of the Income Tax Act, 1961 but the amount required by statute to be transferred to the reserves should be allowed as a prior charge.

9.11. In the case of partnership concerns the tax to be deduted as a prior charge should be the aggregate of the tax payable by the partners on their shares of the profits from the concern, as if it was their sole income, plus the Income Tax and Super Tax payable by the firm. In the case of proprietory concerns the tax should be deducted on the same basis, *viz.* the tax payable by the proprietor on the profit from the concern in which the workmen are employed, as if it is his only income.

CHAPTER X

RECOMMENDATIONS ON THE BONUS FORMULA (CONTINUED)—WHETHER THERE SHOULD BE PRIOR CHARGE FOR REHABILITATION

10.1. In this Chapter we propose to consider the question whether a specific provision for rehabilitation of plant, machinery and buildings is necessary as a prior charge in the bonus formula.

10.2. Under the existing bonus formula, claims by Companies and concerns in respect of rehabilitation usually drag on before Industrial Tribunal for a very long time and bonus disputes, which normally should be settled across the table by collective bargaining (and some are still so settled), result in prolonged litigation which is expensive to both the employers and the trade unions and does not make for industrial harmony and peace. We may cite a few examples. In the case of the Associated Cement Companies Ltd., the Company had paid bonus equivalent to 3 months' basic wages for the year 1953-54. The workers' claim for a larger bonus was referred by the State Government to adjudication of the Industrial Tribunal, the late Shri S. H. Naik (Reference (IT) Nos. 10 and 13 of 1956). The references were received on 6-2-1956 and 13-2-1956 and decided on 30th November 1956. The main dispute in the case turned on the quantum of allowance for rehabilitation. A witness of the Company Shri G. R. Tongaonkar was examined and his evidence and cross-examination took seven days. The Industrial Tribunal came to a certain finding about rehabilitation and awarded one month's basic wages as bonus in addition to the three months' basic wages paid by the Company. The Company obtained special leave to appeal to the Supreme Court. The Supreme Court disagreed with the finding of the Industrial Tribunal as regards the allowance for rehabilitation and held that there was no available surplus to award bonus, and set aside the Award.

The Supreme Court observed :—

> "The result is that there is no available surplus from which the respondents can claim any bonus for the relevant year. It is true that the appellant has already paid the respondents 20.65 lakhs as bonus for the relevant year, and it is likely that it may continue to do so in future; but that is a matter which is not governed by the formula."

The case was decided by the Supreme Court on 5th May 1959. Thus the dispute for bonus for the year 1953-54 which was received by the Industrial Tribunal in February 1956 was finally disposed of on 5th May 1959.

10.3. For the year 1954-55 the Company again paid 3 months' basic wages as bonus. The workmen being dissatisfied, an industrial dispute was raised and was referred to the Industrial Tribunal in Bombay (Originally referred to late Shri S. H. Naik and after his death the matter was transferred to Shri S. Taki Bilgrami—Reference (IT) No. 61 of 1956). The reference was received by the Tribunal on 14th May 1956 and the award was made on 28th July 1961, *i. e.* after more that 5 years. On the claim in respect of rehabilitation the Company filed the affidavits of three witnesses. Of these one was cross-examined by the Advocate of the Union for 17 days, another for 7 days and a third for 3 days (27 days in all). The evidence on the subject matter of rehabilitation ran into about 340 typed pages. Thereafter the case was argued by the Counsel for the parties for nearly 34 days. After this elaborate hearing the Tribunal estimated in detail the cost of rehabilitation at Rs. 288.15 lakhs and deducting notional normal depreciation of Rs. 116.65 lakhs, it worked out the requirement of rehabilitation at Rs. 171.50 lakhs. The Tribunal then came to the conclusion that after deducting this and other prior charges, *viz.* income-tax, return on paid up capital, return on working capital , etc., there was no available surplus but a deficit of Rs. 54.62 lakhs, and therefore, the demand of bonus equivalent to 7 months' wages for the year 1954-55 was rejected. The Company had already paid a bonus equivalent to 3 months' wages. This case illustrates that if the requirement of rehabilitation is to be estimated and detailed calculations made, whenever there is a bonus dispute, it takes considerable time of the Tribunal and of the parties. The case also illustrates that a company may make adequate profits to pay bonus voluntarily and yet calculations like these of rehabilitation claims may wipe out the available surplus.

10.4. In the bonus case Rashtriya Mill Mazdoor Sangh v. Millowners' Association (Reference (IC) No. 150 of 1960) in the Cotton Textile Industry in Bombay for the year 1959, the Reference was received by the Industrial Court on 18-11-1960. 48 textile mills in Bombay were concerned in this Reference. The Rashtriya Mill Mazdoor Sangh filed its statement of claim on 1-3-1961 and thereafter the parties entered into negotiations for a settlement, both because settlement in such matters was desirable, and also because of the

realisation that if the dispute had to be decided by the Court it could only be after prolonged litigation, particularly on the question of the claim of the mills for rehabilitation of plant, machinery and buildings. The negotiations failed. The mill companies filed their written statements, some in December 1961 and others in March 1962. The reference was heard on various dates between March and September 1962. The case was started with 3 of the mills leading evidence in support of their claim for rehabilitation of plant and machinery. Three affidavits of their officers were filed and the Rashtriya Mill Mazdoor Sangh cross-examined those officers. One witness was cross-examined for 11 days, and two others for 11 and 9 days respectively but the cross-examination of all of them still remained incomplete. While this case was going on the disputes regarding bonus for the years 1960 and 1961 were also referred to adjudication. Meanwhile, out-of Court talks between the parties at the instance of influential mediators continued for a long time. Ultimately, after a threatened strike in the textile mills in Bombay, the parties accepted the mediation of the Chief Minister of the Maharashtra State in preference to carrying on a Marathon contest in the Industrial Court. After hearing the parties the Chief Minister suggested that for the three years 1959, 1960 and 1961 a consolidated amount of Rs. 10.75 crores may be distributed as bonus to the workers in the 48 mills in the Cotton Textile Industry in Bombay.

10.5. In Ahmedabad the dispute for bonus for the year 1958 in regard to 16 cotton textile mills which did not pay bonus for that year is at the time of writing the report (in 1963), still pending adjudication, on account of the claim for rehabilitation.

10.6. It might be mentioned here that the question of rehabilitation was an annual and fertile source of controversy every year in disputes relating to bonus in the Bombay Textile Industry. On 3rd January 1957 the Government of Bombay, in pursuance of an agreement between the Rashtriya Mill Mazdoor Sagh and the Bombay Millowners' Association, appointed a Commission consisting of a High Court Judge and two experts; (the Millowners' Association and the Sangh nominating two each), to determine the requirements of rehabilitation of the Mills. The Commission made its report on 17th April 1959, *i.e.* two years after its appointments, in which it gave its findings on the question of rehabilitation in respect of only the machinery and plant installed prior to lst January 1947; and the report did not give any reasons for the findings. The hope that the labours of the Commission would solve for a considerable time the vexed issue of rehabilitation was belied. When the bonus dispute for 1959, referred to above came up, the Rashtriya Mill Mazdoor Sangh relied on the Report as making unnecessary any further inquiry on the question of rehabilitation while the Mill Companies urged that the rehabilitation requirement was not assessed by the Commission according to the bonus formula as approved by the Supreme Court and so a fresh inquiry on the question of the requirements of rehabilitation was necessary. The Court having accepted the plea of the Millowners, a fresh inquiry was accordingly started. After prolonged hearing the dispute regarding bonus was resolved, as stated above, on the intervention of the Chief Minister of Maharashtra. We have referred to this case to show the difficulty of attempting to assess the long term requirements of rehabilitation of an industry on a scientific basis, when in fact such inquiry must be based to a considerable extent on guess-work and on other imponderable factors.

10.7. The Trade Union Federations have unanimously opposed not only the present formula and procedure for determining rehabilitation as unreal, dilatory and tending to deprive the workers of fair bonus, but also the entire basis and validity of the claim for rehabilitation as a prior charge in addition to depreciation. The Employers' Associations, on the other hand, while insisting on the claim for rehabilitation as a prior charge in addition to depreciation, have also criticised the present formula and procedure for determining it. We quote below some of the criticisms of the Employers.

The Employers' Federation of Southern India has stated: —

> "We consider that the present method of determining the rehabilitation amount under the L.A.T. formula is unrealistic as it is impossible to predict with any degree of certainty the prices of machinery and the cost of buildings several years hence. We do not see how a rigid proportion of the surplus to be allowed for rehabilitation, replacement or modernisation, or expansion or ploughing back into the business can be fixed for several years in the future. In our opinion, it would be more realistic to determine the annual amount of rehabilitation from year to year on the basis of the increase or decrease in prices of machinery and building material over the corresponding prices in the previous year."

In the opinion of the Engineering Association of India:—

> "Any estimate with regard to future prices of plant and machinery raises a number of controversial issues and cannot but be a matter of intelligent guesswork and may not, therefore, meet the actual needs of an industrial undertaking in this respect. In the absence of price quotations about the probable

trend of prices during the intervening period or in the bonus year, it is exceedingly difficult for the employers to substantiate the claim for rehabilitation with satisfactory and adequate evidence. With a view to avoiding, controversy and complications in the computation of rehabilitation charges, the Association are of considered opinion that a certain flat percentage of either capital employed on fixed assets or gross profits may be treated as prior charges to cover the claims of the industry for rehabilitation, replacement and modernisation as well as expansion; the appropriate percentage for this purpose may be assessed on the basis of a detailed study of the problem."

The Indian Chamber of Commerce, Calcutta, has observed:—

"Any estimate of the future price of the plant and machinery cannot but be a matter of intelligent guess-work and may not, therefore, correspond with the actual needs in this respect of an industrial unit. It is most often difficult for employers to substantiate their case with evidence which may be considered satisfactory and adequate by an adjudicator or court of law.....In place of the current practice and computation of rehabilitation charges and all its complications we are inclined in favour of a flat percentage of gross profits as a prior charge to cover rehabilitation, modernisation and expansion. As to what should be the appropriate percentage for the purpose has to be assessed on the basis of detailed study of the problem in different industries."

The Federation of Hotels and Restaurant Associations of India, Delhi has stated:—

"The determination of rehabilitation charges has all along been a highly controversial subject and has led to much friction and long drawn industrial litigation. In fixing a certain percentage for rehabilitation, the risk is, that in the long run, it may turn out to be wholly inadequate, but in order to avoid all complications and have industrial peace, it is considered worthwhile to take that risk. Even now, allowance for rehabilitation when fixed, is speculative, as no one can say, if with the upward trend of prices, such allowance would ultimately be found to be adequate."

The Consultative Committee for Tea Producer Associations, Calcutta has expressed the view that:—

"A complicated procedure for the determination of rehabilitation charges based on the original cost, replacement cost, type of equipment to be used in replacement etc. etc. can only lead to dispute. If, therefore, a rehabilitation charge is to be allowed as a charge on profits this should be stated as an arbitrary percentage based on an individual study of the industry in question."

The J. K. Organisation, Eastern Zone, Calcutta has stated:—

"We agree that the present position of asking employers to prove rehabilitation charges by giving the increase in price as multiplier and by proving the life of machinery or building for the purpose of devisor, creates much difficulties and problem to the employers. Firstly the bonus claims are made every year and no supplier of machineries is prepared to give the price quotations every year. Secondly there accrues changes in design or due to technological improvement the original machinery may not be available for sale and as quotations for such old machines are not available and it becomes difficult to obtain quotations and to prove the replacement cost and to prove multiplier in such circumstances. Thirdly the original cost of the machinery and buildings is required to be proved with the help of machinery and buildings registers and these are required to be filed in original before industrial tribunal and as it takes long time for the disposal of the case by the time and the case is disposed of, there may be reference to adjudication for bonus for the subsequent year or years. If by chance an appeal is filed by any of the parties then these machinery registers are kept in deposit with the higher Court until the appeal is disposed of and it creates a big problem for the employers to prove the original cost in the absence of the original register. Fourthly there is controversy over the life of machinery and buildings and it is very difficult to give an exact scientific proof of the residual life of machinery and buildings. As such as we are of the opinion that the claim for rehabilitation should be allowed on fixed percentage basis and we suggest that rehabilitation charge should be allowed at the rate of twice the claim of notional normal depreciation for the year in question."

The Tata Iron and Steel Co. Ltd., and Tata Engineering and Locomotive Co. Ltd., have stated:—

> "The present basis of calculating rehabilitation and replacement allowances creates the impression of being scientific even though it has little basis in logic and leads to prolonged litigation and creates avoidable industrial unrest."

10.8. Messrs Caltex India Ltd., has suggested:—

> "To avoid continuous disputes it may be worthwhile that certain portion of the surplus after meeting prior charges is allowed for rehabilitation, replacement, modernisation and expansion or ploughback giving due consideration to the requirements and conditions of each industry. In any case, this should not be less than 10% of gross profits. Thereafter a certain proportion say 25% may be allowed as Bonus but in no case such Bonus should exceed 3 months' basic salary."

The Tata Oil Mills Co. Ltd., has suggested that some percentage of the surplus should be fixed for rehabilitation, and that the recommendation of the Profit Sharing Committee that 10% of the gross profits should be demarcated towards rehabilitation charges may be conveniently adopted.

10.9. The Indian Engineering Association, Calcutta, the Indian Paper Makers' Association, the Indian Tea Planters' Association, the Indian Non-Ferrous Metals Manufacturers' Association and the Indian Sugar Mills Associations have supported the proposal that rehabilitation should be fixed at certain percentage of the surplus after meeting the prior charges as this would avoid litigation. The Bengal Chamber of Commerce has also stated that "the proposal may perhaps be acceptable as rehabilitation claims lead to endless controversies and litigation". On the other hand, a number of organisations have opposed the proposal as over-simplifying the issue as it involves fixing rehabilitation charge without regard to the real requirements of the industry or concerns.

10.10. Having considered the complications created, the resulting litigation in respect of calculations of rehabilitation requirements which the employers themselves have conceded are matters of guess work, and having regard to the fact that the formula proposed by us leaves a fair surplus for the Company, we are of the view that no specific provision need be made for rehabilitation in addition to the normal depreciation in the formula*. If rehabilitation were allowed at a certain arbitrary percentage of the available surplus, it would have to be different in respect of Companies engaging in manufacturing and Companies engaged both in trading in general and also in manufacturing. In respect of non-manufacturing Companies rehabilitation would be required only for buildings owned by them, on the assumption that depreciation allowances are insufficient. Thus no satisfactory method of calculating rehabilitation requirements can be devised. Employers themselves do not compute rehabilitation requirements by any such formula as is followed in the existing Labour Appellate Tribunal formula. They normally estimate what would be required for replacing machinery needing replacement in the course of a period, usually not more than 3 to 5 years; and they provide for this, year by year, partly from their own resources so far as they permit and partly by long term loans and sometimes by increasing equity capital. We may in this connection refer to the submissions made by Shri G. D. Ambekar on behalf of the Indian National Trade Union Congress at the hearing before the Commission at Bombay:—

> "Industries have become rehabilitation conscious for the purpose of the bonus formula. The question of rehabilitation has arisen on account of the increase in the prices of machinery in the war and post-war period but in this period the profits have also been large. In many cases profits have been frittered away and machinery has not been rehabilitated in the last 15 years after the war. If machinery has not been rehabilitated in the 15 years after the war when will it ever be? It is true that there are difficulties now in obtaining machinery but it was not so in the post-war period. On the one hand machinery is not rehabilitated by Companies in spite of money being available or made available, and on the other hand claims are being made for rehabilitation as prior charge which would wipe out the entire profits. Rehabilitation is claimed also on rehabilitated machinery. In the case of new companies the depreciation allowance is sufficient for the purpose of rehabilitation. Besides the entire surplus after meeting the prior charges is not given to labour as bonus. Rehabilitation should not be given as prior charge. Pre-war industries do not require it as they should have rehabilitated their machinery in the last 15 years. New industries do not require it either. Therefore the claim is unreal. Again

*Subject to Minute of Dissent by Shri Dandekar.

to say what would be the prices of new machinery after 20 years is a leap in the dark. Why should we assume that prices will continue to rule high? Prices of machinery have gone up but the prices of old machinery have also gone up. Under the present formula scrap value (5%) is allowed.

Such old machinery is never sold as scrap. There are people who can utilise old machinery. Sometimes as much as 40% of the original price is secured on selling old machinery.....There cannot be rehabilitation for purposes of bonus. Under the Labour Appellate Tribunal formula reserves used as working capital are not considered available for rehabilitation. This is quite wrong. They are liquid assets and should be considered available for rehabilitation. Reserves and depreciation should both be considered available for rehabilitation."

10.11. We are of the opinion that computation of rehabilitation at a certain percentage of the available surplus or a certain percentage of depreciation or of the block would be arbitrary and without reference to the real requirements of the Company, the state of the machinery and buildings and the funds available with the Company for rehabilitation from out of its reserves and surplus profits. The same objection would apply to computing rehabilitation as a certain percentage of the gross profits after deducting depreciation. It has also to be borne in mind that experience has shown that on account of the substantial rise in prices of machinery during the post-war period it has not been possible for companies to meet all their rehabilitation requirements from internal resources. For this reason Government has created various agencies like the National Industries Development Corporation, the Industrial Finance Corporation and the State Finance Corporation to give long term loans to Companies at reasonable rates of interest to assist them to rehabilitate their machinery.

10.12. To summarise, we have come to the conclusion that no special provision for rehabilitation need be made as a prior charge in the bonus formula. The formula proposed by us provides for the normal (including multiple shift) depreciation allowed under the Income-Tax Act, and indirectly for half of the development rebate, by not taking into account the saving in Tax on account of development rebate. Further we are proposing a substantial portion out of the available surplus, after meeting the prior charges to be left to the Company or concern. This amount together with the tax relief on the amount payable as bonus would be available, among other things, for rehabilitation.

CHAPTER XI

RECOMMENDATIONS ON THE BONUS FORMULA (CONTINUED)

11.1. In this Chapter we propose to deal with the other charges which we recommend should be deducted as prior charges in arriving at the available surplus for purposes of bonus. After depreciation and taxation the next prior charge that we recommend is a return on capital and reserves. This is self explanatory and needs no justification. The only question for consideration is what rate of return should be allowed in the bonus formula. In the Full Bench decision of the Labour Appellate Tribunal (Millowners' Association, Bombay *v.* the Rashtriya Mill Mazdoor Sangh, Bombay—1950 L. L. J. Vol. II page 1247) the Labour Appellate Tribunal observed, at paragraph 37:—

> "Our approach 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."

At paragraph 23 of the decision the Labour Appellate Tribunal stated:—"It is common ground that the fair return on paid up capital in this case should be 6%."

11.2. The Employers' Associations have strongly pressed that the return should be at a uniform rate of 9 to 10% on "employed capital", computed as net fixed assets and current assets less current liabilities. The Unions in general are opposed to giving a higher return than 6% on paid up capital. They have further urged that there should be no return on reserves at all, or that it should in no case be more than 2%. We shall deal more specifically with the question of the appropriate return on reserves in a later paragraph

Return on Paid up Capital

11.3. On the question of return on paid up capital the Employers' Associations and many individual employers who have replied to the questionnaire have pointed out that there has been a general rise in interest rates and borrowing rates since the Labour Appellate Tribunal formula was devised in 1950. They have further pointed out that the current rate at which debentures can be successfully issued by first class companies is 7%, that on preference shares interest at 9% or at a little over has to be offered to induce investment in them, that the Industrial Finance Corporation and the State Finance Corporation which have been constituted with a view to assist industries lend to industries at $7\frac{1}{2}$%. It is further urged that since 1950 when the return of 6% on paid up capital was given by the Full Bench of the Labour Appellate Tribunal in the case of the Millowners' Association *v.* Rashitriya Mill Mazdoor Sangh referred to above there has, in addition to the all round increases in rates of interest, been a change in the system of taxation. Since the Finance Act of 1959 the system of "grossing up" of dividends, under which the shareholder got credit in his assessment for Income-tax paid by the Company on the portion of profit out of which dividend was declared, has been abolished. The shareholder has now to pay Income-tax on the dividend distributed to him without the benefit of grossing, *i.e.* without any credit for the tax paid by the Company. In considering a suitable formula for bonus, it may be conceded that regard must be had to the fact that it is advantageous to industry as well as to the workmen that there should be an investing public who should be given inducement to invest in industry; but the bonus formula cannot be expected to safeguard the investor against increase in taxation. In the conditions of the last few years, with the expenditure on the Plans and more recently under the conditions of the emergency, taxation rates have gone up so as to affect all sections of the public.

11.4. As regards the argument based on the increase in return on preference shares and debentures since 1950, it has to be borne in mind that, in general, these securities are not so easily marketable as equity shares. Beyond the fixed return preference shares have no claim to participate in the profits (save in very exceptional cases of participating preference shares). The equity shareholder looks not only to participation in the profit by higher dividends in future as the company progresses and expands but also to capital appreciation. Equity shares continue to be popular with investors and are more easily marketable than preference shares.

11.5. Our attention has been drawn to the Bank Award of the National Tribunal, Shri Justice Desai, from which it is seen that a strong plea for raising the return on paid up capital from 6%to 8·57% was made to the Tribunal on the grounds, among others,

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that what was considered a fair return on capital when the Full Bench Formula was evolved could not be considered as a fair return now, and further that there had been a change in the system of taxation in regard to Companies. The Tribunal allowed return of 6% on capital and 4½% on statutory reserves and reserves required to be maintained under the conventions established by the Reserve Bank of India, and 4%on other reserves. The Tribunal gave the following reasons for not increasing the return on paid up capital from 6½%.

> "The provision made under the Full Bench formula by way of a return on the paid-up capital is not intended to provide all that the shareholders can get by way of dividend. The shareholders can also look to the interest allowed on reserves used as working capital and on the available surplus for the satisfaction of their needs by way of dividend. In the banking industry unlike other industries reserves have to be built up compulsorily upto a certain limit and reserves are required to be provided under the convention sought to be established by the Reserve Bank of India. These reserves would be considerable and the return allowed thereon would also be available for the benefit of shareholders of banks. Having regard to the peculiar circumstances concerning the banking industry and taking all factors including the exhibits filed before me and the arguments advanced before me into account, I am of the view that generally speaking a return of six per cent. should be provided on the paid-up capital, the detriment suffered by the shareholders by reasons of the change in the policy of taxation being taken into account whilst distributing the available surplus, and I direct accordingly."

11.6. It will, therefore, be seen that a consideration which weighed with the Tribunal in not accepting the plea of the Banks for a higher return was that the reserves required to be built up by statute up to a certain limit, and reserves required to be provided under the conventions sought to be established by the Reserve Bank of India were both allowed as prior charges. Therefore. this decision does not throw light on what should be the appropriate return to be allowed on paid up capital in the case of other industries.

11.7. Having given careful consideration to the representations made before us, we are of the view that the return on paid up capital to be allowed as a prior charge in the bonus formula should be at 7%(*). There has been a sufficient change of circumstances since the Full Bench formula was devised to warrant some increase in the rate of return on paid up capital. We do not think a higher return than 7% should be allowed as a prior charge. The return which we propose on reserves would allow for additional dividend to the shareholders. The proportion of the available surplus which we propose to leave to the Company after paying bonus would also be available, among other things, for payment of higher dividend. As regards preference shares, however, it has to be borne in mind that the dividend on preference shares is a contractual liability. We are of the opinion that on preference share capital the return should be at the actual rate at which dividend is payable, and in the case of participating preference share capital the return should be at that rate of dividend payable on them when the dividend on ordinary shares is declared at 7%.

Our colleague, Shri Dange, does not think that "a sufficient change in the circumstances" since the Full Bench Formula "warrant some increase in the rate of return on paid up capital". He, however, has given his consent to raise the return to 7 per cent because of the common understanding on minimum bonus.

11.8. The next question for consideration is how the capital is to be computed for the purposes of the bonus formula in the case of foreign companies whose business in India is confined to trading and/or who have no paid up capital in India. In decided cases it has been held that the return should be on capital locked up in India, but there is no uniformity in these decisions as to how the capital locked up in India is to be computed. Three methods have been adopted: capital is computed (a) at the average of the annual wage bill, (b) at the average of the value of stock at the beginning and end of the year (this is in rare cases), (c) on the amount outstanding due from the Branch Office to the Head Office. We are of the opinion that as a matter of principle alternative (c) is to be preferred, subject to some modifications; and we recommend therefore that in such cases, for the purposes of return on capital in the bonus formula, the capital should be computed as the sum of amount of the net fixed assets, plus the amount of current assets minus the current liabilities. When capital is thus computed, the amount, if any, appearing as due to or advanced by the Head Office is not to be included in the current liabilities, and the interest, if any, paid to the Head Office is not to be included as expenditure for the purposes of the formula.

(*) Subject to a Minute of Dissent by Shri Dandekar.

Return on Reserves

11.9. The next question for consideration is that of return on reserves. The Federations of Unions are not in favour of allowing any return on reserves. The Indian National Trade Union Congress has stated that reserves are created out of the profits which are the creation of the joint endeavour of both labour and capital; and they do not, therefore, belong to one partner, *viz.* capital. The All India Trade Union Congress and the Hind Mazdoor Sabha have expressed a similar view. The Hind Mazdoor Sabha has submitted that reserves have been built out of profits which the workers have helped to earn, that if the shareholders have made some sacrifices in the shape of lower dividends, the workers have also made a sacrifice in the shape of receiving lower wages but for which accumulation of reserves would not have been possible.

11.10. A number of Employers' Associations and individual employers who have replied to the questionnaire have asked for the same return on reserves as on paid up capital. Some of them, *e.g.* the All India Manufacturers' Organisation, Bombay Millowners' Association, Bengal Chamber of Commerce, the Bengal National Chamber of Commerce, Indian Paper Mills Association, the Indian Engineering Association etc. have asked for a return of 10%on capital employed computed as net assets, comprising net fixed assets and current assets used in the business less current liabilities. Return is claimed at a uniform rate on the ground that the money comprising the reserves has been ploughed back from the profits which could have been distributed as dividends, that but for the reserves the company would have had to borrow money and the interest on such borrowings would have reduced the profits. While many Employers' Associations have asked for the same return on reserves as on paid up capital, a few have asked for a lower rate of return. The return asked for by the latter group of employers is at the "current lending rates" or rates at which banks lend to industries.

11.11. In the Full Bench decision of the Labour Appellate Tribunal (Millowners' Association v. Rashtriya Mill Mazdoor Sangh—1950 L. L. J. Vol. II page 1247) the reason given for a lower return on reserves employed as working capital is that while the paid up capital runs a double risk *viz.* normal trade risks and risks incidental to trade cycles in the case of reserves employed as working capital the incidence of risk is rather small. If this view is carried to its logical conclusion, then in the case of non-manufacturing companies having little or no fixed assets the paid up capital should be given a lower return than in the case of paid up capital in manufacturing industries. Conversely, when reserves are sunk in fixed assets they should, if the above argument is carried to its logical conclusion, be allowed the same return as on paid up capital. But under the existing formula no distinction is made in the return on capital and reserves as between manufacturing and trading companies. And under the existing formula when reserves are capitalised they are given the same return as on paid up capital. It seems to us that to make a distinction in the return on the basis of whether the employment of reserves involves less risk than paid up capital is a debatable proposition. Again it is not always possible to identify what part of the reserves have been used in building up fixed assets and what part as working capital.

11.12. We may now consider the view point of the Unions that there should be no return on reserves or that there should be a lower return on the ground that both capital and labour have contributed to build up reserves, that if the shareholders made sacrifices in the shape of lower dividends the workers have also made scarifice in the shape of lower wages but for which accumulation of reserves would not have been possible. This argument involves the assumption that in all cases reserves have been built on account of low wages. This would not be a valid assumption. Reserves are built up from surplus profits usually after making reasonable provision for dividend and bonus to workmen. It is true that larger dividends could have been declared instead of building up reserves, but this is not the way in which business can normally and prudently be carried on by companies. Besides if instead of building up reserves larger dividends had been paid they would be subject to the Income-tax payable by the shareholders. Companies build up reserves in the ordinary course of business to provide for development and expansion, for tiding over periods of depression, for providing for the contingency of losses in bad years, etc. The workmen contributed to the profits but as stated above the reserves were provided after paying wages and bonus to the workmen.It has also to be borne in mind that the reserves may have been built over a long period of time and the present workmen cannot be considered the representatives in interest of those who left service long ago. On the other hand in the case of reserves which have been built long ago, a considerable portion may have been capitalised so as to form part of paid up capital. Bearing all the above points in mind, while it may still be said that the present labour force has, by and large, contributed to the profits out of which reserves have been built up and which have increased the profit making capacity of the concern, and this may be considered as one of the

factors, not a decisive factor, for giving a lower return on reserves than on paid up capital. But this argument should not be pushed too far so as to imply that when reserves are capitalised they should continue to have the same return as if they were still reserves. It has to be borne in mind, in the first place, that reserves are sometimes capitalised out of the premium on shares paid by the shareholder. Secondly the capaitalisation of reserves requires the permission of the Controller of Capital Issues, and such permission is not given unless the remaining reserves after capitalisation of a portion bear a fair proportion to the paid up capital as it would be after capitalisation of the part of the reserves. It has further to be borne in mind that there is one important consideration for giving a lesser return on reserves than on paid up capital, *viz.* that paid up capital is not available for distribution to shareholders (except by the very laborious process of reduction of capital), but dividend can be declared from out of the reserves, after transferring them to the appropriations account of the year. Moreover when reserves are capitalised the operation attracts tax. For these reasons we are of the view that the existing practice of treating capitalised reserves as on the same footing as paid up capital and allowing the same return thereon as on paid up capital should continue. The return should be from the date on which the reserves are capitalised.

11.13. Having considered the matter carefully we are of the opinion that in the bonus formula the prior charge of return on reserves should be at a lower rate than on paid up capital and that it should continue to be at the rate at which the return is usually allowed on reserves used as working capital under the existing formula, *viz.* at 4%@(*).

11.14. The next point for consideration is whether a return as above should be allowed on *all* reserves shown in the balance sheet or only on the reserves used as working capital, as under the present formula. In the case of the Millowners' Association v. Rashtriya Mill Mazdoor Sangh (1950 L. L. J. Vol. II page 1247) the Labour Appellate Tribunal observed:—

> "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 shareholder 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 a higher rate of interest. The payment of higher interest would necessarily reduce the gross profits; to that extent the employment of reserves as working capital would be beneficial to the employees."

The Labour Appellate Tribunal then went on to give a lesser return on the reserves used as working capital than on paid up capital for the reasons which have been dealt with in Paragraph 11.11 above.

In actual practice the conception of allowing a return on reserves "used as working capital" has led to much unnecessary litigation, the employer Companies contending that reserves have been so used and the Unions denying it and, in some cases, calling for information and production of documents or cross-examining witnesses as to what items of working capital on the assets side are represented by particular items of reserves on the liabilities side. The difficulty of proof in such cases arises from the fact that while the two sides of a balance sheet must balance, it is not possible to pin point any item on the assets side of a balance sheet and to say that it represents or is the counterpart of any particular item on the liabilities side. So if a Company is called upon to prove that a particular reserve as shown on the liabilities side of its balance sheet is represented by particular items on the assets side for the purposes of showing that the reserve is used as working capital, the Company is virtually called upon to prove an impossibility. As observed in the book "Economics" by Paul A. Samuelson (2nd Edition) at page 135:—

> "Another thing to be noticed about our balance sheet is this: Although its two sides must balance in total, yet no single item on one side is matched by an item on the other side. Thus, the Bonds do not correspond in value to the Equipment or Buildings, nor do the Capital items correspond to the Cash. The only correct statement about a balance sheet is that the creditors have a general claim of a definite value against the enterprise, and the owners have a residual claim against the rest."

In the Full Bench decision of the Labour Appellate Tribunal referred to in Paragraph 11.11 above return on reserves was given at 2%. But in a very large number of later cases it gave a return at the rate of 4%.

(*) Subject to a Minute of Dissent by Shri Dandekar.

11.15. Illustrative of the difficulty employers have found in proving that reserves have been used as working capital is the reply to the questionnaire by the J. K. Organisation, Eastern Zone, which has stated:—

> "It is very correct to say that the claim of return on reserves used as working capital in the business leads to much controversy and litigation. Not only there is controversy on the ground that no single item on the assets side of the balance sheet is matched by an equal item on the liability side, but the greater controversy is about the proof required to be given that a particular reserve has been utilised as working capital throughout the year. The Industrial Tribunals demand that proof must be given that particular reserves have been utilised as working capital throughout the year. This creates great problems and difficulties as it is not possible to prepare the balance sheet of each day of 365 days during the year. So far there has been no clear-cut decision of any Court which has clarified as to what proof is to be required to be given to prove that the reserves have been utilised as working capital. We are, therefore of the view that return should be allowed on the reserves without going into question whether they are used as working capital or not."

11.16. The difficulty of proving that reserves have been used as working capital has sometimes been met by Tribunals assuming, in some cases, that if a concern has borrowed funds as shown on the liabilities side of the balance sheet it may be presumed that the reserves have been used as working capital.

11.17. In some decisions by tribunals, following the decision of the Labour Appellate Tribunal, in the case of Rashtriya Mill Mazdoor Sangh *vs.* The Millowners' Association, Bombay—Appeals Nos. 261, 262 and 264 of 1951 (Bombay Government Gazette Part I-L, dated March 13, 1952, page 1093), cash and bank balances have not been included in the reserves used as working capital. This is an unreal distinction and we agree with the submission of the Bengal Chamber of Commerce and Industry that the view that cash and bank balances do not constitute working capital originated out of lack of appreciation of business procedure and accounting methods; and though the fallacy is evident we give brief reasons for agreeing with the Bengal Chamber. Every company must have some cash and money to its credit in its banking account (or overdraft arrangement) for meeting current day-to-day requirements and liabilities as well as for carrying on its business. This amount would vary during the year according to circumstances and requirements. It is altogether unreal to say that these amounts do not form components of working capital or that while circulating assets like stock, bills receivable, trade debts etc. are part of working capital the moment any of these are converted into cash they cease to be working capital until fresh stock is again purchased from the proceeds. On any such view the circulating capital would show an increase at the end of the accounting year if large stocks are purchased just before the closing of the books, while conversely cash and current account balances would be swollen if such purchases or any payments due by the company to creditors were delayed. Therefore, to exclude the cash and current account balances at the beginning or close of the year, or the average of such balances over the year from the reserves in allowing a return on reserves used as working capital would be wholly unjustified. No company wants to keep unnecessarily large amounts in cash or current account. These considerations lead us to the conclusion that the simple as well as the appropriate course is to allow a return on all reserves and surpluses shown in the balance sheet at the beginning of the year, including profit carried forward from the previous year. Provision for taxation should not be considered as reserve; but a specific reserve for taxation (in addition to the full provision) should be included. Return is to be allowed on the reserves and surpluses proper, not on items such as the amount appropriated towards dividends but remaining with the company for some months until the dividend is paid. It is to be noted that depreciation cannot be included in the reserves entitled to a return. Under the relevant Schedule to the Indian Companies Act, depreciation has now to be shown as a deduction from the fixed assets. This is so because depreciation is a provision for the loss in value of an assets owing to wear and tear resulting from its use in earning profits. Therefore it cannot be regarded as a reserve and no return should be allowed on depreciation. But depreciation reserves specifically created out of additional depreciation provided over and above the amount of normal depreciation under the Income-tax Act and figuring as such on the liabilities side of the balance sheet should be treated like any other reserve and allowed a return.

11.18. Under the present bonus formula a reasonable remuneration for the working partners has to be provided as a prior charges. This we think is right and proper. But. the amount so allowed varies according to the view of the Tribunal as to the remuneration that would be considered reasonable for work involving the same responsibility, having regard to the qualifications of the working partners, the amount of time devoted to the

business, etc. We think it desirable, in order to avoid unnecessary controversy and litigation, that for the purposes of the bonus formula the remuneration of the working partners should be determined on the analogy of Managing Agency Commission. We recommend as a general rule the total remuneration of the working partners may be fixed at 25% of the gross profits after deducting normal depreciation admissible under the Income-tax Act. If the terms of the partnership deed provide for remuneration which is lower than this figure, then that remuneration would be allowable, subject to a maximum of Rs. 48,000 for each working partner or the working proprietor, as the case may be. If the terms of the partnership provide for a higher remuneration it would be subject to a maximum of 25%, or a sum calculated at Rs. 48,000 per annum for each working partner or the working proprietor, as the case may be, whichever is less.

CHAPTER XII

RECOMMENDATIONS ON THE BONUS FORMULA (CONTINUED)—PROPORTION OF THE AVAILABLE SURPLUS TO BE ALLOCATED AS BONUS—MINIMUM AND MAXIMUM BONUS AND SET-OFF AND SET-ON PROPOSED

12.1. Having dealt with the prior charges we now come to the question of the proportion of the "available surplus" to be allocated for bonus and the mode of its distribution. By available surplus we mean the same thing as is meant under the existing bonus formula, *viz.* the surplus or balance of gross profit remaining after deducting the prior charges.

Our terms of reference require us to determine the extent to which the quantum of bonus should be influenced by the prevailing level of remuneration. Under the present formula the Tribunal has discretion to allocate from out of the available surplus the proportion for bonus, and the level of wages in the concern is one of the factors that is taken into consideration. We are not in favour of continuing this system, though it may have served a useful purpose in the past. If continued it would retain the element of uncertainty in the determination of bonus. In a number of industries wages have been fixed by Wage Boards. In some other industries Wage Boards have already been formed and their reports are awaited. Wide disparites in wages in different industries, and in different concerns within the same industry are now less likely than in the past. In these circumstances it is not necessary in each case to take into consideration the prevailing level of remuneration in the concern in allocating a proportion of the available surplus as bonus. The fixing of a certain proportion of the available surplus (after meeting the prior charges recommended by us) to be distributed as bonus, subject to a minimum and maximum (coupled with an arrangement for set-off and set-on) in the formula which we recommend, would lead to an equitable result we recommend that this proportion should be 60% The balance left with the concern would be 40%; and this would be increased by the saving in tax on bonus payable. The aggregate balance thus left with the industry is intended to provide for gratuity and other necessary reserves, the requirements of rehabilitation in addition to the provision made by way of depreciation in the prior charges, the annual provision required, if any, for redemption of debentures and return of borrowings, payment of Super Profits Tax, if any, and additional return on capital.

12.2. We now proceed to deal with the question whether the bonus to be paid should be described in terms of basic wages only, or in terms of basic wages together with dearness allowance and/or any other allowances. The Unions in general favour bonus to be expressed in terms of basic wages plus dearness and other allowances. The Indian National Iron and Steel Workers' Federation has, however, stated :

> "Presently the Bonus is paid only on the basic wage. In the new scheme to be evolved by the Bonus Commission we have no objection if the dearness allowance is also added to it but if production bonus, quarter allowance and other allowances for the purpose of bonus are added, we may have difficulties as there would be serious disparity in bonus earnings of the workers in the same category and wage group working in different departments having variable production bonus earnings."

The majority of Employers' Associations and individual employers are in favour of bonus being expressed in terms of basic wages only. The main reasons given for excluding the dearness and all other allowances are that this has been the practice and that if bonus is hereafter expressed in terms of basic wages with dearness allowance it would disturb the existing "differentials" and introduce an element of a variable character in the determination of the quantum of bonus. The Cement Manufacturers' Association has suggested an additional reason *viz.* that any departure from the present method would lead to psychological dissatisfaction, for if allowances are included a lower percentage of aggregate earnings would be payable as bonus and this would not be easily understood or appreciated by workers. The Employers' Federation of Southern India has put the point in this way:

> "The contribution made by different categories of workmen to the profits is fairly well reflected in their basic earnings. Therefore, if the rate of bonus is related to their basic earnings, the distribution of the amount determined to be paid as bonus among the workmen will be fair and equitable."

12.3. However, a few Employers' Associations and individual employers are in favour of bonus being expressed in terms of basic wages and dearness allowance. We give below some of the views : The Tamil Nad Millowners' Association has stated :

> "It is preferable to calculate bonus as a definite percent on the total earnings of the worker which will include Basic Wages and Dearness Allowance."

The Rajasthan Textile Mills Association has stated :—

> "As a portion of the Dearness allowance has already been merged with the basic wages under the Central Wage Board recommendations and as this process of merging might continue, Bonus may now be calculated on total earnings including dearness allowance but Puja Bonus and the like should not be taken into account."

The Madura Ramnad Chamber of Commerce has expressed itself in favour of calculating bonus as a definite percentage on the total earnings *i.e.* including basic wages and dearness allowance, but it adds that Puja bonus should not be included.

The Tata Iron & Steel Co. Ltd., and the Tata Engineering and Locomotive Co. Ltd., have stated :

> "The artificial distinction between basic wages and total emoluments must be eliminated. Under the present system, the same total amount of bonus paid in a unit with low basic wages appears, in terms of many months' basic wages to be high, whereas in a unit with high basic wages and lower allowances, it would give the appearance of being low."

12.4. Having considered the various views, we are of the opinion that the distinction between basic wages and dearness allowance for the purposes of expressing the bonus quantum should be done away with and that bonus should be related to wages and dearness allowance taken together. Under enactments such as Employees' Provident Funds Act, Employees' State Insurance Act etc. there is no distinction made between basic wages and dearness allowance. There is also another aspect of the matter which is of importance. In some industries and concerns a portion of the dearness allowance has been merged with the basic pay, and therefore to lay down a formula for bonus, with minimum and maximum, in terms of basic wages would lead to anomalies. Again it has to be borne in mind that the present system of expressing bonus in terms of basic wages operates against the lower paid workers, in whose case the dearness allowance forms a larger percentage of the total emoluments than in the case of the higher paid staff. For all these reasons we recommend that bonus should be expressed in terms of the total wages, basic wages and dearness allowance. But all *other* allowances such as overtime wages and incentive, production and attendance bonus including attendance bonus under statutory bonus schemes, should be excluded. The inclusion of such allowances would introduce anomalies in regard to bonus as between workmen not getting such allowance and workmen getting such allowance. On the other hand, Puja bonus and other customary bonus if paid, should be considered as bonus paid "on account" and deducted from the amount finally payable as bonus under the formula recommended by us.

12.5. The minimum bonus we recommend is equivalent to 4% of the total basic wage and dearness allowance paid during the year (excluding all other allowances and other bonuses such as production bonus, attendance bonus, statutory attendance bonus etc.) or Rs. 40/- to each worker, whichever is higher. This amount of Rs. 40/- would be payable to workmen who have worked for all the working days of the year (including periods of privilege leave and maternity leave with pay, casual or sick leave with pay). In the case of children the minimum should be equivalent to 4% of their total basic wage and dearness allowance, or Rs. 25/- whichever is higher. For employees who have worked for a lesser period, the amount payable would be *pro rata*. The maximum bonus should be equivalent to 20% of the total basic wage and dearness allowance paid during the year.

12.6. We are of the opinion that bonus payable in accordance with our recommendations should ordinarily be paid not later than 8 months after the close of the accounting year.

12.7. Our terms of reference require us to make recommendations on the question of bonus to "workers". The term "workers" has not been defined but would probably include workmen as defined in the Industrial Disputes Act, and also workmen or employees as defined in the State Acts applicable to industrial workers, such as the Bombay Industrial Relations Act. But in allocating a portion of the available surplus for bonus we have to take into account of the fact that a concern which pays bonus to workmen would ordinarily have to pay bonus also to officers and supervisory staff who contribute to the working of

the concern no less than the workmen. The existing practice varies from industry to industry. In some concerns supervisory staff and officers are paid bonus at the same rate at which it is paid to workmen; in others bonus is paid at a lower rate; in some other concerns no bonus is paid to the covenanted or higher paid officers. In the existing bonus formula as applied by Tribunals bonus to supervisory staff and officers is taken into consideration in the calculations. Where the rate of bonus, paid in terms of so many months' basic wages is high, bonus to officers, is, not infrequently, included in the calculations at a lower rate. We are of the view that for the purposes of the bonus formula, the portion of the available surplus which we have allocated as bonus should be deemed to include bonus to the lower paid supervisory staff and officers. There is another aspect of the matter which has to be borne in mind. If the formula were to provide only for the percentage of the available surplus allocable for bonus to workmen, then the percentage fixed would have to be lower than 60%, for the Company would undoubtedly have to pay bonus to some at least of its supervisory staff and officers. Besides, if a portion of the available surplus is allocated as bonus for workmen only, there would be disputes as to whether employees drawing total emoluments of over Rs. 500 come under the clerical, technical, supervisory category and are therefore workmen as defined in Section 2 (s) of the Industrial Disputes Act or whether their duties are mainly managerial or administrative and they are therefore non-workmen. Having regard to all these considerations we recommend that in the bonus formula proposed by us the portion of the available surplus allocated for bonus should be deemed to include bonus to employees drawing a total basic pay and dearness allowance (taken together) upto Rs. 1,600 p.m., regardless of whether they are "workmen" or non-workmen as defined in the Industrial Disputes Act or any other relevant Act, with the *proviso* that the quantum of bonus payable to employees drawing total basic pay and dearness allowance over Rs. 750 p.m. shall be limited to what it would be if their pay and dearness allowance were only Rs. 750 per month. As regards officers and supervisory staff drawing over Rs. 1,600 p.m. it would be open to the Company or concern, if it considered necessary, to pay them bonus out of the balance (40%) of the available surplus left to it under this formula.

12.8. The bonus formula recommended by us should apply equally to establishments in the public sector (not departmentally run) which compete with establishments in the private sector, as it would to establishments in the private sector. Questions have arisen and would arise in the application of the bonus formula as to whether particular establishments in the public sector can be regarded as competing with any in the private sector especially, when the products and/or the services of the establishments in the public sector are such that only small portions thereof (*e.g.* by-products) compete with the private sector and substantial portions do not. This question we shall deal with in a later Chapter.

12.9. We recommend that the general bonus formula proposed by us should not apply to *new concerns* until they have recouped all early losses including all arrears of normal depreciation admissible under the Income-tax Act, subject to a time limit of six years. In other words, in such cases we recommend that the liability to pay bonus (including minimum bonus) in accordance with our formula should commence only—

(a) from the year in which there is for the first time an over-all net profit, *i.e.* sufficient profit, after providing for that year's normal depreciation, to wipe off all accumulations of previous losses and arrears of depreciation;

or

(b) from the sixth year following the year in which the undertaking begins to sell its products and/or services; *whichever may be earlier.*

This recommendation applies also to existing concerns in respect of new industrial units or undertakings established by them, whether in the same industry (*e.g.* a new cement factory established by an existing cement manufacturing concern) or in a different industry (*e.g.* a new cement factory established by a jute manufacturing concern). Where, however, it has been the practice of such concerns to pay bonus to its workmen at a uniform rate on the basis of a consolidated profits computation in respect of all their units (whether limited to the consolidation of all units engaged in the same industry, or extending also to the consolidation of all units regardless of the industry to which they belong), that practice should continue in respect also of new units started by that concern. What we have stated in this paragraph applies equally to new concerns and new units of existing concerns in the public sector.

12.10. Our colleague Shri Dange does not agree with this recommendation as he feels that this will deprive thousands of workers for such a long period as six years, despite their being in production, from the benefit of even the minimum bonus, in concerns which are expected to have enough financial resources to meet this extra addition of only four percent to their normal wage bill, which to day is, in no case, based on the need based minimum wage convention.

12.11. We believe that the formula recommended by us preserves a proper balance between the claims of labour and capital with due regard to the interests of industry. The formula will not lead to very uneven results as between capital-intensive and labour-intensive industries or as between industries and concerns in which the composition of the capital structure differs. The fixing of a definite mode of computing the available surplus, and of a specific percentage thereof to be allocated for bonus will have the advantage that ordinarily it should be possible for employers and workers to arrive at agreement on bonus soon after the accounts of the year are finalised, without much difficulty and without litigation. Another advantage is that if the workers know in advance that they will get a certain share in the profits computed on a definite basis, it should promote better industrial relations. While in the large majority of cases the formula would work out satisfactorily, such a result cannot, of course, be expected in all cases. There may be a few exceptional cases, *e. g.* where installations of plant during the year are very large and are financed by considerable borrowed capital, the statutory normal depreciation would wipe off a large portion of the profits. In such and, indeed, in all cases, it should always be open to the employer and employees to come to an *ad hoc* agreement on bonus, and this should be encouraged. In other words, there is nothing in our recommendations which would preclude the parties from varying our formula in any manner by mutual agreement. But failing such agreement our recommendations should always prevail.

12.12. To summarise, the general formula for bonus recommended by us, subject to the explanations and particular provisions set out in this Chapter and in Chapters VIII, IX and XI is as under :—

Gross profit for the year computed as per Chapter VIII, paragraph 8.10. above.

Less:Depreciation as per Chapter IX, paragraph 9.2. above.

Less:Income Tax and Super Tax as per Chapter IX, paragraph 9.6 *et Seq* above.

Less:Return at the actual rate payable on Preference share capital and at 7% on ordinary capital, as per paragraph 11.7 plus at 4% on reserves as per Chapter XI, paragraphs 11.13. *et seq* above.

The balance would be the "available surplus". Of this balance, 60% should be allocated as bonus subject to a minimum equivalent to 4% of the annual basic wages and dearness allowance (excluding all other allowances and bonuses such as production bonus, attendance bonus etc.) or a minimum amount of Rs. 40 whichever is higher (Rs. 25 in the case of children). The amount of Rs. 40 (or Rs. 25 as the case may be) would be the sum payable to a worker who has worked for all the working days in the year (including periods of privilege leave with pay, casual leave with pay, sick leave and maternity leave with pay). For a worker who has worked for a lesser period the amount payable would be *pro rata*.

12.13. Where the amount allocable as bonus exceeds the maximum, *i. e.* exceeds the equivalent of 20% of the earnings as defined above, then the excess upto a limit of a further 20% is to be carried forward, to be "set on" in the succeeding years upto a maximum period of the next 4 years. Where there is no available surplus, or the amount out of the available surplus allocable as bonus is a sum less than 4% of the annual earnings as defined above, then the whole of the quantum of 4% or the amount necessary to make up 4% as the case may be, should be carried forward and set off in the succeeding years upto a maximum period of the next 4 years. In making calculations for the succeeding years, the amount of set-on or set-off brought forward from the earliest year should first be taken into account.*

*NOTE.—Any amount left undisbursed out of what has been specifically allocated for distribution as bonus should be carried forward to the bonus account of the following year and dealt with on the lines already discussed.

ILLUSTRATION

In this Illustration, for simplicity, the total amount ot bonus equal to 4% of the annual earnings as defined above is assumed to be Rs. 50,000. Accordingly, 20% maximum would be Rs. 2,50,000 (The actual sum for the particular year which is equal to 4% and 20% of the annual earnings as defined above, would of course, vary according to the wage bill for the year).

Year	Amount equal to 60% of "available surplus", allocable as Bonus	Amount payable as Bonus	Set-on or Set-off of the year carried forward	Total Set-on or Set-off carried forward	
	Rs.	Rs.	Rs.	Rs.	of (year)
1	70,000	70,000	Nil	Nil	
2	6,35,000	2,50,000*	Set-on 2,50,000*	Set-on 2,50,000	(2)
3	2,20,000	2,50,000* (incl. of 30,000 from Year 2)	Nil	Set-on 2,20,000	(2)
4	3,75,000	2,50,000*	Set-on 1,25,000	Set-on 2,20,000 1,25,000	(2) (4)
5	1,40,000	2,50,000* (incl. of 1,10,000 from Year 2)	Nil	Set-on 1,10,000 1,25,000	(2) (4)
6	3,10,000	2,50,000*	Set-on 60,000	Set-on Nil @ 1,25,000 60,000	(2) (4) (6)
7	1,00,000	2,50,000* (inclusive of 1,25,000 from Year-4 and 25,000 from Year-6)	Nil	Set-on 35,000	(6)
8	Nil (due to loss)	50,000** (inclusive of 35,000 from Year-6)	Set-off 15,000	Set-off 15,000	(8)
9	10,000	50,000**	Set-off 40,000	Set-off 15,000 40,000	(8) (9)
10	2,15,000	1,60,000 (after setting off 15,000 from Year-8 and 40,000 from Year-9)	Nil	Nil	

NOTES : *Maximum.

@The balance of Rs. 1,10,000 set-on from Year-2 lapses.

**Minimum.

CHAPTER XIII

APPLICATION OF THE FORMULA TO PARTICULAR INDUSTRIES—THE JUTE INDUSTRY AND THE PLANTATION INDUSTRIES

13.1 In this and in the succeeding Chapters we propose to consider whether the general bonus formula recommended by us in the preceding Chapters should apply to all industries alike, or whether it would need any, and if so what, modifications having regard to the special circumstances of particular industries.

13.2. The jute industry has asked for total exemption from payment of bonus. The Indian Jute Mills Association has submitted as follows:—

> "The Association is strongly of the opinion that in laying down the principles governing the payment of bonus, it is essential to make it clear that the payment of bonus should not be introduced in any industry which is primarily an export industry such as the Jute Industry which has to maintain its exports in the interests of the national economy and in the face of relentless competition from the manufacturing industries of other countries as well as from substitute packaging materials.
>
> In the first place, the Jute Industry is predominantly an export industry which sells approximately 80% of its products abroad. Most of these products are used as packaging materials, particularly for the packaging of agricultural crops. In its export markets the industry faces unremitting competition not only from substitute materials (for example, cotton and paper), and from bulk handling methods, but also from foreign jute manufacturing industries and particularly the jute industry in Pakistan. In recent years the Pakistan jute industry has been expanding rapidly and this expansion constitutes an ever increasing threat to the jute industry in India.
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> Moreover, as an export industry which depends for its survival on its ability to compete in foreign market, the Jute industry cannot pass on increases in production costs to its consumers, as other Indian industries can. Any additional payments to the workers therefore constitute a direct charge on the industry's finances and inevitably weaken its competitive position *vis-a-vis* its rivals.
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> Another major problem that faces the jute industry is the uncertainty of its raw material supplies. For its raw material the jute industry has to depend on an agricultural crop which greatly varies from year to year according to climatic conditions and other factors, and which is often inadequate for the industry's needs. If an adequate jute crop is to be sown, jute prices must be attractive to the cultivators. On the one hand, therefore, the industry is inevitably committed in its own interests to a policy of price support for raw jute, while on the other hand it has no control over the prices of its finished products, which are determined solely by the law of supply and demand on a world wide basis. Like the supply of raw material, the world demand for jute goods is also extremely variable, because it depands in its turn largely on the size of agricultural crops in countries throughout the world.
>
> With this uncertainty in the supply of its raw material and the demand for its products, the profitability of the jute industry is severely restricted and most unstable. In some years the industry suffers huge losses the most recent example of this was in 1961 when in the six months from March to September the industry lost more than Rs. 6 crores; in some years, as for example in 1955 and 1957, the profits are only marginal; and when reasonable profits are made, as in the current year, these are largely consumed in restoring the previous losses and building up the industry's reserves for necessary maintenance and rehabilitation. The low level of profitability in the jute industry is clearly demonstrated by a survey recently undertaken by the Reserve Bank of India and published in the Bank's Bulletin for September 1960. Eighteen industries in India were included in the survey and the results, in so far as the jute industry is concerned, were as follows :—

Profits after tax as percentage of net worth

	1955-58 Average
Jute Textiles ..	1.8%
18 industries (including jute textiles) ..	7.9%

Gross profits as percentage of gross sales

Jute Textiles	..	2.9%
18 industries (including jute textiles)	..	9.4%

For these reasons, it has never been the custom of the jute industry to pay any profit sharing bonus. The workers are remunerated through basic wages and dearness allowance, supplemented in some cases by incentive payments, and this system has been accepted by successive Omnibus Tribunals which have examined the wage structure of the industry and laid down standard scales of pay.

With the working results of the mills varying substantially from year to year for reasons beyond the industry's control, the introduction of a profit sharing bonus would mean not only wide fluctuations in the bonus from year to year with no bonus at all in many years, but also bonus payments at widely differing rates in different units of the industry in the same year. By disturbing the standardised wage structure this would inevitably create discontent among the workers, resulting in labour unrest and a disturbance of industrial peace in an industry which, as India's principal export industry, plays a vital role in the country's economy."

13.3. The Bharat Chamber of Commerce has made similar submissions as follows:—

"Regarding jute textiles, however, there should be a special consideration again as it is fundamentally an export industry. The overwhelming portion of the products are exported and thus the industry has to operate on two very uncertain elements, *viz.*, jute crop depending on weather on the one hand and fluctuations in the international markets for its products on the other. It will be conceded that amongst the organised industries all others named above are principally homebased. Moreover, the industry is already under the pressure of competition of substitutes in the foreign markets. It may be therefore impossible to evolve any formula for surplus sharing in the face of such uncertainties under which the industry operates."

13.4. On the other hand the Federations of Unions have strongly pressed that the jute industry should pay bonus like other industries. Representative of the case of the workmen we give below the arguments urged before us by Dr. Maitrayee Bose of the Indian National Trade Union Congress, who stated: "The Jute industry being export oriented has been the pet child of the Government of West Bengal and the Government of India. It has been allowed to modernise machinery inspite of foreign exchange difficulties. The Industry has been permitted to seal looms when it has wanted to. The minimum wage in the jute industry is very low and is fictitious because the figure of Rs. 70·4 per month is payable only if the working hours are 48 in a week. Since wages are low a bonus system would have been a boon. Industrialists are used to say that the industrial labour is getting everything. They are most solicitious about the peasantry and shed crocodile tears for them. But what have the jute industrialists done for the jute grower. When the floor price of the raw jute is fixed it is not adhered to. They beat down the jute growers to sell at a very low rate." Dr. Bose went on to say: "In Andhra Pradesh one or two jute mills pay bonus. Why should not the Bengal mills pay bonus. Andhra is not far off from Bengal."

13.5. The reference to one or two mills in Andhra Pradesh is to the Nellimarla and Chitavalsah Jute Mills which belong to the McLeod group of mills. They have paid bonus in some years. It was stated before us by Shri C. L. Bajoria, Chairman of the Indian Jute Mills Association that these two mills paid bonus in some years when the profits were high on account of the conditions caused by the Korean War, that these two mills cater mainly for the local market and are not dependent on exports. The jute mills in Calcutta are in a different position and are dependent on exports. Shri Bajoria went on to say:

"There is strong competition from packaging materials and also bulk handling. Exports in sacking have declined considerably owing to competition from Pakistan where the jute mills pay lower wages and are allowed the benefit of export bonus.....profit and loss figures fluctuate widely. The industry requires constant running. It has never had 2 or 3 years without dark clouds. The present cost of jute goods is more than the market can stand. The Bonus system should not be introduced in the Jute Industry. The only payments that should be allowed are production or incentive bonus, not profit bonus. The industry has to maintain its exports in the interests of national economy in the face of relentless competition from the manufacturing industries of other countries as well as from other packaging materials."

13.6. On the subject of competition from Pakistan reference may be made to the speech of Shri G. M. Adamjee, Retiring Chairman of the Pakistani Jute Mills' Association, in his address at the last Annual Meeting of the Association. Shri Adamjee warned his country's jute industry of all out competition from India. He said that the Indian Jute Industry is capable of offering stiff competition because of its high productivity and efficiency, low capital cost, nominal power cost, well established markets all over the world, manufacture of machinery in the country, established business traditions and self-sufficiency in jute.

13.7. The Indian Jute Industry has had some years in which it has made good profits and some in which it has not done well. The Wage Board for the Jute Industry was required to work out the principles that should govern the grant of bonus, if any, to workers in the Jute Industry. The Wage Board observed as follows:—

> "8.12 The Board would have been very much liked the question of bonus in the jute industry to be left to be decided by a special body like the Bonus Commission; but because of the past history in respect of bonus demands in this industry, the members representing workers pressed for a decision on this point, specially as it was a matter specifically referred to the Board. There has been much agitation by the workers on this question as is evident from the reference of the question of bonus to this Board. This may have given rise to hope and expectation in the mind of the jute workers specially in West Bengal that the question of bonus would be given due consideration. As stated earlier, a decision on the question of bonus in the jute industry in West Bengal was deferred by the First Tribunal mainly on the ground that at that time an Export Committee was deliberating on the question of profit sharing in the industry and the Government was expected to take a decision on its findings. The question of bonus was thus kept open and it has remained so although several years have passed thereafter and the report of the profit sharing committee has been published long ago. In view of this, the Board decided that the question of bonus should not be left open till the Bonus Commission decides it. The Board has carefully considered this question specially as the system of bonus is sought to be introduced in the industry for the first time. As mentioned earlier, the members representing workers on the Board were keen about making a beginning in this respect while the members representing employers expressed themselves against this. After considerable discussion in a series of meetings on this subject, the Board ultimately decided unanimously that a scheme of guaranteed bonus scheme should be introduced in the industry but that it should not depend on profits.
>
> 8.13 The representatives of the employers were definitely against the introduction of profit sharing bonus scheme mainly on the ground that the introduction of such a scheme might lead to a lot of dissatisfaction among workers of a mill which may not be making sufficient profits to enable it to pay bonus. It was said that cases might arise where workers in a mill might get bonus while the workers in the other may have to go without it. Difficulties of this type are inherent in the profit sharing bonus schemes.
>
> 8.14 Looking to the fact that the Bonus Commission will be examining the question of bonus in detail and that the bonus is sought to be introduced for the first time in the industry and furthermore as the representatives of the workers themselves urged that at this stage at any rate the scheme of a guaranteed bonus should be introduced and the question of bonus of any other kind could be re-examined later on after the period for which the Board recommendations would be effective, has expired, the Board has not investigated in detail the pros and cons of introducing a profit sharing bonus scheme in this industry. For the same reasons the Board has also not examined in detail the suggestion that the profits of different units may be pooled and bonus may be distributed among the workers. In view of the fact that workers' demand in this respect has remained unfulfilled so far and that workers in most of the industries in West Bengal get an annual bonus, the Board has decided to frame a scheme under which a guaranteed bonus would be paid to the workers depending on the number of days' work in a year. It is hoped that incidentally this would reduce absenteeism in the mills."

The scheme recommended unanimously by the Board was as follows:—

> "1. The qualifying year for the purpose of bonus payment should be the year from 1st January to 31st December preceding the year in which the bonus will actually be payable.

2. Clerical staff, watch and ward staff and other monthly paid workers, who will be on the roll on 31st December will be entitled to bonus equivalent to half a month's basic pay inclusive of 'Wage Board Increment', if any.

3. Workers, other than those mentioned in clause 2 will be entitled to bonus at the rate of one day's basic wage for every completed seventeen days on which they actually worked in the qualifying year, subject to the proviso firstly, that a worker who actually worked for less than fifty-one days in a year will not be entitled to any bonus for that year and, secondly, that the maximum bonus for a year would be twelve days' basic wages."

The Wage Board also recommended that maternity leave upto 12 weeks and days of lay off should be counted as days on which the worker has actually worked, that the "Wage Board Increment" should be treated as part of basic wage, and that the average basic wage of a piece-rated worker should be calculated on the basis of last four completed weeks' basic wages earned by him before the close of the qualifying year.

13.8. Having carefully considered the representations of the employers and the unions and the views expressed unanimously by the Tripartite Wage Board for the Jute Industry, we are of the opinion that the plea that the bonus system should not be introduced in the Jute Industry cannot be accepted. We are of the view that the general bonus formula recommended by us should apply to the Jute Industry also*, unless the Employers' Associations and the Unions concerned agree to any other arrangement.

Plantation Industries

13.9. In the Tea Industry in Bengal, Assam and Tripura bonus has been paid on industry-wise basis under agreements between the employers and the unions concerned. We have set out at Appendix E the latest agreements produced before us. The principal features of the agreements are summarised below:

Each year a company making a profit is required to allocate for bonus a percentage of the profits to workmen as follows:—

	In West Bengal & Tripura	In Cachar	In the Assam Valley
Labour	11%	12%	12%
Subordinate staff and monthly rated workers	1½%	..	..
Clerical and medical staff	1½%	2%	2%

In addition each company (except in Cachar and Tripura) is required to credit to the appropriate Bonus Fund on behalf of the workmen a sum equivalent to 1½% of the profits if any in 1959, 1% of the profits if any in 1960 and ½% of the profits if any in 1961. If in 1960 or 1961 a company in Assam Valley or West Bengal makes a loss or so small a profit that the minimum bonus payable to a workman falls below ten rupees, then the Managers of the Bonus Fund are required, with the permission of the Board set up for the administration of the relevant fund, to cause to be distributed for the relevant Bonus Fund a sum which will enable the company to make a payment:

(a) of ten rupees to each member of the labour force who, being a male, has completed 240 days' work and who being a female, has completed 175 days' work, subject to the qualifications laid down in clause 7(a);

(b) of fifteen rupees to each member of the subordinate staff or monthly rated staff who has worked for eight months; and

(c) of twenty-five rupees to each member of the clerical and medical staff who has worked for eight months.

with proportionately lesser payments to those with lesser entitlements provided always that there is sufficient money in the Fund concerned, and, provided that the workman is still on the Company's books.

13.10. A workman leaving the Company is entitled to bonus (other than minimum bonus from the Fund referred to above) but a workman who has been dismissed for misconduct is not entitled to bonus. The profits are computed after deducting the depreciation admissible for Income Tax and also all other charges allowed by the Income Tax authorities, but without making deductions for income tax itself, for previous losses, for capital expenditure and bonus paid for previous years. There are various provisions relating to the administration of the Fund in the particular region.

* Subject to a Minute of Dissent by Shri Dandekar.

13.11. On behalf of the tea producers in North East India, the Consultative Committee of Tea Producers' Association (representing the Indian Tea Association, Indian Tea Planters' Association, Assam Tea Planters' Association, Bharatiya Cha Parishad, Surma Valley Indian Tea Planters' Association, Tripura Tea Association, Terai Indian Planters' Association and Tea Association of India), has in its reply to the questionnaire stated as follows:—

> "It is considered that the tea industry has a very special character in so far as its profitability—therefore its capability to pay bonus, wages etc.—is concerned. The profits of the industry as a whole and of individual companies may vary widely from year to year according to circumstances which are entirely outside the control of management or labour. Again, in a particular year, one tea district may by reason of weather or other circumstances prove to be profitable whereas a neighbouring district may make losses. It is, therefore, essential that any bonus system for tea should permit of unit-wise variations and should not seek to equate bonus for all districts or all areas on a country-wide basis.
>
> The tea industry has a history of annual bonus payments made by voluntary agreements between employers and labour. The Industry's first labour bonus was paid for the year 1953 and has continued to be paid ever since in terms of three successive agreements ending with the year 1961, whereafter it is our hope to continue bonus payment on the system presently in force."

13.12. The Indian Tea Planters' Association agrees generally with the representation of the Consultative Committee, but differs from it on one material point. While the Consultative Committee is of opinion that bonus should be paid companywise, provision for separate treatment being made where the company operates in different geographical area, the Indian Tea Planters' Association is of opinion that bonus should not be company-wise but "unitwise", the unit being the individual tea estate rather than the company as a whole. This would ensure linking of incentive to payment of bonus. It says that the incentive factor would be completely ignored if bonus were paid on companywise basis, in which case the losing and prosperous estates of a company would be placed on the same footing. The Indian Tea Planters' Association goes on to say that the Labour Appellate Tribunal formula is not suitable for the Tea Industry, but if the formula with suitable modifications is applied, the following items should be prior charges in addition to the normal prior charges.

> "(a) Expenses for replanting of old and worn out tea bushes on the norm recommended by the Plantation Inquiry Commission.
>
> (b) Proportionate costs of a capital nature for undischarged liabilities imposed under the various statutory obligations including the Plantations Labour Act, 1951."

13.13. Our attention has been drawn to the speech of Sir Richard Duckworth Bart, Chairman of the Indian Tea Association, at the Annual General Meeting of the Association at Calcutta on 8th March 1963, in the course of which he said,

> "The second body which may well influence our future is the extremely powerful Bonus Commission, charged with recommending to Government whether bonus should continue, and if so, in what form. We have had our own bonus agreements covering the years from 1953, and we believe that our current scheme is the most comprehensive in the whole of India. I would concede that it could be improved in details, but I believe that the principles which it incorporates are the best suited to our own industry, and possibly to other industries also. The fortunes of a Tea Company vary so much that to impose a uniformly high wage would only result in the ultimate extinction of many tea estates or in their decline into producers of a commodity unlikely to attract overseas customers. On the other hand, Tea has been known to have occasional years of admitted prosperity, and to deny the workers a share in this prosperity, even though it may be a prosperity owing little to the workers or even to the management, would be unfair. We have therefore accepted the principle of profit-sharing, and we have agreed that if we make profits, a share of those profits will go to our workmen. Such an arrangement is very flexible, it imposes no additional burden when times are bad, and allows all our workmen to participate when times are good."
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> * * * * * *
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> "Our agreement also provides for an equalisation fund which is intended to ensure that each year something is set aside, so that when the inevitable lean year comes along, there is a reserve from which a payment can be made. This we believe to be the best way of providing for payment in years of loss without abandoning the cardinal principle of "No profit, No bonus".

13.14. On behalf of labour dissatisfaction was expressed with the present system on the ground that the minimum and maximum were both low.

13.15. We now turn to the bonus system in the plantations in South India. Bonus has been paid uniformly on industrywise basis as a certain percentage of the wages under agreements between the Employers' Associations and the Unions concerned. We have set out at Appendix F the latest agreements produced before us by the United Planters' Association of South India. In the State of Madras the workers in all the tea estates which are members of the Association of Planters in the State of Madras were given as bonus 11% of the earnings for the year 1961. Workers in coffee estates of 150 acres and above (except in Shevroys) were paid bonus at 5% of the earnings. Workers in coffee estates of less area in areas other than Shevroys were given 4%. Workers in the Shevroy areas were paid 3%. Mixed estates having an acreage of 25% and over of tea paid bonus at the rate applicable to tea estates. In the State of Mysore the workers in plantations owned by the Mysore State Planters' Association, the Indian Planters' Association and the Coorg Planters' Association were paid 6% of the wages for 1959-60, 9%for 1960-61 and 4% for 1961-62. In Kerala the percentage has varied according to the size of plantation from $5\frac{1}{4}$ to 6·2/3% in the case of tea estates and $6\frac{1}{4}$% to $7\frac{1}{2}$% in the case of rubber estates. In the coffee estates also the percentage has varied according to the size of the plantation from 4 to 5% for the year 1957, from 5 to $6\frac{1}{2}$% for 1958, and from 4 to 5% for 1959.

13.16. The United Planters' Association of Southern India has in its reply to the questionnaire proposed that profit bonus should be abolished. Without prejudice to this contention it has proposed that bonus should be determined unitwise and it has suggested a formula which involves some variations in the Appellate Tribunal formula. It has referred to the following special features of the Plantation Industry:

"(a) Most of the plantations in South India were established so long ago that their equity capital is far out of line with their actual productive worth or market value. In consequence, dividends expressed under the normal percentage relationship between profits and share capital give a highly exaggerated idea of the profits earned by the industry.

(b) Unlike in other industries, where depreciation is allowed on plant and equipment, no depreciation is allowed on field assets of plantations;

(c) In Plantations, differences exist between units by size, location, soil, terrain, type of trees or bushes, yield and climate. This naturally results in wide variations in profitability;

(d) The plantation industry has to contend with all the risks of an agricultural industry including the vagaries of the weather and the conditions of the soil, besides the incidence of pests and diseases;

(e) The plantation industry does not obtain a return on investment for an average period of 7 years after planting up since a plantation takes that much of time to start yielding;

(f) Plantations being primarily an agricultural industry, facilities for raising credit are more restricted than in other industries".

13.17. At the hearing at Madras it was stated before us by the representatives of the United Planters' Association of South India that a large section of the industry consists of small holdings, particularly in the case of rubber and coffee; and many of them do not pay bonus. Generally only large estates pay bonus. The representative of the Indian National Trade Union Congress, however, stated before us that in Madras State bonus is paid by all the plantations.

13.18. A reference was made by the Commission to the Commissioners of Labour, Madras, Mysore and Kerala, inquiring about the present practice in regard to bonus in the plantations. The replies received are as follows:—

The Commissioner of Labour, Madras :—

"1. The percentage of bonus payable is calculated on the total earnings of the workmen for the year in question.

2. The percentage has varied from year to year and bonus at different rates is being paid to (a) Labour (b) Staff.

3. The bonus is paid by all members of Association of Planters of State of Madras. There is no general industry-wise settlement in the case of the others. Disputes which might arise are dealt with separately. There have been broadly speaking no disputes on bonus in these estates.

4. The bonus is paid by industry-wide settlement in respect of Association of Planters of State of Madras members. The settlement is usually reached before the Commissioner or at Government level after bipartite talks have been held and yielded no result.

5. The dispute in the plantation industry regarding bonus has been settled by conciliation and it has not been found necessary to refer it for adjudication.

Non-members of Association of Planters of State of Madras generally have small holdings with less than 50 acres of planting area. The managements of such plantations may not pay bonus in accordance with state-wide settlement but if any dispute over bonus is brought to the notice of this Department, it is dealt with in the normal course by the conciliation machinery. However, in this connection, I may add that workers employed in small plantations have not organised themselves into strong unions and are not well situated for the purpose of collective bargaining."

The Commissioner of Labour, Mysore, has given the following information :—

"(1) Bonus is being paid on a percentage basis based on the total daily rated wages and not on basic wages. This is because, as per the wage agreements prevailing in the plantation areas in this State, the wages are paid at a consolidated all-inclusive rate and no split-up has been made as between basic wage and dearness allowance.

(2) The percentage of bonus as declared from year to year is as follows :—

1957-58 at 7.1/8%

1958-59 at 7.1/8%

The above agreement is dated 1-9-1959.

1959-60 at 6%

1960-61 at 9%

The above-mentioned agreement was signed on 10-3-1962.

1961-62 at 4%

This agreement is dated 24-8-1962.

In all these 3 agreements referred to above it has been specified that the payment of bonus is subject to the condition that "profits justify the same". It is seen that all the above-mentioned agreements have been made in respect of demands raised by the several unions of workers.

As regards the bonus for the year 1962-63 certain unions have now raised this demand which is under examination by the Department.

(3) The bonus is being paid by all the estates who are members of the Planters Association which have signed the memorandums of settlements. These Associations include the Mysore State Planters Association, Indian Planters Association and the Coorg Planters Association. If any estate is not a member of these Associations it is free to pay the bonus or not. However, in case they do not, it would always be open for the workers to raise an industrial dispute thereon.

(4) Bonus is paid in plantations usually as a result of industry-wise settlements as mentioned above.

(5) In spite of the abovementioned agreements it is seen that now and again an industrial dispute may arise in individual estates regarding the issue of bonus. Such disputes are generally in individual estates which may not be members of the various Planters Associations. Reference of such disputes to adjudication would depend upon the merits of each case.

"As mentioned above, bonus in the plantation industry in this State is being paid by virtue of industry-wise agreements entered into between various Planters Associations and the trade unions. There are, of course, a large number of estates which are very small in acreage and also those which may not be members of any of the Planters Associations and therefore may not pay the bonus as agreed to by the settlements. In such cases the workers are free to raise industrial dispute in regard to this issue."

13.19. In Chapter VI we have considered the question of industrywise agreements, in reference to plantations in Southern India. We would urge on the Employers' Associations and unions concerned to continue industrywise agreements with such modifications, if any, as may be agreed to by them. What we have said applies also to plantations in Bengal, Assam and Tripura. If the parties are unable to renew industrywise agreements our general bonus formula should apply. *We are of the opinion, after taking into consideration the history, progress and present position of the Plantation Industries, that they would be in a position to pay the minimum bonus recommended by us. Bonus higher than the minimum would be payable only if adequate profits are made. We see no good reasons for recommending exemption from the general bonus formula recommended by us in the case of the Plantation Industries nor do we recommend any modifications of the formula in its application to these industries, if they are unable to renew industrywise agreements for bonus.

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*Subject to a Minute of Dissent by Shri Dandekar.

CHAPTER XIV

APPLICATION OF THE FORMULA TO PARTICULAR INDUSTRIES (CONTINUED) —THE COAL INDUSTRY

14.1. The employers have strongly pressed that the profit bonus system should not be introduced in the Coal Industry. The Indian Mining Association, the Indian Mining Federation, the Indian Colliery Owners' Association and the Madhya Pradesh & Vidarbha Mining Association have submitted as follows :—

"(a) Mining involves the working of a wasting asset.

(b) A bonus scheme based on attendance has been in existence in this industry since 1947 and there have not been any disputes between labour and employers on the issue of bonus.

(c) Almost all workers in the industry are employed on piece rate basis and bonus payable can, therefore, be considered as a payment on effort put in by the workers.

(d) Questions relating to the Coal Mines Bonus Scheme have been reviewed continuously over the last 12 years and tripartite decisions have been taken that the Scheme, subject to certain amendments which have since been effected, should continue in its existing form."

The Associations go on to say :—

"One of the major problems of the Coal Industry has been the high rate of absenteeism among workers. Consequently, when the wage structure in the Bengal and Bihar coalfields was standardised for the first time by the Coal Conciliation Board Award in 1947, the Board recommended that a form of production-cum-attendance bonus should be paid to workers in the Mining Industry. The recommendations of the Board were accepted by Government and the Coal Mines Bonus Scheme Act 1948 was accordingly introduced having retrospective effect from 1947. Since the introduction of the Quarterly Bonus Scheme based on attendance linked with production in the case of piece rated workers, the Coal Industry has succeeded in ensuring that its labour force becomes more permanent and is more settled in the coalfield areas.....The Coal Industry has been spared this unrest, which in certain industries in the Eastern region of India has now become an annual feature. Furthermore, it is pertinent to note that the Unions in the Coal Industry, as recently as the 29th January, 1962, submitted demand notices to employers for revision of wages and other facilities. These demand notices did not include any issue relating to payment of bonus or any change in the existing Coal Mines Bonus Scheme. Consequently, the Industry asserts that the issue of bonus in Coal Mines was resolved over 12 years ago and there have not been any demands on this account.

"The reopening of the issue, in the opinion of the Coal Mining Industry, would lead to various disputes in the collieries and would hamper coal production particularly at a time when more and more production is required by the country. It must also be appreciated that the existing Coal Mines Bonus Scheme, which has been working satisfactorily for so long has been liberalised recently to ensure that more workers qualify for the quarterly bonus. The Scheme is certainly advantageous than any profit sharing scheme and provides for the interests of both the employers and the workmen in that the Industry has gained by the more settled labour force whereas workers have gained in the shape of additional remuneration. We therefore, reiterate that in our view, bonus should be regarded as an incentive and should not be linked to profits for reasons stated.....Any scheme for a profit sharing bonus in the Coal Industry would be palpably unfair to the workmen themselves. Mining conditions in different units (and there are about 850 units in the Coal Industry) vary considerably. Many mines which may be efficiently managed have a very high cost of production owing to the fact that several adverse factors are encountered in the mining of coal, which tend to raise production costs considerably. In such cases, the workmen, who may be working under arduous conditions and who may be efficient at their work, will receive a considerably lower quantum of bonus than the workmen working in a colliery having comparatively easy conditions where profits may be considerably higher. In such an event, the good worker working in an efficiently managed concern would, in the event of a profit sharing scheme, being introduced, be penalised for

reasons beyond the control of both the management and the workmen. The Coal Industry, therefore, cannot agree that bonus should be paid on profits .....The statistics published by the Regional Labour Commissioner, Dhanbad, indicate that more than 65% of the workers in the Industry qualify for this bonus. The Industry's own statistics indicate that as many as 85% of the workers earn the bonus in a particular quarter.....As already stated, mining conditions vary considerably from unit to unit and for reasons already stated, it must be realised that the efficiency of a unit in terms of its profitability is not a matter over which managements have any control. Consequently, a Profit Sharing Bonus in the Coal Industry would not only prove difficult of implementation, but would also give rise to innumerable disputes and would result in considerable labour unrest. With regard to profitability, reference is invited to the September 1961 bulletin issued by the Reserve Bank of India which clearly establishes that the return on capital in the Coal Industry is amongst the lowest of any organised industry. The existing Bonus Scheme which has worked satisfactorily should not, therefore, be disturbed."

14.2. Having cited at length the representations of the Employers' Associations in the Coal Industry we have to make the following observations. As regards the point that under a profit bonus system the workmen who may be working under more difficult mining conditions would receive a lower quantum of bonus than workmen working in a colliery having comparatively easy conditions where profits may be considerably higher, it is not a valid objection, for it is inherent in the profit bonus system that the bonus is not directly related to the efforts of each workman or group of workmen. The workmen's best efforts may be neutralised by losses incurred as a result of circumstances over which neither they nor the management may have control. We have already examined the general pros and cons of a profit bonus system and it is not necessary to refer to them again. It has to be borne in mind that profit bonus is also paid in industries which have incentive bonus schemes; and merely because in the Coal Industry there is a statutory bonus scheme linked to attendance as part of the wage structure, it is not a valid reason why the workmen should not, as in the case of other industries, be allowed to participate in the prosperity of the industry. We may, however, mention that Coal is a very labour intensive industry, and the price of coal is controlled. Some rough calculations made by us give ground for the belief that if the general bonus formula were applied to the Coal Mining Industry, the workers would probably get only the minimum bonus in a large majority of cases. It might also transpire that in the case of this industry which has never paid profit bonus, the payment of a minimum bonus may necessitate some, though not appreciable, increase in the price of coal. If the payment of a minimum bonus necessitates a rise, we think that it would be preferable to the discontent that might be caused by singling out this industry for excluding the workers in it from the benefits of a profit bonus scheme. It has to be borne in mind that coal mining is one of the most strenuous of occupations. We have therefore, come to the conclusion that our general bonus formula should apply also to the Coal Industry.

14.3. What we have said about the application of our bonus formula to the coal mining industry applies also to the mining industry generally.

CHAPTER XV

APPLICATION OF THE FORMULA TO PARTICULAR INDUSTRIES (CONTINUED) —BANKS AND INSURANCE COMPANIES.

Banks

15.1. The dispute on the principles of bonus applicable to Banks was referred by the Government of India (Ministry of Labour) to Shri Justice K. T. Desai, constituting a one-man National Industrial Tribunal, by an order dated 2nd September 1960. The Award was published in the Gazette of India dated 20th August 1962.

15.2. Shri Justice Desai held that bonus was payable only when the industry makes a profit. He rejected the demand of the employees for a minimum bonus equal to a month's pay, irrespective of whether adequate profits were made or not, and even when a loss was incurred. He also rejected the conception of an industrywise bonus for Banks.

15.3. The Award follows, in the main, the Full Bench formula of the Labour Appellate Tribunal. The material provisions in the Award are summarised below.

15.4. The adjusted gross profit should be arrived at in the following manner :—

(1) The gross profit as shown in the balance sheet should be accepted without submitting it to close scrutiny (para 92).

(2) To this gross profit, the following items should be added back :—

(a) The actual provision made for depreciation.

(b) The bonus if any paid or provided for in respect of previous years or the year in question.

(c) Debit entries relating to previous years, donations, charities, provision for gratuity fund, etc.

(d) The actual provision for taxation. Regarding taxes, he has given further directions as under :—

(i) As regards banks whose profit and loss account does not disclose any provision for taxes on income, there will be no amount added back to the disclosed profit on account of taxes on income and there will be no deduction subsequently made in respect of the notional taxes on income represented by the adjusted profits.

(ii) As regards banks which have disclosed the provision made for taxes on income in the profit and loss account, they may still not have disclosed the amount of tax deducted at source for which the banks are entitled to claim credit whilst paying taxes. Even in a given case where a full disclosure has been made in respect of the provision for taxes in the profit and loss account including the tax deducted at source, the banks doing so cannot be placed in a disadvantageous position by reason of such disclosure. In the case of all these banks also there will be no amount added back to the disclosed profits on account of taxes on income and there will be no deduction subsequently made in respect of the notional taxes on income represented by the adjusted profits.

(iii) As regards the third type of banks which show the profit subject to taxation in the profit and loss account and disclose the provision made for taxes on income whilst appropriating the profit, the actual provision made for tax on income should be deducted from the profit shown in the profit and loss account and subsequently there will be no deduction in respect of the notional taxes on income represented by the adjusted profits (para 95).

15.5. After having arrived at the adjusted profits in the above manner, the following prior charges should be deducted therefrom in order to arrive at the surplus :—

(1) (a) The amount which is statutorily required to be set apart by a bank by way of reserve fund out of its profit under the provisions of Section 17 of the Banking Companies Act, 1949. Every bank is required under that Section to transfer to the reserve fund a sum equivalent to not less than 20 per cent. of such profit until the amount in the reserve fund together with the amount in the share premium account equals the paid up capital of the bank (para 96).

(b) The amount of reserve required to be set apart in order to comply with the following convention established by the Reserve Bank of India in the interests of Banking Industry :—

(i) Where the published reserves of banks are equivalent to or more than their paid-up capital, irrespective of what is said in Sections 11 and 17 of the Banking Companies Act, they should transfer at least 20 per cent. of their declared profits (that is to say, profits after making usual and necessary provision) to their published reserves till such time as their published reserves and paid-up capital reach a level of at least 6 per cent. of their deposits.

(ii) Where the reserves of banks have not reached parity with their paid up capital, they should continue to transfer 20 per cent. or more of their disclosed profits till—

(a) the reserves are at least equal to the paid-up capital and

(b) the ratio of paid-up capital and published reserves to total deposits is at least 6 per cent. (para 97).

Thus a bank is permitted to deduct as prior charge any sum transferred to reserves under provisions of Section 17 *or* to comply with the convention sought to be established by the Reserve Bank. No excess transfer, however, would be considered as prior charge (para 98).

(2) The second prior charge is notional normal depreciation (para 99).

(3) The third prior charge :—

(a) Return at 6% on paid-up capital; no distinction is made between bonus share capital and ordinary share capital (para 104-5).

(b) Return at the following rates on reserves utilised as working capital is permitted as a prior charge, and in this matter no distinction is made regarding depreciation reserves used as working capital.

(i) $4\frac{1}{2}$% return on statutory reserves and reserves required to be maintained under the convention sought to be established by the Reserve Bank.

(ii) A return of 4% on other reserves.

(4) The provision required to be made for rehabilitation, replacement and modernisation should be allowed as a prior charge (para 109).

15.6. *Available surplus.*—Shri Justice Desai has not laid down the proportion of the available surplus to be apportioned as bonus to the bank employees. However, he stated that the general considerations laid down by the Supreme Court in the Associated Cement Companies case would apply also to the Banking Industry in considering the question of the distribution of the available surplus. He goes on to say that generally speaking the labour in the case of a number of Banks (exclusive of Exchange Banks) will become the major claimant as Banks would benefit by provisions already made for transferring 20% of the profits to reserves, and for rehabilitation, modernisation etc. and moreover, shareholders would be getting not merely the interest on paid-up capital but they would also benefit by the return provided in connection with reserves used as working capital (para 110).

15.7. While rejecting the suggestion that there should be a ceiling on bonus, he stated that the following observations of the Supreme Court in the case of Standard Vacuum Refining Co. of India Ltd. *v.* its workmen (1961 Supreme Court Reports page 506 at page 562) should be borne in mind :—

> ".....unreasonably high or extravagent claims for bonus cannot be entertained just because the available surplus would justify such a claim. As has been observed by the Labour Appellate Tribunal in Burmah-Shell Oil Storage and distributing Co. of India Ltd., Bombay *v.* Their workmen [(1953) 2 L.L.J. 246] care must be taken to see that the bonus which is given is not so excessive as to create fresh problems in the vicinity that upset emoluments all round or that it creates industrial discontent or the possible emergence of a privileged class. The impact of the award of bonus in an industrial dispute on comparable employments or on other employments in the region cannot be altogether ignored, though its effect should not be over-estimated either."

15.8. *Exchange Banks.*—As Section 17 of the Banking Companies Act does not apply to Exchange Banks, and as the reserves of those Banks are kept with their Head Offices, the question of treating transfers of any amount to reserves as a prior charge would not arise in their case; however, this circumstance would have to be taken into account while distributing the available surplus. Therefore, in the case of Exchange Banks his general observation that in the case of a large number of banks labour will be the claimant for the major share in the available surplus would not apply. One cannot however predict and say what precisely the share of labour would be in the available surplus in the case of Exchange Banks in any given year (para 114).

15.9. We now come to the respresentations made to us by the Employers' Associations in the Banking Industry and by the Trade Unions. The following is a summary of the oral submissions made before us by the Exchange Banks' Association and the Indian Banks' Association:—

The Exchange Banks' Association:—

> Any formula for bonus causes more trouble than it resolves. Bonus should be given at the discretion of the Bank. We would rather pay higher salary but no bonus. We are worried if the formula for manufacturing concerns is applied to Banks. Banks do not publish in their final balance sheets the exact amount of their profitability. A bank exists on credit. If a Bank shows that for reasons beyond its control it has had one or two unprofitable years there could be a run on the bank. Such a thing would be detrimental to the national economy. Care has to be taken that these things do not leak out to the Press. At present Banks are incurring some loss on account of slump in Government securities. We are trying to spread the banking habit. If people know that Banks are losing money they would not deposit money readily in Banks. We may have to hide our profits in some years so that we can use them in a year in which we have not operated profitably. Profits can be hidden by putting more money than required in the item "Contingency accounts etc.". There is no secret reserve which does not enter the Balance Sheet. Workers also benefit by this as they get bonus in bad years as well as in good years.

The Indian Banks Association, Bombay:—

> We do not wish to enter into theoretical discussion on the concept of bonus. Workers have been accustomed to bonus. We accept the Desai formula with certain modifications suggested by us. Perhaps if the emergency had not occurred the matter would have been taken to a higher court but we accepted the Award. We would suggest a flat percentage of 12% as return on capital and working funds. We would stress that the continued confidence of the public in a Banking concern is a vital factor in the success of a Banking concern. Maintenance of credit does not mean hiding of profits or of prosperity. It means that in the wider interests of economy the faith of the public *i.e.* depositors and financial institutions should be maintained. If for instance in a particular year one Bank makes a huge profit and another Bank makes a loss because a valued client fails, the country does not want that there should be a scramble for the shares of the former Bank and a run on the latter. The law relating to Banks allows secret reserves to provide for bad and doubtful debts and contingencies. Banks continuously lend money. With the best managements sometimes disasters occur. So we have to keep on cushioning. This necessity is recognised by Section 34A of the Banking Companies Act. If we have to borrow at 6½% from the Reserve Bank how can we afford it if the return given by the Desai Award is 6%. It is becoming increasingly difficult for Banks to maintain their profits. The Reserve Bank has issued a directive that a liquidity ratio of 6% should be maintained *i.e.* that Banks must have capital and reserves equal to 6% of deposits. Today the average ratio is 4%. We do not get return on unpublished reserves under the bonus formula. The Reserve Bank has directed that all Banks must achieve 28% overall liquidity position *i.e.* if advances are 100 crores, the Banks must have 28% in cash, deposits with Reserve Bank and Government securities. Today the ratio is less than 20%. At present Banks are required to maintain 20% ratio. The statutory deposit with the Reserve Bank has been increased to 3% of deposits by the end of 1964. Banks have to work under certain credit controls. Some time back we were not allowed to give advances on particular goods; sometimes we were required to maintain a certain margin. We propose that

the available surplus after meeting the prior charges should be divided into 3 parts, one-third to shareholders, one-third to labour and one-third to the industry. The maximum bonus should be 20% of the basic wages which works out to 25% of the old basic wages as some portion of the dearness allowance has been merged.

15.10. The substance of the submissions made by the Trade Unions were as follows:—

The All India Bank Employees Federation:

Bonus has been a continuous headache. Disclosed profits are not correct profits. If profits are grossed up by adding secret reserves a certain percentage should be given to labour. If secret reserves are not included a higher percentage should be allowed. Minimum bonus for each class of Banks should be fixed as follows:—3 months' total wages for the A Class Banks, 2 months' total wages for the B Class Banks and one month's total wages for the C Class Banks. Maximum bonus for each Class should be equivalent to 6 months' total wages. The minimum bonus being a minimum should not be dependent upon profits.

The All India Bank Employees' Association:

It made similar submissions to those made by the All India Bank Employees' Federation. The Association further submitted that bonus should be a first charge on the profits, and that return on capital should not be given in the case of Exchange Banks as they have no capital in India.

15.11. Having considered the representations made to us we are of the opinion that the entire formula of the Desai Award (including the computation of gross profit) should continue to be applicable in future with the following modifications*:—

(1) Where for any earlier year bonus has been paid after making deduction of notional normal depreciation the notional normal depreciation should continue. In all other cases the depreciation admissible under the Income-tax Act should be deducted from the profits.

(2) Our recommendations in regard to Super Profits Tax, Donations, Extraneous profits and losses will also apply to Banks.

(3) There should be no specific provision for rehabilitation.

(4) The distinction between reserves used as working capital and reserves not so used should be abolished (*vide* Chapter XI Paragraphs 11.14 to 11.17). And as regards return on reserves depreciation should not count as reserve except in the circumstances indicated in Chapter XI Paragraph 11.17.

(5) The percentage of the available surplus allocable as bonus after meeting the prior charges should be 60%.

(6) The distribution of the quantum of bonus to employees should be on the same basis as in the case of other industries, as proposed in Chapter XII, with a minimum equal to 4% of the wages (inclusive of basic wages and dearness allowance) and a maximum equal to 20%, with provision for set-off and set-on upto four years.

15.12. We must now consider the problem of bonus in relation to the State Bank of India, who has made lengthy submissions giving reasons why industrial employments in public sector establishments competing with the private sector, and in particular the State Bank of India and its subsidiaries, should be given special treatment in the matter of bonus.

15.13. We quote below relevant extracts from the memorandum:—

"The economic situation in India at the time of Independence was characterised by acute shortages, repressed inflation, wide-spread controls and stagnation in the investment market. A further dislocation of the national economy was caused by the partition of the country. The prime objective of Government was, therefore, to restore a measure of stability to the economy..... Government in its Industrial Policy Resolution of April 1948, indicated that the State must play a progressive role in the development of industries and

*Subject to a Minute of Dissent by Shri Dandekar.

that for some time to come the State could contribute more quickly to the increase of national wealth by expanding its private activities wherever it was already operating and by concentrating on new units of production in other fields.

It was thus that the principle of Government ownership and control was made applicable to a segment of the economy comprising arms and ammunition, atomic energy and railway transport. In regard to certain key industries like coal, iron and steel, aircraft manufacture, shipbuilding etc. the State was made responsible for further expansion and in the rest of the industrial field, the initiative for development and responsibility for management lay with the private enterprise, the Government having the right to acquire any undertaking in the public interest and to intervene in cases where the conduct of industry was found unsatisfactory.

In March 1950, Government set up a Planning Commission to formulate plans in conformity with the provisions of the Constitution and the Industrial Policy Resolution of 1948. The Commission observed that a rapid expansion of the economic and social responsibilities of the State was necessary if the objective aimed at was to be realised and recommended a progressive widening of the public sector.

In December 1954, Parliament accepted a socialistic pattern of society as the objective of the country's economic policy. . . . The Industrial Policy Resolution declared that the adoption of the socialistic pattern of society as the national objective and the need for planned and rapid Development require that all industries of basic and strategic importance or in the nature of public utility services, should be in the public sector. Other industries which are essential and require investment on a scale which only the State in the present circumstances, could provide had also to be in the public sector.

Therefore, Government classified into three categories, having regard to the part which the State would play in each of them:—

(i) Industries the future development of which was to be the exclusive responsibility of the State,

(ii) Industries which were to be progressively owned by the State and in which the State would therefore generally take the initiative in establishing new undertakings, but in which private enterprise would also be expected to supplement the effort of the State, and

(iii) All remaining industries, the future development of which would be left to the initiative and enterprise of the private sector, leaving it however open to the State to start any industry even in this category. . . . . .

The public corporations in the second category have all been created by statutes passed by Parliament and the relative legislation makes provision for a large measure of Government nominated directors and principal officers. The relative legislation also provides for Government directives to be given to these corporations in the public interest. Apart from these, Government control is generally exercised in the rule making powers and invariably the previous sanction of the Central Government has to be taken for the rules of the Corporations on the more important matters. As regards the third category the Memorandum and Articles of Association of the Government Companies generally provide for nomination of the directors by Government and rules on certain important matters are liable to be reserved for Government's consideration.

As regards Audit Control, Government's power as to the nomination of the Auditors is reserved to be exercised on the advice of the Comptroller and Auditor General of India.

As regards the manner of operation (e.g. from the stand-point of profits) Corporations like the State Bank of India are directed to act on business principles regard being had to public interest.

The policy in regard to public sector companies is to create surpluses consistent with public interest and to distribute these surpluses (a) in the expansion, consolidation or development of the unit itself and in some cases also (b) in the making of resources available to the State for being used in other national activities."

The Memorandum then goes on with the special features of the State Bank:—

"The Government of India and the Reserve Bank had always been exercised by the problem of rural economy and credit and the seriousness of the problem can best be judged by the fact that two major Committees were appointed, one in 1949 and the other in 1951. The second Committee ultimately recommended "the creation of one strong, integrated, State sponsored, State-partnered commercial banking institution with an effective machinery of branches spread over the whole country, which, by further expansion (including further, but minor amalgamation where necessary), can be put in a position to take over cash work from non-banking treasuries and sub-treasuries, provide vastly extended remittance facilities for co-operative and other banks, thus stimulating the further establishment of such banks, and, generally, in their loan operations, in so far as they have a bearing on rural credit, follow a policy which, while not deviating from the canons of sound business, will be in effective consonance with national policies as expressed through the Central Government and the Reserve Bank."

The Government of India accepted the above recommendation and enacted the State Bank of India Act, 1955, which resulted in the taking over of the Imperial Bank of India and the assumption of control of the business and undertaking of that Bank.

By the creation of the State Bank of India, the State found itself in possession of a comparatively wide spread banking organisation, which could be used by the State in furtherance of its economic policies, particular emphasis being laid on rural credit and small industries. As up to then, commercial banks were shy to open branches in rural and semi-urban areas being primarily moved by the profit motive, the State Bank of India at its very inception was statutorily bound to open 400 new branches within a period of five years. The State Bank of India more than fulfilled this statutory target and, as a result of Government policy, is committed to further extend its branch expansion programme. In the meantime as a result of the enactment of the State Bank of India (Subsidiary Banks) Act, 1959, 8 Banks previously sponsored by certain princely States and State Governments, were created subsidiaries of the State Bank of India. The policy was that these subsidiaries should assist the State Bank of India in its branch expansion programme and in its commitment to function in the public interest.

.....Statutory recognition has been given to the basic fact that branch expansion means and involves financial losses due to uneconomic working during the initial stages. This recognition is in the form of the creation of the Integration and Development Fund held by the State Bank of India and into which is ploughed back dividends declared by the State Bank of India on 55% of the Bank's equity capital, which is the minimum to be owned by the Reserve Bank of India. (In this connection it may be mentioned that the Reserve Bank of India holds 92.11% of the equity capital of the State Bank of India). This Fund, which again represents public funds, is earmarked to meet part of the losses incurred by the State Bank of India and its subsidiaries in the process of branch expansion.....It is for the serious consideration of this Commission of Enquiry whether the workmen of these Banks should be allowed to make an industrial claim for bonus. If such an industrial claim is allowed to be made, it would be a claim on public funds, built up after giving fair and adequate wages to the workmen (as laid down by All India Tribunals) and if following the present concept of granting an equal bonus to all workmen in India, such bonus is paid to workmen in rural and semi-urban areas, the repercussions in such areas is best left to imagination.

Just as surpluses and profits of industrial concerns in the public sector are not to be viewed as commercial profits, similarly profits and surpluses of the State Bank of India and its subsidiaries should not be viewed purely or mainly as commercial profits. The two fold object of Government and the National Planners in respect of surpluses of the public sector undertakings is (a) to provide funds for expansion of the unit itself and (b) to provide funds to the Government in the shape of dividends etc. for being used for other public purposes. Both these objects are fulfilled in the State Bank of India.

In the context of the present judicially interpreted meaning of bonus, as being an industrial claim at the hands of workmen on the satisfaction of certain pre-conditions, it would be pertinent to examine how the profits and surpluses of the State Bank of India and its subsidiaries arise and the degree

of contribution of the workmen to the earning of these surpluses and profits. As is well known, it was a feature even at the time of the Imperial Bank of India that public institutions and bodies were required to have accounts in that Bank. This position continues even in the case of the State Bank of India. Again these Banks act as Agents of the Reserve Bank of India for transacting Government business, in all places where the Reserve Bank of India has no office. By Government business is meant maintenance of currency chests, conduct of treasury business and the provision of remittance facilities. These Banks are remunerated for doing Government business at a nominal rate of commission, but the volume of work is such that the commission amounts to a substantial sum. It is stressed that by taking over the conduct of Government business, these Banks in essence and effect now perform a part of Governmental activity. Further in view of its position as a State owned Bank, foreign agencies trading with Indian businessmen generally insist upon Bank guarantees to be provided by the State Bank of India. Till recently the rupee counterparts under U. S. Public Law 480 were deposited with the State Bank of India but since it was found in practice that the State Bank of India was required to maintain a high degree of liquidity to meet calls upon these rupee counterparts accounts, the Government of India decided that these funds should be held by the Reserve Bank of India and the State Bank of India has been gradually transferring these funds to the Reserve Bank. The deposit of these funds with the State Bank of India may not have been permanent, but the fact remains that the income of the Bank gained appreciably on account of these funds.....

The services rendered by these Banks include promotion and financing of co-operative marketing societies, processing societies and small scale industries and the provision of rural credit and loans against warehouse receipts so as to obviate the tillers of the soil being forced to sell their produce at low prices to meet immediate needs. All these activities postulate that the Bank should provide the required services at the lowest possible rate of interest and commission to encourage financial progress of the country and if compulsory bonus is introduced, the expense thereof, particularly as the Bank is rapidly expanding, would impose a strain on the resources of the Bank which could probably only be made by increasing the cost of nationally essential services, which would in effect defeat the very objects for which the Bank was established and retard the development programmes, particularly in the underdeveloped rural areas where the need for development is the greatest.

If the functions of these banks had been discharged departmentally, as was the case with the Bank of Patiala, the question of payment of bonus would not arise as Government could not be expected to pay bonus on the surpluses accruing in any one of its department. The discharging of these functions by separate corporations is an arrangement for convenience of administration and cannot make a difference in regard to payment of bonus.....

It is, therefore, the submission of these Banks that the concept of bonus as an industrial claim that may be raised by workmen on the satisfaction of certain pre-conditions, as their share in the profits, should not be made applicable to these banks or indeed to industry as a whole in this country for all the reasons set out earlier in these submissions. These Banks have been paying bonus to their workmen on recommendations made from time to time by the Board of Directors and it is submitted that this position should be allowed to continue."

15.14. At the hearing before us at Bombay it was further submitted that the State Bank was required under the State Bank of India Act to open 400 branches in India in the five years from 1st July 1955. Actually it had opened 416 branches in that period, about 200 in a number of places where there were no Banks at all. It is evident this provision was enacted by the State Bank of India Act, in order that facilities of Banking should be extended to small centres and rural centres where such facilities did not exist. Private Banks would not ordinarily open branches in upcountry areas unless there are prospects of profit.

15.15. The All India State Bank of India Staff Federation has proposed that in the case of the Banking Industry, including the State Bank of India, bonus should be made of two parts: one part should be a predetermined constant equivalent to two months' salary independent of the working results of the year, while the other part should be linked with the dividend declared for the year.

15.16. It might be mentioned here that the Award of Shri Justice Desai in regard to Banks does not apply to the State Bank of India which was not a party to the reference. Having considered the different views on the question of bonus to employees of the State Bank of India we are of the opinion that the formula proposed by us in regard to Banks generally should also apply to the State Bank of India. We may add that in Chapter XVIII we have negatived the contention that the principles of bonus in respect of public sector industries which compete with the private sector should be different from those applicable to the private sector.

Insurance companies

15.17. In considering the question of bonus for employees of General Insurance Companies the provisions of certain Sections of the Insurance Act, 1936 have to be taken into consideration. Section 31A(1) (c) provides, *inter alia*, that notwithstanding anything to the contrary contained in the Companies Act, or in the Articles of Association of the Insurer (if a company), or in any contract or agreement, no Insurer shall after the expiry of one year from the commencement of the Insurance (Amendment) Act, 1950, be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the Insurer. Proviso (vii) to Section 31A(1)(c) is as follows:—

> "Nothing in this sub-section shall be deemed to prohibit the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration, such bonus, in the case of any employee, not exceeding in amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case."

Section 40C(1) is as follows:—

> "After the 31st day of December, 1949, no insurer shall, in respect of any class of general insurance business transacted by him in India, spend in any calendar year as expenses of management including commission or remuneration for procuring business an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer."

Then follows a Proviso to this which is not material.

15.18. In the explanation to this Section the expression "expenses of managements" is defined as follows:—

> "Expenses of management" means all charges, wherever incurred whether directly or indirectly, including Commission payments of all kinds and, in the case of an insurer having his principal place of business outside India, a proper share of head office expenses, which shall not be less than such percentage as may be prescribed, of his gross premium income (that is to say, the premium income without taking into account premiums on the insurance ceded or accepted) written direct in India during the year."

15.19. The result of these provisions is that the Central Government has to consider the specific circumstances of each case and decide whether any, and if so what, bonus should be paid by an Insurance Company to its employees and whether the bonus proposed to be paid is reasonable.

15.20. The bonus formula of the Labour Appellate Tribunal has not in the past been applied to the Insurance Companies on account of the provisions of Section 31A(1)(c). And in view of the foregoing provisions of law we feel that our recommendations should not in terms, apply to employees of general Insurance Companies. It would, of course, be open to the parties concerned to come to mutual agreements concerning the matter and also for the Department of the Government of India concerned to consider whether, in giving its sanction to any proposal for bonus under the proviso (vii) to Section 31A (1) (c), such agreements and/or the principles recommended by us in respect of bonus should be applied, with such modifications, if any, as may be necessary.

CHAPTER XVI

APPLICATION OF THE FORMULA TO PARTICULAR INDUSTRIES (CONTINUED) —THE SUGAR INDUSTRY

16.1. The Wage Board for the Sugar Industry was required by one of its terms of reference to work out the principles that should govern the grant of bonus to workers in the Sugar Industry. The Report was published in 1960. The Wage Board made certain recommendations which we shall be reproducing in a later paragraph. The bonus practices in the Sugar Industry prevailing before the Wage Board made its recommendations are described in the Wage Board Report as follows:—

> "338. No uniform system regarding bonus determination in the sugar industry obtains at present. In the Maharashtra and South regions, the parties' approach by and large, has followed the lines of the full bench L.A.T. formula. The controversy mainly centres round the quantum of prior charges and the share of bonus in the residuary surplus. However, the number of cases in which bonus claims are still dealt with on basis other than the one stated above, is by no means small.
>
> 339. But in U.P. and Bihar, this question stands on a basis all its own. The first and the most outstanding point of difference is that here the bonus issue is treated on an industrywise basis as against the results shown by individual units. The next point of distinction is that even when proceeding on the industrywise basis, the available surplus for the entire industry in the respective States is not calculated after consolidation of the balance sheets but is estimated by indirect methods for which the break up of cost structure (given by the Tariff Board) is considered good enough working data. The total bonus amount to be distributed on this basis is allocated to individual units on basis of their output, and on rates linked to production bonus is distributed to workers in each unit. The bonus rates in U.P. sugar factories, generally set the pattern for those in Punjab. The Mills in Madhya Pradesh also favour this system.
>
> 340. Needless to say that much controversy has centred round this system and the Government intervention for settlement of bonus claims in the sugar industry of U. P. and Bihar has become an annual affair. Typical of the sentiments voiced by the employers against the system is the following para from the letter addressed by one of the employers' member of the State level Sugar Bonus Committee.
>
> > "Unfortunately to a very great extent the same story has been repeated (this year) as in the last year and in previous years and there has been "rough shod riding" from one stage to another by a peculiar system of Committees, Subcommittees and so called Tripartite Conferences. May be that some of the larger factories will stand to gain, as usual by the decision but a great many small factories are once again coming under the heel."
>
> Contrasted to the above statement, and quite as typical of the sentiments of employees is the following statement of the trade union organisations in U.P.
>
> > "We would never accept linking of bonus with profits. Linking of bonus with production in Sugar industry was extensively justified by the L.A.T. of India.....We totally accept and stand by this view."
>
> 341. Faced with such sharply contrasted and widely divergent view points of the parties, the State Labour Authorities in U.P. and Bihar have been managing to tackle the bonus issue from year to year with *ad hoc* solutions or make-shift arrangements which in view of the reference to this Board are characterised by them as interim measures.

Salient features of the bonus system prevailing in U.P. and Bihar Sugar Mills

> 342. A resume of how the particular bonus system prevalent in the sugar industry of U. P. and Bihar came to be evolved, is given in Annexure F. With a view to constructing a satisfactory bonus formula, it is necessary to note

the salient features of the prevailing systems and to examine them. Thus, the salient features of the bonus system prevailing in the sugar industry of U.P. and Bihar are as follows:—

(i) The bonus rates for the year 1949-50 in the case of sugar mills of U.P. and Bihar which have been made the basis for decision in subsequent years, were based on estimates of surplus profits calculated on the break up of production cost of sugar as given by the Tariff Board (1950) and made due allowance for prior charges. Following the above procedure, the details of calculations as made by the L.A.T. are shown in Appendix LXXVI. The name of production bonus often given to this system is therefore clearly a misnomer.

(ii) Subsequent rates of bonus decided after negotiations between the parties have conformed to the so called basic bonus rates or varied from them in one direction or the other in differing degree depending on the estimates of savings however rough—of the working of the year in question, as compared to that of the year, bonus rates in respect of which were decided by the L.A.T. As the State Labour Department of the U.P. Government have also informed, the *ad hoc* Committee appointed to consider the question of bonus from year to year took into consideration factors like sugar recovery, cane crushed etc. in making recommendations to the State Government.

(iii) Factories producing less than one lakh maunds of sugar have always been excluded as they are not supposed to have any residuary surplus.

(iv) Even factories falling within the four corners of the general bonus formula can be exempted, and are in fact exempted, if they show loss or only meagre profits on the working of the season.

(v) Some times, the rates are also relaxed in individual cases if the profits are not found sufficient to bear the burden of the generally applicable bonus rates.

16.2. After considering the merits and drawbacks of the system prevailing in U.P. and Bihar the Wage Board made the following recommendations for the North and Central Regions:—

"356. Choosing the good points of the system which has prevailed in the North for thirteen years and eliminating its drawbacks as discussed above, in the circumstances of the attitude of labour apropos balance sheets in the North and the new support which this method of calculating bonus has gained in Central region, the Board endeavoured to evolve for these two regions on basis of the representative cost data related to varying duration and recovery, a bonus formula which besides retaining the merit of simplicity should bear relationship to the actual working results of the individual units. With that end in view, the Board makes the following unanimous recommendations for North and Central Region:—

(i) Bonus will be determined unitwise and not industrywise as hitherto done in U. P. Gross profit, which the Tariff Commission in its 1959 report has termed as return on capital employed, will be calculated for each factory on the basis of regional cost schedule prepared by the Commission as applied to the duration of season and recovery of that factory. As the costs arrived at by the Commission are based on 1957-58 season, with some provision for contingencies, subsequent variations in cost as may be indicated or confirmed by the Food Ministry of the Government of India will be taken into account.

(ii) Any concession in Excise Duty and/or cess as may be given by the Government will be added to the gross profits calculated in the above manner. Deferred cane price as may be found to be payable to the cane suppliers under the price linking formula notified by the Government will be debited against the gross profit calculated as above.

(iii) Loss on export of sugar, if any, will be debited against the said gross profit *i. e.* return on capital employed.

(iv) The Tariff Commission has not made any provision for selling agents' commission. As long as the entire distribution of sugar in a State is controlled by the Government, in arriving at the figure of gross profit

of any factory in that State, selling agents' commission will not be allowed. But if and when sugar distribution is decontrolled (or where it is decontrolled as in Central region at present), the actual selling agents' commission paid, subject to a maximum of 75 nP. per 100 rupees of sugar price realised will be allowed as an item of cost.

(v) Price realised for D-29 quality will be taken to be the selling price for the entire sugar as costs have been based by the Tariff Commission for D-29 quality by reducing from the regional manufacturing cost an amount representing 90% of the average of differential price fixed by the Government for other qualities of sugar; the balance 10% of the differential price being regarded by the Commission as the necessary incentive to produce sugar of better quality.

(vi) According to Tariff Commission, from the return on capital allowed by them the following items will have to be deducted for arriving at the figure of net profit available for dividend on preference and equity capital:—

(a) Gratuity;

(b) Interest on borrowed capital and debentures·

(c) Managing Agent's Commission;

(d) Bonus; and

(e) Income tax and Super tax.

In order to arrive at the figure of taxable profit excluding bonus, actual payments made by each factory under items (a), (b) and (c) stated above will be deducted from the return on capital calculated as above, provided that the managing agents' commission will not exceed 10% of the return on capital as reduced by payment of items (a) and (b).

(vii) In respect of 1959 Central Budget, it was explained by Finance Ministry that in order to simplify the taxation procedure, the total taxation was splitted into two parts (1) by levy of 45% income-tax and super-tax on taxable profit of a limited company and (2) by levy of 30% on dividend amount as may be declared by a ·company. It was pointed out that the total taxation amounted to average 56% of the taxable profit and that as a result of this simplification of taxation procedure, the taxation will on an average, be substantially the same as the present. Accordingly from the taxable profit, as worked out according to clause (vi), 56% will be deducted for meeting taxation liabilities under the above new procedure of taxation. In future, however, if this percentage is increased or decreased by the Government, the same will be taken into account.

(viii) 22% of the profits which remain after deducting taxation as per clause (vii) will be paid as bonus to the employees; provided that in case of factories having less than 1,000 tons crushing capacity the bonus at 20% of the net profits after tax will be paid. In both the cases, saving in taxation according to clause (vii) on the amount distributable as bonus would be further distributed in the same proportion being relief under Income-tax Act, but it would be done only once:

Provided further that bonus will be subject to a ceiling of 3 months consolidated wages.

Explanation.—If a factory has actually crushed 1,000 tons per 24 hours crushing as seasons' average, it will be considered to be of 1,000 tons capacity even if its registered capacity is below 1,000 tons.

(ix) Bonus will be paid *pro rata* on the basis of the earnings (whole of the basic pay and the dearness allowance) of all employees for the period of the cane crushing season.

Explanation.—'Employees' will also include staff not coming under the definition of 'workman' under the Industrial Disputes Act, but the staff at the head office of the factory as may be in the employment of its managing agents, will not be entitled to get any share of the above bonus.

(x) Where a factory claims that it has suffered losses or made such meagre profits during the year as to make it unreasonable for it to pay bonus as above, it will have the right to represent its case before a tripartite

committee consisting of three persons as may be nominated by the State Government concerned, out of which one each will represent the employers and employees and the third one will be representative of the State Government. The decision of that tripartite committee will be binding on the factory concerned and its employees.

(xi) The Union Government have declared that they will shortly appoint Bonus Commission. When that Commission makes its recommendations, both employers and employees will have, in the light of those recommendations, the right to seek modifications of this bonus formula and failing settlement in respect of the same, terminate this bonus formula.

The rate of tax on profits assumed in the formula

357. A few points contained in the above formula need specially to be elucidated. The first of these pertains to the tax provision to the tune of 56% of the taxable profits. The average tax of 56% on taxable profits is based on retention of 18% of the sale proceeds with a company. The calculations are as follows:

		Tax
Taxable Profits	100	
Less Income-tax and Super-tax	45	45
Balance	55	
Less retained earnings with the Co.	18	
Balance dividend	37	
Less tax @30% on dividend	11	11
		56

Where retained earnings are less than 18% of the taxable profit *i.e.* 33% of profits after payment of 45% tax, the total tax will exceed 56%. In North region, in the years 1957 and 1958 retained earnings were only 3.5% and 4.5% respectively of the taxable profits. If the retained earnings continue at the same percentage of taxable profits, the present rate of total taxation will amount to more than 60% of the taxable profits, in the North region. But in arriving at the figure of average taxation, it will not be prudent to base it on figures of only two years' profit. As the all India average has been taken to be 56%, the Board considers that it would be more fair to take 56% as the average taxation rate though in years in which retained earnings are lower than 18% of taxable profits the average taxation rate will work out to be somewhat higher."

16.3. For the Maharashtra and the South region the Wage Board made the following recommendations:—

"360. The bonus practices in Maharashtra and South regions have been briefly referred in para 338 *supra* and more detailed description is available in annexure 'G'. From these it would appear that within the frame work of the full bench formula of the Labour Appellate Tribunal, the parties from unit to unit make adjustments and settle the bonus issue by collective bargaining from year to year. On the whole, this system has so far worked satisfactorily in the sugar industry of these regions. Since in these regions the profitability of sugar industry is higher, generally speaking, the workers have been receiving reasonably fair amount of bonus. The Board is aware of several cases where even though the profits were not substantial, the workers succeeded by collective bargaining in obtaining bonus. The evidence which came before the Board also indicates that there is in these regions no particular urgency for the substitution of the existing arrangements. Besides, as is also borne out by the judgment of the Supreme Court in the A.C.C. case*, the full bench L.A.T. formula is a good enough arrangement for settlement of bonus issue in the industry until the question is comprehensively considered by a high power body in all its aspects after taking evidence from all industries.

361. The Government have already announced their intention of appointing a Bonus Commission, and in view of the fact that there is no particular urgency for upsetting the arrangement which has until now worked satisfactorily in Maharashtra and South regions, the Board does not feel it necessary to evolve a fresh bonus formula for the sugar industry of these regions and recommends that the present practice of settling bonus by negotiations with the full bench formula as interpreted recently by the Supreme Court in the background may continue."

*Civil Appeal No. 549 and 460 of 1957-I.L.L.J. pp. 644-682.

16.4. The Indian National Sugar Mills and Workers' Federation has represented to us that the Wage Board formula is "woefully disappointing". It goes on to say that while under the old formula the industry distributed Rs. 1.5 crores as bonus for 1959-60, the amount for the year 1960-61 under the Wage Board formula was merely Rs. 33 lacs. By a modification of clause (viii) of the bonus formula regarding sharing of saving in taxation, the amount came to be increased by Rs. 4 lacs, but this made little difference. Under the old system the bonus for 1960-61 would have come to Rs. 1.25 crores. On the recommendations of the State Labour Tripartite Conference (Sugar) held on 13th June 1961, a Committee was constituted by the U.P. Government, under section 3 of the U. P. Industrial Disputes Act, to consider the question of grant of bonus to their workmen by vacuum pan sugar factories of the State for 1960-61, generally on the recommendations of the Wage Board, subject to such modifications as may be mutually agreed upon and to submit its report to Government. The Committee brought about a settlement between the representatives of the employers and workmen and made the following recommendations:—

(1) The formula of bonus recommended by the Central Wage Board for Sugar Industry would be applicable subject to the conditions that the saving in taxation referred to in clause (viii) of paragraph 356 of the Wage Board's Report would be distributable between the factory and employers in the proportion of 50:50.

(2) The Managing Agency Commission referred to in Cl. (vi) (actual or maximum of 10 per cent. whichever is less) of paragraph 356 of the said Report, would be deductable only after deductions on account of gratuity and interest on borrowed capital and debentures have been made;

(3) In such factories where the Managing Agency system does not exist and Directors/Partners/Secretary/ Treasurer work as top management, their salaries on expenses may be chargeable in the same manner as Managing Agency."

The U.P. Government gave effect to these recommendations in respect of bonus for 1960-61 by an order under section 3 of the U. P. Industrial Disputes Act.

16.5. The Indian National Sugar Mills Workers' Federation has stated that balance sheets can never be a satisfactory basis for bonus calculations for the sugar industry, that the old formula of the Labour Appellate Tribunal should be restored for the North and Central regions, and for the other regions the general formula recommended by the INTUC should be applied.

16.6. On the other hand the Indian Sugar Mills Association has recommended that (a) the aim should be to replace, in a period of 5 years, profit bonus by bonus related to productivity, and efficiency, (b) in the intervening period the Wage Board formula should be followed. For the same reasons given in Chapters III & IV we cannot support the proposal.

16.7. It appears to us that the formula prescribed by the Wage Board for the North and Central regions, as also the formula for that region which prevailed before the Wage Board recommendations, are too complicated. Having made our general recommendations on the basis of profits made as shown in the audited accounts and balance sheets, we cannot see our way to recommend a formula different from that applicable to other industries in India on the assumption that while audited accounts and balance sheets in the whole of India can be used as the basis for determining bonus, they should be presumed to be unreliable only in the case of sugar mills in a particular region.

16.8. We are also unable to support the suggestion of the Indian National Sugar Mills Workers' Federation that the formula which prevailed before the Wage Board recommendations should be restored. We are of the opinion that the general formula proposed by us should be applicable to the Sugar Industry unless the Employers' Associations and the Unions concerned agree to any other arrangement or formula in their respective regions.

CHAPTER XVII

APPLICATION OF THE FORMULA TO PARTICULAR INDUSTRIES (CONTINUED) —MISCELLANEOUS INDUSTRIES

Certain Industries in Kerala

17.1. In certain industries in Kerala, *viz.* tiles manufacturing, cashew manufacturing and coir manufacturing, bonus is paid in an *ad hoc* way at a certain percentage of the wages. In the reply to the questionnaire by the Kerala Cashew Manufacturers' Association it is stated that the Cashew manufacturers are agreeable to continue to pay bonus at a fixed rate irrespective of profit or loss. The Association goes on to say:—

> "In the Cashew Industry it has been our experience to face lightning strikes demanding exhorbitant bonus which this industry could not afford. The Unions so word that their strike notices as to retain sufficient latitude in the matter of beginning a strike while the goods are in process. Kernels in process are liable to infestation and rapid deterioration in quality. When a strike is launched, generally 7 days' goods will be in several stages of processing. Strikes are invariably accompanied by unlawful picketting for preventing salvage of goods in process. If the strike continues for about ten days, the goods in process will practically become unfit for human consumption and unmarketable. The value of the goods so damaged is always much more than the capital invested by managements. This is because almost all the manufacturers work their factories on capital borrowed from scheduled banks on the security of goods. The result is that a strike, if it continues for more than ten days would ruin any manufacturer. We would, therefore, agree to a fixed bonus, irrespective of profit, payable annually at an agreed time provided the unions agree not to claim profit-sharing bonus and not to resort to strikes on such demands and provided also that the Government undertakes to enforce the agreement by providing sufficient protection and facilities for salvaging goods in process in the event of a strike in violation of the agreement..... bonus has necessarily to be industry-wise. We are also anxious that it should not be industry-*cum*-region-wise. The profit of an individual unit will depend on the sales and purchases position of that particular unit. This being so, several firms engaged in this industry will have different trading results. When one is suffering heavy loss another would be making a profit. Therefore, a rate of bonus decided on the basis of profit will create labour unrest in this area where almost the entire industry owned by different firms are situated at close proximity. If certain workers receive bonus and workers employed in neighbouring Cashew Factories are not getting it, there would naturally be a certain amount of discontentment leading to unrest in the industry. It is, therefore, essential to eliminate such an eventuality."

17.2. The Association suggests that the minimum bonus should be equal to 3% of the basic wages and the maximum 6%. The Association does not suggest how the figure of actual bonus between these two limits is to be arrived at and how the matter is to be resolved if the industry and the Union concerned cannot agree.

17.3. We are of the opinion that if the industries and Unions concerned can come to an agreement on the subject matter of bonus on an industrywise basis it would be a good thing; and such agreement should of course be acted upon. Failing such agreement, however the general bonus formula recommended by us should also apply to the industries in Kerala referred to above.

Electricity undertakings

17.4. The Federation of Electricity Undertakings in India has submitted that the peculiar features of the industry should be borne in mind in applying any bonus formula to this Industry. In particular, it emphasises the fact that the concept of "reasonable return" and the mode of computing the "clear profit" to see how it compares with the "reasonable return" have both been statutorily defined. In this connection it has drawn attention to certain provisions of the Electricity Supply Act, 1948. The Sixth Schedule of the Act lays down:—

> "The licensee shall so adjust his rates for the sale of electricity whether by enchancing or reducing them that his clear profit in any year of account shall not, as far as possible exceed the amount of reasonable return."

The Federation goes on to say that for enhancing the electricity rates there are certain mandatory provisions to be followed, which do not permit an increase in the rates unless certain pre-conditions are satisfied. The terms of the license requires the licensee to meet the entire demand for power within his area of supply irrespective of whether it is economical for him to cater to such demand or not. The return on the capital base is allowed at only 6%. There has to be a contribution to reserves at a certain rate and they have to be invested in Government securities. Interest paid on loans is not allowed as expenditure. The industry is capital intensive. The capital invested is Rs. 300 crores; the number of employees is about 55,600. More than half of the Electricity Undertakings in India do not pay bonus. The Federation has consequently submitted that as Electricity Undertakings are rigidly controlled Public Utility Undertakings bonus should not be allowed to be claimed as a matter of right and in any case should not exceed the equivalent of two months' basic pay.

17.5. At present, disputes regarding bonus in Electricity Undertakings when referred to Industrial Tribunals are decided in accordance with the Full Bench formula of the Labour Appellate Tribunal. We are of the view that there is no good ground for exempting electricity undertakings from the general approach to bonus. Our general formula would therefore apply, subject to this that, as in the case of Banks and Cooperative Societies, the amount required to be transferred by statute from the profit of the year to the reserves should be allowed as a prior charge. The formula would, of course, not apply to Electrical Undertakings run by Municipalities, for the terms of reference to us exclude industries in the public sector run departmentally.

Seamen on High Seas

17.6. At present shipping companies which pay bonus to their shore employees do not pay bonus to seamen on their vessels. Section 100 of the Merchant Shipping Act, 1958, requires that the master of every Indian ship except a home trade ship of less than 20 tons shall enter into an agreement in the prescribed form in accordance with the Act with every seaman whom he engages. Section 114(1) extends the provisions of Section 100 to foreign ships. Section 102 lays down that if the master of a ship registered at a port outside India has an agreement with the crew in accodrance with the law of that port and engages in any port in India a seaman who is not the holder of a certificate of discharge issued in India, the seaman may sign the agreement so made and it shall not be necessary for him to sign an agreement under this Act. Agreements are usually entered into for particular voyages or for periods not exceeding one year. We were informed by the representatives of the National Union of Seafarers of India that the average seaman gets employment for 9 months in a year and that 85% of Indian seamen are engaged in foreign ships. It was further stated by the Union that the minimum wage of the seaman with food is Rs. 125·00 per month and the average Rs. 180·00 per month. On the other hand the Indian National Steamship Owners' Association gave the figure Rs. 130·00 per month for seamen on coastal shipping and Rs. 154·00 per month for seamen on high seas (in both cases with food).

17.7. It was further stated before us that prior to 1954 it was the right of shipowners themselves to select seamen for voyages from those offering to be engaged. Since that time an official Seamen's Employment Office has been constituted under the Merchant Shipping Act, the intention being to distribute employment evenly. Under this system each company maintains a roster of seamen. There is also a General Roster from which a shipowner may take seamen when men on the Company's Roster are not available.

17.8. Our terms of reference require us to recommend the principles of bonus for workers in "industrial employment". The term is not defined but it would presumably include workers covered by the Industrial Disputes Act and State Acts like the Bombay Industrial Relations Act. Section 150(9) of the Merchants Shipping Act lays down that the Industrial Disputes Act shall not apply to any disputes between seamen and the owners of ships and such disputes have to be referred to a special tribunal. It is therefore doubtful whether seamen come within the purview of the reference to us.

17.9. In the view we have taken our recommendations would not apply to seamen. Even otherwise the question of bonus to them raises certain difficulties which must be borne in mind. If Indian shipping companies engaged in foreign trade were required to pay bonus to seamen it would put them at a disadvantage in competition with foreign shipping companies, and it would be difficult to attempt to apply the bonus formula to foreign shipping companies. Any attempt to force the bonus formula on them would discourage the employment of Indian seamen, and foreign companies may well prefer to employ seamen from other countries. It may therefore be unwise to apply the bonus formula in respect of these employees. Our colleague, Shri Dange, however, is not inclined to agree with this view.

17.10. We were informed at one of our meetings that one Indian company *viz.*, the Bombay Steam Navigation Co. (1953) Ltd., which is a subsidiary of the Scindia Steam Navigation Co. Ltd. and engaged wholly in coastal trade, pays bonus to seamen engaged in coastal ships. The bonus is on the same scale as that paid to the shore staff of the Scindia Steam Navigation Co. We hope this practice will be continued by the company.

Stevedore Labour

17.11. There are about 18 stevedoring firms in Bombay and about 34 in Calcutta. The figures for other ports are not readily available.

17.12. In Bombay stevedore labour has been paid profit bonus at a uniform rate, but stevedore labour in other ports is not paid any profit bonus. This is due to historical circumstances. At the hearing before us in Calcutta the Federations of Unions strongly pressed that since stevedoring is a profitable business, labour should be given a share in the profit. On the other hand, the Master Stevedores Association, Calcutta, and the Calcutta Stevedores Association have in a representation to us submitted as follows:—

"(1) The volume of business carried on by the Stevedores is very uncertain, depending upon the arrival and departure of ships.

(2) The requirement of labour being irregular and intermittent, the bulk of the labour force is engaged on a daily basis as casual labour.

(3) The workers are registered under the Dock Labour Board and are employed by the Stevedores as and when required; they return to the Dock Labour Board's 'pool' after the work has been completed.

(4) The rates of wages, allowances and overtime, hours of work, rest, intervals, holidays and pay in respect thereof and other conditions of service are prescribed and fixed by the Board.

(5) The Casual workers are guaranteed a minimum 21 days wages per month."

The Associations further say that the employer—employee relation is intermittent as workers reporting under the 'pool' are employed by the Stevedores in rotation under the existing employment scheme. The Associations say that the introduction of bonus would give rise to various complications and be a new source of disputes.

17.13. We are of the opinion that stevedore labour should not, *per se*, be ineligible for bonus. It has not been suggested that stevedoring is less profitable in Calcutta than in Bombay. The circumstance that employment is from a pool, in rotation and intermittent, is not a good argument against giving bonus and there should be no practical difficulties since a record is regularly maintained of the persons who have been employed under each stevedore.

17.14. The next question is about the mode of computation and the formula to be applied. Stevedore employers employ labour registered under the Scheme framed under the Dock Workers (Regulation of Employment) Act, 1948, which aims at decasualising dock labour. The essential feature of the Scheme is the common sharing of the services of those in the registered pool of workers, as and when required by the stevedores concerned. The Scheme is administered by the Dock Labour Board which lays down the wages and conditions of service of registeerd dock workers. The Scheme itself does not provide for bonus; but in this connection the Bombay Stevedores Association Ltd., has stated as follows:—

> "Prior to the Bonus Agreement of 1956, bonus, as a gratuitous payment, was being paid by individual stevedors employers at varying rates. This position was considered unsatisfactory and as a result of this feeling, the member of this Association decided that payment of bonus so far as this industry was concerned should be rationalised, should not be based on the profits of the individual employer and should be based on the true source of profit, namely tonnage handled by the members. Therefore, over and above the handsome earnings ensured by the piece rate system of payment, dock workers employed by the members of this Association whether directly or through the Bombay Dock Labour Board, commenced getting bonus based on a rational and equitable method of computation.
>
> It is submitted that it would be wrong and retrograde to upturn this equitable method of bonus payment by applying the present judicially interpreted concept of bonus as a share in profit and, if this is done, it would result in detriment

not only to the stevedore employers but also to the dock workers employed by them. It would be in effect mean the re-emergence of the same unsatisfactory position (namely of uneven and varying rates of bonus) which the members of this Association sought to rectify by the Agreement of 1956. Thus, so far as dock workers are concerned, the adoption of any other method of Payment of bonus, would result in receipt by each set of them of varying rates of bonus or no bonus at all. In this connection it is once again emphasised that so far as the daily rated reserve pool workers are concerned, their services are in fact shared by several registered employers and it would be totally incongruous in applying the existing Full Bench Formula, to call upon each stevedore employer to pay bonus *pro rata* to such of the reserve pool workers who may have been employed by him from time to time and for varying periods. So far as the stevedore employers are concerned, it may be pointed out that they do not as a general rule solely depend or confine themselves to stevedoring work. They have per force to engage themselves in other activities as well, which have absolutely no connection with work in the Port of Bombay or the connection may be purely incidental. Employees engaged for the other activities have nothing in common with the dock workers employed by the employers and if the present concept of bonus is applied along with the presently accepted principles of distribution of bonus etc. It is apprehended that this would result in acrimonious bickering and litigation, where there is none at present.

The present method of payment of bonus in this industry has the tremendous merit of completely obviating acrimonious bickering and litigation in that both parties know the amount of tonnage handled and the rate of bonus is arrived upon as a result of collective bargaining. The common sight, presently obtaining where the Full Bench Formula is applied, of workmen attempting to dissect audited accounts and of workmen labouring under a sense of acute dissatisfaction and suspicion, is totally absent so far as this industry is concerned in view of the agreement method of payment of bonus existing in this industry."

17.15. The Association has entered into an agreement with the Transport and Dock Workers' Union for 4 years ending 31st March 1965 by which bonus is payable to the workmen at a certain rate per dead weight ton of cargo excluding coal, mail and passengers' luggage and bananas, loaded or discharged by the members of the Association at the Bombay Port. The rate fixed is 15 nP. per ton for the two years ending 31st March 1963, and 16 nP. for the two years ending 31st March 1965. The amount payable by the individual stevedoring employers and firms at these rates is pooled for distribution among the entitled workers on the basis of the number of days actually attended by the Reserve Pool workers and on the basis of days attended by the monthly stevedore workers. The total amount of bonus constituting the bonus pool is thus divided among the reserve pool workers and the monthly workers in proportion to the number of man days, and in proportion to the differentials in basic wages of the respective categories. We give at Appendix 'G' a copy of the agreement.

17.16. The representatives of the All India Port and Dock Workers' Federation who appeared before us at the hearing at Bombay did not oppose the suggestion that the above mentioned system of determining bonus should be continued. Since stevedoring is done by some firms in addition to other business and it may be difficult to go into the accounts and separate the profit in stevedoring from other lines of business and in view of the past practice it is desirable that the present practice in Bombay which has worked well should be continued. So far the Stevedores' Association has been able to come to an agreement with the Transport and Dock Workers' Union about the rate of contribution by the employers to the bonus pool. We hope that this will continue to be the case. If in future the parties cannot for any year agree as to the rate of contribution to the bonus pool and/or as to the manner of its distribution among the entitled workmen we recommend that the same should be determined by arbitration. If in any year the parties do not agree to arbitration, the machinery of the Industrial Disputes Act would be available for settlement of the dispute. In view of the particular circumstances in which stevedore labour is employed under the decasualisation scheme we are clear that our general formula would be inapplicable; so also any system of minimum and maximum bonus. We recommend further that the bonus pool system for stevedore labour in Bombay should also be applied at other ports, including Calcutta, subject to such modifications as local conditions may require. In the event of disagreement the matter should be referred to arbitration or adjudication.

Small shops and Trading Establishments

17.17. A number of Associations urged before us that small shops and trading establishments should not be brought within the scope of the bonus formula and the suggestion made was that just as establishments engaging less than 20 persons are not covered by Acts such as the Employees' Provident Funds Act and by the provisions of the Industrial Disputes Act regarding lay off and retrenchment compensation, etc. such establishments should also not be brought within the scope of the formula applicable to companies and large establishments. It was urged that the application of the bonus formula with the concomitant challenging of accounts etc. would disturb harmony in the relations between the employers and employees in such cases.

17.18. Having given consideration to the matter we recommend that the general bonus formula proposed by us should not apply to small units employing less than 20 persons, except those which are factories as defined in the Factories Act.

Institutions

17.19. The bonus formula should obviously not apply to employees of institutions such as Chambers of Commerce, Red Cross Associations, Universities, school, colleges, hospitals and social welfare institutions, etc. Such institutions are not established with a view to make profits, though they may have a surplus of income over expenditure. It is not necessary to go into the question as to which of these are industries within the meaning of the Industrial Disputes Act. We recommend that the bonus formula should not apply to such nistitutions.

Our colleague, Shri Dange, however, thinks that Bonus formula should be applicable to those institutions which are within the meaning of the Industrial Disputes Act.

Industries run by Charitable Institutions

17.20. The case of employees of industries run by Charitable Institutions for profit deserves special consideration. The profits made by such industries are used for the charitable purposes of the Institution. For instance, the Hamdard Laboratories (India) Ltd. has represented that the bonus formula should not apply to such charitable institutions, or if it is applied, Income-tax and Corporation Tax at the rate applicable to companies, though not chargeable, should be notionally deducted; otherwise such Institutions would lose the benefit of the tax exemption. We are of the opinion that employees of industrial establishments engaging 20 or more persons and factories within the meaning of the Factories Act, owned by Charitable Institutions for profit should be eligible for bonus according to the bonus formula; but we agree that in such cases Income Tax and Corporation Tax should be deducted as a prior charge at the full rate applicable to Companies notwithstanding that no tax may in fact be chargeable. Organisations operating concerns of this type should not be deprived of the benefit of tax concession which is given for promoting the charitable purpose.

Building Workers

17.21. The Building Workers' Association of India has represented that workmen in the industry engaged through contractors should be given bonus. They get minimum wages fixed under the Minimum Wages Act. Most of them are unskilled.

17.22. Workers engaged directly by construction companies would be getting bonus according to our formula if they have worked for the company for not less than 30 days in the year. But the question of bonus to workers engaged through contractors raises difficulties. Such workers are engaged for a particular contract job. To attempt to pay them bonus according to the profits of the particular job would create serious practical difficulties. We think that the problem relating to workers on building construction engaged through contractors is one of evolving and enforcing a proper wage structure. It is not feasible to apply the bonus formula to such workers engaged through contractors on building construction work, and we recommend accordingly.

CHAPTER XVIII

APPLICATION OF THE FORMULA—THE PUBLIC SECTOR

18.1. We may now consider the question of payment of bonus in public sector industries, in view of the note appended to item (1) of the Terms of Reference defining its scope as follows:—

> '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.'

Departmentally run industries in the public sector have definitely been excluded and, therefore, need not be considered.

18.2. A number of representatives of public sector enterprises appeared before us or submitted their representations. In one way or another, they emphasised the special character of public sector enterprises stating that their primary objective was to assist in the economic growth of the country with a view to promoting employment and the well-being of the community in general; that profit motive was a secondary consideration and that whatever gains ultimately accrued would be utilised for further growth to the ultimate good of the entire community; that most of them were of a basic character designed to promote dependent industries in the private sector; that certain financial institutions recently set up were not intended to restrict or retard the business activities of established private financial institutions, but were primarily designed to provide cheap credit for the development of industries in the private sector when credit position remains tight, or where, because of the need for under-writing greater risk elements, established institutions may be somewhat reluctant to operate.

18.3. They also pointed out that for loans advanced by the Government to public sector undertakings only a limited return, much below the prevalent market rate of interest, was credited to the Public Exchequer and substantial balance was left to augment the resources for further assistance. They, therefore, pleaded for a differential treatment in respect of bonus compared with the private sector industry. Some of them also represented that their industry or business was of a non-competitive or monopolistic character and, therefore, was entitled to exemption.

18.4. In our view the determining factor under our terms of reference is whether a public sector industry is really competitive or otherwise. Other considerations have no relevance as they, more or less, euqally apply to the private sector. And the real point for consideration, therefore, is what constitutes competitive character in a public sector enterprise.

18.5. In the strict economic sense competition covers not only service rendered and/or the production of an industrial unit but also the resources utilised (competition for labour, capital and materials); but if this were intended there could hardly be any significance in a specific use of the expression "which compete with the establishments in the private sector", because every industry must employ and compete for resources for running it, and therefore, there can be no exemption. It is thus evident that "competition" in our terms of reference has a restricted meaning and applies purely to the aspect of competition in the service and products of a public sector enterprise.

18.6. Then again, there is a view that even competition in this sense, though it may be entirely marginal, it is competition all the same and, therefore, those public sector enterprises which are even marginally competing with the private sector industries fall within the purview of our Terms of Reference. Here again, it is to be appreciated that if this was the intention, there would hardly be any purpose in making a distinction. On the other hand, it seems equally inconceivable that such a provision should have been specifically made simply to single out and exclude only the marginally competitive cases. We have, therefore, to view this matter in a wider perspective and not in a rigid or restricted connotation; and to interpret 'competition' in the sense which the framers of the Terms of Reference apparently had in mind.

18.7. In this context it seems evident in our view that the intention underlying this proviso was to restrict the application of our bonus formula to those units in the public sector which effectively compete with units in the private sector to a significant degree and are identifiable as such. Competition in this sense implies a public sector enterprise which substantially impinges upon the activities of enterprises in the private sector, whether as to marketing, or pricing, or rendering service.

18.8. Talking generally in the light of what has been said earlier, we feel that a practical, rough and ready but objective yardstick for assessment of the competitive character of public sector enterprises is necessary. And we recommend, therefore, that if not less than 20% of the gross aggregate sales turnover of a public sector undertaking consists of sales of services and/or products which compete with the products and/or services produced and sold by units in the private sector, then such undertakings should be deemed to be competitive and our fomula should apply to such units. We recommend further that in the event of any disputes in particular cases as to whether any anomalous and marginal cases fall within or outside the dividing line of being "20% competitive" the machinery for deciding them should be that recommended by us in Paragraph 19.23 Chapter XIX for the settlement of bonus disputes generally.

18.9. We may mention here that we are aware that some non-competitive public sector enterprises have in the past been paying bonus in some form to their workers by mutual accommodation. They are, of course, outside our purview. But we trust they will not, merely for that reason, discontinue the payment of bonus in future.

18.10. Our colleague Shri Dange does not agree with this recommendation, as he holds that public sector undertakings should pay bonus from the moment they go into production/service irrespective of whether they are competitive or not.

18.11. Our colleague, Dr. B. N. Ganguli, has reservations with regard to the views expressed in paragraphs 18.7 and 18.8. His views are embodied in a note appended to the Report; but he does not wish this to be treated as a minute of dissent.

CHAPTER XIX

MISCELLANEOUS

19.1. In this Chapter we propose to deal with some general matters.

19.2. Question 13 of our questionnaire was on a matter which had led, in practice, to much controversy and litigation. It was as follows:—

> "In computing the profits, in what circumstances should workmen or unions be allowed to challenge audited accounts in the case of (a) public limited companies, (b) private limited companies, (c) proprietory and partnership concerns? Even where no *prima facie* case is made out to show incorrectness of the balance sheet, please state whether in a bonus dispute a concern should be required to give particulars regarding a particular item, or give the major break up figures of miscellaneous expenses, etc., in order to add to the profit which should not be considered as expenditure for the year in the computation of profits for the purposes of bonus calculation, such as bonus paid in respect of previous years, capital expenditure, etc."

19.3. The Indian National Trade Union Congress has replied that the fact that the accounts are audited would not *per se* make them acceptable to labour, that as labour's right to participate in the management of industry has been recognised, labour has the right to satisfy itself that the profits have been correctly arrived at, and when the profits are challenged labour must be given the right to inspect the accounts. Merely supplying particulars or break-up figures of certain items of expenditure of the profit and loss account is not enough. The other Federations of Unions have expressed similar views and asked for facilities for inspecting books of account, challenging particular items therein, etc.

19.4. The Employers' Associations strongly object to workmen being allowed to go behind audited accounts unless a *prima facie* case is made out for questioning the correctness of such accounts. They state that endeavours to explore balance sheets and extract unnecessary information by fishing inquiries in an attempt to discover incorrectness of the accounts has, in recent years, generated much ill-will between employers and their workmen in various industries and that the practice is altogether unhealthy. They refer to the provisions of the Companies Act providing penalties for Directors and Auditors passing incorrect balance sheets and profit and loss accounts.

19.5. In this connection we may refer to the view taken by the Supreme Court in the case of the Associated Cement Companies (1959 I L.L.J. page 644) wherein the Supreme Court observed:—

> "The working of the formula begins with figure of gross profits taken from the profit and loss account which are arrived at after payment of wages and dearness allowance to the employees and other items of expenditure. As a general rule, the amount of gross profits thus ascertained is accepted without submitting the statement of the profit and loss account to a close scrutiny. If, however, it appears that entries have been made on the debit side deliberately and *mala fide* to reduce the amount of gross profits, it would be open to the tribunal to examine the question and if it is satisfied that the impugned entries have been made *mala fide* it may disallow them."

This is accepted by the Employers' Association as an equitable rule. But they feel that notwithstanding this decision there is a tendency for Unions to attempt to go behind audited accounts without good reason and for Tribunals to permit roving inquiries.

19.6. Here we may refer to the provisions of Section 3 of the Commercial Documents Evidence Act which provides, *inter alia*, that a Court may presume that certain documents purporting to be made by the appropriate authority were so made and that the statements therein are accurate. Among such documents are specified, "copy, certified by the Registrar of Companies, of the balance sheet, profit and loss account and audit report of a Company filed with the same Registrar under the Indian Companies Act 1956 and the rules made thereunder". We are of the opinion that: (a) in a bonus proceeding formal proof of an audited balance sheet and profit and loss account by the filing of an affidavit or by the certification by the Registrar should not be required unless the tribunal or arbitrator considers it necessary; (b) the presumption that statements in the document are correct may be drawn in respect of balance sheets and profit and loss accounts which are audited by qualified auditors and need not be confined to copies thereof certified by the Registrar of Companies.

19.7. If a *prima facie* case is made out showing that the balance sheet or profit and loss account is incorrect the Tribunal or other authority may go into the question of the correctness or incorrectness of the items. The Tribunal deciding a bonus dispute may, in its discretion, permit Unions to obtain clarification of items in the balance sheet or profit and loss account or major break-up figures of large items. But we consider that Tribunals and Arbitrators should not embark on investigations into questions such as whether stocks have been correctly valued, whether a portion of the revenue expenditure which has been passed by the Auditors as revenue expenditure should be considered as capital expenditure, the adequacy of remuneration to Directors and Managing Agents of Companies, whether expenditure on travelling allowance is excessive etc. The Companies Act and other Acts provide ample safeguards against malpractices. There are also provisions under the Companies Act for directing investigations into the affairs of Companies in certain circumstances.

19.8. We now come to accounts of partnership and proprietory concerns. In a bonus dispute the Tribunal may, if it thinks it necessary, require the accounts in such cases to be audited. When they are audited and certified to be correct the same principles should apply as in the case of audited accounts of companies.

19.9. The case of Banks requires special mention. The Bombay Exchange Banks Association has submitted as follows:—

> ".....the practice of adding back items and of workmen questioning items in audited accounts has considerably disturbed industrial relations in practice. Secondly, in the case of banking companies the practice would inevitably result in disclosure of details not required to be set out in the published accounts and which should not be publicised even confidentially, in the interests of the general public. This latter principle has been recognised by the introduction in 1960 of Section 34A in the Banking Companies Act, 1949.... The basic distinction between banking concerns and other companies is that the very nature of banking depends upon public confidence on the part of the depositors, and for this reason any formula which is devised must necessarily avoid direct or indirect disclosure of any of the transactions of a banking company. Accordingly in our submission the formula should not in any manner go behind or beyond the published accounts of the banking concern.... As the Commission must be well aware the audited accounts of an ordinary company are subject to supervision by the authorities under the Companies Act and the auditor certifying them, in issuing his certificate, is making a formal declaration in accordance with law and is subject to severe sanctions should his certificate be inaccurate. In the case of banks they are subject to the additional supervision and control of the Reserve Bank of India under the provisions of the Banking Companies Act and the Reserve Bank of India Act. In these circumstances, it is impossible to envisage any balance sheet issued by a bank being incorrect. The question of supplying break ups of any item in the audited balance sheet should not arise."

The Indian Banks association agrees with this submission and adds :

> "It would be impossible to carry on the business of banks without great loss to their prestige and harm to the confidence of the public in them if audited accounts of banks (which are invariably limited companies) should be permitted to be challenged in proceedings regarding the ascertainment of bonus."

19.10. There is force in these submissions. We are of the opinion that in a bonus proceedings audited accounts of Banks should not be permitted to be challenged or gone behind. Unions may, however, be permitted to obtain from the Bank such information as is necessary for working out calculations according to the bonus formula *e. g.* figures of basic wages and dearness allowance, bonus for previous years included in the accounts of the year, whether provision for bonus is included in expenditure for the year, etc.

19.11. An important question for consideration is whether there should be a minimum period of attendance in a year to qualify for bonus. The Federations of Unions are not in favour of any such minimum at all. This should mean that temporary workers or casual workers who have worked for even a day or two would be entitled to bonus *pro rata*. The United Trades Union Congress (U. P. Branch) has, however, proposed that in seasonal industries one month's working during the whole season should qualify for bonus and in non-seasonal industries two months'. In a number of agreements between companies and Unions a minimum period of work in a year is specified to qualify for bonus. For instance in the case of the Firestone Tyre & Rubber Co. of India Private Ltd., a minumum qualifying period of 30 days in a year has always been agreed to by the

company and Union concerned and this has been incorporated in agreements between the Company and Union concerned as well as in all the bonus awards relating to this Company. The industrywise agreements in the Tea Industry in Bengal and Assam and in the plantations in South India lay down a minimum qualifying period for bonus. In the Tata Iron & Steel Co. Ltd., there has been a practice embodied in agreements between the Company and the Union concerned that employees who have put in less than a year's service are not eligible for bonus. In the existing bonus agreement between the Indian Iron & Steel Co. Ltd. and the Union there is a similar provision.

19.12. The Employers' Associations are in favour of a minimum period, some suggesting as much as 240 days which is the minimum period for qualifying for lay off compensation, retrenchment compensation, leave with wages under the Factories Act and the Mines Act and for benefits under the Employees Provident Fund Act. Further, they point out that the contribution of temporary and casual workers to the profit is negligible and that real contribution is made by the workmen who have worked for an appreciable period. They also point out in this connection the administrative difficulties of keeping records and verifying claims of casual and temporary workers.

19.13. For instance, the Tata Oil Mills Co. Ltd., while stating that casual workers do not really contribute to the profits of the concern, adds that in the case of casual workers it is difficult for the employer to satisfy himself that payment is made to the right persons. Another employer has pointed out that registers are not required to be maintained for casual workers and that casual workers cannot be regarded as part of the working force of the unit. The representatives of Gujarat Mills & Industries while agreeing that casual labour does not contribute much to production and should not be paid any profit bonus, have further submitted that the flight of technical men from one concern to another has become a problem and this would, to some extent, be lessened if bonus is not paid to those who leave the services of the Company.

19.14. Having considered the matter carefully we are of the view that there should be a minimum period of 30 days' work in the year for qualifying for bonus. In the profit sharing systems in other industrialised countries there is usually a minimum qualifying period. A minimum qualifying period is, on principle, desirable. It would also avoid administrative difficulties caused to companies by having to keep records of attendance of casual and temporary workers who may have worked at any time during the year and to verify that bonus payments claimed are made to the right persons.

19.15. The next question for consideration is whether a dismissed employee should be eligible for bonus payment. There is nothing anomalous in combining bonus stoppage with dismissal—indeed it would be rational—because such cases warrant severity in order to act as a deterrent. After all bonus can only be shared by those workers who promote the stability and well-being of the industry and not those who positively display disruptive tendencies. Bonus certainly carries with it the obligation of good behaviour which helps sustaining the industry.

19.16. It is, however, necessary that the authorities administering it must not do so lightly. They should be doubly careful when they resort to this extreme course. The basic ingredients of misconduct are not in doubt; they are categorically defined in the Standing Orders which deal with various types of conduct for which dismissal is permissible and in the case of wrongful dismissal workmen are not without a remedy. Why should, therefore, there be any exemption ?

19.17. Our colleagues representing labour have misgivings regarding its implementation. In their experience managements have not yet developed that stability of judgment or conscientiousness as to translate it into practice in the manner envisaged by us. They further consider that in accordance with the existing practice of Tribunals, bonus should be withheld only in the case of misconduct causing financial loss to the company to the extent of the loss. It is recognised that the evil of genuine misconduct should be eliminated; but they consider that the time is inopportune for extending the scope further to cases of dismissal for misconduct as they apprehend that the labour is apt to react adversely to any change.

19·18. Having regard to these apprehensions we all feel inclined to fall in line with them; and we recommend that, for the present, the existing practice may continue, but with the addition that bonus may be withheld for dismissal only in cases of riotous or violent behaviour on the work premises, theft, fraud, misappropriation or sabotage of property of the concern; and further extension may be deferred to a more propitious moment.

19.19. However, our colleague Shri Dange totally disagrees both with the approach as well as the recommendation on this question. He does not mind the present position being retained in which bonus is withheld on account of misconduct involving financial loss to the Company.

19.20. Our terms of reference require us to recommend whether bonus due to workers, beyond a specified amount, should be paid in the form of National Savings Certificates or in any other form. In Paragraph 3.21 Chapter III we have stated that the concept of bonus has the advantage that in the case of low paid workers such sharing in the prosperity of the concern augments their earnings and so helps to bridge the gap between the actual wage and the need based wage. We have further observed that the profit bonus system suits the workers' pattern of consumption for spending at least once in a year on some articles of additional and diversified consumption and on needs which cannot conveniently be met from the monthly wage packet. In the circumstances we are of the opinion that the amount of bonus payable to the workers should be paid in cash and not in the form of National Savings Certificates or any other form.

19.21. Our terms of reference require us to suggest on appropriate machinery and method for the settlement of bonus disputes. The Indian National Trade Union Congress has, in its reply to the questionnaire, stated that the existing machinery has made the parties perpetual litigants, that the appropriate machinery would be voluntary arbitration with no right of appeal, but if voluntary arbitration is not available a Standing Tripartite Machinery industry-wise or industry-*cum*-regionwise, should be constituted whose decision should be binding.

The Bombay Millowners' Association has stated :

> "We are of the opinion that it would be possible for the trade unions and employers to arrive at an agreement on the issue of Bonus if the Bonus Commission succeeds in laying down a simple and workable formula. However, the machinery provided under the Industrial Disputes Act and other industrial relations legislation should always be available to the parties should they fail to arrive at an amicable settlement of the bonus dispute."

19.22. Some Employers' Associations have suggested that when a bonus dispute is referred to Tribunals, accountants should be associated with the Tribunal. Other Employers' Associations have suggested that the State Governments should set up panels of arbitrators and reference of disputes to such panels by Government should be made only when there is a joint submission.

19.23. Since we have simplified the bonus formula and substantially reduced the factors of uncertainty in its operation there should be less scope for disputes and for litigation. The formula could be worked out, in the large majority of cases, without difficulty. There may, however, be a residue of cases where the parties do not agree on the calculations of bonus or some other minor issues may be involved. In such cases we would recommend that the matter be referred to arbitration, each party appointing one arbitrator. The arbitrators before entering on the reference should choose an umpire to whom the matter would be referred in case of disagreement between the two arbitrators. If the parties are not willing to refer the dispute to arbitration, the machinery of the Industrial Disputes Act would be available for the settlement of the dispute.

19.24. We suggest that our recommendations should apply to all bonus matters relating to accounting year ending on any day in calendar year 1962 other than those cases in which settlements have been reached or decisions have been given.

19.25. Our colleague Shri Dange desires that the following statement be incorporated in the Report :

> "There are certain points in the general body of the Report and in the Bonus Formula adopted here on which I would have liked to add a separate dissenting note detailing my views. But I have refrained from doing so in the hope that what has been accepted herein may do away with the complications which the workers had to face on the bonus question in the last few years and may give *all* of them a better deal for the time being at least."

Acknowledgements

19.26. We have already referred to the valuable assistance from various Associations of Employers, individual employers and the Unions. We once again wish to express our thanks to all of them for the active co-operation extended by them which has made our task easier.

19.27. Before concluding we wish to express our appreciation of the services of the staff of the Commission who had at times to work very hard. Shri K. R. Wazkar in particular has discharged his duties as Secretary to the Commission with zeal and industry and we wish to thank him here for all the assistance given by him to the Commission.

19.28. Shri M. B. Prabhoo our Assistant Secretary did quiet useful work, so also the Private Secretary to the Chairman, Shri P. V. Kale, who in addition did the work of analysing balance sheets and profit and loss accounts of various concerns. We are thankful to Sarvashri V. M. Marathe and K. S. Pillai, Stenographers. Particular thanks are due to Shri P. D. Vaidya, Senior Clerk, who has been extremely useful in all administrative matters connected with the Commission's work, and to the Investigator Shri D. S. Prabhu Ajgaonkar for his excellent work. Shri S. D. Narvekar, Junior Clerk also deserves special mention for the hard work put by him.

M. R. MEHER
Chairman

M. GOVINDA REDDY
B. N. GANGULI
S. R. VASAVADA
S. A. DANGE
N. DANDEKAR
K. B. MATHUR
Members.

K. R. WAZKAR
Secretary.

BOMBAY, 18TH JANUARY, 1964.

NOTE BY DR. B. N. GANGULI ON TREATMENT OF PUBLIC SECTOR ENTERPRISES FROM THE POINT OF VIEW OF THE BONUS FORMULA

1. There are two basic reasons for recommending a policy of similar rewards for similar types of labour, *viz.*, (a) the need for equity in income policy, and (b) the desirability of reflecting properly the economic cost of labour to different industrial and productive units. While from the point of view of the social objectives outlined in the Indian Constitution and the Indian Five Year Plans the former is an important consideration, it is the latter that is of more direct relevance from the point of view of fostering economic efficiency. Whenever different production units compete for the same type of labour, economic efficiency demands that the cost of labour is reflected to the different units in a uniform manner. This requirement extends not only to the policy regarding basic wages, but also to the policy of bonus payment. From the point of view of economic efficiency, therefore, it is desirable to have as uniform a bonus policy as possible, for different sectors and units.

2. The crucial test from the standpoint of efficiency is the competitiveness of different units in their demand for labour. It is important to guard against two sources of confusion here. Firstly, it may be thought that a unit competes with the other units only if it is a significant part of the industry as a whole. This view is indefensible because being a smaller part of the industry only means that the unit faces more (and not less) competition from the rest. In fact in the case of "perfect competition", a situation that the economists postulate to illustrate the most extreme degree of competition, each unit is assumed to be a very small part of the industry. If a "percentage" test, as proposed, is used, the most extreme degree of competition would appear to be a situation of no competition at all. The second source of confusion is to think too much in terms of industries and sectors rather than in terms of the labour market as a whole. Units producing very different kinds of goods may, nevertheless, compete for the same kind of labour. To see, therefore, whether a certain public sector undertaking competes with the private sector, we have to look not only at the private sector units that produce the same goods as the public undertaking in question, but also at other private sector units that compete for the same kind of labour, irrespective of whether they produce the same kind of goods or not. Economic and statistical studies have shown that labour is perhaps the most non-specific of all factors of production, and this makes it unwise to apply any criterion of competitiveness that is based not on the labour market as whole but only on the industry in question. The industry-based " percentage test " is, therefore, one that I am not inclined to accept.

3. If a certain public sector undertaking is set up not for profit but for some specific purpose, it will be difficult to apply a bonus formula, particularly because the undertaking may make no profits to which bonus can be tied. Two warnings should, however, be borne in mind here. Firstly, even in the case of no-profit undertakings, there will be a need for having a system of reward as uniform with the rest of the economy as possible, and also there should be a method of giving the workers incentive to work hard a purpose that bonus is designed to serve. There is a need for thinking what alternative arrangements may help uniformity and incentives. Secondly, many public sector undertakings are set up without the primary purpose of earning profits, but which, for good economic reasons, should not be made to work too much divorced from the profit criterion. Experience shows that an attempt to earn profits ensures a certain degree of efficiency in working, and this working efficiency will be desirable even when the primary purpose of the undertaking is not profits. Thus the fact that a certain public sector undertaking has been "formed for a public purpose and not to make profits", is not a sufficient reason for exempting it from the application of the bonus formula.

4. In the case of public sector corporations that earn large profits as a result of monopoly conditions, there is indeed a case for not giving as high a scale of bonus as will be justified by the large size of the profits. But this is not an argument for not giving any bonus at all, but only an argument for having an appropriate bonus system, that makes the ratio of bonus to profits relatively low.

5. It should, therefore, be recognised that public sector undertakings should have, as far as possible, a system of bonus that is reasonably close to the bonus given in the private sector. To have a "percentage test" will be to impair economic efficiency, as the test fails to measure competitiveness. In so far as the public sector undertaking

engages staff that comes from the same overall labour market in which private sector undertakings also compete, there is an argument for having a policy of treating bonus for the public sector on par with bonus in the private sector. This rule should apply even to public sector undertakings that are set up to meet a public purpose rather than to earn profit. The exceptions to the rule should be confined to the following three cases : (1) When a public sector undertaking uses labour that is entirely specific to it, without being involved in competition in the labour market. This is, needless to say, a very rare situation. (2) When the public sector undertaking acts on a no-profit basis. Here we have to think of methods of ensuring uniformity and incentives, serving the same purpose as bonus payment. (3) When the public sector undertaking earns huge profit as a result of monopoly advantages. Here the bonus system need not be dispensed with altogether, but the bonus should be a very low proportion of profits.

6. The above argument is worked out in terms of efficiency. There is also the consideration of equity and justice. It is easy to see that the force of this consideration of equity is entirely in the direction of having a uniform system of bonus in the public and in the private sector, argued above in terms of economic efficiency. In fact, the equity consideration goes even further than that of economic efficiency, because even if the labour in a public enterprise is entirely specific and has no employment opportunity elsewhere, as in case (1) above, equity demands that it gets the same kind of bonus as other labour. But even if we leave out equity, economic efficiency also demands that the system of payment in the public sector be as similar to that in the private sector as possible. This applies to the bonus also, and the only exceptions to this requirement are noted in the three cases discussed above.

(Sd.) B. N. GANGULI

SHRI DANDEKAR'S MINUTE OF DISSENT

1. I regret to have to record my dissent from some of the recommendations in this Report.

2·1. *Super Profits Tax* : The first of these concerns the disallowance of Super Profits Tax (hereinafter referred to as "SPT") as a prior charge in the formula recommended by the Commission for computing the "available surplus" for purposes of determining the quantum thereof to be allocated as bonus.

2·2. The reasons for this disallowance have been set out in paragraph 9·8 in Chapter IX of the Report and may be summarised as follows :—

(i) that bonus itself is an admissible deduction for purposes of taxation (including SPT);

(ii) that the only reason, nevertheless, for duducting Income-tax and Super tax (but not SPT) as a prior charge in the bonus formula in to ensure a minimum return on capital and reserves *after* allowing for these taxes but *before* allowing for bonus itself;

(iii) that the foregoing consideration has, however, no relevance in relation to SPT because

(a) SPT is a tax on "Super Profits" *i.e.* on excessive or abnormal profits ; and

(b) in computing the liability for SPT, various further and substantial allowances besides those admissible for income-tax are statutorily allowable as deductions including, specifically, both the liability for income-tax and super-tax itself and a basic return on capital and reserves ;

(iv) that if, in these circumstances, SPT were allowed as a prior charge for purposes of bonus, it would be necessary to add back the saving in SPT to the amount allocated as bonus ; but this being a very complicated and difficult exercise, must be avoided.

2·3 Having given the most careful and, indeed, anxious thought to the whole subject in the light of these arguments, I must, with respect, observe that the reasons given at (i) and (iv) above have, in my view, no greater relevance for SPT than for Income-Tax and Super-Tax. And the answer to them in both cases, would be the same, namely,

(a) that these considerations do *not* justify the total disallowance of a direct tax like SPT as a prior charge ; and

(b) that they can be adequately taken into account and allowed for, quite simply, either by enhancing somewhat the proportion of the available surplus which would otherwise be allocated to bonus, or by computing the SPT liability on a provisional assumption as to the quantum of bonus payable.

2·4 I concede there is some force in the reasons set out at (ii) and (iii) in sub-para 2·2 above. But the real problem is two-fold. In the first place, it cannot be disputed that where SPT *is* payable it is factually a money out-go which necessarily reduces the magnitude of the real or true "available surplus" *pro tanto*. Secondly, however low the *level of priority* one may be willing to accord to SPT as a prior charge in the bonus formula, it would be rather odd to suppose that merely by refusing to deduct it at all (even when it is payable) it becomes in some esoteric fashion "available" (as part of the available surplus) for distributing a percentage thereof as bonus to workmen.

2·5. There is another aspect of this subject which must not be overlooked. Even if it were conceded that because of the specific mode of computing SPT in its present form, the disallowance of this tax as a prior charge would not result in serious harm to the companies affected, no one can foresee the changes that may be brought about in future in the structure of this particular tax, or in the taxation structure generally, which might warrant a change of view. Meanwhile, to accept the disallowance of SPT might be taken to imply a general expression of opinion that all forms of direct taxation, save only income-tax and super-tax are irrelevant for bonus purposes and should be ignored in computing the available surplus. Such a proposition would be wholly untenable, and has only to to be stated to be at once rejected. The only true principle can be that *all* direct taxes, whatever their mode of computation, must come into the reckoning as diminishing the available surplus to the extent of their net incidence; and when this does in fact happen, as in those cases where SPT is leviable, the interest-in-expectancy (if I may so call it) of *all* the three beneficiaries *viz.*, the workmen, the company and the shareholders, in the available surplus will naturally be adversely affected.

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2·6 I am, therefore, clearly of opinion :—

(a) that SPT (like the Wealth Tax when it was applicable to companies) must be deducted as a prior charge;

(b) that so long as SPT is computable in its present form it cannot, of course, rank *pari passu* with Income-tax and Super-tax in the matter of priority;

(c) that it should rank in priority somewhat lower down, next after the return on capital and reserves, but before rehabilitation allowance;

(d) that in those cases in which, for any accounting year, SPT is payable and has thus to be deducted as a prior charge, the amount of SPT to be so deducted should be computed (under certification by the Auditors) *strictly* according to the provisions of the Income-Tax Act and the SPT Act, after making *full* allowance for *all* the various applicable reliefs, rebates, allowances and deductions provided therein, *except* only that no deduction at all should be made for bonus itself;

(e) that where SPT is found to be payble and deductible as above as a prior charge, the portion of the available surplus to be distributed as bonus should be according to the following scale :—

If the amount of SPT deductible by way of prior charge as above in respect of any accounting year is :		The percentage of available surplus to be distributed as bonus shall be :
Less than 2½%.....	Of the estimated "total income" for purposes of Income Tax.	60% (as in para 12.12 of Chapter XII of Report).
2½%, upto 7½%	Do.	62½%
above 7½%, upto 12½%	Do.	65%
above 12½%, upto 17½%	Do.	67½%
above 17½	Do.	70%

NOTE.—Instead of (d) & (e) above, an alternative approach *except in the case of Banks* would be (at the option of the employees) as follows:—

The incidence of SPT should be computed (under certification by the auditors) strictly according to the provisions of the Income-tax Act and the SPT Act, after making *full* allowance for *all* the various applicable reliefs, rebates, allowances and deductions provided therein, and on the *provisional assumption*, as regards bonus itself, that it would not be less than:—

either (i) the minimum bonus payable under the recommendations made in this Report;

or (ii) the amount payable according to the *same scale* as that adopted for that particular (next) preceding accounting year in respect of which bonus has already been settled and paid (whether voluntarily, or by agreement, or under an award);

whichever of the two [*(i) or (ii)*] *is greater.*

And in such cases the portion of available surplus distributable as bonus would remain undisturbed at 60%.

3·1. *Rehabilitation Allowance* : The next subject upon which I am unable to agree with my colleagues concerns their refusal to accept the claim for a *specific allowance* for rehabilitation and replacement of plant, machinery and buildings as a prior charge in the formula recommended by the Commission for computing the "available surplus" for purposes of bonus.

3·2 The most authoritative recent study on this subject in India is by the National Council for Applied Economic Research (NCAER). In its publication on this subject entitled "REPLACEMENT COST IN INDUSTRY" the NCAER has accorded its powerful support to two very radical propositions, namely :—

(a) that depreciation itself should be provided in the accounts of companies (and should be allowed for taxation purposes) on replacement cost basis; and

(b) that this should be made obligatory by statute.

Specifically, the NCAER has made the following explicit recommendation in this regard in Chapter VI (at pages 17 and 18) of its publication referred to :—

> "The National Council recommends that depreciation allowance to cover replacement cost of the fixed assets of a firm should be made legally obligatory. It also urges that in estimating the replacement cost the firms should be asked to take account of increases , if any, in the price of the relevant assets, following the formula provided in Table I attached to Chapter I of this Report. For this purpose the Central Government should undertake the task of compiling index numbers of prices of important types of machinery used in our industries.
>
> Where, however, price adjustments are found operationally difficult, as in the case of buildings, legal obligation may be limited to depreciation at original cost, although even here in case indirect evidence of a price rise is available, tax exemption should be granted on such additions to depreciation allowances as would be justified by the price rise.
>
> We, therefore, recommend that the depreciation allowance that we are asking to be put on a compulsory basis should be regarded strictly as cost and that net profit must be calculated only after deducting the whole of depreciation from gross profit. The principle, let it be emphasised, must apply to both the managing agency remuneration and any extra demand that labour may make."

3.3. In the Bonus Commission itself there was no dispute as to the *nature* of the claim for rehabilitation allowance, namely, that it seeks to recover out of profits some, if not the whole, of the very substantial short-fall, in a period of steadily rising prices, between the original cost of fixed assets (covered by normal depreciation) and the cost of their rehabilitation and replacement. The majority of my colleagues do not also dispute the essential *merits* of the claim, at any rate in part and to a reasonable extent. What is disputed is the *manner* in which the claim can or should be computed and dealt with, in whole or even in part, in the bonus formula; and they conclude by denying altogether the need for making any specific provision for rehabilitation by way of a prior charge against profits. Their reasons for this conclusion are summarised in Chapter X (at paragraph 10.12) of the Report, which is reproduced below :

> "To summarise, we have come to the conclusion that no special provision for rehabilitation need be made as a prior charge in the bonus formula. The formula proposed by us provides for the normal (including multiple shift) depreciation allowed under the Income-Tax Act, and indirectly for half of the development rebate, by not taking into account the saving in Tax on account of development rebate. Further we are proposing a substantial portion out of the available surplus, after meeting the prior charges to be left to the Company or concern. This amount together with the tax relief on the amount payable as bonus would be available, among other things, for rehabilitation."

3.4 With great respect, I confess my inability to follow the above reasoning. For example, in what way the allowance properly made for normal depreciation and fully justified, as it doubtless is, on its own merits (*vide* paragraph 9.2 in Chapter IX of the Report), is relevant for denying a specific allowance for rehabilitation I cannot understand. Similarly, I am unable to grasp how the "not taking into account (of) the saving in tax on account of development rebate", resulting logically from the denial of that rebate itself as a charge against profits (even to the extent of 75% thereof required by law to be ploughed back), can justify the denial of a rehabilitation allowance. Unless I have grossly misunderstood the treatment of these subjects in Chapter IX, I am unable to see how these matters can be relied upon twice over : once, to justify the allowance of certain prior charges (to wit, depreciation and full taxation) on their own merits; and again, to justify the refusal to allow something else (*viz.* rehabilitation) as a prior charge.

3·5 There remains the last part of my colleagues' argument to consider, namely, that the formula recommended by the Commission for computing the available surplus and for determining the quantum of bonus at 60% thereof leaves the following "Substantial portion" out of the available surplus with employer :—

(i) 40% of the available surplus, not distributable as bonus; *plus*

(ii) the retention of the full tax benefit on 60% of " available surplus" distributable as bonus.

These retentions, it is suggested, should adequately cover among other things the reasonable rehabilitation needs of most concerns. The only comment I feel called upon to make on this proposition is to enumerate in order of priority the multiplicity of the main (residual) obligations, not covered as prior charges in the bonus formula, which "among other things" the concern is expected to meet out of the above retentions :

(a) Super Profits Tax, where applicable;

(b) Additional return on capital and reserves, being the difference between the "market rate of return" and the "minimum rate of return" allowed in the bonus formula;

(c) Finance for repayment of medium and long-term indebtedness, including Deferred Payments, Debentures and Redeemable Preference Shares ;

(d) Provision for gratuities;

(e) Reserves for contingencies and for strengthening the enterprise generally;

(f) Finance for rehabilitation, replacement, modernisation and obsolescence.

3·6 For my part, it seems to me unrealistic to suppose that in the process of meeting this formidable array of obligations out of the retained balance of the available surplus, there is likely to be anything left over for rehabilitation. And I therefore conclude that if there is any merit at all in the claim for rehabilitation, as indeed there is, it must be conceded in the form of a *specific allowance* therefor, by way of a prior charge against profits, in computing the available surplus for purposes of bonus. In doing so, however, I readily concede :—

(i) that there should be no attempt at meticulous calculations;

(ii) that in most cases it must be frankly recognised that only a part of the rehabilitation needs can be covered out of current profits; and

(iii) that any *ad hoc* formula devised for the purpose must accept a sharp upper limit in the case of most concerns, while not overlooking the fact that in the case of trading concerns, banks and managing agency houses, the rehabilitation requirements are likely to be relatively small.

3·7 On giving careful thought to the problem in the light of the foregoing considerations, I am clearly of opinion that :—

(1) The claim for a specific allowance for rehabilitation of plant, machinery and buildings, (*and* for a "wasting asset allowance" in the case of mines and quarries, *and* for a "replantation allowance" in the case of plantations), as a prior charge against profits for purposes of bonus must be conceded and should rank next after the allowance for SPT.

(2) (a) The "rehabilitation allowance" should be restricted to such plant, machinery and buildings as are more than 10 years but less than 30 years old *and* were actually in use by the concern during the accounting year, (such assets being hereinafter referred to as "eligible assets");

(b) the "wasting asset allowance" should be restricted to the premia, or "salami" and the like, being lump sum payments, if any, actually made for acquiring freehold or leasehold mining and/or quarrying rights, including the price, if any, actually paid for acquisition of the surface rights connected therewith (all such rights being hereinafter referred to as "eligible-wasting assets".);

(c) the "replantation allowance" should be restricted to such parts of Tea, Rubber, Coffee and other plantation estates as were planted (or replanted) more than ten years prior to the accounting year *and* were actually under plantation crops during the accounting year (such plantations being hereinafter referred to as "eligible plantations").

(3) The amount of the rehabilitation allowance *plus* the wasting asset allowance *plus* the replantation allowance should be *limited in the aggregate* to the lowest of the three undermentioned amounts:

(a) An amount equal to 10% of the balance of profits remaining after deducting from gross profits the following four prior charges :

Depreciation

Taxation (excluding SPT)

Return on Capital & Reserves

SPT :

OR

(b) *The net amount actually set aside to the credit of reserves at the end of the accounting year, to be ascertained by comparing the aggregate total of the "reserves and surplus" appearing in the balance sheet at the commencement of the accounting year with the aggregate total thereof at the end of the accounting year (after taking into account any reserves capitalised during the year);

OR

(c) The aggregate of the following three amounts :

(i) For rehabilitation allowance, an amount equal to 5% of the original cost of the eligible assets; *plus*

(ii) For wasting asset allowance (where due), an amount equal to 4% of the cost of the eligible wasting assets actually being exploited during the accounting year; *plus*

(iii) For replantation allowance (where due), an amount equal to 4% of the cost (excluding the cost of land) of the eligible plantations.

3·8. I must add, however, that in no case should the allowance for rehabilitation and/or for wasting assets and/or for replantation be less than the amount if any (nett after tax) admissible as such allowance under any operative recommendations of the Tariff Commission or other price-fixation authorrity (to the extent they have been accepted by Government).

4·1. *Return on Capital* : The third important subject upon which I regret I am unable to agree with my colleagues concerns their rcommendation to allow a return on paid-up capital at only 7% (and on reserves at only 4%). Their reasons for this recommendation, which they conceive involves an *increase* from the 6% rate of return prevailing since the Full Bench decision of the Labour Appellate Tribunal in 1950, may be quoted from paragraph 11·7 (Chapter XI) of the Report :—

> "Having given careful consideration to the representations made before us, we are of the view that the return on paid-up capital to be allowed as a prior charge in the bonus formula should be at 7%. There has been a sufficient change of circumstances since the Full Bench formula was devised to warrant some increase in the rate of return on paid up capital. We do not think a higher return than 7% should be allowed as a prior charge. The return which we propose on reserves would allow for additional dividend to the shareholders. The proporation of the available surplus which we propose to leave to the Company after paying bonus would also be available, among other things, for payment of higher dividend."

4·2. Before setting out my reasons for dissenting from this, it would be desirable, I think, to formulate at the outset what appear to me to be the basic facts and circumstances in the light of which this matter has to be considered. These seem to me to be the following:—

(1) As *far back as in* 1950, for purposes of the bonus formula the adequate rate of return on capital invested in companies was conceived by the Full Bench of the Labour Appellate Tribunal to be such that the "investing public would be attracted to the industry by a steady and progressive return on capital which the industry may be able to offer". This concept of what is intended by a "fair return on capital" still holds the field, and quite rightly so;—and it would be well therefore to emphasise :—

(a) that it was *not* thought of as a return to the company, but as a *return to the investor* (shareholder);

(b) that as such it was *not* a "minimum" return that was envisaged, but a "*steady and progressive return*" such as would *attract* the investor. This in my view is the only principle having validity for what is essentially still

*This alternative should not be considered in the case of Banks.

a "free enterprise" economy; and its implications have been explained very lucidly by the Labour Appellate Tribunal in the Indian Oxygen & Acetylene Company's case,—(1954) 2 LLJ 54—in the following words :—

"An employer, however sound his financial position, is entitled to a fair return on the money he puts into the business. In fixing a fair return for an investment a point for consideration is of course the amount of risk involved, but the danger of discouraging investment by giving an unattractive return should not be lost sight of. One of the means for achieving the industrial peace which is essential for the development and expansion of industry is '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'. For the sake of the workmen as much as for the sake of employers it is desirable that the business should continue and expand which would be achieved by ploughing back the profits. The ploughing back of profits would be discouraged if the share-holders are not assured a fair return."

(2) Again, *as far back as in* 1950, the "fair" rate of return on capital,, conceived as above, was fixed at :—

6% on paid-up capial;
plus 4% on reserves;
plus something more, perhaps, from out of the undistributed part of the available surplus.

(3) Two features of the above scheme for allowing a fair return on capital, which must be emphasised as facts that cannot be disputed, are :—

(a) that the return of 6% on paid-up capital in the above scheme was envisaged as a *tax-free* return to the *investor* (equivalent to a gross taxable return of 8·57%);

(b) that this was regarded as fair, in the sense of being "*steady and progressive*" and capable of being supplemented out of the further tax-free return of 4% (equivalent to a gross taxable return of 5·7%) on reserves *plus* a further possible return (also tax-free) from the residue of the available surplus.

4·3. In view of the foregoing facts and circumstances, we in the Bonus Commission were not called upon to evolve any new concept of "return on capital" or to re-define the old concept. Nor, indeed, was it our task to evolve *in vacuo* a specific quantification of a "fair return" for the first time or *de novo*. Our task was the relatively simple one of the considering :—

(a) whether there had occurred any material changes in the facts and circumstances in the economic scene since 1950 to warrant any alteration in the rate of return on capital ?

(b) if so, what degree of enhancement (or lowering) of the rate of return would such changes justify ?

4·4. My colleagues have answered these questions in a strange way. They have conceded that 'there has been a sufficient change of circumstances since the full Bench formula was devised (in 1950) to warrant some *increase* in the rate of return on paid-up capital"; but they have promptly proceeded, in fact, to *decrease* the return from its 1950 level, *i.e.*

from 6% tax-free (upto 1958), equivalent to 8·5 % taxable,
to 7% taxable, equivalent to 4·9% tax-free.

As for the return on reserves, they did not think it called for any increase at all, (not even in the peculiar sense in which an "increase" was conceded for the return on paid-up capital) with the result that the return on reserves was *decreased* by them very substantially from its 1950 level, *i.e.*

from 4% tax-free (up to 1958), equivalent to 5.7% taxable, down to 4%taxable.

4·5. With great respect, the reasons advanced by my colleagues for these recommendations are incomprehensible to me. They felt that the change in the system of taxation introduced in 1959,—whereby the shareholder lost the very valuable right of "credit" in his own assessment for the tax paid by the company, with the result that all dividends, instead being tax-free, became thereafter taxable,—should be ignored. They proceeded therefore, on the footing that the 7% (taxable) return they recommended on paid-up

capital involved actually an "increase" of 1% over the 6% (tax-free) rate which was considered a fair return in 1950. They have added the rider, even though (qua a principle of computation) it was nothing new they were proposing, that the return on reserves recommended by them, *viz.* 4% taxable as against 4% tax-free in the 1950 formula, *plus* the residue out of the available surplus left with companies "would allow for additional dividend to the shareholders".

4·6. As I have said earlier, I am unable to agree with my colleagues in regard to the recommendations they have made on this subject or to accept that the *decrease* in the rate of return (on paid-up capital and reserves) they have in fact proposed constitutes a "fair return" in the light of the facts and circumstances prevailing in the economic scene since 1959 compared with the conditions in 1950.

4·7. It is to these facts and circumstances that I must now turn. They are concerned almost wholly with showing :—

(a) that there exists a fairly well established inter-relationship between the various interest rates for "first class" borrowers or scrips in the capital market, from which one can readily infer (within one-half per cent) what the level of any particular rate should be at any given time if the levels of the other rates are known ;

(b) that *all* the main interest rates for first class borrowers or scripts have gone up appreciably since 1950, with the result that the 7% (taxable) rate of return for purposes of bonus formula would be the only one entirely out-of-step with the established trends in the capital market.

4·8. The annexed table of interest rates and yields in the capital and money market at Bombay is relevant and self-explanatory from the foregoing points of view. On the data there tabulated, it is plain :—

(i) that the *taxable* yield on the principle long-dated Security of the Government of India is about ½% above the Bank Rate; and that the *taxable* yield on First Class Debentures, (and the rate of short-term borrowing for First Class borrowers) is usally about 2 to 2½% above the Bank Rate ;

(ii) that the *taxable* yield on Preference Shares (and also the tax-free yield when converted to taxable basis) is usually about 2½% to 3% above the taxable yield on Debentures; and

(iii) that in 1950 when the Full Bench of the Labour Appellate Tribunal fixed the "fair" return on paid-up capital for purposes of bonus at 6% tax-free (equivalent to 8·57% taxable) the entire interest rates structure was geared to a Bank rate of 3% whereas the bank rate is now 4%.

4·9. It is important to recall in this connection that it was in 1950, with reference to the then money market conditions, that the Full Bench of the Labour Appellate Tribunal stated in its decision :

> "It is common ground that the fair return on paid-up capital in this case should be 6 %".

The "6%" referred is of course 6% tax-free, equivalent to 8·57% taxable.

4·10. Having regard to the foregoing facts and circumstances, there can be little doubt that the "fair" return in 1964 cannot possibly be *lower* than in 1950; which means that, comparing like with like, the taxable return on paid-up capital in 1964 should be at least 8·57% and that on reserves should be at least 5·7%. But this leaves out of account the general increase in interest rates over the years up to 1961, *viz.*

33-1/3% increase in the Bank Rate;

40% increase in the yield on 3% Conversion Loan;

20% increase in the yield on First Class Debentures;

25% increase in the yield on First Class Preference Shares.

If due regard is had to the above clear picture of the extent of upward movements in various main (inter-related) interest rates since 1950, it seems plain that the "fair" taxable return on paid-up capital for purposes of the bonus formula which, by common consent, was 8·57 % in 1950 cannot be less than 9·5% in 1963. Similarly, the fair taxable return on reserves cannot be less than 6·25%.

4·11. It is my firm conviction, upon a dispassionate consideration of all the relevant facts and circumstances prevailing during the last three years compared with those in 1950, and upon the most anxious thought devoted to the concept of "fair return" as defined in 1950 and elucidated (in the Indian Oxygen case, in 1954, on the one hand, and to the changing social values and environment in India, on the other, that the fair return in the present context cannot possibly be less than 8·5 (taxable) on paid-up capital and 6 % (taxable) on reserves.

4·12. In the case of Banks, however, where certain appropriations to reserves are themselves to be allowed as "prior charges" in computing the available surplus for for purposes of bonus, it would be fair to reduce the above rates to 7·5% and 5% respectively.

4·13. In regard to *Participating* Preference Capital, the return should be at that (gross) rate of dividend payable on them when the dividend on ordinary shares is declared at 8·5%.

5·1. *General Bonus Formula* : —It follows from what I have said in the preceding paragraphs of this Minute that the General Bonus Formula recommended by the Commission is not wholly acceptable to me.

5·2. In my view the correct formula for computing the available surplus should be as follows :

Gross Profit for the accounting year computed as in paragraph 8·10 (Chapter VIII) of the Report . . . . . Rs.

Less : Depreciation as per paragraph 9·2 (Chapter IX) of the Report . . . . . Rs.

Balance . Rs.

Less : Income-Tax & Super-Tax as per paragraph 9·6 (Chapter IX) of the Report . . . . . Rs.

Balance . Rs.

Less : Return on Capital :—

(*a*) at actual rate on Preference Capital . . . .
(*b*) at 8·5% on paid-up capital . . . . .
(*c*) at 6% on Reserves . . . . . Rs.

Balance . Rs.

Less : Super Profits Tax as per paragraph 2·6 (*a*) to (*d*) of my Minute Rs.

Balance Rs.

Less : Rehabilitation Allowance and/or . . . . .
Wasting Asset Allowance and/or . . . . .
Replantation Allowance as per paragraph 3·7 of my Minute Rs.

Balance . Rs.

5·3. The final balance in the above formula is the "available surplus". The portion of this to be distributed as bonus (subject to the recommendations made by the Commission as regards maximum/minimum bonus and set-on/set-off) should be in accordance with the scale recommended by me in sub-para (*e*) of paragraph 2·6 of my Minute, subject to the "NOTE" appearing at the end thereof.

6·1. *Jute Industry* : I feel somewhat apprehensive about applying our bonus formula in its full rigour to the Jute Industry, which is one of the three most important foreign exchange earners for this country. This industry has to encounter severe international competition from Pakistan, France and Dundee, the competition from Pakistan being very direct and most effective. There is also the competition from new and alternative forms of packaging. While in recent years the industry has been considerably rationalised and has developed improved (and new) products and processes, it still remains exposed to keen and effective international competition. This results in the industry experiencing uneven and sharply fluctuating prosperity and adversity every two or three years; but this fact cannot be taken into account in any direct way in the

bonus formula which is concerned with treating each accounting year separately. In these circumstances, it is necessary to minimise the adverse impact of our recommendations, even as modified according to my Minute of Dissent upon the export capability of the Jute Industry. I think this can best be achieved :—

(*a*) by lowering the "minimum bonus" from 4% to 2% of the year's basic wages and dearness allowance; and

(*b*) by lowering the "maximum bonus" from 20% to 10% of the year's basic wages and dearness allowance, and also lowering the limit for "carry forward" of the excess (for purposes of set-on in succeeding years) to 10%.

6·2. *Plantation Industry* :—In this case, too, I feel apprehensive about applying our bonus formula in its full rigour. The Plantation Industry is also a very important foreign exchange earner. It has not only to face growing international competition from existing and new alternative sources of supply in a period of rising costs at home; but it has also to contend, periodically, with adverse climatic conditions and attacks from pests. I think the situation, in so far as the impact of bonus is concerned, can be best met in the manner indicated in the preceding paragraph for the Jute Industry.

6·3. *Coal Mining Industry* :—This industry has been in bad shape for years. It is a basic industry; but to the workers engaged in it, coal mining is naturally a very unpleasant and most arduous occupation. Over the last twenty years, all sorts of measures have been adopted in this industry for increasing the output, conserving the coal resources, increasing the safety in mines, etc.; and many of these measures have involved heavy subsidies, directly or indirectly, from the Government. Moreover, in this industry there has been in operation for some years a *statutory* bonus scheme geared to attendance; but there has never been any annual bonus geared to profits. In fact, a large majority of the collieries earn only marginal profits; and many would close down but for the indirect subsidies they receive. My acquaintance with this industry extends over seven years; and the two constant nightmares over that period have been falling output and rising costs, apart from a chronic state of indiscipline and even lawlessness. In these circumstances, my very specific apprehensions about applying our profit bonus scheme and formula to this industry are :—

(a) that attendance, and therefore production, may fall off, even perhaps somewhat rapidly, if the requirements concerning the minimum period of service to become eligible for the profit bonus were less rigorous than those which have to be complied with *quarterly* for earning the statutory attendance bonus;

(b) that the costs may rise, and therefore the pits-head selling price of coal may have to be increased, especially if production should be adversely affected by the profit bonus being regarded by the miners as a comfortable substitute for the more rigorous attendance bonus.

To those who may not be familiar with the problems of the industries which *consume* coal, whether as power or fuel or transport or even (as in the case of cement) as virtually a raw material, the adverse consequences which I apprehend may not seem serious in their final incidence expressed in "naye paise per tonne". But having lived with them continuously for some years, to me they are very real. In these circumstances, I feel that for this industry the profit bonus scheme may, perhaps, be wholly wrong; and that the proper way to improve the earnings of the workmen engaged in coal mining may well be to improve the rewards under the existing statutory bonus scheme geared to attendance. Alternatively, if there can be no such exception made for this industry, the maximum and minimum bonus payable should be lowered as suggested by me for the Jute Industry.

6·4. *Other Mining Industries* :—(Manganese, Iron Ore, etc.) : These should be dealt with in the same way as the Coal Mining Industry.

6·5. *Banking* :—The dissent I have expressed from the views of my colleagues concerning certain specific elements in the general bonus formula, namely :

Super Profits Tax

Rehabilitation Allowance

Return on Capital and Reserve

is equally relevant in the application of that formula to the banking industry (save to the extent I have myself qualified those views in their application to that Industry).

7·1. *General* :—In conclusion I must regretfully express my considered opinion that to continue indefinitely with the "profit bonus" would, in the long run, be unwise alike for the employees, the employers and the consumers, *i.e.* for the country as a whole. The practice of giving an annual profit "bonus" to workmen, when so entrenched as to become a "justiciable right", is a contradiction in terms. It wholly ignores the production and productivity aspects of this country's industrial problem; in a developing economy, it puts a premium on those, both employers and employees, who shirk hard work; and it thrives entirely at the cost of the consumer.

7·2. The difficulties in the way of evolving any *general scheme* for substantially higher earnings for workmen, linked annually (or at shorter intervals) to production (or productivity) are doubtless real. Indeed, they are insurmountable if what is sought in such an endeavour is to find one a single formula covering all units in all industries, or even all units in a given industry, or even all units in a given industry in a specific region. But this is so entirely because of the absurdity of such an approach, and not because of any inherent impossibility in working out *specific* Production (or Productivity) Incentive Schemes *Unitwise* in most industries. But unfortunately, this is not what many employers and most workmen seem to want. Many employers express a preferrence for an "elastic wage structure", which is a lazy man's reason for prefering the annual "profit bonus" scheme; and the generality of workmen like to have something coming in at the end of the year for which no specific (direct) exertion is required of them, which again leads to a preference for the annual profit bonus.

7·3. As a student of the Indian economic scene for some years I am convinced that so long as we in this country persist with annual wrangles about profit bonus, on the one hand, and periodical wrangles about wages and dearness allowances etc., on the other,—neither of them related in any noticeable or specific manner to improving productivity (or even production) as such,—the progress in the *real earnings* of workmen is bound to be slow. A powerful upward surge in national income, employment, wages and profits, and in *per capita* income, certainly does not lie in that direction.

7·4. However, so long as our attitude to the annual profit bonus remains what it is, I regard it as an unavoidable necessity with which we must live, accepting it as one of the unpleasant facts of our industrial life. On this view, these exercises in evolving principles and formulae for the computation and payment of the profit bonus in industry are unavoidable. Even so, I have no doubt at all that our endeavour should be to evolve formulae consistent with principles, not *vice versa*. The views I have expressed in the foregoing paragraphs of this Minute are conceived on that footing; for I am firmly of opinion that in human affairs all compromises on principle, however convenient they may seem at the time they are accepted, are apt very soon to do irreparable harm.

(Sd.) N. DANDEKAR

BOMBAY, 18-1-1964

ANNEXURE TO SHRI DANDEKAR'S MINUTE OF DISSENT

Structure and Movements of Principal Interest Rates
(Bombay Stock Exchange: 1949—1956—1961)

Particulars	Taxable or Tax-free	1949 %	1956 %	1961 %
1. Reserve Bank of India				
(a) Bank Rate	Taxable	3	3½	4
(b) Lending Rate to Banks	Taxable	3	3½	4-5-6*
2. Government of India 3% Conversion Loan (Redeemable 1986 or later)	Taxable yield	3.2	3.9	4.5
3. First Class Debentures	Taxable	5 to 5½	5½ to 6	6 to 6½
4. Borrowing Rate from Banks for First Class Borrowers	Taxable	5	5½	6
5. First Class Preference Shares (Old Issues)	Tax-free yield	5½ to 6	6 to 6½	6½ to 7
6. First Class Preference Shares (New Issues)	Tax-free	..	6½	..
	Taxable	..	7½	9 to 10

*On basic quota @ 4%.
On excess up to double basic quota @ 5%.
On further excess @ 6%.

(Sd.) N. DANDEKAR
18-1-1964

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Concept of Bonus

1. It is difficult to define in rigid terms the Concept of Bonus but it is possible to urge that once profits exceed a certain base, labour should legitimately have a share in them. In other words, we think it proper to construe the concept of bonus as sharing by the workers in the prosperity of the concern in which they are employed. This has also the advantage that in the case of low paid workers such sharing in prosperity augments their earnings and so helps to bridge the gap between the actual wage and the need based wage. If it is not feasible to better the standard of living of all the industrial and agricultural workers as aimed at in Article 43 of the Constitution, there is nothing wrong in endeavouring to do so in respect of at least those workers whose efforts have contributed to the profits of the concern in which they have worked. The validity of such a conception of bonus is not affected by the difficulty of determining or quantifying precisely the 'living wage' or even the 'need-based' wage at any given time and place. (Paragraphs 3.21 and 3.22)

2. It appears to us that a properly conceived bonus system that is linked to profit also imparts a measure of desirable flexibility to the wage structure. The workers are enabled to share in the prosperity of the concern, without disturbing the underlying basic wage structure. (Paragraph 3.23)

3. It would neither be feasible nor desirable to require industries to incorporate existing schemes of varying bonus payments into the wage structure permanently with a view to eliminate bonus, for while profits are variable, wage rates are fixed on the industry-*cum*-region basis and not on the basis of the particular unit's ability to pay. This is not peculiar to this country. (Paragraph 3.24)

4. The profit bonus system has little direct incentive effect. Bonus is usually paid to all workmen at the same rate in terms of monthly basic wages in some cases, or in some cases in terms of consolidated wages. The efficient as also the inefficient worker gets bonus at the same rate. An annual but uncertain bonus varying from year to year and paid long after the close of the financial year can hardly act as an incentive to greater effort. Incentives, to be effective, have to be given soon after the effort which it is sought to reward. Besides, the best incentives are those applied to results achieved by individuals or small groups of workmen; the incentive becomes weaker when applied to large groups; and when the factory is treated as a unit, the incentive is too weak to have any influence on the quantity or quality of work turned out by the individual worker. Profit bonus is in reality a very different thing from incentive bonus, for incentives to efficiency operate only under properly conceived production bonus schemes which establish a direct relationship between better production, efficiency and higher earnings. (Paragraph 3.27)

No case for abolition of Bonus

5. Having taken into consideration the role that profit bonus has played in the past and is playing at present in the industrial system in India, we are unable in the present circumstances to support the proposal of some Employers' Associations and individual employers that we should recommend the abolition of bonus altogether. If bonus disputes have led to strife and litigation it should not be overlooked that industrial disputes on other subjects have also led, unfortunately, to industrial strife and it cannot therefore be an argument for denouncing the bonus system which has served and is serving a useful purpose. The remedy is to evolve a satisfactory bonus scheme. The worker is habituated to this system in which he receives a lump sum payment every year. It suits the workers' pattern of consumption for spending, at least once in a year, on some articles of additional and diversified consumption and on needs which cannot be conveniently met from the monthly wage packet. In any event, we do not think it feasible or advisable to abolish this long standing system by attempting to merge bonus in wages. (Paragraph 3.29)

6. In our opinion the formula for comptiung bonus need not, however, be perfectly logical or aim at giving mathematical justice; it would be futile to attempt to do so. It should be a formula which is not complicated, which is easy to understand and broadly just and fair to all concerned. In making our recommendations we have kept these aims in view. (Paragraph 3·30)

Linking of Bonus with production

7. In view of the objections to the proposal by large sections of employers as well as by almost all the Unions, and the practical difficulties inherent in any such proposal, we are unable to recommend that the concept of bonus based on profits should be replaced by an annual bonus linked with production or productivity. It is doubtless true that properly devised incentive systems in manufacturing concerns form a useful part of the wage structure and would help to increase production; but they cannot be suggested as a substitute to replace the annual profit sharing bonus. Where in particular Companies, as in the case of Indian Aluminium Co. Ltd., the employer and the Unions have adopted or, in future, opt for such a scheme in substitution of bonus based on profits, it would be a different matter; and our recommendations would then have no application to such cases. (Paragraph 4.6)

Bonus as a certain percentage of gross profit

8. We are unable to recommend that bonus should be determined at a certain percentage of the gross profit after deducting only depreciation, for the following reasons:—

(1) It is not possible to work out a percentage satisfactorily for each industry. The proportion between bonus paid in the past and the gross profits (after depreciation) in the relevant years may reveal wide disparity between various units even in the same industry.

(2) The formula would also necessitate a separate examination of each unit, as a single rate for the whole industry would be impracticable; a percentage acceptable to labour would be quite unacceptable to the Companies in the Industry and *vice vesra.*

(3) The calculation of the percentage is complicated by too many variable factors such as the type of industry, whether the industry is capital-intensive or labour-intensive, the proportion of bonus paid by different units to the profits made by them in the past etc. The capital employed for units of identical capacity may be different; and to apply a uniform percentage for determining bonus would not take account of disparities in the quantum of employed capital and the composition of the capital *i.e.* the proportion of owned capital and borrowings.

(4) It gives the highest priority to bonus without regard to the claims of capital for even a minimum return or to the needs of the industry. (Paragraph 5.8)

9. We appreciate that it may be feasible for particular concerns to enter into long term agreements with the Unions concerned on the basis of percentage of bonus to the profits after deducting depreciation and after taking into consideration the proportion of bonus paid in the past years, the prospects of the concern and other relevant factors; but the Commission cannot recommend any such formula for general application as it is impracticable to determine bonus as a certain percentage of the profits applicable to all units in the different industries. (Paragraph 5.9)

Bonus Pool

10. There is a system of pooling bonus to a limited extent in the Tea Industry in North East India, but it is by industrywise agreement in which bonus is payable on the basis of a certain percentage of the profits. There is also a minimum bonus in those cases where there is a loss or only a small profit. Most employers are strongly opposed to any such pooling arrangement. We think there is force also in the objection that a bonus pooling system puts a premium on inefficiency by requiring the profits of an employer who has made profits to be distributed to workmen of loss making units. This may not also be welcome to the workmen of the profit making units. If one of the aims of a profit bonus system is to create in the workers a sense of belonging to the concern, to have a stake in the industry and its continued prosperity, this cannot be achieved if bonus is unconnected with and dissociated from the profit made by the concern, and is payable, in case of loss, from the profits of other concerns. (Paragraphs 6.6 and 6.7)

11. It seems to us doubtful whether the bonus scheme prevalent in the tea estates in West Bengal, Assam and Tripura which is acceptable to the employers and the workmen in the tea industry could be worked out for other industries. (Paragraph 6.8)

12. In the plantations in South India bonus is paid at a certain percentage of the annual earnings and this arrangement appears to have worked satisfactorily. (Paragraph 6.9)

Whether bonus should be unitwise, industrywise or industry-cum-regionwise

13. We are of the opinion that ordinarily the computation and payment of bonus should be unitwise in accordance with the formula recommended by us in the succeeding Chapters. We are unable to recommend a formula for a uniform rate of bonus for all Industries generally or for the Cotton Textile Industry in Southern India or for the Plantations. Where industrywise arrangements already exist the parties are at liberty to renew the agreements, with such modifications, if any, as may be agreed to by them. If the Employers' and Employees' Associations can agree to make or continue industrywise agreements on a basis acceptable to them, the formula proposed by us in our recommendations in the succeeding Chapters would not apply. The formula proposed by us would also not apply during the currency of any industrywise or unitwise agreements, except where such agreements stipulate that the formula recommended by the Bonus Commission should apply in modification or substitution of existing arrangements. (Paragraph 6.12)

Minimum and Maximum Bonus

14. There can be no doubt that bonus should be subject to a reasonable maximum. (Paragraph 7.8)

15. If there is a maximum so that however high the profits in a year the workers cannot be given more bonus than at a certain rate expressed in terms of wages, it stands to reason that there should be a minimum also. Labour cannot be expected to accept as reasonable a formula which provides for a ceiling on bonus without also providing for a floor. An arrangement of minimum and maximum would have the added advantage of evening out bonus payments over the years and thus avoid the obvious disadvantages of widely fluctuating bonus, with years in which there may be no bonus at all and others in which the bonus would be very large. In some industries there have been agreements providing a formula for bonus with a minimum and maximum and a set-off and set-on arrangements. If a reasonable minimum and maximum are fixed, linked with a system of set-off of deficiencies and set-on of excesses in the succeeding years, it would be a satisfactory arrangement both from the point of view of employers and labour. An exception would however have to be made in the case of new concerns up to a certain period. (Paragraph 7·9)

Bonus based on single year's profits

16. The opinion of the representatives of Employers' Associations who appeared before us was generally in favour of continuing the present practice of taking the profits of the particular year as the basis. The Unions were also not in favour of taking the average of two or three years as the basis. In the circumstances we think it would be best that bonus for any particular year should be related only to the profits of that year. (Paragraph 7·11)

Computation of Gross Profits

17. The first step in the formula must necessarily be the ascertainment of the gross profit of the accounting year for the purposes of the bonus formula. (Paragraph 8·2)

Extraneous Profits

18. We have considered the question whether extraneous profits, *i.e.* profits unrelated to the efforts of workmen should be excluded from the computation of profits for the purposes of bonus. In actual practice the question of extraneous profits has led to much controversy and litigation as to what should be considered as extraneous profits. To attempt to scan too closely profits unrelated to the efforts of workmen serves little useful purpose. We are of the opinion that only the following items should be excluded from the profit computed for the purpose of the bonus formula: (a) profit or loss from the sale of immovable property or fixed assets of a capital nature (other than those on which depreciation has been allowed) comprised in the undertaking, unless the business of the company consists, wholly or partly of buying and selling such property or assets; (b) income, profits and losses from businesses outside India; (c) income of a non Indian concern from investments outside India; and (d) refund of Income-tax paid for previous years and any excess provision for Income-tax for previous years written back to the profit and loss account. (Paragraphs 8·2 and 8·6)

Donations

19. It is usual for companies and firms to make donations to charities, both to maintain the goodwill of the public and also to make a contribution through the exercise of reasonable charity towards the public welfare, which to some extent is to be expected

of every prosperous concern or individual in the country. We have not heard that shareholders have objected to such reasonable donations to charities, and we do not believe that workmen are as a rule averse to it. The Income-tax Act allows donations to charities as expenditure whithin certain limits. Such donations have sometimes to be made to help flood relief and for other laudable objects, and a large number of companies have contributed according to their mite to the Defence Fund. It would be unreasonable to add back such amounts to the profits and consider them notionally available for bonus. But donations in excess of the amount admissible under the Income-tax Act stand on a different footing and cannot be allowed as expenditure for the purposes of the bonus formula. (Paragraph 8·9)

20. The manner in which the gross profits of the accounting year should be computed for the purpose of bonus formula in the case of companies is indicated in the proforma reproduced below. The same mode of computation would apply, *mutatis mutandis* in the case of proprietory and partnership concerns. (Paragraph 8·10)

COMPUTATION OF GROSS PROFITS (BEFORE DEPRECIATION AND TAXATION) FOR PURPOSES OF BONUS

Accounting Year ending.....

Item No.	Particulars	Amount of Sub-Items	Amount of Main Items	Remarks
1	2	3	4	5
		Rs.	Rs.	
1.	*Net profit* as per Audited profits and Loss Account.			
2.	*Add back* provision for:			
	(a) Bonus.			
	(b) Depreciation.			
	(c) Direct Taxes, including the provision (if any) for previous years.			See foot note (1)
	(d) Development Rebate Reserve.			See foot note (2)
	(e) Any other Reserves.			See foot note (2)
	Total of Item (2)	Rs.		
3.	*Add back* also:			
	(a) Payment of Bonus, if any, relating to previous years.			See foot note (2)
	(b) Donations in excess of the amount admissible for Income-tax.			
	(c) Capital Expenditure and Capital Losses (other than losses on sale of capital assets on which depreciation has been allowed for Income-tax).			See foot note (2)
	(d) Losses of, or Expenditure relating to, any business situated outside India.			
	Total of Items (3)	Rs.		
4.	*Add also* : Income, Profits or Gains (if any) credited directly to Reserves, *other than* :			
	(i) Capital Receipts and Capital Profits (including Profits on the sale of Capital assets on which depreciation has not been allowed for Income-tax).			
	(ii) Profits of, Receipts relating to, any business situated outside India.			
	(iii) Income of non-Indian Companies from Investment outside India.			
	Net Total of Item (4)	Rs.		
5.	Total of Item 1 plus 2 plus 3 plus 4.		Rs.	
6.	Deduct:			
	(a) Capital Receipts and Capital profits (other than profits on the sale of assets on which depreciation has been allowed for Income-tax.			See foot note (3)

1	2	3	4	5
	(b) Profits of, Receipts relating to, any business situated outside India.			See foot note (3)
	(c) Income of non-Indian Companies from Investment outside India.			See foot note (3)
	(d) Expenditure or Losses (if any) debited directly to Reserves, *other than*:			
	(i) Capital Expenditure and Capital Losses (other than loss on sale of capital assets on which depreciation has not been allowed for Income-tax).			
	(ii) Losses of any business situated outside India.			
	(e) In the case of non-Indian concerns proportionate Administrative (overhead) expenses of Head office allocable to Indian business.			See foot note (4)
	(f) Excess provision, if any, of previous years relating to Bonus, Depreciation, Taxation or Development Rebate if written back.			See foot note (3)
	Total of Item (6)	Rs.		
7.	Gross Profit for purposes of Bonus [Item (5) minus (6)].		Rs.	

Foot-notes:

(1) This includs Income-tax, Super-tax, Corporation Tax, Super Profits Tax and other Taxes on Income.

(2) If, and to the extent, charged to Profit and Loss Account.

(3) If, and to the extent, credited to Profit and Loss Account.

(4) In the proportion of Indian Gross Profit (Item 7) to Total World Gross Profit (as per consolidated Profit and Loss Account, adjusted as in Item (2) above only).

N.B.—The computation of Gross Profit for purposes of Bonus as above should bear a certificate as to its correctness by the Company's Auditors.

Depreciation

21. In our opinion depreciation should be the first prior charge on the gross profits. In fact it can be said that the real profit of the accounting year is ascertained only after deducting depreciation. Depreciation is an estimated sum representing the loss incurred by wear and tear of an asset and must be written off to keep the capital intact.

22. Depreciation under the Income-tax Act is allowed on the "written down value" system, *i. e.* at the prescribed rates of depreciation applied to the full costs of the assets in the first year and to their reducing values in subsequent years (that is to say the value as reduced by the amount of depreciation). If this is understood as the "normal" depreciation then under the Labour Appellate Tribunal formula it is the "notional normal" depreciation that is to be allowed as a deduction for purposes of Bonus.

23. Since that decision, the "initial" depreciation and "additional" depreciation allowances which were admissible under the Income-tax Act on assets installed after March 31, 1948, which necessitated the concept of "notional normal" depreciation have been abolished. The initial depreciation has been replaced by the development rebate. Meanwhile, the concept of "notional normal" depreciation in bonus computations has, in practice, led to much litigation, though, fortunately, in the case of machinery installed after the abolition of the additional depreciation allowances referred to above, the notional normal depreciation and the Income-tax normal depreciation would be the same.

24. We have given much thought to the question of the mode of computing depreciation and, in particular, to the alternatives suggested *viz.* straight line depreciation, and a formula of "wear and tear depreciation" suggested by some Unions. We are not in favour of imposing a new type of depreciation and requiring employer to maintain separate books and accounts for calculating such depreciation. Even if the straight line method were now adopted for the purposes of the bonus formula, it could only be adopted in respect of new Companies; and in the case of old companies, it could readily be adopted only in respect of plant installed after the coming into effect of our recommendations for otherwise

a portion of the depreciation which has been already written off would have to be written back after laborious calculations. The formula would also work out unevenly as between new Companies and old Companies, and as between old Companies some of whom may instal considerable new machinery and others who get on with the bulk of the old machinery. The straight line basis requires keeping a separate record of each asset and each addition to an asset, while the reducing balance method is simple of calculation and has been increasingly followed in this country.

25. Having given careful consideration to the matter we are in favour of allowing as prior charge only the normal depreciation admissible under the Income-tax Act (including multiple shift allowance). Though in the initial years of the life of assets, such depreciation is higher than on a straight line basis, in later years the expenditure on repairs and maintenance increases as the plant becomes older, and so the increasing charge on repairs offsets, to some extent, the diminishing charge for depreciation. Besides, in the case of existing Companies, while the Income-tax depreciation in the case of new plant will be higher in the initial period, it will be much lower on the older plant, so that the sum total of the normal depreciation admissible under the Income-tax Act (including multiple shift depreciation) is, on the whole, likely to be a more appropriate prior charge for the purposes of the bonus formula than depreciation calculated in any other alternative way. We recommend, therefore, that the normal depreciation including multiple shift allowance admissible for Income-tax should be a prior charge both for existing and new Companies.

26. There are, however, cases in which bonus has been determined and paid in the past after deducting from the profits the "notional normal" depreciation. In such cases if a switch over is now made to the normal depreciation admissible under the Income-tax Act the Company may not get the benefit of the entire depreciation of certain assets for the purposes of the bonus formula and a portion of the depreciation would lapse. We, therefore, recommend that in any case where bonus has been paid in the past under an Award or agreement after allowing "notional normal" depreciation from the profits, the depreciation to be deducted from the profits for the purpose of the bonus formula should, at the option of such Company, continue to be the "notional normal" depreciation. (Paragraphs 9.2 and 9.3.)

Taxation

27. The next prior charge to be deducted should be the Income-tax and Super-tax. In the case of Companies these should be deducted at the current standard rate applicable for the year for which bonus is to be calculated. In the case of plantation Companies Agricultural Income-tax would also have to be deducted on the portion of income taxable as agricultural income. (Paragraph 9.4)

28. We have recommended in the previous Chapter, that the present practice of determining bonus on the basis of the profits of the particular accounting year for which bonus has to be determined should be continued. Since this involves that losses or arrears of depreciation of previous years are not taken into account, it stands to reason that the concession given in Income-tax on account of previous years' losses or arrears of depreciation should not also be taken into account in deducting the Income-tax and Super-tax at the standard rate from the profits. This is equitable and also secures indirectly to the Company some degree of replenishment of previous losses and arrears of depreciation. (Paragraph 9. 5)

29. The tax should be deducted at the standard rate; but when the rate is less on account of double taxation, *e.g.* investment income from shares in Companies, income from Subsidiary Companies, the tax leviable on that portion of the income would be at the lower rate applicable. In deducting tax we would, however, leave out of account rebate in tax given by the Finance Act in respect of income from articles exported, as the saving in tax is specifically intended as an inducement to export. So also the concession given in Section 84 of the Income-tax Act in respect of certain new undertakings should not be taken into account. (Paragraph 9.6)

Development Rebate

30. Under the Income-tax Act development rebate is not part of the depreciation allowance and is granted over and above the depreciation allowance. It is a special allowance to encourage Companies to instal new machinery. In a year in which installations of machinery are very large, the inclusion of the whole of the development rebate together with the statutory depreciation, as prior charge, might wipe off or substantially reduce the available surplus, even though the working of the concern may have resulted in very good profit. Development rebate has not been treated as a prior charge under the Labour Appellate Tribunal formula and we are also of the view that it should not be deducted as a prior charge.

31. It seems to us that if development rebate is not allowed as a prior charge it is fair that the concession in Tax on account of development rebate should not be taken into consideration in deducting Income-tax and Super-tax in the bonus formula. (Paragraph 9.7)

Super Profits Tax

32. We are of the opinion that in the calculations for the purposes of the bonus formula no deduction need be made on account of Super Profits Tax for the following reasons:—

(1) Bonus paid up to a reasonable amount is allowable as expenditure under the Income-tax Act.

(2) The Super Profits Tax has been notified by the Government as a *Tax on excess or abnormal profits,* under Section 349(4)(d) of the Companies Act.

(3) Super Profits Tax is leviable on the "*chargeable profits*" as defined in Section 2(5) of the Super Profits Tax Act, read with the First Schedule to the Act.

(4) Super Profits Tax is chargeable at certain rates on so much of the chargeable profits as exceeds the standard deduction *i.e.* 6% of the capital, computed in a a certain manner. The calculation of Super Profits Tax itself is beset with complications. It is desirable not to make the bonus formula unnecessarily complicated.

(5) Another reason for not deducting the Super Profits Tax as a prior charge is that the Tax would be payable only if the surplus left to the Company is sufficiently large, for only the portion of income over the standard deduction is liable to Tax. (Paragraph 9.8).

Different rates of Tax

33. In the case of Companies in which the public are not substantially interested, according to the definition given in Section 2 (18) of the Income-tax Act, the deduction of tax should be only at the standard rate applicable to Companies in which the public are substantially interested.

34. In the case of non-resident Companies tax should be deducted at the chargeable (higher) rate. As in such cases the available surplus would be greatly reduced by the higher rate of Tax, while the saving in Tax on bonus paid would be larger, we are of the opinion that in the case of such Companies the percentage of the available surplus allocated as bonus should be increased by 7%, so that it should be 67% instead of 60% in the case of other Companies as recommended by us in Paragraph 12.1. (Paragraph 9.9).

35. In the case of Co-operative Societies Income-tax should be deducted from the Tax profit, at the rate if any, at which the Society is liable to pay Tax according to the provisions of Section 81 of the Income-tax Act, but the amount required by statute to be transferred to the reserves should be allowed as a prior charge. (Paragraph 9.10).

36. In the case of partnership concerns, the Tax to be deducted as a prior charge should be the aggregate of the Tax payable by the partners on their shares of the profit from the concern, as if it was their sole income, plus the Income-tax and Super-tax payable by the firm. (Paragraph 9.11).

37. In the case of proprietory concerns the Tax should be deducted on the same basis *viz.* the Tax payable by the proprietor on the profit from the concern in which the workmen are employed, as if it is his only income. (Paragraph 9.11).

Rehabilitation

38. Having considered the complications created, the resulting litigation in respect of calculations of rehabilitation requirements which the employers themselves have conceded as matters of guess work, and having regard to the fact that the formula proposed by us leaves a fair surplus for the Company, we are of the view that no specific provision need be made for rehabilitation in addition to the normal depreciation in the formula. If rehabilitation were allowed at a certain arbitrary percentage of the available surplus, it would have to be different in respect of Companies engaged in manufacturing and Companies engaged both in trading in general and also in manufacturing. In respect of non-manufacturing Companies rehabilitation would be required only for buildings owned by them, on the assumption that depreciation allowances are insufficient. Thus no satisfactory method of calculating rehabilitation requirements can be devised. (Paragraph 10.10).

39. We are of the opinion that computation of rehabilitation at a certain percentage of the available surplus or a certain percentage of depreciation or of the block would be arbitrary and without reference to the real requirements of the Company, the state of the machinery and buildings and the funds available with the Company for rehabilitation from out of its reserves and surplus profits. The same objection would apply to computing rehabilitation as a certain percentage of the gross profits after deducting depreciation. We have therefore come to the conclusion that no special provision for rehabilitation need be made as a prior charge in the bonus formula. The formula proposed by us provides for the normal (including multiple shift) depreciation allowed under the Income-tax Act, and indirectly for half of the development rebate, by not taking into account the saving in Tax on account of development rebate. Further we are proposing a substantial portion out of the available surplus, after meeting the prior charges to be left to the Company or concern. This amount together with the tax relief on the amount payable as bonus would be available, among other things, for rehabilitation. (Paragraphs 10.11 and 10.12).

Return on Paid-up Capital

40. Having given careful consideration to the representations made before us, we are of the view that the return on paid-up capital to be allowed as a prior charge in the bonus formula should be at 7%. We are of the opinion that on preference share capital the return should be at the actual rate at which dividend is payable, and in the case of participating preference share capital the return should be at that rate of dividend payable on them when the dividend on ordinary shares is declared at 7% (Paragraph 11.7).

Computation of capital of foreign companies

41. In the case of foreign companies whose business in India is confined to trading and/or who have no paid-up capital in India, capital for the purposes of return in the bonus formula should be computed as the sum of amount of the net fixed assets, plus the amount of current assents minus the current liabilities. When capital is thus computed, the amount if any, appearing as due to or advanced by the Head Office is not to be included in the current liabilities, and the interest, if any, paid to the Head Office is not to be included as expenditure for the purposes of the formula. (Paragraph 11.8).

Return on Reserves

42. We are of the opinion that in the bonus formula the prior charge of return on reserves should be at a lower rate than on paid up capital and that it should continue to be at the rate at which the return is usually allowed on reserves used as working capital under the existing formula, *viz.* at 4%. This return should be allowed on all reserves and surpluses shown in the balance sheet at the beginning of the year including profit carried forward from the previous year. Provision for taxation should not be considered as reserve; but a specific reserve for taxation (in addition to the full provision) should be included. Return is to be allowed on the reserves and surpluses proper, not on items such as the amount appropriated towards dividends but remaining with the company for some months until the dividend is paid. It is to be noted that depreciation cannot be included in the reserves entitled to a return. But depreciation reserve specifically created out of additional depreciation provided over and above the amount of normal depreciation under the Income Tax Act and figuring as such on the liabilities side of the balance sheet should be treated like any other reserve and allowed a return. (Paragraphs 11.13 and 11.17).

Remuneration for working partners

43. We think it desirable, in order to avoid unnecessary controversy and litigation, that for the purposes of the bonus formula the remuneration of the working partners should be determined on the analogy of Managing Agency Commission. We recommend as a general rule that the total remuneration of the working partners may be fixed at 25% of the gross profits after deducting normal depreciation admissible under the Income-tax Act. If the terms of the partnership deed provide for remuneration which is lower than this figure, then that remuneration would be allowable, subject to a maximum of Rs. 48,000 for each working partner or the working proprietor, as the case may be. If the terms of the partnership provide for a higher remuneration it would be subject to a maximum of 25% or a sum calculated at Rs. 48,000 per annum for each working partner or the working proprietor, as the case may be, whichever is less. (Paragraph 11.18).

Allocation of the available surplus as bonus

44. It is not necessary in each case to take into consideration the prevailing level of remuneration in the concern in allocating a proportion of the available surplus as bonus. The fixing of a certain proportion of the available surplus (after meeting the prior charges recommended by us) to be distributed as bonus, subject to a minimum and maximum

(coupled with an arrangement for set-off and set-on) in the formula which we recommend, would lead to an equitable result. We recommend that this proportion should be 60%. The balance left with the concern would be 40%; and this would be increased by the saving in tax on bonus payable. The aggregate balance thus left with the industry is intended to provide for gratuity and other necessary reserves, the requirements of rehabilitation in addition to the provision made by way of depreciation in the prior charges, the annual provision required, if any, for redemption of debentures and return of borrowings, payment of Super Profits Tax, if any, and additional return on capital. (Paragraph 12.1).

Bonus to be in terms of basic wages and D. A.

45. We are of the opinion that the distinction between basic wages and dearness allowance for the purposes of expressing the bonus quantum should be done away with and that bonus should be related to wages and dearness allowance taken together. But all *other* allowances such as overtime wages and incentive, production and attendance bonus including attendance bonus under statutory bonus schemes, should be excluded. The inclusion of such allowances would introduce anomalies in regard to bonus as between workmen not getting such allowance and workmen getting such allowance. On the other hand, Puja Bonus and other customary bonus, if paid, should be considered as bonus paid "on account" and deducted from the amount finally payable as bonus under the formula recommended by us. (Paragraph 12.4).

Quantum of minimum and maximum bonus

46. The minimum bonus we recommend is equivalent to 4% of the total basic wage and dearness allowance paid during the year (excluding all other allowances and other bonuses such as production bonus, attendance bonus, statutory attendance bonus etc.) or Rs. 40 to each worker, whichever is higher. This amount of Rs. 40 would be payable to workmen who have worked for all the working days of the year (including periods of privilege leave and maternity leave with pay, casual or sick leave with pay). In the case of children the minimum should be equivalent to 4% of their basic wage and dearness allowance, or Rs. 25 whichever is higher. For employees who have worked for a lesser period, the amount payable would be *pro rata*. The maximum bonus should be equivalent to 20% of the total basic wage and dearness allowance paid during the year. (Paragraph 12.5).

47. We are of the opinion that bonus payable in accordance with our recommendations should ordinarily be paid not later than 8 months after the close of the accounting year. (Paragraph 12.6.).

48. We recommend that in the bonus formula proposed by us the portion of the available surplus allocated for bonus should be deemed to include bonus to employees drawing a total basic pay and dearness allowance (taken together) up to Rs. 1,600 p.m. regardless of whether they are "workmen" or non-workmen as defined in the Industrial Disputes Act or any other relevant Act, with the *proviso* that the quantum of bonus payable to employees drawing total basic pay and dearness allowance over Rs. 750 p.m. shall be limited to what it would be if their pay and dearness allownce where only Rs. 750 per month. As regards officers and supervisory staff drawing over Rs. 1,600 p.m. it would be open to the Company or concern, if it considered necessary, to pay them bonus out of the balance (40%) of the available surplus left to it under this formula. (Paragraph 12.7).

New Units

49. We recommend that the general bonus formula proposed by us should not apply to *new concerns* until they have recouped all early losses inlcuding all arrears of normal depreciation admissible under the Income-tax Act, subject to a time limit of six years. In other words, in such cases we recommend that the liability to pay bonus (including minimum bonus) in accordance with our formula should commence only—

(a) from the year in which there is for the first time an over-all net profit, *i.e.* sufficient profit, after providing for that year's normal depreciation, to wipe off all accumulations of previous losses and arrears of depreciation;

or

(b) from the sixth year following the year in which the undertaking begins to sell its products and/or services;

whichever may be earlier.

This recommendation applies also to existing concerns in respect of new industrial units or undertakings established by them, whether in the same industry (*e.g.* a new cement factory established by an existing cement manufacturing concern) or in a different industry (*e.g.* a new cement factory established by a jute manufacturing concern). Where, however,

it has been the practice of such concerns to pay bonus to its workmen at a uniform rate on the basis of a consolidated profits computation in respect of all their units (whether limited to the consolidation of all units engaged in the same industry, or extending also to the consolidation of all units regardless of the industry to which they belong), that practice should continue in respect also of new units started by that concern. What we have stated in this paragraph applies equally to new concerns and new units of existing concerns in the public sector. (Paragraph 12. 9).

The Bonus Formula

50. The general bonus formula recommended by us, subject to the explanations and particular provisions set out in the various Chapters, is as under:—

Gross Profit for the year computed as per Chapter VIII Paragraph 8.10.	Rs.
Less.—Depreciation as per Chapter IX Paragraph 9.2.	Rs.
	.....
	Rs.
Less.—Income-tax and Super-tax as per Chapter IX Paragraph 9.6.	Rs.
	.....
	Rs.
Less.—Return at the actual rate payable on Preference Share Capital and at 7% on Ordinary Capital, plus at 4% on reserves as per Chapter XI Paragraph 11.13.	Rs.
	.....
Balance.	Rs.
	.....

The balance would be the "available surplus". Of this balance, 60% shall be allocated as bonus subject to a minimum equivalent to 4% of the annual basic wages and dearness allowance (excluding all other allowances and bonuses such as production bonus, attendance bonus etc.) or a minimum amount of Rs. 40 whichever is higher (Rs. 25 in the case of children), The amount of Rs. 40 (or Rs. 25 as the case may be) would be the sum payable to a worker who has worked for all the working days in the year (including periods of privilege leave with pay, casual leave with pay, sick leave and maternity leave with pay). For a worker who has worked for a lesser period the amount payable would be *pro rata.* (Paragraph 12.12).

Set off and Set-on

51. Where the amount allocable as bonus exceeds the maximum, *i.e.* exceeds the equivalent of 20% of the earnings as defined above, then the excess upto a limit of a further 20% is to be carried forward to be "set-on" in the succeeding years upto a maximum period of the next 4 years. Where there is no available surplus, or the amount of the available surplus allocable as bonus is a sum less than 4% of the annual earnings as defined above, then the whole of the quantum of 4%, or the amount necessary to make up 4% as the case may be, should be carried forward and set-off in the succeeding years upto a maximum period of the next 4 years. In making calculations for the succeeding years, the amount of set-on or set-off brought forward from the earliest year should first be taken into account. (Paragraph 12.13).

Any amount left undistributed out of what has been specifically allocated for distribution as bonus should be carried forward to the bonus account or the following year and dealt with on the lines already discussed.

Jute Industry

52. Having carefully considered the representations of the employers and the unions and the views expressed unanimously by the Tripartite Wage Board for the Jute Industry, we are of the opinion that the plea of employers in the jute industry that the bonus system should not be introduced in the Jute Industry cannot be accepted. We are of the view that the general bonus formula recommended by us should apply to the Jute Industry also, unless the Employers' Associations and the Unions concerned agree to any other arrangement. (Paragraph 13.8).

Plantation Industries

53. In reference to Plantations in South India, we would urge on the Employers' Associations and Unions concerned to continue industrywise agreements with such modifications, if any, as may be agreed to by them. What we have said applies also to plantations

in Bengal, Assam and Tripura. If the parties are unable to renew industrywise agreements our general bonus formula should apply. We are of the opinion, after taking into consideration the history, progress and present position of the Plantation Industries, that they would be in a position to pay the minimum bonus recommended by us. Bonus higher than the minimum would be payable only if adequate profits are made. We see no good reasons for recommending exemption from the general bonus formula recommended by us in the case of the Plantation Industries nor do we recommend any modification of the formula in its application to these industries, if they are unable to renew industrywise agreements for bonus. (Paragraph 13.19).

Coal Industry

54. It has to be borne in mind that profit bonus is also paid in industries which have incentive bonus schemes; and merely because in the Coal Industry there is a statutory bonus scheme linked to attendance as part of the wage structure, it is not a valid reason why the workmen should not, as in the case of other industries, be allowed to participate in the prosperity of the Industry. We may, however, mention that Coal is a very labour intensive industry and the price of coal is controlled. Some rough calculations made by us give ground for the belief that if the general bonus formula were applied to the coal mining industry the workers would probably get only minimum bonus in a large majority of cases. It might also transpire that in the case of this industry which has never paid profit bonus, the payment of a minimum bonus may necessitate some though not an appreciable increase in the price of coal. If the payment of a minimum bonus necessitates a rise, we think that it would be preferable to the discontent that might be caused by singling out this industry for excluding the workers in it from the benefits of a profit bonus scheme. It has to be borne in mind that coal mining is one of the most strenuous of occupations. We have, therefore, come to the conclusion that our general bonus formula should apply also to the coal industry. (Paragraph 14.2).

Mining Industry

55. What we have said about the application of our bonus formula to the coal mining industry applies also to the mining industry generally. (Paragraph 14.3).

Banks

56. Having considered the representations made to us we are of the opinion that the entire formula of the Desai Award (including the computation of gross profit) should continue to be applicable in future with the following modifications:—

(1) Where for any earlier year bonus has been paid after making deduction of notional normal depreciation the notional normal depreciation should continue. In all other cases the depreciation admissible under the Income-tax Act should be deducted from the profits.

(2) Our recommendations in regard to Super Profits Tax, Donations, Extraneous profits and losses will also apply to Banks.

(3) There should be no specific provision for rehabilitation.

(4) The distinction between reserves used as working capital and reserves not so used should be abolished (*vide* Chapter XI Paragraphs 11.14. to 11.17.). And as regards return on reserves depreciation should not count as reserve except in the circumstances indicated in Chapter XI Paragraph 11.17.

(5) The percentage of the available surplus allocable as bonus after meeting the prior charges should be 60%.

(6) The distribution of the quantum of bonus to employees should be on the same basis as in the case of other industries, as proposed in Chapter XII, with a minimum equal to 4% of the wages (inclusive of basic wages and dearness allowance) and a maximum equal to 20%, with provision for set-off and set-on up to four years. (Paragraph 15.11).

State Bank of India

57. It might be mentioned that the Award of Shri Justice Desai in regard to Banks does not apply to the State Bank of India which was not a party to the reference. Having considered the different views on the question of bonus to employees of the State Bank of India we are of the opinion that the formula proposed by us in regard to Banks generally should also apply to the State Bank of India (Paragraph 15.16.).

Insurance Companies

58. The bonus formula of the Labour Appellate Tribunal has not in the past been applied to the Insurance Companies on account of the provisions of Section 31A(1)(c) of the Insurance Act. And in view of these provisions we feel that our recommendations should not, in terms, apply to employees of general Insurance Companies. It would, of course, be open to the parties concerned to come to mutual agreements concerning the matter, and also for the Department of the Government of India concerned to consider whether, in giving its sanction to any proposal for bonus under the proviso (vii) to Section 31A(1)(c), such agreements and/or the principles recommended by us in respect of bonus should be applied, with such modifications, if any, as may be necessary. (Paragraph 15.20).

Sugar Industry

59. We are of the opinion that the general formula proposed by us should be applicable to the Sugar Industry unless the Employers' Associations and the Unions concerned agree to any other arrangement or formula in their respective regions. (Paragraph 16.8).

Tile, cashew and coir manufacturing industries in Kerala

60. We are of the opinion that if the representatives of industries and Unions concerned can come to an agreement on the subject matter of bonus on an industrywise basis it would be a good thing, and such agreement should of course be acted upon. Failing such agreements, however, the general bonus formula recommended by us should also apply to industries in Kerala referred to above. (Paragraph 17.3).

Electricity Undertakings

61. At present disputes regarding bonus in Electricity Undertakings when referred to Industrial Tribunals are decided in accordance with the Full Bench formula of the Labour Appellate Tribunal. We are of the view that there is no good ground for exempting electricity undertakings from the general approach to bonus. Our general formula would, therefore, apply, subject to this that, as in the case of Banks and Co-operative Societies, the amount required to be transferred by statute from the profit of the year to the reserves should be allowed as a prior charge. The formula would, of course, not apply to Electrical Undertakings run by Municipalities, for the terms of reference to us exclude industries in the public sector run departmentally (Paragraph 17. 5).

Seamen on High Seas

62. Section 150(9) of the Merchant Shipping Act lays down that the Industrial Disputes Act shall not apply to any disputes between seamen and the owners of ships and such disputes have to be referred to a special tribunal. It is, therefore, doubtful whether seamen come within the purview of the reference to us. (Paragraph 17. 8).

63. In the view we have taken our recommendations would not apply to seamen. Even otherwise the question of bonus to them raises certain difficulties which must be borne in mind. If Indian shipping companies engaged in foreign trade were required to pay bonus to seamen it would put them at a disadvantage in competition with foreign shipping companies and it would be difficult to attempt to apply the bonus formula to foreign shipping companies. Any attempt to force the bonus formula on them would discourage the employment of Indian seamen, and foreign companies may well prefer to employ seamen from other countries. It may, therefore, be unwise to apply the bonus formula in respect of these employees. (Paragraph 17. 9).

64. We were informed at one of our meetings that one Indian company, *viz.* the Bombay Steam Navigation Co. (1953) Ltd., which is a subsidiary of the Scindia Steam Navigation Co. Ltd. and engaged wholly in coastal trade, pays bonus to seamen engaged in coastal ships. The bonus is on the same scale as that paid to the shore staff of the Scindia Steam Navigation Co. We hope this practice will be continued by the Company. (Paragraph 17.10).

Stevedore Labour

65. We are of the opinion that stevedore labour should not *per se* be ineligible for bonus. It has not been suggested that stevedoring is less profitable in Calcutta than in Bombay. The circumstance that employment is from a pool, in rotation and intermittent, is not a good argument against giving bonus and there should be no practical difficulties since a record is regularly maintained of the persons who have been employed under each stevedore. (Paragraph 17.13).

66. Since stevedoring is done by some firms in addition to other business and it may be difficult to go into the accounts and separate the profit in stevedoring from other lines of business and in view of the past practice it is desirable that the present practice in

Bombay which has worked well should be continued. So far the Stevedores' Association has been able to come to an agreement with the Transport and Dock Workers' Union about the rate of contribution by the employers to the bonus pool. We hope that this will continue to be the case. If in future the parties cannot for any year agree as to the rate of contribution to the bonus pool and/or as to the manner of its distribution among the entitled workmen, we recommend that the same should be determined by arbitration. If in any year the parties do not agree to arbitration, the machinery of the Industrial Disputes Act would be available for settlement of the dispute. In view of the particular circumstances in which stevedore labour is employed under the decasualisation scheme we are clear that our general formula would be inapplicable; so also any system of minimum and maximum bonus. We recommend further that the bonus pool system for stevedore labour in Bombay should also be applied at other ports, including Calcutta subject to such modifications as local conditions may require. In the event of disagreement the matter should be referred to arbitration or adjudication. (Paragraph 17.16).

Small shops and Trading establishments

67. Having given consideration to the matter we recommend that the general bonus formula proposed by us should not apply to all small units employing less than 20 persons except those which are factories as defined in the Factories Act. (Paragraph 17.18).

Institutions

68. We recommend that the bonus formula should not apply to institutions such as Chambers of Commerce, Red Cross Associations, Universities, Schools, Colleges and Hospitals and Social Welfare Institutions. Such institutions are not established with a view to make profits, though they may have a surplus of income over expenditure. (Paragraph 17.19).

Industries run by Charitable Institutions

69. We are of the opinion that employees of industrial establishments engaging 20 or more persons and factories within the meaning of the Factories Act, owned by Charitable Institutions for profit should be eligible for bonus according to the bonus formula; but we agree that in such cases Income-tax and Corporation Tax should be deducted as a prior charge at the full rate applicable to Companies notwithstanding that no tax may in fact be chargeable. Organisations operating concerns of this type should not be deprived of the benefit of tax concession which is given for promoting the charitable purpose. (Paragraph 17.20).

Building Workers

70. These workers get minimum wages fixed under the Minimum Wages Act. Most of them are unskilled. (Paragraph 17. 21).

71. Workers engaged directly by construction companies would be getting bonus according to our formula if they have worked for the company for not less than 30 days in the year. But the question of bonus to workers engaged through contractors raises difficulties. Such workers are engaged for a particular contract job. To attempt to pay them bonus according to the profits of the particular job would create serious practical difficulties. We think that the problem relating to workers on building construction engaged through contractors is one of evolving and enforcing a proper wage structure. It is not feasible to apply the bonus formula to such workers engaged through contractors on building construction work, and we recommend accordingly. (Paragraph 17. 22).

The Public Sector

72. We recommend that if not less than 20% of the gross aggregate sales turnover of a public sector undertaking consists of sales of services and/or products which compete with the products and/or services produced or sold by units in the private sector, then such undertakings should be deemed to be competitive and our formula should apply to such units. We recommend further that in the event of any disputes in particular cases as to whether any anomalous and marginal cases fall within or outside the dividing line of being "20% competitive" the machinery for deciding them should be that recommended by us in Paragraph 19. 23 Chapter XIX for the settlement of bonus disputes generally. (Paragraph 18.8).

73. We may mention here that we are aware that some non-competitive public sector enterprises have in the past been paying bonus in some form to their workers by mutual accommodation. They are, of course, outside our purview. But we trust they will not, merely for that reason, discontinue the payment of bonus in future. (Paragraph 18.9).

Proof of items in Balance-sheet and Profit Loss Account

74. If a *prima facie* case is made out showing that the balance sheet or profit and loss account is incorrect the Tribunal or other authority may go into the question of the

correctness or incorrectness of the items. The Tribunal deciding a bonus dispute may, in its discretion, permit Unions to obtain clarification of items in the balance sheet or profit and loss account or major break up figures of large items. But we consider that Tribunals and Arbitrators should not embark on investigations into questions such as whether stocks have been correctly valued, whether a portion of the revenue expenditure which has been passed by the Auditors as revenue expenditure should be considered as capital expenditure, the adequacy of remuneration to Directors and Managing Agents of Companies, whether expenditure on travelling allowance is excessive etc. The Companies Act and other Acts provide ample safeguards against malpractices. There are also provisions under the Companies Act for directing investigations into the affairs of Companies in certain circumstances. (Paragraph 19.7).

Accounts of Partnership and Proprietory Concerns

75. In a bonus dispute the Tribunal may, if it thinks it necessary, require the accounts in such cases to be audited. When they are audited and certified to be correct the same principles should apply as in the case of audited accounts of companies. (Paragraph 19.8).

Audited Accounts of Banks

76. We are of the opinion that in a bonus proceeding audited accounts of Banks should not be permitted to be challenged or gone behind. Unions may, however, be permitted to obtain from the Bank such information as is necessary for working out calculations according to the bonus formula, *e. g.* figures of basic wages and dearness allowance, bonus for previous years included in the accounts of the year, whether provision for bonus is included in expenditure for the year etc. (Paragraph 19.10).

Minimum attendance to qualify for bonus

77. In a number of agreements between companies and Unions a minimum period of work in a year is specified to qualify for bonus. (Paragraph 19.11). We are of the view that there should be a minimum period of 30 days' work in the year for qualifying for bonus. In the profit sharing systems in other industrialised countries there is usually a minimum qualifying period. A minimum qualifying period is, on principle, desirable. It would also avoid administrative difficulties caused to companies by having to keep records of attendance of casual and temporary workers who may have worked at any time during the year and to verify that bonus payments claimed are made to the right persons. (Paragraph 19.14).

Non-payment of bonus due to misconduct

78. Bonus certainly carries with it the obligation of good behaviour which helps sustaining the industry. (Paragraph 19.15).

79. According to the existing practice, bonus is withheld only in the case of misconduct causing financial loss to the company to the extent of the loss. (Paragraph 19.17).

80. We recommend that, for the present, the existing practice may continue, but with the addition that bonus may be withheld for dismissal only in cases of riotous or violent behaviour on the works premises, theft, fraud, misappropriation or sabotage of property of the concern. (Paragraph 19.18).

Payment of Bonus in Cash

81. We are of the opinion that the amount of bonus payable to the workers should be paid in cash and not in the form of National Savings Certificates or any other form. (Paragraph 19. 20).

Machinery for settlement of Bonus Disputes

82. Since we have simplified the bonus formula and substantially reduced the factors of uncertainty in its operation there should be less scope for disputes and for litigation. The formula could be worked out, in the large majority of cases, without difficulty. There may, however, be a residue of cases where the parties do not agree on the calculations of bonus or some other minor issues may be involved. In such cases we would recommend that the matter be referred to arbitration, each party appointing one arbitrator. The arbitrators before entering on the reference should choose an umpire to whom the matter would be referred in case of disagreement between the two arbitrators. If the parties are not willing to refer the dispute to arbitration, the machinery of the Industrial Disputes Act would be available for the settlement of the dispute. (Paragraph 19.23).

Retrospective effect to our recommendations

83. We suggest that our recommendations should apply to all bonus matters relating to accounting year ending on any day in calendar year 1962 other than those cases in which settlements have been reached or decisions have been given. (Paragraph 19. 24).

APPENDIX 'A'

Telephone No.
of Secretary:
Office :253763
Residence : 65910

GOVERNMENT OF INDIA

MINISTRY OF LABOUR AND EMPLOYMENT

BONUS COMMISSION

Old Secretariat, Fort, Bombay-1.
10th April, 1962.

Dear Sir,

The Government of India have appointed the Bonus Commission to study the question of bonus in industrial employments and to make suitable recommendations. On the next page you will find the terms of reference to the Commission.*

2. The Commission has prepared a questionnaire, a copy of which is sent herewith. The Commission will be grateful if you will be so good as to let it have your answers to the questionnaire. You may give your answers in regard to industry or industries with which you are concerned.

3. It will be seen that the questionnaire is prepared in two sections. Section I is to be answered by the Federations of Employers or Employers' Associations or the Chambers of Commerce, as the case may be, as also by the Federations of Unions. The Federations of unions may please ascertain the views of the unions affiliated to them and send a consolidated reply. Unions not affiliated to the Federations may, if they wish, send their replies to the questionnaire direct. Section II contains questions requiring statistical and other information from selected representative units or concerns in the various industries to whom the questionnaire is being sent separately. However, they may, if they wish, answer questions in Section I also. If the Federations of employers or employees wish to supplement the information by collecting statistical data required as per questions in Section II for more units, they may do so. Units in the public sector to whom this questionnaire is being sent are requested to answer questions in both the Sections.

4. The questionnaire is also being sent to Ministries of the Government of India, State Governments and selected individuals. They are requested to answer such of the questions in the questionnaire in which they are interested or may have views to express.

5. Replies to Section I may be sent in eight copies and replies to Section II in three copies.

6. Please let this Commission know whether, in case your presence is required by the Commission for clarification of the views expressed in the replies, you or your representatives will be in a position to appear before the Commission.

7. As the Commission desires to proceed with the work as soon as possible, it is requested that your answers to the questionnaire may please be sent so as to reach the Commission not later than 30th June, 1962.

8. Any contribution which you are able to make to the subject will be appreciated.

9. Kindly acknowledge receipt of this questionnaire. Your reply to the questionnaire may be sent to the Secretary, Bonus Commission, Old Secretariat, Fort, Bombay-1.

Yours faithfully,
M. R. MEHER,
Chairman,

QUESTIONNAIRE

GENERAL

(1) Please give your (*a*) Name, (*b*) Address, (*c*) Designation.

(2) Please state to which industry or industries or concern or concerns your answers have reference and state the nature of the industry or business.

Note.—In the case of replies to questions 1 and 2 by individual concerns please state whether it is a family concern, a partnership, a proprietory concern, a public company, private company or a subsidiary company of an Indian/foreign company.

SECTION I

Concept of Bonus

(3) (*a*) How would you define the concept of bonus?

(*b*) In what circumstances should bonus become payable?

(*c*) Should bonus be determined unit-wise, industry-wise or industry-*cum*-region-wise in the industry to which your answers have reference?

*See page 1 of Chapter I.

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(4) Have you any comments to offer on the following ideas which are said to form part of the basic concept of bonus?

(*a*) That bonus represents additional remuneration payable to workmen out of the available surplus so as to bridge the gap between the workmen's actual earnings and the living wage;

(*b*) That bonus in the case of workmen drawing a living wage acts as an incentive to further efficiency;

(*c*) That bonus gives labour a sense of partnership in the industry.

BASIS OF COMPUTATION

(5) What principles would you recommend for computation and payment of bonus to workmen based on profits and what should be the method of payment ?

Note.—The expression "workmen" wherever it appears in this questionnaire has the meaning given in section 2(*s*) of the Industrial Disputes Act, 1947.

(6) Do you suggest that in the industrial employments to which your answers relate there should be any departure from the general principles that may be enunciated by you? If so, what are they? Please give reasons for such departures.

Note.—The term 'industrial employments' will include employments in the private sector and in establishments in the public sector not departmentally run and which compete with establishments in the private sector.

(7) Are there any special features such as the character of the industry, its past history, customs, traditions, etc., in regard to bonus, to be taken into account? If so, please state what are these special features and why they need special consideration?

(8) Please state whether the principles proposed by you need any modification in their application to proprietory and partnership concerns.

(9) Please state the extent to which the quantum of bonus should be influenced by the prevailing level of the workmen's remuneration including production bonus, coustomary bonus (such as Pooja bonus and the like), bonus as a condition of service, etc.

(10) Please state whether in your opinion bonus should be linked with production and if so how practical effect can be given to the views that you may have on the subject in determining and allocating the quantum of bonus.

(11) What should be the prior charges and how should they be calculated in different circumstances ?

(12) Please give your opinion on each of the following formulae:—

(*a*) From the gross profits before tax after allowing managing agency commission, deduct depreciation allowed under the Income-tax Act (without taking into account development rebate), and from the balance a certain percentage to be allocated as bonus (subject to a maximum), the percentage to be determined for each industry after taking into consideration whether the industry is capital-intensive or labour-intensive, the proportion of the bonus amount to the total profits in the past, and other relevant factors. Also please state what should be the percentage to be allocated as bonus in the industry in regard to which your reply relates, and when and under what circumstances should the percentage once fixed be altered.

(*b*) The existing formula of the Labour Appellate Tibunal to be continued with suitable modification so as to simplify it and avoid prolonged litigation:—

(i) Instead of the amount of rehabilitation being determined as at present, a certain proportion of the surplus after meeting the prior charges should be allowed for rehabilitation, replacement and modernisation or expansion, or ploughback into the business, and out of the balance a certain proportion to be allocated as bonus, subject to a maximum in terms of monthly basic or consolidated wages.

(ii) Allowing a return on reserves used as working capital has in practice led to much controversy and litigation, since no single item on the assets side of a balance sheet is matched by an equal item on the liabilities side, though the two sides must balance in total. In the circumstances, please consider whether return should be allowed on reserves without going into the question whether they are used as working capital or not. If so, which reserves should be included for the purposes of the return ?

(*c*) Would you suggest any other modifications to the existing Labour Appellate Tribunal formula as interpreted by the Supreme Court, in regard to—

(i) the determination of rehabilitation charges ?

(ii) the allowance for return on paid-up capital (including premium) and on reserves used as fixed capital and/or as working capital, having due regard to the varying circumstances of different industries ?

(iii) the inclusion or exclusion of extraneous profits unrelated to the efforts of employees? If extraneous profits are excluded, should extraneous losses, such as loss on sale of fixed assets, be added to the profits ?

(iv) return on paid-up capital, premium and reserves in the light of the changed system of corporate taxation ?

(v) any other matters?

(d) Have you any comments to offer on a suggestion that bonus should be computed as a percentage of the income assessed to income-tax or gross profits, such percentage being separately fixed for each industry?

(e) Should provision made from profits to gratuity reserve fund or to debenture redemption fund be treated as prior charges?

(13) In computing the profits, in what circumstances should workmen or unions be allowed to challenge audited accounts in the case of (a) public limited companies, (b) private limited companies, (c) proprietory and partnership concerns? Even where no *prima facie* case is made out to show incorrectness of the balance sheet, please state whether in a bonus dispute a concern should be required to give particulars regarding a particular item, or give the major break-up figures of miscellaneous expenses, etc., in order to add to the profits items which should not be considered as expenditure for the year in the computation of profits for the purposes of bonus calculations, such as bonus paid in respect of previous years, capital expenditure, etc.

(14) Should there be a minimum bonus, irrespective of losses, and maximum bonus irrespective of level of profits? If so, what should be the minimum and maximum in the industry or concern to which your reply relates? Please state the manner in which profits or losses or surplus or deficit should be carried forward and for what period. In making your suggestions you are requested to bear in mind that in some industries there is a separate basic wage and dearness allowance and in some others wages are consolidated.

(15) (a) Where there is a separate basic wage and dearness allowance would you suggest, for the purpose of bonus, calculation of basic earnings as inclusive of allowances such as house rent allowance, duty allowance, night shift allowance, overtime pay, etc.?

(b) Would you suggest for the purposes of bonus, that the total earnings of the workmen including dearness allowance as also Pooja bonus and the like (but excluding production and incentive bonus) should be taken into account?

(16) Should there be different rates of bonus for different categories of workmen depending upon their emoluments ? If so, in what manner?

(17) (This question is for Sugar Companies and concerns in the North and Central Regions only).

Please state how the formula recommended by the Central Wage Board for the Sugar Industry for the North and Central Region in paragraph 356 of its Report has been working? Do you suggest any modifications, or would you suggest any other formula? In suggesting any other formula, please bear in mind what the Wage Board has stated in paragraphs 344 and 347 of its Report.

Miscellaneous

(18) Should bonus beyond a certain amount be paid to the workmen in the form of National Savings Certificates or credited to provident fund or in any other forms? Please give reasons.

(19) Should casual labour be also considered eligible for bonus? Would you suggest a certain period of minimum days of attendance during the year, to qualify for bonus? Please give reasons.

(20) Are you satisfied with the existing machinery and method for the settlement of bonus disputes? If not, please make your suggestions as to the appropriate machinery and method.

(21) In case there is a subsisting industry-wise bonus agreement or award applicable to the industry to which your reply relates, please send two copies of such agreement or award.

(22) Have you any other suggestion to make concerning bonus?

SECTION II

Statistical and Other Information required from Individual Concerns

(23) (a) Please state what is (i) the minimum basic wage of an operative, (ii) average basic wage of an operative, (iii) starting basic pay of a clerk, (iv) average basic pay of a clerk in your concern.

(b) What is the dearness allowance in the case of operatives and clerks? If the dearness allowance fluctuates with the cost of living index or if there is a scheme of dearness allowance varying with the pay slabs please give particulars of the same and state the average amount paid as dearness allowance under each of the schemes, for the latest month, specifying the month both for operatives and clerks.

(c) If the wages in your concern are consolidated, please state what is the minimum wage of (i) an operative and (ii) a clerk; (iii) average consolidated wage of an operative and (iv) average consolidated wage of a clerk.

(24) What is the monthly aggregate average earning, including incentive earning, attendance bonus, shift allowance, etc., for operatives and clerks? What is your over-all *per capita* labour cost including expenditure on fringe benefits?

(25) Please supply—

(a) two copies of balance sheets and profit and loss accounts of your concern, for the last three accounting years;

(b) One copy of the last bonus award or agreement (other than any industrywise agreement), relating to your concern;

(c) Two copies of the particulars of production or incentive bonus scheme, if any, in your concern.

(26) Please supply the following information in regard to your concern for the last three accounting years:—

Name of the concern.....

Year in which the concern was established.	Accounting Year.	Total number of		Paid-up capital		Total Reserves as shown on the liabilities side of the balance sheet.	Long term and medium term borrowed capital.	Profit after deducting Managing Agency Commission and interest charges but before depreciation and tax.	Depreciation allowed for the year under Income-tax Act (not including development rebate).	Arrears of depreciation, if any, for previous years.	Depreciation provided for in the accounts for the year.	Profit after deducting column (8) from column (7) or loss as the case may be.	Dividend per cent on the ordinary shares in case of companies.	Dividend as percentage of capital employed (total of columns 4 and 5).
		Workmen.	Other employees.	(*i*) Ordinary.	(*ii*) Preference.									
1	2	3		4		5	6	7	8	9	10	11	12	13

Total amount of wages and salaries (excluding bonuses shown under columns 15, 17, 18 and 19) to						Total amount of bonus (other than the bonuses referred to in columns 17, 18 and 19) paid to		Rate at which bonus referred to in column 15 paid in terms of basic wages or consolidated wages (*e.g.* 1 month, 2 months etc.) to		Total amount of Pooja (or other similar) bonus paid to		Rate at which Pooja (or other similar) bonus was paid.	Total amount of production bonus or incentive bonus paid to		Whether bonus was given voluntarily or under Award of Agreement.	Remarks.
Workmen.			Other Employees.													
(*i*) Basic wages.	(*ii*) Dearness allowance.	(*iii*) Other earnings (overtime shift allowance etc.)	(*i*) Basic wages.	(*ii*) Dearness allowance.	(*iii*) Other earnings (overtime shift allowance etc.)	(*a*) Workmen.	(*b*) Other Employees.	(*a*) Workmen.	(*b*) Other Employees.	(*a*) Workmen.	(*b*) Other Employees.		(*a*) Workmen.	(*b*) Other Employees.		
14						15		16		17		18	19		20	21

APPENDIX 'B'

TABLE SHOWING THE NUMBER OF REPLIES RECEIVED FROM VARIOUS ASSOCIATIONS OF EMPLOYERS, TRADE UNIONS AND OTHERS TO WHOM THE QUESTIONNAIRE WAS SENT, AND ALSO THOSE WHO HAD NO COMMENTS TO OFFER

Sl. No.	Name of the Organisations	Number of replies received		Number of letters stating that they had no comments to offer
		Section I	Section II	
1	Employers' Federations	3	..	..
2	Employers' Associations	55	..	4
3	Bank Employers' Associations	2	..	..
4	Chambers of Commerce (including Federations)	15	..	4
5	Trade Union Federations and All India Unions of Employees.	21	..	..
6	Bank Employees' Federations	3	..	..
7	Individual Unions	12	..	..
8	Departments of Economics of different Universities	1	..	1
9	Ministries of Central Government	..	..	21
10	State Governments and Commissioners' Provinces	11	..	3
11	Representative Units in various industries	..	233	..
12	Individual Employers	38	9	..
13	Public Sector Units	29	28	47
14	Individuals	3	..	..
	TOTAL	193	270	80

APPENDIX 'C'

LIST OF PERSONS WHO APPEARED BEFORE THE BONUS COMMISSION AT THE PUBLIC SITTINGS

AHMEDABAD

Wednesday, 3rd October, 1962

1. Ahmedabad Millowners' Association, Ahmedabad .	1. Shri Amritlal Hargovandas. 2. Shri Rasiklal C. Nagari, President. 3. Shri Kanchanlal C. Parikh, Vice-President. 4. Shri Navanitlal Sakarlal 5. Shri Surottam P. Hatheesing. 6. Shri Arvind Narottam. } Committee Members. 7. Shri H. G. Acharya, Secretary.
2. Hind Mazdoor Sabha, Gujarat Region . . .	1. Shri Natwarlal Shah, General Secretary.

Thursday, 4th October, 1962

1. Indian National Trade Union Congress (Gujarat Branch)	1. Shri N. H. Sheikh. 2. Shri C. K. Shah. 3. Shri A. N. Buch.
2. Textile Labour Association, Ahmedabad . . .	1. Shri S. R. Shah. 2. Shri R. M. Shukla. 3. Shri N. M. Barot.
3. (1) State Transport Workers' Union . . . (2) Ahmedabad Municipal Transport Services Motor Drivers & Motor Workers' Association, Ahmedabad.	1. Shri Chandulal Shah, General Secretary.
4. (1) Baroda Chemical Works Kamdar Mandal, Baroda (2) Baroda Engineering Works Kamdar Mandal, Baroda (3) Sevalia Cement Workers' Union, Sevalia . . (4) Tata Chemical Kamdar Sangh, Mithapur . . (5) Indian National Chemical Workers' Federation (Gujarat).	1. Shri Nathalal Shah.
5. Gumasta Mahamandal, Ahmedabad . . . . . (Maskati, Madhavpura) and Miscellaneous Unions .	1. Shri T. Shukla, President.

Friday, 5th October, 1962

1. Saurashtra Millowners' Association	1. Shri Jayantilal Amritlal and Shri Shantilal Mangaldas, Senior Members.
2. Saurashtra Labour Association	1. Shri A. N. Buch, General Secretary, Gujarat Branch of Indian National Trade Union Congress.

BOMBAY

Thursday, 27th December, 1962

1. The Millowners' Association, Bombay . . .	1. Shri Pratap Bhogilal, Chairman. 2. Shri D. S. Bakhle, Dy. Chairman. 3. Shri F. H. Kemple. 4. Shri J. J. Ashar. 5. Shri C. C. Choksey. 6. Shri R. L. N. Vijayanagar, Secretary. 7. Shri M. S. Warty, Labour Officer.

2. Bombay Chamber of Commerce & Industry, Bombay	1. Shri F. E. H. Goddard, President. 2. Shri J. B. Bowman, Vice-President. 3. Shri N. M. Wagle. 4. Shri Keshub Mahindra. 5. Dr. K. S. Basu. 6. Shri L. C. Joshi, Adviser.
3. Indian Merchants' Chamber	1. Shri Pravinchandra V. Gandhi, President. 2. Shri G. P. Kapadia. 3. Shri Ambalal Kilachand. 4. Dr. R. C. Cooper. 5. Shri Tanubhai D. Desai. 6. Shri C. L. Gheevala, Secretary. 7. Shri S. K. Aiyar, Legal Assistant.
4. Mahratta Chamber of Commerce	1. Shri R. D. Pusalkar. 2. Shri V. B. Kirtane. 3. Shri C. R. Bondre. 4. Shri B. R. Sabde, Secretary.

Friday, 28th December, 1962

1. Maharashtra Chamber of Commerce	1. Shri Lalchand Hirachand, President. 2. Shri Ramkrishna J. Bajaj. 3. Shri K. S. Mehta. 4. Shri M. P. Chitale. 5. Shri R. G. Mohadikar, Secretary.
2. Federation of Gujarat Mills and Industries, Baroda . .	1. Shri P. V. Kale. 2. Shri N. B. Vaze. 3. Shri H. M. Shah.
3. All India Manufacturers' Organisation . . .	1. Shri P. V. Mehta, Chairman. 2. Shri Murarji J. Vaidya. 3. Shri N. D. Sahukar. 4. Shri B. D. Somani. 5. Shri H. P. Merchant. 6. Shri S. P. Subramanian. 7. Shri L. V. Bansod, Asstt. Secretary.

Saturday, 29th December, 1962

1. Indian Merchants' Chamber	Appearances as on 27th December, 1962.
2. Deccan Sugar Factories Association	1. Shri B. Narayanaswamy. 2. Shri G. G. Rege, Secretary. 3. Shri Ganpule. 4. Shri Adarkar.
3. Cement Manufacturers' Association	1. Shri P. K. Mistry. 2. Shri Ravikant D. Shah. 3. Shri S. C. Agarwal. 4. Shri R. P. Jain. 5. Shri R. S. Gavankar, Secretary. 6. Shri Cooper. 7. Shri S. V. Uttamsingh. 8. Shri Ranga Rao. 9. Shri V. B. Kher. 10. Shri P. S. Shroff.

4. The Federation of Electricity Undertaking of India, Bombay.	1. Shri N. C. Jhaveri. 2. Shri R. P. Aiyar, Secretary. 3. Shri F. P. Parekh.

Monday, 31st December, 1962

1. Indian National Trade Union Congress . . .	1. Shri G. D. Ambekar. 2. Shri G. Ramanujam. 3. Shri Kanti Mehta.
2. Raahtriya Mill Mazdoor Sangh	1. Shri N. S. Deshpande. 2. Shri V. R. Hoshing.
3. Indian National Cement Workers' Federation . .	1. Shri H. N. Trivedi, President. 2. Shri C. L. Dudhia, Vice-President.
4. N. C. Corporation	1. Dr. (Miss) S. P. Vaswani.

Wednesday, 2nd January, 1963

1. Hind Mazdoor Sabha	1. Shri Mahesh Desai. 2. Shri H. K. Sowani. 3. Shri Natwar Shah. 4. Shri Bagaram Tulpule.
2. All India Trade Union Congress (Maharashtra Branch)	1. Shri K. T. Sule. 2. Shri G. Sunderam. 3. Shri S. G. Patkar. 4. Shri D. S. Nargolkar. 5. Shri G. R. Khanolkar. 6. Shri R. S. Kulkarni. 7. Shri G. V. Chitnis.
3. All India Cement Workers' Federation, Bombay .	1. Shri K. T. Sule. 2. Shri G. G. Dharadhar. 3. Shri V. N. Prabhu.
4. Bharatiya Mazdoor Sangh	1. Shri D. B. Thengdi. 2. Shri M. P. Mehta. 3. Shri G. S. Gokhale. 4. Shri B. N. Satheye.

Thursday, 3rd January, 1963

1. The Employers' Federation of India, Bombay . .	1. Shri Naval H. Tata. 2. Shri A. R. Foster. 3. Shri N. G. Bowen. 4. Shri G. B. Pai. 5. Shri N. Das. 6. Shri N. M. Vakil.
2. The All India Organisation of Industrial Employers .	1. Shri D. C. Kothari. 2. Shri Surottam P. Hutheesing. 3. Shri Bububhai M. Chinai. 4. Shri P. Chentsal Rao.
3. Silk and Art Silk Mills' Association Ltd., Bombay .	1. Shri D. N. Shroff. 2. Shri D. P. Ketkar,

CALCUTTA

Thursday, 17th January, 1963

1. Indian National Trade Union Congress . . .	1. Dr. Mrs. Maitreyee Bose. 2. Shri Michsel John. 3. Shri Kanti Mehta. 4. Shri M. N. Sharma.
2. Imperial Tobacco Employers' Association . . .	1. Shri Ajit Kumar Ghose. 2. Shri Dhurba Gopal Dutta.
3. Imperial Tobacco Co. Indian Employees' Union . .	1. Shri G. G. Banerjee, General Secretary.

Friday, 18th January, 1963

1. Hind Mazdoor Sabha	1. Shri Narayan Das Gupta. 2. Shri Bibhas Ghose.
2. Indian Engineering Association	1. Shri A. K. Mitra, Chairman. 2. Shri C. E. Cargin, Dy. Chairman. 3. Shri H. K. S. Lindsay. 4. Shri B. A. Tarlton, Secretary. 5. Dr. J. K. Bose, Labour Adviser.
3. Indian Jute Mills Association	1. Shri C. L. Bajoria, Chairman. 2. Shri D. P. Goenka. 3. Shri J. Patterson. 4. Shri R. H. Morrison.
4. Indian Mining Association	1. Shri Pran Prashad, Chairman. 2. Shri W. J. Jameson. 3. Shri R. Lall.
5. Indian Mining Federation	1. Shri V. K. Seth, Secretary, Joint Working Committee.

Saturday, 19th January, 1963

1. Indian Paper Makers Association	1. Shri I. A. Macpherson, Chairman. 2. Shri M. L. Zutshi, Vice-Chairman. 3. Shri B. A. Tarlton, Secretary.
2. Indian Paper Mills Association	1. Shri U. S. Bajoria, President. 2. Shri A. K. Jain, Vice-President. 3. Shri J. R. Krishnaswami, Secretary.
3. Indian Tea Planters' Association	1. Shri S. N. Bose, Member, Executive Committee. 2. Shri D. C. Ray.
4. Bengal Millowners' Association	1. Shri Pratap Singh, President. 2. Shri T. P. Chakravarti, Vice-President. 3. Shri M. L. Shah. 4. Shri S. N. Hada. 5. Shri S. Bhattacharjee, Secretary.
5. Indian Non-Ferrous Metal Manufacturers' Association	1. Shri P. N. K. Pillai. 2. Shri A. Dutt Roy. 3. Shri T. S. Sehmi. 4. Shri P. C. Jain.
6. Indian Sugar Mills' Association	1. Shri R. P. Newatia, Chairman. 2. Shri A. K. Jain. 3. Shri S. S. Kanoria. 4. Shri M. L. Apte. 5. Shri M. L. Nopani. 6. Shri V. S. Sankara. 7. Shri J. S. Mehta, Secretary.

Monday, 21st January, 1963

1. Consultative Committee of Tea Producers' Association	1. Shri J. L. Llewellyn. 2. Shri P. Crombie.

2. Engineering Association of India	1. Shri T. R. Gupta, President. 2. Shri A. K. Bhattacharya. 3. Shri P. R. Bagri. 4. Shri R. A. Trivedi. 5. Shri R. L. Rajgharia. 6. Shri K. S. Mehta. 7. Shri S. K. Asthana.
3. Indian Chamber of Commerce	1. Shri S. T. Sadashivan, President. 2. Shri S. P. Jain. 3. Shri R. H. Mody. 4. Shri S. S. Kanoria. 5. Shri C. S. Pande, Secretary. 6. Shri J. S. Mehta, Dy. Secretary. 7. Shri S. K. Sen, Labour Adviser.
4. Bengal Chamber of Commerce & Industry	1. Shri A. R. Foster. 2. Shri H. K. S. Lindsay. 3. Shri A. D. Ogilvie. 4. Shri M. Ghose, Labour Officer.
5. Bharat Chamber of Commerce	1. Shri H. S. Singhania, President. 2. Shri R. N. Bangur. 3. Shri B. D. Kanoria. 4. Shri G. R. Aiyar. 5. Shri L. R. Das Gupta, Secretary.
6. Bengal National Chamber of Commerce & Industry	1. Shri Sukumar Roy. 2. Shri Sachindra Bhusan Dutta. 3. Shri J. Gupta, Labour Officer.
7. J. K. Organisation	1. Shri Lakshni Pat Singhania, Director I/C. 2. Shri K. K. Bhasin. 3. Shri D. Prakash, Personnel Officer.
8. Master Stevedores Association	1. Shri D. S. Bose. 2. Shri P. M. Bhesania.
9. Calcutta Stevedores Association	1. Shri K. P. Mukerji. 2. Shri P. Mukerji.
10. Indian Institute of Personnel Management	1. Prof. A. D. Singh. 2. Shri B. Bose, Hon. Secretary. 3. Shri S. K. Sen, Hon. Treasurer. 4. Shri R. L. Moitra.
11. National Instruments Ltd.	1. Shri S. P. Das Gupta, Personnel Officer.
12. Indian Aluminium Co. Ltd.	1. Shri P. N. K. Pillai. 2. Shri S. K. K. Basin.

Tuesday, 22nd January, 1963

1. All India Trade Union Congress 2. Bengal Chatkal Mazdoor Union	1. Shri Ram Sen. 2. Shri T. N. Siddhanta. 3. Shri Bhowani Roy. 4. Shri Chowdery.
3. United Trade Union Congress	1. Shri Durga Bagchi. 2. Shri Jatin Chakravarty.
4. All India Cine Employees' Federation	1. Shri Haripada Chaterji, General Secretary.
5. Confederation of Free Trade Unions	1. Shri Biswanath Dubey, Working President. 2. Shri Pratap Banerjee, Executive Secretary. 3. Shri Porvat Biswas.
6. Federation of Mercantile of Employees' Union	1. Shri P. K. Ghose.

MADRAS

Friday, 1st February, 1963

1. Indian Federation of Working Journalists . . .	1. Shri L. Meenakshi Sundaram, Secretary General. 2. Shri S. V. Jayasheela Rao. 3. Shri M. S. Sarma.
2. Hind Mazdoor Sabha	1. Shri S. S. C. Anthony Pillai.
3. All India Trade Union Congress	1. Shri V. G. Row. 2. Shri V. Subramanyan. 3. Shri R. Kisan. 4. Shri A. Ramnathan. 5. Shri M. K. Ranganathan.
4. Institute of Chartered Accountants of India . . .	1. Shri P. Brahmayya, President. 2. Dr. R. C. Cooper, Vice-President. 3. Shri M. S. Srinivasan. 4. Shri R. Rajgopalan. 5. Shri B. R. Malhotra, Secretary.
5. North Malbar Chamber of Commerce . . .	1. Shri Haridas Goverdhandas.
6. Andhra Chamber of Commerce	1. Shri Jayantilal P. Sanghrajka, President. 2. Shri M. S. Sumbasiwan, Secretary.
7. Malbar Chamber of Commerce, Calicut . . .	1. Shri B. V. Abdulla Koya, Vice-President.
8. Madura Ramnad Chamber of Commerce, Madurai .	1. Shri P. Jagadisan. 2. Shri L. N. V. Subramanian.

Friday, 1st February, 1963 & Saturday, 2nd February, 1963

1. Indian National Trade Union Congress (Tamil-Nad), Andhra, Mysore, Kerala.	1. Shri G. Ramanujan, President (INTUC) (Tamilnad). 2. Shri R. Rangaswamy, General Secretary. 3. Shri K. Ramaswamy Naidu, Vice-President. 4. Shri M. S. Ramchandran, Executive Committee Member. 5. Shri K. C. Ramaswamy, Committee Member. 6. Shri Jagannatha Rao, President, Andhra Pradesh (INTUC). 7. Shri Sanjeeva Reddi, Secretary, A. P. (INTUC). 8. Shri G. S. Dharasingh, Secretary, Kerala (INTUC). 9. Shri G. M. Stephen, President, Kerala (INTUC). 10. Shri D. Venkatesh, General Secretary, Mysore (INTUC). 11. Shri H. Jaffar Khan, President, H.M.T. Karmik Sangh. 12. Shri V. S. Venkatesh, Jt. Secretary. 13. Shri C. Marriappa, Jt. Secretary, Mysore State (INTUC). 14. Shri A. Rammanna, General Secretary, State Branch, Banglore (INTUC). 15. Shri K. P. Sachindranath, Organising Secretary, Mysore (INTUC). 16. Shri H. S. Masti Gouda, Vice-President, Mysore (INTUC).

Saturday, 2nd February, 1963

2. United Planters' Association of Southern India . .	1. Shri W. C. F. Simmonds, Vice-President. 2. Shri P. K. Kurian. 3. Shri P. S. Subramanian.
3. West Coast Industrialists' Association	1. Shri D. M. S. Rao.

Saturday, 2nd February, 1963—contd.

4. Southern India Hosiery Manufacturers' Association, Tirpur.	1. Shri S. Arunachalam, Secretary. 2. Janab A. D. Mohamed Shariff, Secretary.
5. Motor Vehicles & Allied Industries Association, Madras	1. Shri K. V. Srinivasan, Chairman. 2. Shri K. Hariharan.
6. Tamilnad Printing Workers' Central Association and Madras State Hotel Employees' Central Association	1. Shri K. S. Venkataram, General Secretary.
7. South India Sugar Mills Association.	1. Shri Venugopal Naidu. 2. Shri V. S. Shankar. 3. Shri R. Mainprice. 4. Shri P. Krishna Rao.
8. Neyvelli Lignite Corporation Ltd.	1. Shri P. V. Kalyanaramana, Jt. Personnel Officer.
9. Tungabhadra Steel Products Ltd.	1. Shri N. Satyanarayana Murthy.
10. Travancore Minerals Ltd., Quilon	1. Shri S. Ganapathy, Chief Accountant.
11. Southern India Millowners' Association, Coimbatore .	1. Shri N. S. Bhatt. 2. Shri C. G. Reddi. 3. Shri C. Ramanathan. 4. Shri M. Krishnamoorthy.
12. Tamilnad Millowners' Association, Madurai .	1. Shri S. N. Krishnamurthi.

Sunday, 3rd February, 1963

1. The Employers' Federation of Southern India . .	1. Shri N. G. Bowen, Chairman. 2. Shri A. Morris. 3. Shri B. A. Forsyth. 4. Shri N. S. Bhat, Adviser.

NEW DELHI

Tuesday, 19th February, 1963

1. Heavy Electricals (India) Ltd.	1. Shri S. Sarangapany, Resident Director.
2. Hindustan Steel Ltd.	1. Shri Inderjit Singh, Director (Finance). 2. Dr. P. Prasad, Economic Adviser.
3. Cloth Commission Agents' Union . . .	1. Shri Sheel Chand Mangala. 2. Shri Rajinder Kishore. 3. Shri Kishori Lal Khanna. 4. Shri Prakash Narayan. 5. Shri Krishna Gopal Rohatgi. 6. Shri Mahendra Kumar Bansal.
4. Delhi Hindustani Mercantile Association . . .	1. Shri D. N. Vohra, Labour Law Adviser. 2. Shri Brij Bhusan Sharan, President. 3. Shri Murlidhar Singhania, Sr. Vice-President. 4. Shri Ganpat Rai, Hon. Secretary. 5. Shri R. K. Tandon, Asstt. Secretary. 6. Shri M. K. Bansal.
5. Ashoka Hotels Ltd.	1. Brig. Raj Sarin.
6. Textile Manufacturers' Association, Amritsar . .	1. Shri R. K. Kapur, Labour Welfare Officer.
7. Hamdard Laboratories (India)	1. Shri A. M. Khan. 2. Shri R. Gopalkrishnan. 3. Shri A. A. Kidwai. 4. Shri Athar Hashmi.

Wednesday, 20th February, 1963

1.	1. Shri Khandubhai Desai, M. P.
2. The Madhya Pradesh Millowners' Association, Indore	1. Shri K. A. Desai. 2. Shri V. R. Trivedi, Secretary.

3. Rajasthan Textile Mills Association, Jaipur .	1. Shri M. L. Gupta, Chief Officer, Maharaja Shree Umaid Mills Ltd. 2. Shri V. N. Soral.
4. Madhya Pradesh Organisation of Industries, Bhopal .	1. Shri H. L. Jain, Hon. Jt. Secretary.
5. M. P. Chamber of Commerce & Industry, Gwalior .	1. Shri Paras Kumar Gangwal, M.Com.
6. Federation of Trade Associations, Kanpur . . .	1. Shri J. P. Sharma.
7. Federation of Indian Traders' Association, New Delhi .	1. Shri D. B. Gupta, Secretary. 2. Shri Y. R. Bhasin. 3. Shri Vasdev. 4. Shri H. K. Gupta. 5. Shri N. S. Singal. 6. Shri Roshanlal.
8. Federation of Hotel & Restaurant Associations of India	1. Shri Y. R. Bhasin, Director-in-Charge, Industrial Disputes Bureau.
9. New Delhi Traders' Associations, New Delhi . .	1. Shri M. M. Agarwal, Hon. General Secretary. 2. Shri S. L. Bali. 3. S. S. Backliwal.

Thursday, 21st February, 1963

1. Indian National Trade Union Congress (Delhi, M.P., Uttar Pradesh, Rajasthan, Bihar and Punjab).	1. Shri Ramsinghbhai Verma, President, M. P. Branch. 2. Shri N. K. Bhatt, Asstt. Secretary. 3. Dr. G. S. Melkote, M. P., Organising Secretary, INTUC. 4. Shri G. C. Joshi, General Secretary, Punjab Branch. 5. Shri D. Durgawat, General Secretary, Rajasthan. 6. Shri P. K. Sharma, U. P. Branch.
2. Indian Sugar Mills Workers' Federation, Lucknow	1. Prof. J. C. Dixit.
3. All India Trade Union Congress (Delhi, M. P., U. P., Rajasthan, Bihar & Punjab).	*M. P. States Committee* 1. Shri Homi Daji, M. P., General Secretary. 2. Shri Govind Srivastva, Secretary. *Rajasthan State Committee* 1. Shri Keshrimal, Secretary. *Delhi State Committee* 1. Shri B. D. Joshi, President. 2. Shri A. C. Nanda. *AITUC* 1. Shri Indrajit Gupta. 2. Shri K. G. Srivastava. 3. Shri Satish Loomba. 4. Dr. M. K. Pandhe.
4. Hind Mazdoor Sabha (Delhi, M. P., U. P., Rajasthan, Bihar & Punjab).	1. Shri Jai Gopal, Regional Secretary. 2. Shri D. D. Vashist, General Secretary.
5. All India Opium Employees' Association, Jhalawar .	1. Shri J. K. Saxena, General Secretary. 2. Shri Anand Prakashji.

Friday, 22nd February, 1963

1. Fertiliser Corporation of India Ltd.	1. Shri B. C. Mukerji, Chairman.
2. Nahan Foundry Ltd., Nahan	1. Shri C. S. Shukla, General Manager.
3. Heavy Engineering Corporation	1. Dr. Nagaraja Rao, Chairman.
4. Hindustan Salt Ltd., Jaipur	1. Shri D. D. Suri, Managing Director.

5. Gwalior Potteries	1. Shri Vikramaditya Bhargava, M.Sc., General Manager.
6. Employers' Association of Northern India . . .	1. Shri P. D. Singhania. 2. Shri J. V. Krishnan, Secretary.

BOMBAY

Monday, 11th March, 1963

1. Bombay Exchange Banks' Associations, Bombay . .	1. Shri F. E. H. Goddard, Chairman. 2. Shri A. D. R. Geddis, Vice-Chairman. 3. Shri P. Mandal. 4. Shri T. B. Sarwal. 5. Shri S. R. Mehta, Hon. Secretary. 6. Shri R. Setlur, Adviser.
2. Indian Banks' Association, Bombay	1. Shri N. K. Petigara. 2. Shri M. G. Parikh. 3. Shri F. C. Cooper. 4. Shri P. V. Gandhi. 5. Shri S. R. Bhise.
3. State Bank of India, Bombay	1. Shri H. C. Sarkar, Chief Officer (Administration). 2. Shri K. Venkatachari.
4. Overseas General Insurers Association, Calcutta . .	1. Shri R. A. Issac.
5. Hindustan Antibiotics Ltd., Pimpri	1. Dr. G. S. Kasbekar, Managing Director.
6. All India Bank Employees' Federation, Kanpur . .	1. Shri C. L. Dudhia, President. 2. Shri V. N. Sekhri, General Secretary. 3. Shri O. P. Nigam, Jt. Secretary. 4. Shri K. A. Pandya. 5. Shri. U. S. Shenoy.
7. All India Bank Employees' Association, Delhi . .	1. Shri K. K. Mundal, Vice-President. 2. Shri Prabhat Kar, General Secretary. 3. Shri V. M. Chitnis.

Tuesday, 12th March, 1963

1. All India State Bank of India Staff Federation, Calcutta .	1. Shri H. K. Sowani, Adviser. 2. Shri M. L. Majumdar, Secretary.
2. All India Insurance Employees' Association, Bombay .	1. Shri K. S. B. Pillai, Jt. Secretary.
3. Foreign Film Distributors Employees' Union, Bombay .	1. Shri V. B. Kulkarni, General Secretary. 2. Shri V. K. Tembe, President.
4. Indian National Steamship Owners' Association, Bombay	1. Shri R. J. Kolah. 2. Shri K. M. Seth. 3. Dr. N. P. Mehta. 4. Shri S. K. Aier, Secretary. 5. Shri K. J. Vesuna. 6. Shri A. R. Vasavada. 7. Shri A. H. Maru.
5. National Union of Seafarers of India, Bombay	1. Shri K. K. Khadilkar.
6. Indian Chemical Manufacturers' Association, Calcutta .	1. Shri J. H. Doshi, Leader. 2. Dr. Ajoy Gupta. 3. Shri B. M. L. Murthy.
7. Kerala Cashew Manufacturers' Association, Quilon .	1. Shri K. Janardanan Pillai, (S.I. Cashew-nut Manufacturers' Association).
8. Indian Cashew Exporters' Association, Quilon . .	1. Shri S. Vasudev Nayak (Kerala Cashew Manufacturers' Association). 2. Shri Sujir Ganesh Nayak (Kerala Cashew Manufacturers' Association).

9. South Indian Cashew Manufacturers' Association, Quilon.	1. Shri P. G. Verghese (Indian Cashew Exporters' Association). 2. Shri P. M. Mohmmed.
10. All India Port & Dock Workers' Federation, Bombay .	1. Shri S. R. Kulkarni. 2. Dr. Shanti Patel.

Wednesday, 13th March, 1963

1. Indian National Port & Dock Workers' Federation, Bombay.	1. Shri H. N. Trivedi, President.
2. All India Shipping Employees' Federation, Bombay .	1. Shri Manohar Kotwal. 2. Shri H. M. Mankodi. 3. Shri K. M. Vani. 4. Shri I. B. Syed. 5. Shri J. S. Deshmukh. 6. Shri L. N. Pande. 7. Shri M. M. Vani, General Secretary.
3. Shipping Corporation of India, representing Eastern Shipping Corporation Ltd., Western Shipping Corporation Ltd.	1. Shri C. P. Srivastava, Managing Director, Shipping Corporation of India.
4. Hindustan Shipyard Ltd.	Ditto.
5. The Mogul Line Ltd.	Ditto.
6. Mazgaon Dock Ltd., Bombay	1. Shri P. R. Menon, Director Financial Manager. 2. Lt. Col.W. C. Cole, Personnel Managar. 3. Shri N. Rajan, Chief Accountant.
7. Bombay Stevedores Association, Ltd.	1. Shri D. A. Dhunjibhoy. 2. Shri S. C. Sheth.
8. Kinematograph Renters' Society (P) Ltd. . . .	1. Shri B. N. Nadkarni. 2. Shri P. V. Prabhu.
9. Hindustan Antibiotics Mazdoor Sangh, Pimpri . .	1. Shri K. N. Phadke, Vice-President. 2. Shri K. T. Sule, Advocate. 3. Shri P. R. Chandran, General Secretary. 4. Shri V. T. Deshmukh, Vice-President.

Monday, 8th April, 1963

1. Federation of Western India Cine Employees. . .	1. Shri V. B. Kulkarni, Vice-President. 2. Shri Sadanand G. Desai, General Secretary. 3. Shri Somnath, Office Secretary.
2. Building Workers' Federation of India . . .	1. Shri K. A. Khan, President. 2. Shri S. R.L. Nathan, General Secretary. 3. Shri V. B. Kulkarni, Secretary.
3. Hindustan Insecticides	1. Shri B. B. Mathur, Managing Director. 2. Shri K. R. Kuppuswamy, Financial Controller.

Tuesday, 9th April 1963

1. State Trading Corporation of India Ltd . . .	1. Shri Gobind Narayan, Managing Director. 2. Shri A. N. Kaul, Financial Adviser.

APPENDIX 'D'

BONUS AGREEMENT BETWEEN THE AHMEDABAD MILLOWNERS' ASSOCIATION AND THE TEXTILE LABOUR ASSOCIATION, AHMEDABAD FOR THE YEARS, 1953—57.

WHEREAS the Textile Labour Association, Ahmedabad, a Representative Union for the local area of Ahmedabad under the Bombay Industrial Relations Act, 1946, has given a notice in Form "L" dated the 24th June, 1955 to the Ahmedabad Millowners' Association, Ahmedabad, representing its local member Mills, desiring a change that certain definite principles, procedure and method should be decided by both the Associations for adoption in future for a period of five years from 1953 to 1957, both inclusive, for grant of Bonus to the employees of the Cotton Textile Mills of Ahmedabad which are members of the Ahmedabad Millowners' Association and

WHEREAS the Ahmedabad Millowners' Association and the Textile Labour Association, without renouncing the general principles enunciated in decisions and Awards of the Arbitration Boards, the Industrial Court, the Labour Appellate Tribunal and the Supreme Court in respect of Bonus or the rights and privileges created thereunder but only with a view to creating goodwill among workers and for the purpose of maintaining peace in the Industry, have decided to arrive at a mutual arrangement in the matter of the demand of the Textile Labour Association as contained in its aforesaid notice in Form "L".

NOW, therefore, it is agreed between the Ahmedabad Millowners' Association, on behalf of its local member mills, and the Textile Labour Association, a representative union, as under:—

(1) That this Agreement shall apply to Bonus claims in respect of years 1953, 1954, 1955, 1956 and 1957 in case of each individual member mill. Such claims shall be considered on basis of the result of working of the concern during the year as disclosed in the published balance sheet and profit and loss account for the year (1) ending 31st December 1953, 31st December, 1954, 31st December 1955, 31st December 1956 and 31st December 1957 in case of mills whose accounting year begins on lst January, (2) ending 31st March, 1954, 31st March 1955, 31st March, 1956, 31st March 1957 and 31st March 1958 in case of mills whose accounting year begins on lst April, (3) ending 30th June 1953, 30th June, 1954, 30th June 1955, 30th June 1956 and 30th June 1957 in case of mills whose accounting year begins on lst July and (4) ending 30th September 1953, 30th September, 1954, 30th September 1955, 30th September 1956 and 30th September 1957 in case of mills whose accounting year begins on lst October.

This Agreement shall remain in force for a period of five years and shall apply to Bonus claims in respect of the five years, *viz.* years 1953, 1954, 1955, 1956 and 1957 and notwithstanding both the parties to this Agreement getting their right foı termination of the Agreement after a period of one year under provision of section 116(3) of the Bombay Industrial Relations Act, 1946, both the parties agree that they will not exercise their right of termination of this Agreement, since, as this agreement makes provision of "set-off" and "set-on" for a period of five years, it is necessary that it should remain operative for that period.

2. That the claim of the employees for Bonus would only arise if there should be available surplus of profit after making provision for all the prior charges including a fair return on paid-up capital and on reserves employed as working capital as per the Formula laid down by the Labour Appellate Tribunal in its Full Bench decision in Appeals Nos. 1 and 5 of 1950 (Millowners' Association, Bombay *vs.* the Rashtriya Mill Mazdoor Sangh, Bombay), *i.e.*,

(a) Prior charges, *viz.*

(i) Statutory Depreciation and the Development Rebate;

(ii) Taxes;

(iii) Reserve for Rehabilitation, Replacement and Modernisation of Block as calculated by the Industrial Court (Basic year 1947) and

(b) A Fair Return.

(i) at 6 per cent. on paid-up capital in cash or otherwise including Bonus Shares;

(ii) at 2 per cent. on reserves employed as Working Capital ;

(1) For the purpose of this Formula, the amount of the total gross profits of the mill for the year shall be the amount of profits as disclosed in published Balance-Sheet of the Company, without making provision for depreciation and for Bonus but after deducting from it, the amount of extraneous income (like interests from investments, rent from property) which is unrelated to the efforts of the workers.

(2) If in any year, the amount of Statutory Depreciation and Development Rebate will be higher than the amount of Reserve for Rehabilitation the full amount of Statutory Depreciation and Development Rebate shall be adopted as a prior charge and no extra provision shall be made for Rehabilitation in that year.

3. That a mill which has an available surplus of profits after providing all prior charges etc. on basis of the Full Bench Formula, as described above in clause 2 of this Agreement, shall pay to its employees bonus out of the available surplus, which bonus in no case shall be less than an amount equivalent to 4.8 per cent. of basic wages earned during the year or shall exceed an amount equivalent to 25 per cent. of the total basic wages earned during the year.

(i) Provided that if in respect of a particular year, a mill has an available surplus of profit as determined according to the Full Bench Formula, as described herein-before in clause 2, which is adequate for granting Bonus at a higher quantum than the ceiling of 25 per cent. of basic wages earned during the year as fixed above and it pays the maximum Bonus *viz.* 25 per cent. of basic wages earned during the year under the provisions of this Agreement, such mill will be deemed to have set aside a part of the residue of available profits after grant of maximum Bonus (*i.e.* 25 per cent. of basic wages earned during the year), not exceeding an amount equivalent to 25 per cent. of the basic wages earned during the year as a "reserve" for Bonus for purpose of "set-on"

(adjustment) in subsequent years, provided, however, that the aggregate amount of available surplus thus deemed to have been set aside for purpose of "set-on" (adjustment) shall not at any time exceed an amount equivalent to 25 per cent. of basic wages earned during the year.

The amount of available surplus of profits thus deemed to have been set aside for purpose of "set-on" (adjustment) will be utilised for making up the deficit, if in any subsequent year the available surplus of profit of a mill calculated according to the Full Bench Formula described hereinbefore in clause 2, will not be adequate to pay bonus as provided under this Agreement.

The setting aside of a part of available surplus of profit provided under this clause is only for notional calculation for purpose of bonus and has nothing to do with the actual appropriations and allocations made in the Balance-Sheet of the Company:

(ii) Provided further that in case of a mill whose available surplus of profit in a particular year, as calculated under the Full Bench Formula is adequate to grant Bonus at a rate lower than the ceiling (*i.e.* 25 per cent. of basic wages earned during the year) fixed under the Agreement, the quantum of Bonus will be fixed in such a manner that there will remain with the mill, at least a minimum amount of Rs. 10,000 after providing all prior charges including taxes and after grant of Bonus to the employees. The amount, as indicated hereinbefore set aside and left with the mill under the provisions of this clause shall not be required to be utilised for "set-on" (adjustment) purpose *i.e.* for distribution of Bonus in any subsequent year or for making up deficit in the maximum Bonus (*i. e.* 25 per cent. of basic wages earned during the year) in any such year:

(iii) Provided further that if in respect of any year, a mill has available surplus of profits which is adequate to pay bonus at a rate lower than the minimum rate (*i.e.* 4.8 per cent. of basic wages earned during the year) fixed under this Agreement and it is required to pay bonus at the minimum rate (*i. e.* 4.8 per cent. of basic wages earned during the year) under the provision of this Agreement, it shall be entitled to set-off the excess amount thus paid by it to make up the minimum bonus (*i.e.* 4.8 per cent. of the basic wages earned during the year) against the amount of bonus that would be payable in a subsequent year or years in the manner following:—

1. If in the subsequent year, the available surplus of profits of this mill as calculated under the Full Bench Formula as described hereinbefore in clause 2 is adequate to grant bonus at the maximum rate of 25 per cent. of basic wages earned during the year, the mill will first take out of the amount thus payable as bonus, the excess amount paid by it as bonus in the previous year to make up the minimum bonus (*i.e.* 4.8 per cent of basic wages earned during the year) and will then distribute the remaining amount (25 per cent. of basic wages earned during the year less the excess amount) as bonus.

2. If in the subsequent year, the available surplus of profits of this mill as calculated under the Full Bench Formula described hereinbefore in clause 2 is adequate to grant bonus at a rate lower than the maximum rate (*i.e.* 25 per cent. of basic wages earned during the year), the mill (a) will first set aside out of the available surplus after providing all prior charges including taxes at least an amount of Rs. 10,000, and (b) then out of the balance of available surplus of profits, it will further take out the excess amount paid by it as bonus in previous year to make up the minimum bonus (*i.e.* 4.8 per cent. of basic wages earned during the year), and (c) then it will distribute the remaining amount of available surplus of profit as bonus.

The provision for setting aside at least a minimum amount of Rs. 10,000 out of the available surplus of profits for the year by mills whose available surplus of profit calculated according to the Full Bench Formula described hereinbefore in clause 2 is adequate to pay bonus at a quantum lower than the maximum (*i.e.* 25 per cent. of basic wages earned during the year) fixed under this Agreement, is made on *ad hoc* basis and the actual apportionment of the available surplus of profits between the mill and its employees will be decided on merits of the case of each individual mill on the principle laid down by the Labour Appellate Tribunal that there is no justification for granting the entire surplus profits as bonus.

4. That

(i) a mill whose profit is not adequate to provide for all prior charges, etc. as per the Full Bench Formula as described in clause 2, or

(ii) a mill which has made loss, though totally exempt from liability to pay Bonus under the general principles governing Bonus enunciated by the Labour Appellate Tribunal in its Full Bench decision in appeals Nos. 1 and 5 of 1950 (Millowners' Association, Bombay *v.* The Rashtriya Mill Mazdoor Sangh, Bombay) and the decision of the Supreme Court in Civil Appeal No. 135 of 1951 (Muir Mills Ltd. Kanpur *v.* Suti Mill Mazdoor Union, Kanpur and the State of U.P.) will, as a special case, for creating goodwill among its workers and for continuing peace in the industry but without creating a precedent, pay to its employees a minimum bonus equivalent to 4.8 per cent. of the basic wages earned by them during the year:

Provided that such mill shall be entitled to set-off (adjust) the amount thus paid by it as minimum Bonus (*i.e.*, 4.8 per cent. of basic wages earned during the year) against the amount of bonus that would be payable in the subsequent year or years under the provisions of this Agreement in the manner following:—

The mill will first deduct from the amount of bonus that would be payable in the subsequent year under the terms of the Agreement, the amount of minimum bonus (*i. e.*, 4.8 per cent. of basic wages earned during the year) paid by it in previous years and then out of the residue of the surplus profits thus arrived at, it will pay bonus under the provisions of this Agreement.

5. That for the proper and correct application of the principle of "set-off" (adjustment) and "set-on" (adjustment) adopted for the purpose of grant of minimum and maximum bonus in this agreement, a set of illustrations is given hereunder for guidance.

(a) The term "Full Bench Formula" used in the following illustrations refers to the "Full Bench Formula" described in clause 2 of this Agreement.

(b) It is understood that except in respect of the minimum rate, all figures of percentages in the following illustrations are rounded off for facility of calculation but in case of calculations of quantum of bonus of individual mills the actual percentages will be applied.

(c) It is further understood that the expression "reserve for bonus", "set aside as reserve for bonus" and the like used in the following illustrations do not in any way signify that there will be any actual appropriation of balance-sheet profit under this head. The expressions are used solely for the purpose of explaining the principle of "set-on" (adjustment) and signify only a notional carry forward.

(d) In the following illustrations, the amount for purpose of "set-off" (adjustment) is shown in form of a certain percentage of basic wages earned during the year. In practice, however, the amount of minimum bonus *i. e.* 4.8 per cent. of basic wages earned during the year) that will be determined to be payable from actual calculations under the provisions of this Agreement, will be permitted to be "set-off" (adjusted) by the mill in the subsequent year.

Illustration I

In 1953, Mill "A" has a surplus of profit as calculated according to the Full Bench Formula, which is adequate to grant Bonus equivalent to 83 per cent. of basic wages earned during the year.

This mill will pay maximum Bonus equivalent to 25 per cent. of the basic wages earned during the year under the Agreement and will further be deemed to have set aside a maximum amount equivalent to 25 per cent. of the basic wages earned during the year for purpose of "set-on" (adjustment) in subsequent years.

In 1954, this Mill has an available surplus of profit calculated, according to the Full Bench Formula which is adequate to grant Bonus equivalent to 8 per cent. of basic wages earned during the year.

This mill will, first, set aside out of the available surplus of profit after providing all prior charges including taxes, at least a minimum amount of Rs. 10,000 and then to the residue, it will add, out of the amount deemed to have been set aside as "reserve for Bonus" in the previous year, an amount adequate to make up the total amount equivalent to 25 per cent. of basic wages earned during the year (8 per cent.— Minimum amount set aside + Adequate amount out of amount deemed to have been set aside in previous year for "set-on" adjustment =25 per cent. of basic wages earned during the year) and the total amount thus arrived at will be paid as Bonus.

In 1955, this Mill has no available surplus of profit calculated according to the Full Bench formula for grant of Bonus (or has made a loss) and will, therefore, be required to grant minimum Bonus equivalent to 4.8 per cent. of the basic wages earned during the year under the Agreement.

But as it has with it a part of the amount (equivalent to 25 per cent. of basic wages earned during the year) deemed to have been set aside as "reserve" for Bonus in year 1953, it will pay Bonus out of such residue of Bonus "Reserve" but not below the minimum (*i. e.*, 4.8 per cent. of basic wages) earned during the year.

In 1956, this Mill makes loss (or has no available surplus of profit according to the Full Bench Formula).

It will, therefore, pay minimum Bonus equivalent to 4.8 per cent. of basic wages earned during the year under the agreement.

The Mill will be entitled to "set-off" (adjust) such amount of minimum Bonus (*i. e.*, 4.8 per cent. of basic wages earned during the year) against the amount of Bonus that may be payable in subsequent years.

In 1957, this Mill makes loss (or has no available surplus of profit according to the Full Bench Formula).

It will pay the minimum Bonus equivalent to 4.8 per cent. of basic wages earned during the year under the provisions of the Agreement.

The Mill will be entitled to "set-off" (adjust) this amount against the amount of Bonus that may be payable in subsequent years.

The Mill, however, will not be able to reimburse itself for this amount together with the amount distributed in the year 1956, out of the amount of Bonus that may be payable in the next year, *i. e.*, 1958 as the agreement will not be operative in respect of Bonus for that year.

Illustration II

In 1953, Mill 'B' has an available surplus of profit calculated according to the Full Bench Formula, which is adequate to grant Bonus equivalent to 37.5 per cent. of the basic wages earned during the year.

Under the Agreement, however, it will pay Bonus at the maximum rate *viz.* 25 per cent. of the basic wages earned during the year and will further be deemed to have set aside an amount equivalent to 12.5 per cent. of basic wages earned during the year as "reserve" for Bonus for purpose of "set-on" (adjustment) in subsequent years.

In 1954, this Mill has an available surplus of profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 8 per cent. of basic wages earned during the year.

This Mill will first set aside, out of available surplus of profit after providing all prior charges including taxes, at least a minimum amount of Rs. 10,000 and then to the residue, it will add the amount of "reserve" for Bonus deemed to have been set aside in year 1953 and the total amount thus arrived at (*viz.* 8 per cent. the minimum amount set aside + 12.5 per cent.) will be paid as Bonus.

In 1955, this Mill has an available surplus of profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 50 per cent. of basic wages earned during the year.

Under the agreement, this mill will grant maximum Bonus equivalent to 25 per cent. of the basic wages earned during the year and will be deemed to have set aside out of the residue, an amount equivalent to 25 per cent. of basic wages earned during the year as "reserve" for Bonus for purpose of "set-on" (adjustment) in subsequent years.

In 1956, this Mill has an available surplus of profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 83 per cent. of basic wages earned during the year.

Under the provisions of the Agreement, this Mill pays maximum Bonus equivalent to 25 per cent. of basic wages earned during the year.

However, it will not be deemed to have set aside any part of the surplus profit as "reserve" for Bonus for purpose of "set-on" (adjustment) in future years, as it is deemed to have set aside in the previous year for purpose of "set-on" (adjustment) an amount equivalent to 25 per cent. of basic wages earned during the year.

In 1957, this Mill makes loss (or has no available surplus for grant of Bonus according to the Full Bench Formula) and will, therefore, be required to grant minimum Bonus equivalent to 4.8 per cent. of basic wages earned during the year.

However, it is deemed to have set aside during previous year an amount equivalent to 25 per cent. of basic wages earned during the year as "reserve" for Bonus for purpose of "set-on" (adjustment). Hence it will be deemed to draw upon this "reserve" and grant Bonus at the maximum rate of 25 per cent. of basic wages earned during the year.

Illustration III

In 1953, Mill "C" has no available surplus of profit for Bonus calculated according to the Full Bench Formula.

It pays minimum Bonus equivalent to 4.8 per cent. of the basic wages earned during the year.

In 1954, this Mill has a surplus of available profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 42 per cent. of basic wages earned during the year.

Under the Agreement, this Mill will—

(i) be required to pay Bonus at the maximum rate *i.e.*, 25 per cent. of the basic wages earned during the year, and

(ii) be deemed to set aside for purpose of "set-on" (adjustment) an amount equivalent to 17 per cent. of basic wages earned during the year out of the residue of surplus profits.

However, as it has paid minimum Bonus (*i.e.*, 4.8 per cent. of basic wages earned during the year) in respect of previous year, it will be entitled to deduct such amount from the amount of maximum Bonus (*i.e.*, 25 per cent. of basic wages earned during the year) that will be payable under the Agreement in respect of the current year and then will distribute the balance (25 per cent. — 4.8 per cent. = 20.2 per cent. of basic wages earned during the year) as Bonus.

In 1955, this Mill has available surplus of profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 8 per cent. of basic wages earned during the year.

This Mill will first set aside out of the available surplus of profits after providing all prior charges including taxes, at least a minimum amount of Rs. 10,000. Then to the residue, it will add the amount equivalent to 17 per cent. of basic wages earned during the year deemed to have been set aside in year 1954 for purpose of "set-on" (adjustment) and distribute as Bonus the total amount thus arrived at (8 per cent.— *minimum amount set aside + 17 per cent.*).

The amount of Rs. 10,000 minimum set aside out of the available surplus and left with the mills under this clause shall not be required to be utilised for the purpose of "set-on" (adjustment) *i. e.*, for grant of Bonus in any subsequent year.

In 1956, this Mill has no available surplus of profit calculated according to the Full Bench Formula.

It pays minimum Bonus equivalent to 4.8 per cent. of basic wages earned during the year.

It will be entitled to set-off (adjust) the amount of such minimum Bonus (*i.e.*, 4.8 per cent. of basic wages earned during the year) against the amount of Bonus that may be payable in the subsequent year.

In 1957, this Mill has an available surplus of profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 8 per cent. of basic wages earned during the year.

The mill, however, will—

(i) first deduct out of this available surplus of profits arrived at after providing all prior charges including taxes at least a minimum amount of Rs. 10,000; and

(ii) then out of the residue further take out an amount equivalent to 4.8 per cent. of basic wages earned during the year paid by it as minimum Bonus in the previous year; and

(iii) then utilise the balance (8 per cent.—minimum amount—4.8 per cent.) for payment of Bonus.

However, if the balance of surplus profit is not adequate to pay minimum Bonus (*i.e.*, 4.8 per cent. of basic wages earned during the year), the mill will pay minimum Bonus (*i.e.*, 4.8 per cent. of basic wages earned during the year) and will be entitled to "set-off" (adjust) the amount of difference between the minimum Bonus (*i.e.*, 4.8 per cent. of basic wages earned during the year) and the balance of surplus profits (8 per cent.— minimum amount—4.8 per cent.) against the amount of Bonus that may be payable in respect of subsequent year.

The Mill will, however, be unable to reimburse itself for such difference as the Agreement will not be operative in respect of Bonus claim for 1958.

Illustration IV

In 1953, Mill "D" has no available surplus of profit calculated according to the Full Bench Formula.

It pays minimum Bonus equivalent to 4.8 per cent. of the basic wages earned during the year under the Agreement.

This mill will be entitled to set-off (adjust) the amount of such minimum Bonus (*i.e.*, 4.8 per cent. of basic wages earned during the year) against the amount of Bonus that may be payable in subsequent years.

In 1954, this mill makes loss.

It pays minimum Bonus equivalent to 4.8 per cent. of basic wages earned during the year with provision for set-off (adjustment).

In 1955, this Mill has no available surplus of profit calculated according to the Full Bench Fomula.

It pays minimum Bonus equivalent to 4.8 per cent. of the basic wages earned during the year with provision for set-off (adjustment).

In 1956, this Mill has an available surplus of profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 83 per cent. of basic wages earned during the year.

Under the Agreement, this Mill—

(i) will be required to pay Bonus at the maximum rate of 25 per cent. of basic wages earned during the year, and

(ii) will be deemed to set aside for purpose of "set-on" (adjustment) an amount equivalent to 25 per cent. of basic wages earned during the year.

This mill, however, will—

(i) first take out of the amount of maximum Bonus equivalent to 25 per cent. of basic wages earned during the year that will be payable under the Agreement, the total amount paid by it as minimum Bonus (*i. e.*, 4.8 per cent. of basic wages earned during the year) in the previous three years equivalent to 14.4 per cent. (4.8 per cent. × 3) of the basic wages earned during the year, and

(ii) then pay the residue (*viz.*, 25 per cent.—14.4 per cent. =10. 6 per cent.) of basic wages earned during the year as Bonus.

In 1957, this Mill has available surplus of profit calculated according to the Full Bench Formula which is adequate to grant Bonus equivalent to 12.5 per cent. of basic wages earned during the year.

This Mill will—

(i) first set aside out of the available surplus of profits arrived at after providing all prior charges including taxes, at least a minimum amount of Rs. 10,000, and

(ii) then add to the residue, by drawing upon the amount of surplus of profits deemed to have been set aside by it in the previous year, *i.e.* 1956 an amount adequate to make up a total amount equivalent to 25 per cent. of the basic wages earned during the year and pay Bonus at the maximum rate (*i. e.*, 25 per cent. of the basic wages earned during the year).

6. That the amount of "reserve" for Bonus deemed to have been set aside by a mill for the purpose of "set-on" (adjustment) under the provision of this Agreement which remains unutilised at the end of year 1957 (or on 31st March 1958 or on 30th June 1957 or on 30th September 1957 as the case may be) after grant of Bonus for that year, shall lapse and the employees shall have no right to such amount for satisfying their claim for Bonus at any future time after the termination of this Agreement. Similarly, the amount or amounts of minimum Bonus (*i. e.*, 4.8 per cent. of basic wages earned during the year) paid by a mill during the period of the Agreement which it is entitled to set-off (adjust) against the amount of Bonus that was payable during the period of the five years under the provisions of this Agreement but which remains unadjusted on 31st December 1957 or on 31st March 1958 or on 30th June 1957 or on 30th September 1957, as the case may be, shall lapse on the termination of this Agreement and the mill shall not be entitled to set-off (adjust) such amount against the amounts of Bonus that may become payable in future years.

7. That mills shall pay to their employees Bonus according to the terms and conditions provided under this Agreement in respect of each of the five years from year 1953 to year 1957, both inclusive:

Provided that the Bonus in respect of year 1953 shall be paid before the lst November 1955 and the Bonus in respect of years 1954 to 1957, shall be paid within a period of two months of the date that will be mutually fixed by the parties for distribution of Bonus in the respective years, subject to the following conditions:—

(i) In the case of women employees who have been on maternity leave during the year, the maternity allowance drawn by them shall be included in their earnings for the purpose of calculating Bonus;

(ii) Employees who have been dismissed on account of misconduct causing financial loss to the Company will not be entitled to Bonus to the extent of the loss caused;

(iii) Persons who are eligible for Bonus but are no longer in the service of the mill shall submit their claim within one year of the declaration of Bonus and Bonus shall be paid within one month of the receipt of the claim. Failing an application within the period specified, the right to claim the Bonus shall not survive.

8. That the Ahmedabad Millowners' Association and the Textile Labour Association will jointly determine in case of each individual member mill the available surplus of profit and fix the quantum of Bonus to be distributed in terms of the Agreement on basis of the Balance-Sheet of the year after obtaining the

necessary information regarding Bonus provision, statutory depreciation etc. from the mills after the publication of Balance-Sheets. Such necessary data shall be supplied by the mills to both the Associations within a period of two months of the publication of the Balance-Sheet or before the end of the month of September of the next year whichever is later. If there will be any difference of opinion between the parties regarding determination of the available surplus of profit or the quantum of Bonus to be paid by the mill, the matter will immediately be referred to the President of the Labour Appellate Tribunal of India and in case he is not available or is unable to function, to an Umpire from the Panel of Umpires formed under the provision of clause 2B of the Submission regarding Arbitration, dated 27th June 1955 and in case the Panel of Umpires is not formed or is not functioning, to a person mutually agreed to between the parties and his decision shall be accepted by both the parties.

AHMEDABAD, *dated the 27th June* 1955.

For The Ahmedabad Millowners' Association, Ahmedabad.
(*Signed*) *H. G. Acharya*, SECRETARY.

For The Textile Labour Association, Ahmedabad.
(*Signed*) *S. R. Vasavada*, GENERAL SECRETARY.

APPENDIX 'E'

NORTH-EAST INDIA TEA PLANTATIONS BONUS AGREEMENT OF 1961.

Indian Tea Association

Circular No. 58. Royal Exchange, Calcutta, 4th May, 1961.

(All Members of the Association)

BONUS

MEMO.—I reproduce below, for the information of members of the Association, the Agreement signed on the 26th April, 1961, covering bonus for all classes of tea garden employees in Assam, West Bengal, and Tripura.

W. M. PARIS,
Acting Deputy Secretary.

This Agreement shall be known as the North-East Indian Tea Plantations Bonus Agreement of 1961.

2. It shall apply to all tea estates in West Bengal, Assam and the States of Tripura.

3. It shall relate,

(i) to the bonus, if any, payable for the years 1959, 1960 and 1961 to all tea garden employees, other than to the managerial staff; and

(ii) to the creation, management and distribution of Bonus Funds.

4. It may by mutual consent be extended for a further period.

5. Definitions for the purposes of this Agreement :—

(a) "Area" means the Assam Valley or Cachar or Tripura or the Terai or Darjeeling or the Dooars.

(b) "Board" means the Board set up by the signatories to this Agreement to supervise the management of the Company, Agency House and Central Bonus Funds.

(c) "Bonus Fund" means any Fund created in terms of the provisions of this Agreement, and shall include Funds managed on a Company basis, on an Agency House basis and on a Central basis.

(d) "Company" means the tea estates of a company within one of the areas as above defined, and shall include the estates of proprietors where there is no Company.

(e) "Day" means a day upon which not less than the minimum wage has been earned by work, or upon which the workman has worked for the full working period.

If less than the minimum wage has been earned or less than the full working period has been worked, then half a day shall be counted.

(f) "Managers" means the Company in respect of Company Bonus Funds, the Agency House in respect of Agency House Bonus Funds and the Trustees to be constituted by the Board in respect of Central Bonus Funds.

(g) "Profits" means the profits earned by the Company in the area in the year on account of which Bonus is payable, minus depreciation as permitted by the Income Tax Authorities and minus all charges which are allowed by the Income Tax Authorities but without deductions for payment of income tax, for previous losses, for capital expenditure (which shall include monies spent in making New Extensions) and for any bonus charged in 1959, 1960 and 1961 on account of a previous year.

NOTE (1).—The signatories recognise that this definition is not the definition which appears in the Companies' Act, and that the method of calculating the figure upon which bonus is payable differs from methods used in other Agreements. It is nevertheless the signatories' view that the present definition and the manner of its application will properly fulfil the intention of this Agreement.

NOTE (2).—"Profits" for the purpose of this Agreement would be calculated in the following manner:

(a) For 1959—

(i) Balance after meeting Company's revenue expenditure permitted as a charge by the Income Tax Authorities which do not vary with the profits of 1959, say . .	1,000
(ii) Add back Bonus for 1958 or any previous year paid in 1959, say . . .	100
	1,100
(iii) Less depreciation as permitted by the Income Tax Authorities, say . . .	75
(iv) Balance	1,025
(v) Company's obligations which vary with the profits earned in 1959, and which have not been allowed for in reaching the balance in (i). X% of (1025–15½%) say	60
(vi) Sum upon which 1959 Bonus and Bonus Fund payments will be calculated @ total of 15½%	965

(b) For 1960—

As above save that the years are advanced by one and that 15½% becomes 15%.

(c) For 1961—

As for 1960, save that the years are advanced by one, and that 15% becomes 14½%.

(In respect of Cachar and Tripura, the provisions of Clause 6 (i) (b) may be noted.)

(h) "Workman" means an employee of the Company whether a member of the Labour Force or of the Sub-Staff and Monthly-Rated workers or of the Clerical and Medical Staff, as such terms are generally understood in West Bengal and in Assam.

(i) "Year" means the financial year of the Company in question.

6. (i)(a) In each of the years of this Agreement in which it makes a profit, the Company shall allocate for distribution amongst those of its workmen who are entitled to bonus under this Agreement sums equal to the following percentages of its profits.

	In West Bengal & in Tripura	In Cachar	In the Assam Valley
Labour	11%	12%	12%
Sub-Staff & Monthly-Rated Workers	1½%	..	..
Clerical & Medical Staff*	1½%	2%	2%

(b) Where in Cachar and Tripura there exists the practice of paying to the Clerical and Medical Staff one month's basic salary as bonus, irrespective of profit or loss, such practice shall remain undisturbed and this Agreement shall not apply.

(ii) In addition, each Company, save companies in Cachar and in Tripura, shall credit to the appropriate Bonus Fund on behalf of its workmen a sum equivalent to 1½% of the profits if any in 1959; to 1% of the profits if any in 1960; and to ½% of the profits if any in 1961.

(iii) A statement based on the pro-forma in Note 2, Clause 5 (g) shall be prepared by the Company, and made available to the representatives of the workmen at the time of payment.

(iv) "Appropriate Bonus Fund" in sub-clause (ii) shall for the present mean—

(a) in the Assam Valley, a Bonus Fund managed on behalf of the workmen by the Company concerned, and

(b) in West Bengal, either:

(aa) A Fund covering the Companies in the membership of the Indian Tea Association, Calcutta, for which an Agency House acts either as agents or Secretaries, such Funds being established within each area on an Agency House basis and managed by the Agency House concerned, or

(bb) the Fund covering Darjeeling, the Terai and the Dooars as a whole and relating to all companies not in the membership of the Indian Tea Association, Calcutta, to be managed by the Indian Tea Association on behalf of the workmen of those companies.

(v) It shall be the duty of the Managers of these Funds to submit to the Board quarterly statements showing the position of the Funds under their management. The Board shall sit once a quarter, and shall examine the statements submitted to them.

(vi) Should it at any time be necessary for payments to be made from any Fund in accordance with the provisions of Clause 11 of this Agreement, it will be the duty of the Managers of the Fund in question to submit to the Board a statement of the case indicating the circumstances in which payment is to be made and the amount of payment which is recommended. No payments shall be made from any Fund except for the purposes of the Fund as set down in Clause 11, nor until the sanction of the Board has been received, nor may any payment be made from one Fund to another.

(vii) If there remains in any Fund at the expiry of this Agreement any balance, such balance or balances shall be disposed of in accordance with the directions of the Board.

(viii) It shall be open to the workmen in the Assam Valley in consultation with the employers concerned to establish Agency House and/or Central Funds in the Assam Valley in respect of any year before any distributions of bonus for that year have been started.

(ix) Each Company shall send to the Board two copies of the Statement of its audited accounts for the Board's records.

7. An individual workman will be entitled to a share in the bonus available under Clause 6 (i).

(a) if he is a member of the labour force based upon the number of days which he has worked in the Bonus Year, a day worked by a female worker counting as 1¼ days for the purpose of calculating her share of bonus :

Provided that in Assam no bonus shall be payable to any workman who has worked less than six days in a year and that in West Bengal no bonus shall be payable to any permanent workman who has worked less than thirty days and to any temporary workman who has worked less than ninety days:

*(In the Assam Valley "Clerical Medical" shall for the purposes of this Agreement be deemed to include "graded Artisans".

In West Bengal "School Teachers" will be included in the "Clerical & Medical" category, and will be entitled to bonus based on the portion of their salary paid by the Company.)

Provided further, that minors will receive half the bonus to which an adult female worker working the same number of days would be entitled.

(b) If he is a member (i) of the sub-staff or monthly rated staff or (ii) of the clerical and medical staff,

proportionate to the ratio which his basic salary on the 31st December of the Bonus Year bears to the total salaries of those in either (i) the sub-staff or monthly rated staff or (ii) the clerical and medical staff, as the case may be.

8. (i) If any workman shall leave the service of the Company during the currency of this Agreement, he shall register an address with the Company and the Company shall send to the workman at the address so registered any bonus to which the said workman shall be entitled by virtue of the terms of this Agreement.

(ii) If any workman shall be dismissed from the service of the Company he shall forfeit all claim to any bonus to which but for such dismissal he might have been entitled on account of the year in which his services were terminated.

(iii) If any workman to whom this Agreement applies has received or receives any bonus or advance in lieu of bonus or similar payment customary or otherwise which remains unpaid, then the sums payable to the workman in terms of this Agreement shall, in respect of those particular years taken individually, be reduced accordingly:

Provided that in the District of Cachar and Tripura there shall always be left to the workman in any one year an amount equivalent to the sums if any previously paid to him in respect of that year on account of Fagua and Durga Puja Bonuses.

(iv) If any workman shall die while in the service of the Company his heirs upon identification shall be paid after discharge of all debts owned by the deceased to the Company any unpaid Bonus or balance thereof to which the deceased had become entitled in terms of this Agreement.

(v) If any workman shall have left the service of the Company before the payment of bonus under this Agreement but during the period covered by this Agreement, he will be entitled on application to the Manager of the estate within six months of the payment of bonus to his share therein. Monies not claimed shall be credited to the appropriate pool.

9. Bonuses and contributions to the Pool under this Agreement shall be payable in respect of 1959 by the 30th November, 1961, or within twelve months of the payment of bonus on account of 1958, whichever is later, and in respect of subsequent years within twelve months of the payment of bonus on account of the previous year:

Provided that if no bonus is payable in respect of a particular year then the interval shall be extended by twelve months.

10. If a Company in the Assam Valley shall have made a loss or inadequate profits in the year 1959, then there shall be advanced—

(a) to each member of the labour force who has worked for not less than 240 days and to each female worker who has worked for not less than 175 days in that year, and who is still on the Company's books a sum of ten rupees, with proportionately lesser amounts for minors and for those who have worked for a lesser number of days, and

(b) to each member of the clerical and medical staff who has worked for not less than eight months in the bonus year and who is still on the Company's books a sum of twenty-five rupees, with proportionately lesser sum for lesser periods.

The sums thus advanced shall be recoverable from subsequent bonuses, or if they are inadequate from the Fund.

11. If in 1960 or in 1961 a Company in the Assam Valley or if in any year of this Agreement, a Company in West Bengal shall make a loss, or so small a profit that the maximum bonus payable to any workman falls below ten rupees, then the Managers of the Bonus Fund as described in Clause 6 (ii) shall with the permission of the Board cause to be distributed from the relevant Bonus Fund a sum which will enable the Company concerned to make a payment—

(a) of ten rupees to each member of the labour force who, being a male, has completed 240 days' work and who being a female, has completed 175 days' work, subject to the qualifications laid down in Clause 7 (a);

(b) of fifteen rupees to each member of the sub-staff or monthly rated staff who has worked for eight months; and

(c) of twenty-five rupees to each member of the clerical and medical staff who has worked for eight months

with proportionately lesser payments to those with lesser entitlements provided always that there is sufficient money in the Fund concerned, and provided that the workman is still on the Company's books.

12. (i) If an estate or part thereof shall change hands during the pendency of this Agreement, or shall have changed hands in any year the financial results of which are relevant to the purposes of this Agreement, the Selling Company shall provide the Purchasing Company with figures of the profits and/or losses attributable to the said estate for any year of the Agreement on account of which bonus had not been paid at the time the estate or part thereof changed hands.

(ii) If there shall be doubt or dispute regarding the determination of the amount which is attributable to an estate or part thereof which changes hands, then a figure shall be used which bears to the profits or losses of the Selling Company the same relation as does the acreage under tea of the sold estate to the acreage under tea of the Selling Company as a whole.

13. Unless there is any Agreement to the contrary,

(a) the Selling Company shall be responsible for the payment of the bonuses which have fallen due before the sale of the estate or part thereof, and

(b) any sums in the Bonus Fund of the sold estate shall be credited to the Board, and the Board shall deposit the sum in the appropriate Fund in terms of Clause 6 (iv).

14. Nothing in this Agreement shall prejudicially affect any member of the clerical and medical staff who is already governed by any Company Scheme which provides higher benefits.

15. For the resolution of doubts and the removal of difficulties it is agreed that the interpretation of this Agreement shall be entrusted to a Committee consisting of Mr. G. S. Ahluwalia or his nominee, and of three representatives each from the employers and the workmen.

Sd/-I. F. Morriss (*I. T. A.*) 26-4-61.
Sd/-M. N. Sarmah (*I. N. T. U. C.*)
Sd/-N. C. Majumder (*T. T. A.*)
Sd/-Monoranjan Roy, (A. *I. T. U. C.*)
Sd/-H. P. Barooah (*A. T. P. A.*) 26-4-61.
Sd/- Maitreyee Bose (*I. N. T. U. C.*)
Sd/-J. N. Mitra, (*H. M. S.*).
Sd/-S. N. Chaterjee, *Deputy Labour Commissioner, West Bengal,* 26-4-61.
Sd/-G. S. Ahluwalia, *Chairman, Bonus Sub-Committee of Industrial Committee on Plantations.*

I sign the agreement in respect to Bonus payable to Labour & substaff but not in respect to that payable to the Clerical and Medical staff in W. Bengal Estates. I agree however to the provisions relating to the Pool.

Sd/-B. C. GHOSE, (*I. T. P. A.*) 26-4-61.

Witnesses:—

Sd/- J. L. LLEWELLYN , (*I. T. A.*), 26-4-61.
Sd/-S. M. MOHTA, (*T. A. I.*), 26-4-61.
(*Observer*)

APPENDIX F

BONUS AGREEMENTS IN PLANTATION INDUSTRY IN SOUTH INDIA

(1) MEMORANDUM OF SETTLEMENT

(Under Section 12(3) of the Industrial Disputes Act, 1947)

Representing the Employers	Representing the Employees
1. Sri K. B. Somana, Chairman, Coorg Planters' Association.	1. Sri B. N. Kuttapa, Secretary, Coorg District Estate Workers' Union, Mercara.
2. Sri G. M. Manjanathaya, President, Indian Planters' Association, Coorg.	2. Sri K. Ramdas.
	3. Sri S. M. John Taylor, Vice-President, Karnataka Provincial Plantation Workers' Union, Chikmagalur.
3. Sri P. G. Gurjer, Acting Chairman, MSPA, Chikmagalur	4. Sri V. S. Govindan, General Secretary, Mysore Plantation Workers' Union, Chikmagalur.
4. Sri H. K. Chandrasekhara, Secretary, MSPA, Chikmagalur	5. Sri N. Krishna Singh, Secretary, United Plantation Workers' Union of Mysore State, Somwerpet.
	6. Sri K. S. Ganapathi, Joint Secretary, United Plantation Workers' Union of Mysore State.
	7. Sri Govindaswamy, Secretary, Coorg Plantation Labour Union, Pollibetta.
	8. Sri C. S. Laxmana, Organising Secretary, Coorg Plantation Mazdoor Sangh.
	9. Sri V. Subramanyam, Vice-President, Coorg Plantation Labour Union, Pollibetta.

Short Recital of the Case

This is a Memorandum of Settlement under Section 12 of the Industrial Disputes Act, 1947, arrived at between the employers and employees of the Plantation Industry in Mysore State represented respectively by the aforementioned representatives this Saturday, the 10*th day of March*, 1962 in the presence of the Assistant Labour Commissioner and Conciliation Officer, Mysore Division, Mysore as a result of Conciliation Proceedings initiated by him in view of the notices of demands submitted by the several Trade Unions of the workmen noted below:—

(1) Notice of demands dated 28-9-1961 and 16-10-1961 given by the Secretary, Coorg District Estate Workers' Union, Mercara to certain 57 Plantation Managements.

(2) Notice of demands dated 14-8-1961 given by the Secretary, United Plantation Workers' Union of Mysore State, Somwarpet to certain 7 Plantation Managements.

(3) Notice of demands dated 4-1-1962 given by the General Secretary, Mysore Plantation Workers' Union to certain 14 Plantation Managements.

(4) Notice of demands dated 3-2-1961 and 7-2-1961 given by the Working President, Indian Plantation Workers' Union, Chikmagalur to certain 46 Plantation Managements.

(5) Notice of demands dated 31-3-1961 given by the Secretary, Karnataka Provincial Plantation Workers' Union, Chikmagalur, to the Mysore State Planters' Association, Chikmagalur.

(6) Letter dated 25-10-1961 of the President, Mysore State Plantation Labour Union, Chikmagalur, regarding Gratuity etc.

(7) Notice of demand dated 13-11-1961 given by the Secretary, Coorg Plantation Labour Union, Pollibetta to certain 16 Plantation Managements.

The above notices of demand *inter alia* pertain to wages, gratuity, paid holiday, bonus for the years 1959 to 1961, sickness allowance, cumblies, footwear, festival holidays, abolition of contract system, provision of employment for dependants of workmen etc. After prolonged discussions and negotiations with the parties on 25th October 1961, 18th December 1961, 19th December 1961, 29th January 1962, 10th February 1962 and 10th March 1962, a settlement of the dispute has been arrived before the Conciliation Officer in terms of the following:—

Terms of Settlement

(1) That the Managements agree to pay to the workmen bonus for the years 1959-60 and 1960-61 at the rate of 6% and 9% wages respectively. This is agreed to be inclusive of any payments already made towards bonus by the Plantation Managements and shall be subject to the condition that the estates in question have made profits justifying the same.

(2) That the managements agree to give one additional cumbly during the years 1962-63 and 1964-65 to every worker who has put in not less than 200 days of attendance during the preceeding 12 months. The period of authorised leave and involuntary unemployment shall be regarded as attendance for this purpose.

(3) Both the parties agree to carry on further negotiations regarding way expenses with a view to obviating the difficulties if any in the existing practice.

(4) The other claims and dispute raised by the workmen in their notices detailed in the preamble are not pressed.

Representing the Employers	Representing the Employees
(Sd) P. G. Gurjer	(Sd) B. N. Kuttappa
(Sd) K. B. Somana	(Sd) K. Ramdas
(Sd) H. K. Chandrasekhara	(Sd) N. Krishna Singh
	(Sd) C. S. Laxmana
	(Sd) Govindaswamy
	(Sd) K. S. Ganapathi.

Before me

(Sd.) M. Chandrasekariah

Assistant Labour Commissioner and Conciliation Officer.

(2) *MEMORANDUM OF SETTLEMENT UNDER SECTION 12(3) OF THE INDUSTRIAL DISPUTES ACT, 1947, BEFORE THE COMMISSIONER OF LABOUR, MADRAS, ON THE 19TH JUNE, 1962*

Names of Parties	Workers and the Managements of Plantations in the State of Madras.
Representing Employers	1. Mr. E. J. C. Menzies, Chairman. 2. Mr. J. N. A. Hobbs. 3. Mr. M. S. P. Rajes. 4. Mr. M. M. Muthiah, and 5. Mr. C. V. Subhu, Committee Members, Association of Planters of the State of Madras.
Representing Employees	1. Mr. R. Raman Nair, President, and Mr. S. M. Narayanana, Secretary, Nilgiri District Estate Workers' Union, Rockby, Coonoor. 2. Mr. M. S. Ramchandran, General Secretary, Madura and Tirunelveli Districts National Plantations Workers' Union. 3. Mr. K. R. Bellie, Nilgiri District Estate Maistries Union. 4. Mr. C. Maduram, Working President, Anamalai Plantation Workers' Congress, Valparai. 5. Mr. R. V. Rajan, Tamilnad Thotta Thozhilalar Munnetra Sangam. 6. Mr. M. Malli Chettiar, Secretary, South Indian Plantation Workers' Union. 7. Mr. A. Ramnathan, Secretary, Tamilnad Plantation Workers' Union. 8. Mr. P. Virudhagiri, Secretary, Plantation Labour Association. 9. Mr. P. M. Sheriff, General Secretary, The South Indian Plantation Workers' Union, Valparai. 10. Mr. R. Muthuswami, President, Thozhilalar Munnetra Sangam, Valparai. 11. Mr. P. I. Perumal, President, Neelamalai Plantation Workers' Union, Coonoor R. S. 12. Mr. Jebakanhi, President, Madras Provincial Plantation Workers' Union, Valparai.

Short recital of case

The Industrial Dispute over the payment of bonus to the plantation workers for the year 1961 is settled on the following terms in conciliation before the Commissioner of Labour, Madras, and as a result of the good offices of the Minister-in-Charge of Labour.

In this connection, it was represented by the managements that as far as coffee estates are concerned the drop in production and prices during 1961 did not allow them to agree to pay any higher percentage of bonus than 4 per cent but in deference to the suggestion of the Honourable Minister-in-Charge of Labour, they were agreeable to pay a bonus of 5 per cent. in respect of estates with 150 acres and above in areas other than Shevroys.

Terms of Settlement

1. The Managements agree to pay bonus to the workers employed in all the Tea Estates in the Madras State who are members of the Association of Planters of the State of Madras at the rate of 11%(eleven per cent) of the earnings during the year 1961 less the amounts, if any, already paid in respect of that year.

2. The Managements agree to pay to the workers employed in all coffee estates with 150 acres and above in the Madras State who are members of the Association of Planters of the State of Madras, except in the Shevroys, a bonus at the rate of 5%(five per cent) of the earnings during the year 1961 less the amounts already paid, if any in respect of that year. The workers in coffee estates in areas other than Shevroys less than 150 acres in extent will be paid a bonus of 4% of their annual earnings for 1961 less the amounts already paid, if any. So far as the coffee estates in Shevroys are concerned, though a bonus of 2% has already been paid to the workers in accordance with the understanding with the Tamilnad Thotta Thozhilalar Munnetra Sangam, Yervaud, and though the management have expressed their inability to pay any additional bonus for this year, yet in difference to the suggestion of the Honourable Minister-in-charge of Labour, the managements agree to pay an additional 1% *ex-gratia*.

3. Mixed estates who are members of the Association of Planters of the State of Madras having an acreage of 25% and over of tea will pay the same bonus for 1961 as is applicable to Tea estates.

4. The payment of the above bonus under this agreement will be made on or before 15-7-1962.

5. The parties agree that this agreement shall be in full settlement of the claim for bonus for the year 1961 and that there are no outstanding disputes on this issue upto and inclusive of the year 1961.

For the Employers	For the Employees
(Signed)	(Signed)
Mr. M. S. P. Rajes,	Mr. M. Malli Chettiar,
Mr. M. M. Muthiah,	Mr. P. L. Perumal,
Mr. E. J. C. Menzies,	Mr. R. V. Rajan,
Mr. J. N. A. Hobbs, and	Mr. R. Raman Nair,
Mr. C. V. Subbu.	Mr. K. R. Bellie,
	Mr. M. S. Ramchandran,
	Mr. S. M. Narayanan, and
	Mr. C. Maduram.

(Sd.) T. N. Lakshminarayanan,
Commissioner of Labour.

(3) MEMORANDUM OF SETTLEMENT

Present:—

Representing employers:—

1. Shri M. M. Varghese
2. Shri M. K. Kuriakose
3. Shri M. P. Cheryan
4. Mr. C. H. S. London
5. Shri P. A. Mathew
6. Shri K. Alexander Thomas.

Representing Workmen:—

1. Shri K. Karunakaran
2. Shri B. K. Nair
3. Shri A. V. Radhagopi Menon
4. Shri P. Sankar.

Short recital of the Case

The dispute relating to bonus for the years 1957, 1958 and 1959 was taken up for consideration by the Plantations Labour Committee at its past four meetings. At a meeting of the Committee held on the 25th January 1960 at Ernakulam, in the presence of the Chief Secretary of Government, the following agreement has been arrived at:—

Terms of Agreement

1. The parties agree to the payment of the following rates of bonus for the three years 1957, 1958 and 1959:

I. Tea Estates

(a) Estates which admeasure above 100 acres 6⅔% of the annual total earnings of the workers for each of the three years.

(b) Estates which admeasure up to 100 acres and coming within the purview of the Plantations Labour Act.....6% of the annual total earnings of the workers for each of the three years.

(c) Other estates.....5¼%of the annual toal earnings of the workers for each of the three years.

II. Rubber Estates

(i) Estates which admeasure above 200 acres.....7½%of the annual total earnings of the workers for each of the three years.

(ii) Estates which admeasure up to 200 acres and which are coming within the Plantations Labour Act.....6⅔ % of the annual total earnings of the workers for each of the three years.

(iii) Estates which do not fall within the purview of the Plantations Labour Act.....6¼% of the annual total earnings of the workers for each of the three years.

NOTE.—The above bonus rates will not apply to non-bearing areas under tea and rubber.

III. Coffee Estates

(i) Estates which admeasure 300 acres and above

For 1957	5%
For 1958	6½%
For 1959	5%

of the annual total earnings of the workers.

(ii) Estates below 300 acres for which the Plantations Labour Act applies

For 1957	4%
For 1958	5%
For 1959	4%

of the annual total earnings of workers.

NOTE.—The above bonus rates will not apply to non-bearing areas.

2. In the case of the tea-cum-rubber estates the payment of bonus will be made at the rates specified above for tea and rubber for tea workers and rubber workers respectively.

3. Both parties agree that the above rates will be paid to temporary and casual workers also.

4. The rates specified above are inclusive of payments already made towards bonus for these years.

5. The Memorandum of Settlement dated 8-7-1957 regarding the application to Malabar of the Madras Settlement of the 15th April 1957 is adopted and confirmed by all parties.

6. It is agreed that bonus in the future as from 1960 should be regulated by a formula that will be devised.

7. This agreement will not apply to the Talayar Tea Co. Ltd., or the Churakulam Tea Estates Private Ltd.

Representatives of Employers:—

1. Sd. M. K. Kuriakose
2. Sd. M. P. Cheryan
3. Sd. M. M. Varghese
4. Sd. C. H. S. London
5. Sd. P. A. Mathew
6. Sd. Alexander Thomas.

Representatives of Workmen

1. Sd. K. Karunakaran.
2. Sd. A. V. Radhagopi Menon
3. Sd. P. Sankar

(Sd) A. Kunjukrishna Pillay,
Conciliation Officer,
(Labour Commissioner)
Ernakulam, dated 25th January, 1960.

APPENDIX 'G'

BONUS AGREEMENT IN RESPECT OF REGISTERED STEVEDORE WORKERS

Office of the Regional Labour Commissioner 'Central', Wakefield House, Sprott Road, Ballard Estate Bombay-1

[1] MEMORANDUM OF SETTLEMENT

Representing Employers:

1. Shri D. A. Dhunjibhoy, Vice-President
2. Shri S. C. Sheth, Committee Member
3. Shri B. L. Desai, Secretary

} Bombay Stevedores' Association Ltd., Janmabhoomi Chambers, Fort St., Bombay-1.

Representing Employees:

1. Shri P. D'Mello, General Secretary
2. Shri M. G. Kotwal, Secretary

} Transport and Dock Workers' Union, Nagindas Chambers, Frere Road, Bombay-1.

Short Recital of the Case

The Transport & Dock Workers' Union, Bombay, in a letter received in this office on 2-5-56 represented demands of registered monthly and reserve pool stevedore workers employed by members of the Bombay Stevedores' Association Ltd., for bonus for the years ending 31-3-55 and 31-3-56. It was stated that the Bombay Stevedores' Association Ltd., and the Transport and Dock Workers' Union had put forward certain proposals with a view to come to an amicable settlement. The Union urged for holding conciliation in the matter. Accordingly, conciliation proceedings were held on 4-5-1956 and a settlement on the following terms was reached on 4th May, 1956.

Terms of Settlement

THIS AGREEMENT is made this fourth day of May, 1956 between the Bombay Stevedores' Association Ltd., representing its members from time to time during the currency of this Agreement (hereinafter referred to as the 'Association') and the Transport & Dock Workers' Union representing the stevedore workers registered on the registers of the Bombay Dock Labour Board (hereinafter referred to as the "Union").

It is hereby agreed, as follows:—

(1) The Association and the Union agree that bonus shall be paid to registered stevedore workers (hereinafter called the 'workmen' for) each of the five years commencing from the lst April 1954 to 31st March 1955, lst April 1955 to 31st March 1956, lst April 1956 to 31st March 1957, lst April 1957 to 31st March 1958, lst April 1958 to 31st March 1959, at the following rates and subject to the following conditions:—

(a) For the years 1954/1955 and 1955/1956, the total amount of bonus to be paid by the Association to the workmen shall be at the rate of Re. 0/2/0 (Two Annas) per dead weight ton of cargo, excluding coal, mail and passenger's baggages, loaded or discharged by the members of the Association at the port of Bombay, either in the docks or overside or in stream.

(b) For the years 1956/1957, 1957/1958 and 1958/1959, the total amount of bonus to be paid by the Association to the workmen shall be at the rate of Re. 0/2/3 (Two and a quarter anna) per dead weight ton of cargo, excluding coal,mail and passenger's baggages loaded or discharged by the members of the Association at the port of Bombay, either in the docks or overside or in stream.

The foregoing quantum of bonus shall be distributable among the workmen on the following basis:—

(a) In respect of the years ending 31st March 1955 and 31st March 1956, the foregoing quantum of bonus shall be distributed among the workmen on the basis of the following formula.

Total number of man-days worked including the days attended, but not employed and days of paid leave and including also Sundays and paid holidays in respect of monthly workers and subject to a maximum limit of 250 days in a year for a worker shall be ascertained in case of reserve pool workman from the records of the Bombay Dock Labour Board and in case of registered monthly workmen from the records of their respective employers.

(b) In respect of years ending 31st March, 1957, 31st March 1958 and 31st March, 1959, the foregoing quantum of bonus shall be distributed among the workmen on the basis of the following formula:—

Total number of man-days worked including the days attended but not employed, days of paid leave and including also Sundays and paid holidays in respect of monthly workers, shall be ascertained in case of reserve pool workers from the records of the Bombay Dock Labour Board and in case of registered monthly workers from the records of the respective monthly employers.

(c) The total amount of bonus provided in sub-clause (a) and (b) of clause 1 shall be divided amongst the reserve pool workers and monthly workers in proportion to the number of man days worked by each workman subject to the limitation specified in clause 2(a) above for years ending 31-3-55 and 31-3-56 and in proportion also to the differential in basic wage of the respective categories in the manner set out hereinbelow.

(d) Any workmen who has worked for less than 26 days in any one of the relevant years, shall not be entitled to bonus in respect of that year. While computing the man days worked under item 2(a), the total man days worked by such workman shall be excluded.

(e) The formula agreed in clause 2(b), and 2(c) may be reviewed by mutual agreement if data based on man days makes it desirable to do so.

3. For calculation of the quantum of bonus payable to the respective categories of workmen the following formula shall be adopted:—

(a) Suppose the actual man days of tindels are A and the tindels' basic wage is Rs. 3-8-0 and junior workers basic wage is Rs. 2-2-0 then the man days of tindels should be increased by

$$\frac{A \times \text{Rs. } 3\text{-}8\text{-}0}{\text{Rs. } 2\text{-}2\text{-}0.} - 1.64 \times A.$$

(b) The same formula stated above will be adopted for calculation of the man days of winchmen, hatchforemen, khalasis and senior workers.

(c) The above adjusted man days of the higher paid categories should be added to the man days worked by the junior workers and reserve pool workers to give the total man days worked by all the workers.

(d) Each worker shall be paid the bonus based on the rate arrived per man day multiplied by the number of man days worked by him in his respective category during the years.

(e) The total amount of bonus at the rate fixed under para 1 will be divided by the total number of man days as stated in the previous para, to arrive the bonus to be paid to each worker.

(f) Tindels, winchmen, hatchforemen, khalasis and senior workers will receive their bonus based on adjusted man days.

Assuming the sum payable under sub-clauses (a) and (b) of clause 1 hereof is Rs. 1,000 and assuming further that the man days worked in respect of each category of workmen is as under:

Tindel	100	
Senior workers, Hatchforeman, Winchman, Khalasis	400	
Junior workers and RPW.	500	1,000

The adjusted man days on the basis of the wages will be :

Tindel	$100 \times \frac{56}{34}$	165
Senior workers, Hatchforemen, Winchmen, Khalasis	$400 \times \frac{40}{34}$	471
Junior workers and RPW	500	1,136

Rate per man day payable will be: $\frac{1000}{1136}$ = Rs. 0-14-1 per man day

Junior worker & RPW will get— $500 \times 0/14/1$	Rs. 440-1-8
Senior worker, Hatchforeman, Winchmen will get . . . . . $471 \times 0/14/1$	Rs. 414-9-3
Tindel will get $165 \times 0/14/1$	Rs. 145-3-9
	Rs. 999-14-8

Rate per man day, therefore, of different categories will be:—

Tindel	$\frac{\text{Rs. } 145\text{-}3\text{-}9}{100}$	Rs. 1-7-3
Senior worker, Hatchforemen, Winchmen, Khalasis	$\frac{\text{Rs. } 414\text{-}9\text{-}7}{400}$	Rs. 1-0-7
Junior worker and RPW	$\frac{\text{Rs. } 400\text{-}1\text{-}8}{500}$	Rs. 0-14-1

4. In addition to the bonus payable as herein provided to a monthly worker in respect of the years ending 31st March, 1955 and 31st March 1956 only such workman shall be entitled to additional bonus to be paid by the Association, as follows:—

(a) A workman who has attended for work for at least 8 months in the relevant year, shall be paid half the amount of the special monthly wage increase introduced with effect from July 1963. As in illustration, a tindel attending for 8 months or over in the relevant years shall be paid Rs. 27-8-0 in addition to the bonus payable to him under the foregoing provisions.

(b) A monthly workman who has attended for work for less than 8 months in the relevant years shall be paid only a portion of the said increase. As an illustration, a tindel attending for 4 months in the relevant years shall be paid one fourth of the said increase *i. e.* Rs. $\frac{55}{4}$=Rs. 13-12-0 and so on.

5. The bonus for the years 1954/1955 and 1955/56 shall, as far as possible be disbursed by the Association on or before the 10th May 1956. If for any reason, it becomes impossible so to do, advances may be made to the workmen with adjustments to be affected after deductions from the wages for May 1956 or as soon as possible thereafter. Any short payments shall be made good on the same dates. The bonus for the remaining three years shall be paid by the 31st May following the said financial periods and shall be subject to adjustments if necessary as soon as possible thereafter.

6. The agreement in respect of 1956/1957, 1957/1958 and 1958/1959 is arrived at subject to the proviso that the award of the Labour Appellate Tribunal in appeals (Bom.) Nos. 172, 174 and 179 of 1955 remains in force in the port. If for any reason, the piece rate system is suspended or is modified or becomes inoperative in whole or in part, the parties to this agreement shall be free to consider this agreement as cancelled in so far as it has not then been implemented. If the agreement is notified as cancelled by any party for any of the above reasons the parties to this agreement shall be free to pursue their own course for settlement of the question of bonus then unpaid.

7. It is further agreed between the Association and the Union that an endeavour will be made by both the parties to arrive at a piece rate system of working cargoes temporarily time rated and iron and steel cargoes and in the interim period, every endeavour will be made by the Union to ensure that adequate output is achieved on such cargoes.

8. It is further agreed between the parties that disputes arising in the day to day working of the stevedoring work will be resolved by direct negotiations and in case of failure by constitutional means.

9. Any workman who has left the service of the Bombay Dock Labour Board or the employer parties on the due payment of any bonus herein provided shall be entitled to the said bonus provided only that he makes an application in writing for the same to be received by the Association within six months from the due date of payment of such bonus.

10. Any workman dismissed for misconduct resulting in financial loss shall be entitled to the bonus payable as herein provided only under deduction of amount of such loss.

Signature of Parties

Employers representatives :	*Representing employees* :
(1) D. A. Dhunjibhoy	(1) P. D' Mello.
(2) S. C. Sheth	(2) M. G. Kotwal.
(3) B. L. Desai	

(R. J. T. D'MELLO)
Conciliation officer (Central)-II, Bombay.

(2) Memorandum of Settlement

Name of Parties :

Representing Employers:	(1) Shri S. C. Sheth on behalf of the Bombay Stevedores' Association Ltd., and (2) Shri B. L. Desai, Secretary, Bombay Stevedores' Association Ltd., Bombay.
Representing Employees :	(1) Shri Nana Tukaram Zende, President, Transport & Dock Workers' Union, Bombay, and (2) Shri S. R. Kulkarni, Secretary, Transport & Dock Workers' Union, Bombay.

Short recital of the case

The Secretary, Transport & Dock Workers' Union, Bombay, in a letter dated 21-5-60, represented the demand regarding yearly bonus to stevedore workers for the year ending 31-3-1960.

Discussions were held between the Bombay Stevedores' Association Ltd., representing their members and the Transport & Dock Workers' Union on the question of bonus for the years ended 31st March 1960 and 31st March 1961 in the light of the settlement dated 4th May 1956, between the parties. Certain proposals emerged as a result of these discussions and the Union urged for holding conciliation in the matter with a view to settle the dispute amicably.

Accordingly conciliation proceedings were held on 23-5-60 and both the parties were persuaded to come to a reasonable settlement. Accordingly a settlement on the following terms was reached on 23-5-1960.

Terms of Settlement

This Agreement is made the 23rd May 1960 between the Bombay Stevedores' Association Ltd., representing its members from time to time during the currency of this Agreement (hereinafter referred to as the 'Association') and the workmen registered on the registers of the Bombay Dock Labour Board represented by the Transport & Dock Workers' Union (hereinafter referred to as the 'Union').

It is hereby agreed as follows:

(1) It is agreed between the parties that bonus shall be paid to registered stevedore workers (hereinafter called the workmen) for each of the two years commencing lst April 1959 to 31st March 1960 and lst April 1960 to 31st March 1961 at the following rates and subject to the following conditions:—

(a) For the years 1959-1960 and 1960-1961 the total amount of bonus to be paid by the Association to the workmen shall be at the rate of Re. 0-2-3 (Two and a quarter anna) per dead weight ton of cargo, excluding coal, mail and passenger's baggages, loaded or discharged by the members of the Association at the port of Bombay, either in the docks or overside or in stream.

(b) The above bonus shall be distributed on the basis mentioned in clause 2(b), (c), (d) and (e) of the settlement dated 4th May 1956 (hereinafter referred to as the "1956 settlement").

(c) The calculation of the quantum of bonus payable to the respective categories of workmen shall be on the formula set out in clause 3 of the 1956 settlement.

(d) Any workmen dismissed for misconduct resulting in financial loss shall be entitled to the bonus payable as herein provided only under deduction of the amount of such loss.

(2) The above bonus for the year 1959/1960 shall, as far as possible, be disbursed by the Association on or before the 6th day of June 1960 and for the year 1960/1961, as far as possible on or before the lst day of June 1961.

(3) It is clearly understood and is a condition precedent to payment of any bonus under the Settlement that bonus hereunder will only be payable provided the decision of the Labour Appellate Tribunal in Appeals (Bom.) Nos. 172, 174 and 179 of 1955, remains in force in the port. If for any reason the piece rate system is suspended or is modified or becomes inoperative in whole or in part, the parties to this agreement shall be free to consider the unimplemented part of this agreement as cancelled. If the agreement is notified as cancelled by any party for any of the above reasons, the parties to this agreement shall be free to pursue their own course for settlement of the question of bonus then unpaid.

(4) Any workman who has left the service of the Bombay Dock Labour Board or the employer parties on due date of payment of any bonus hereunder shall be entitled to the said bonus only provided he makes an application in writing for the same and the application is received by the association within six months from the due date of payment of such bonus.

(5) The parties reiterate that any disputes arising in the day-to-day working of stevedoring work will be resolved by direct negotiations and in case of failure by constitutional means.

Signature of parties.

Sd/- S. C. SHETH, On behalf of the Bombay Stevedores' Association Ltd., Bombay.

Sd/- B. L. DESAI, On behalf of the Bombay, Stevedores' Association Ltd., Bombay.

Witnesses:—

(1) Sd/- KHAN K.A.

(2) Sd/- N. BENJAMIN.

Sd/- NANA TUKARAM ZENDE, President, Transport & Dock Workers' Union, Bombay.

Sd/- S. R. KULKARNI, Secretary, Transport & Dock Workers' Union, Bombay.

Sd/- R. J. T. De' MELLO
Conciliation Officer (Central) I, Bombay.

Bombay, dated 23rd May, 1960.

(3) MEMORANDUM OF SETTLEMENT

Name of the Parties

Representing Employers: . . . . . (1) Shri E. M. Cassinath, Vice-President, Bombay Stevedores' Association Ltd., Bombay.

(2) Shri S. C. Seth, Member Bombay Stevedores' Association Ltd., Bombay.

Representing Employees: . . . . . (1) Shri S. R. Kulkarni, Secretary, Transport & Dock Workers' Union, Bombay.

(2) Shri K. A. Khan, Secretary, Transport & Dock Workers' Union, Bombay.

Short recital of the case

The Secretary, Transport & Dock Workers' Union, Bombay, on behalf of stevedore workers demanded bonus equal to six months total wages for the year ending 31st March, 1962. There were direct negotiations between the parties with a view to settle the dispute but later some differences arose which could not be reconciled. The Union, thereupon, requested that the dispute may be taken up in conciliation. Following joint discussions, settlement was brought about on the following terms which covers the bonus demand not only for the year 1961/1962, but also for three subsequent years ending 31st March 1965. This agreement is made between the Bombay Stevedores' Association Ltd., representing its members from time to time during the currency of this agreement (hereinafter referred to as the 'Association') and the workmen on the registers of the Bombay Dock Labour Board as represented by the Transport & Dock Workers' Union (hereinafter referred to as the 'Union').

It is hereby agreed as follows:—

(1) It is agreed between the parties that bonus shall be paid to registered stevedore workers (hereinafter called the workmen) for each of the four years commencing lst April, 1961 to 31st March, 1962, lst April, 1962 to 31st March, 1963, lst April 1963 to 31st March 1964, lst April 1964 to 31st March 1965 at the following rates and subject to the following conditions:—

(2) For the years commencing lst April 1961 to 31st March 1962 and lst April 1962 to 31st March 1963, the total amount of bonus to be paid by the Association to the workmen shall be at the rate of 15 nP. (Fifteen naya Paise) only per dead weight ton of cargo, excluding coal, mail and passenger's baggages and bannas, loaded or discharged by the members of the Association at the Port of Bombay.

(3) For the years commencing lst April 1963 to 31st March 1964 and lst April 1964 to 31st March 1965, the total amount of bonus to be 16 nP. (Sixteen naye paise) only per dead weight ton of cargo, excluding coal,mail and passenger's baggages and bannas, loaded or discharged by the members of the Association at the Port of Bombay.

(4) The above bonus shall be paid to the workmen covered under this agreement on the basis of the number of days actually attended by the Reserve Pool Workers and on the basis of the days attended by the Monthly Stevedore workers including Sundays. This formula may be reviewed by mutual agreement.

(5) The calculation of the quantum of bonus payable to the respective categories of workmen shall be on the formula set out below.

(6) The total amount of bonus provided in clauses 2 & 3 above shall be divided amongst the reserve pool workers and monthly workers in the proportion to the number of man days as arrived at in clause 4 above and in proportion to the differentials in basic wage of the respective categories in the manner set out herein below:—

(a) Suppose the actual man days of tindels are A and the tindels' basic wage is Rs. 3-50 and junior workers basic wage is Rs. 2-12, then the man days of tindels should be increased by $\frac{A \times \text{Rs. } 3 \cdot 50}{\text{Rs. } 2 \cdot 12} = 1 \cdot 65 \times A.$

(b) The same formula stated above will be adopted for calculation of the mandays of which drivers hatchforemen, khalasis and senior workers.

(c) The above adjusted man days of the higher paid categories should be added to the man days worked by the junior workers and reserve pool workers to give the total man days worked by all the workers.

(d) Each worker shall be paid the bonus based on the rate arrived per man day multiplied by the number of man days worked by him in his respective category during the years.

(e) The total amount of bonus at the rate fixed under para 1 will be divided by the total number of man days as stated in the previous para, to arrive the bonus to be paid to each worker.

(f) Tindels, winch drivers, hatchforeman, khalasis and senior workers will receive their bonus based on adjusted man days.

(7) The above bonus for the year 1961/1962 shall, as far as possible, be disbursed by the Association on or before the 30th July 1962 and for the years 1962/1963, 1963/1964 and 1964/1965, as far as possible, on or before the 30th May of each of the following years.

(8) It is clearly understood and is a condition precedent to payment of any bonus under the Settlement that bonus hereunder will only be payable provided the decision of the Labour Appellate Tribunal in Appeals (Bom.) Nos. 172, 174 and 179 of 1955, remains in force in the port. If for any reason the piece rate system is suspended or is modified or becomes inoperative in whole or in part, the parties to this agreement shall be free to consider the unimplemented part of this agreement pertaining to the year during which the change is brought about and thereafter as cancelled. If the agreement is notified as cancelled by any party for any of the above reasons the parties to this agreement shall be free to pursue their own course for settlement of the question of bonus, then unpaid.

(9) Any workmen who has left the service of the Bombay Dock Labour Board or the employer represented by this Association before the due date of payment of any bonus as per this settlement shall be entitled to the said bonus only when he makes an application in writing for the same and the application is received by the association within 12 months from the due date of payment of such bonus.

(10) Any workmen dismissed for misconduct resulting in financial loss shall be entitled to the bonus payable as herein provided only after deduction of the amount of such loss.

(11) The parties reiterate that any disputes arising in the day-to-day working of stevedoring work will be resolved by direct negotiations and in case of failure by constitutional means.

SIGNATURE OF THE PARTIES

(1) E. M. CASSINATH, *Vice President, Bombay Stevedores' Association Ltd., Bombay.*

(2) S. C. SHETH, *Member, Bombay Stevedores' Association Ltd., Bombay.*

(1) S. R. KULKARNI, *Secretary, Transport & Dock Workers, Union, Bombay.*

(2) K. A. KHAN, *Secretary, Transport & Dock Workers' Union, Bombay.*

T. R. MALHOTRA, *Conciliation Officer (Central) I, Bombay.*

Bombay, dated this 30th day of June, 1962.

GIPN—S3—3 M of I. & E./63—19-2-64—3,400.