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MAURITIUS

Annual Report
OF THE
Ombudsman
(JANUARY — DECEMBER)
FOR
1984

No. 4 of 1985

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1984

OMB. 13/04/Vol. XI

Ombudsman's Office,
4th Floor, Bank of Baroda Building,
Sir William Newton Street,
Port Louis,
Mauritius.
19th March, 1985

His Excellency Dr. The Rt. Honourable Sir Seewoosagur Ramgoolam,
G.C.M.G., Kt., P.C.

The Governor-General of Mauritius,
Government House,
Le Réduit.

Your Excellency,

I have the honour to submit, in accordance with section 101(3) of the Constitution, a report on the discharge of my functions which is to be laid before the Assembly. The report covers the period 1st January to 31st December, 1984.

Respectfully yours,

R. SEWGOBIND
Ombudsman

CONTENTS

		<i>Paragraphs</i>
1.	Introduction	1—4
2.	Statistics :	
	(a) Caseload	5
	(For details <i>vide</i> Appendices and Case Notes)	
	(b) Visits	14
	(c) Copies of Complaints	15
3.	Comments on Statistics	6—13
4.	Reports and Recommendations under S. 100 of the Constitution	16
5.	Cases Explained	17—19
6.	Acknowledgements	20—22
7.	Historical Notes on Institution of Ombudsman	23—28
8.	Appointment and Jurisdiction of Ombudsman	29
9.	Comment on Section 97 of the Constitution	30—34
10.	Conclusion	35—36
11.	Case Notes :	

Appendix A

	<i>Pages</i>
Agriculture, Fisheries and Natural Resources	18—19
Co-operatives	20—21
Education, Arts and Culture	21—22
Finance (Customs)	22—23
Health	23—28
Housing, Lands and the Environment	28—29
Income Tax	30—31
Labour and Industrial Relations	31—33
Police	33—35
Prime Minister's Office	35—40
Prisons	40—53
Social Security	53—57
Telecommunications	57
Trade and Shipping	58—60
Works	60—65

Appendix B

12.	Statistical Summary of Complaints dealt with department-wise	66
-----	---	----

Appendix C

13.	Schedule of Complaints for period 1st January 1984—31st December 1984	67—72
	(All complaints with departments concerned, nature of complaints and results of investigation)	

Appendix D

14.	Cases outside jurisdiction	73
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Annual Report of the Ombudsman

January—December 1984

This is the eleventh annual report of the Ombudsman and it covers the period 1st January to 31st December 1984.

2. The first Ombudsman, Judge Gunnar Lindh from Sweden, was appointed in March 1970 and he resigned in January 1972.

3. Mr. S. Mootoosamy, C.M.G., was appointed Ombudsman on the 23rd January 1973 and he passed away on the 16th July 1974.

4. I was appointed Ombudsman on the 20th February 1975.

STATISTICS

(a) Caseload

5. Cases pending at 31st December 1983 ...	...	13
Case intake in 1984 ...	...	172
Cases dealt with during period under review ...	...	185
Cases declined for want of jurisdiction ...	...	52
Cases explained ...	...	34
Cases in which investigation discontinued ...	...	18
Cases not justified ...	...	61
Case justified/rectified ...	...	1
Case explained/rectified ...	...	1
Cases rectified ...	...	2
Cases justified ...	...	2
Case withdrawn ...	...	1
Cases pending at 31st December 1984 ...	...	13

6. (a) Not all the cases are within my jurisdiction and several of them are cases concerning matters of appointment, promotion, transfer, discipline, etc., within the public service, para-statal and other statutory bodies. Such cases are outside my jurisdiction. But that does not mean that public officers or employees of para-statal or statutory bodies can never complain to the Ombudsman. They can always contact him about any problems they may have with a government department or officer so long as these problems do not concern their employment. Some day, somehow a government activity is quite likely to affect them in one way or another and they will then be fully entitled to bring their grievance to the Ombudsman; they would thus be complaining not as public officers or employees as described above but as members of the public.

(b) I reiterate that I investigate complaints from *members of the public* against acts of maladministration of Government Departments or Officers or the Tender Board as a consequence of which they have sustained injustice.

7. It may be commented that the number of *justified complaints* is low but that is not the most important point in the Ombudsman's work. What is important is that people want more and more to be enlightened about the whys and wherefores of an administrative action which concerns them, are ventilating their grievances against the public administration instead of taking things lying down and have a place and a third party where and to whom they can do so. That is already meeting a great need of the public.

8. The *number* of complaints may appear to be comparatively *small*. The extent of the jurisdiction, the standard of the public service, publicity and the vigilance of the public have a direct bearing on the number of complaints.

SOME COMPARATIVE STATISTICS

9. (a) In this connection, it is worth noting that even in Sweden, the country of origin of Ombudsman, "in the first 100 years of the Office's existence, the *Justitieombudsman* (Ombudsman) received only about 70 complaints a year. Since then the number has risen rapidly". (Vide *The Swedish Parliamentary Ombudsman*, Stockholm 1976, published by the Ombudsmen of Sweden). The Swedish Parliamentary Ombudsmen's Report for the period July 1, 1983 to June 30, 1984 shows that out of a total of 3,207 complaints received, 1,251 complaints were dismissed without investigation, 60 were referred to other agencies or state organs. In 1,506 cases no criticism was made after investigation, in 387 cases admonitions or other criticism were made, in two cases prosecutions or disciplinary proceedings (which are within the jurisdiction of the Swedish Ombudsmen) were started and in one case proposals to Parliament or the Government were made.

(b) The Annual Report of the British Parliamentary Commissioner for Administration (Ombudsman) for Session 1983-84 shows that in that year 1,046 complaints were received, including cases brought forward from 1982 and 809 were disposed of during the period. 605 were rejected, 198 were fully investigated and the results reported to Members of Parliament, 6 were discontinued and 237 were carried over into 1984.

10. The investigation of complaints takes time involving lengthy correspondence and the study of files and documents of the Ministries and Departments concerned. Of course, any number of complaints are welcome and should there be overburdening as suspected by Professor de Smith, the Constitutional Commissioner (vide end of quotation in paragraph 27 of this Report), an enlargement of the staff would be the obvious solution.

11. It may also be said that there are not many important complaints. But what appear to be small grievances to some critics are really big problems for the vast majority of people in any country. A retiring benefit not paid in time, action on a complaint to a police officer or a labour officer or any officer or Ministry or Department being unreasonably delayed, a medical

report not being available, or a patient's record not easily traceable in a hospital, (to cite only a few cases), may appear small matters to those who look for sensational news. But to the persons concerned such matters are of great importance as they affect them adversely.

12. The curt and classic bureaucratic reply "it is regretted that your request cannot be granted" really leaves the citizen most perplexed as he does not know the reasons for the rejection of his request, specially when he sees other similar requests have been granted. The public officer cannot always afford the time to sit down and explain all the circumstances to the party concerned and in some cases cannot and should not reveal to the public all the information at his disposal. It is there that the Ombudsman, having access to all the information, with some exceptions, plays the role of the public relations officer and having investigated the whole case uses his judgment in making a suitable reply to the complainant. His main task is to satisfy himself whether there is or there is not any act of maladministration e.g. error, negligence, delay, discrimination, misapplication or misinterpretation of the law, etc. Sometimes, it is not the refusal to grant something but the lack of proper and complete explanation for such refusal that is at the root of the grievance.

13. The statistics should also be read together with the number of visits (see below) and in the light of the learned comments on the British statistics of Professor K. W. R. Wade, Q.C., given at the end of paragraph 35 under the heading "Conclusion" in this Report.

(b) Visits

14. (a) There were 34 visits to my office during 1984 by members of the public individually or in groups. Their representations were about attorneys, Ministry of Agriculture, Fisheries and Natural Resources, barristers, Central Housing Authority, Central Water Authority, District Council, Development Works Corporation, Ministry of Education, Arts and Culture, Ministry for Employment and of Social Security and National Solidarity, husband, Meteorological Services, neighbour, National Transport Authority, Police, Prisons Authorities, Public Service Commission, Registrar-General, Sugar Planters Mechanical Pool Corporation, surveyors, Telecommunications Department and Ministry of Works.

(b) In nine (9) cases the visits were followed, on my advice, by complaints in writing. In four (4) cases, the visitors never wrote to me although they had agreed to do so. In the remaining cases they went away satisfied with the explanation I gave them about the absence of jurisdiction and wherever required, about the need to seek legal advice, or, if they had no means, to apply for legal aid. I offered some personal advice in appropriate cases.

(c) Quite often, the complainants are called at my office for clarifications (dates and circumstances) of their complaints or for communicating to them orally lengthy and detailed explanations of Ministries. Sometimes, hearings are held at my office which are attended by the officers of the Ministries concerned, the complainants and their witnesses, if any, Official files and documents and authoritative books (in scientific e.g. medical fields) are also produced for my information and investigation.

(c) Copies of Complaints

15. Thirty-four (34) copies of complaints addressed to the Governor-General, the Prime Minister, Ministers, the Director of Public Prosecutions, the Commissioner of Police, etc., were sent to me. Some of them were signed and the addresses were given. In suitable cases I enquired from the Department concerned as to what action was taken and the writers were informed of the replies received. There were other cases of anonymous copies or copies without addresses of the writers. Obviously, I could not act on such letters not only because of the anonymity etc., but because the anonymous writers did not appear to be aggrieved persons, or the letters related to private disputes or personnel matters within the public service or para-statal bodies. In cases where the original was addressed to the Minister by name, I did not take any action at all as I thought that it would be trespassing on the prerogatives of the Minister. Obviously, it was for the Minister to see what steps to take and I had no right to tell him what to do or enquire as to what action he proposed to take. To sum up, no action was taken in 14 cases for want of jurisdiction, action was taken in 20 cases and case files were opened in 16 of these 20 cases.

REPORTS AND RECOMMENDATIONS UNDER SECTION 100 OF THE CONSTITUTION

16. (a) During the year under review, three complaints were found *justified*, one of which was rectified. The first on the ground of a manifestly unreasonable act of the Reception Officer of a prison who had pleaded guilty departmentally to the charge of neglect of duty in connection with the disappearance of the brown jacket of the complainant — a prisoner — from the latter's private property which had been placed in the custody of the officer. This complaint subsequently was rectified by the payment by the officer into the prisoner's account of the agreed sum of Rs 240 representing a reasonable price at the material time.

The second finding was based on the ground of an unjust act consisting in irresponsible, arrogant and callous behaviour by a Medical Records Clerk at a State hospital towards complainant — a lady cardiac out-patient — and in not assisting her in the tracing of her case-file with the result that (i) she could not be examined by the Specialist in spite of a previous appointment and (ii) she was "shuttled" between the Clerk's desk to the Consultation room from noon to 2. p.m. while she was not feeling well. Curiously enough, the file was found on the Clerk's desk soon after the departure of the Specialist from the hospital.

The third justified case related to a prosecution after the time limit by the Ministry of Works (owing to the negligence of the Ministry) for building at less than the statutory distance, which resulted in the case falling through in Court.

For details, vide Appendix A under headings "Prisons", "Health" and "Works" — Case Notes No. C/18/84, C/113/84 and C/4/84 respectively.

(b) In accordance with Section 100(2) of the Constitution, a report was made by me to the Commissioner of Prisons in the first case, to the Permanent Secretary of the Ministry of Health in the second one and to the Permanent Secretary of the Ministry of Works in the third case.

(c) Copies of the reports were sent to the Prime Minister and the Minister of Reform Institutions, the Minister of Health and the Minister of Works as prescribed by the section.

CASES EXPLAINED

17. There were 34 cases which were classed "*Explained*". They were cases which were fully investigated but which did not fit into the "*Justified*" or "*Not Justified*" straitjackets.

18. Some case reports are given in *Appendix A*.

19. *Appendix B* contains a statistical summary of the complaints dealt with department-wise. *Appendix C* shows the departments concerned, the nature of the complaints and the result. *Appendix D* shows the number of complaints received against officers, authorities, statutory bodies, individuals and private companies over whom or over which the Ombudsman has no jurisdiction.

ACKNOWLEDGEMENTS

20. Ombudsmen from many countries continued sending to this Office their reports which are a source of useful information about the nature and variety of complaints and the modes of investigation. The International Ombudsman Institute situated at the Law Centre, University of Alberta, Edmonton, Alberta, Canada, sends a Newsletter every two months with the aim to keep us in touch with all major developments in the world of Ombudsmen.

21. At home, I am glad to record that generally in the discharge of my functions I have had the fullest co-operation of Ministries, Government Departments and Officers, the Police and even of certain statutory bodies outside my jurisdiction.

22. I also wish to record my appreciation of the work performed by the Staff of my Office in their respective fields. Investigation remained my exclusive responsibility.

SOME HISTORICAL NOTES ON THE INSTITUTION OF OMBUDSMAN

23. The institution of Ombudsman originated in Sweden as long ago as 1809. The word too is Swedish and means a representative. According to Professor Geoffrey Sawer of the Australian National University, parallels can be found much earlier, between 800 and 80 B.C. in such institutions as the Roman Censor and dynastic China's Censorship called the *Control Yuan*, whose functions were to supervise the performance of officials and hear complaints in cases of maladministration. Of course, other examples of offices for the purpose of similar investigations could probably be found in other countries as well.

24. It was in 1809 too that Finland separated from Sweden conserving the institution which in 1919 became known as that of the Chancellor of Justice. Other European countries like Denmark, West Germany and Norway followed suit and in 1955, in 1957 and in 1962, respectively, had their Ombudsman. The 1960's saw an upsurge of this new idea of handling people's complaints against the Administration and it swept through Europe, United States, Canada, Australia, New Zealand, Asia, parts of Africa and other developing countries.

25. To-day, to cite at random a few more examples known to me country-wise or state-wise, in order to illustrate the world-wide prevalence of the institution. New Zealand (1962) (*Parliamentary Commissioner (Ombudsman)*), Great Britain (1967) (*Parliamentary Commissioner for Administration*), France (1973) (*Le Médiateur*), U.S.S.R. (*Procurator*), Canada, Japan, the Philippines, Singapore, Malaysia, India (*Lokayukta*), Western Australia (*Parliamentary Commissioner for Administrative Investigations*), South Australia (*Ombudsman*), Israël (*Commissioner for Complaints from the Public*), Tanzania (*Permanent Commission of Enquiry*), Nigeria, Zambia (*Investigator-General*), Alaska, Hawaii (*Ombudsman*), Guyana (*Ombudsman*), Fiji (*Ombudsman*), Papua New Guinea (*Ombudsman Commission*), Dominica (*Parliamentary Commissioner*) and Mauritius (*Ombudsman*) have all appointed an officer or officers to look into the grievances of citizens or members of the public against government activities amounting to mal-administration.

26. As a result of the Constitutional Review Talks held at the Colonial Office in 1961, a Constitutional Commissioner for Mauritius was appointed by the British Secretary of State in order to make proposals as to the kind of institution best suited to the conditions and the needs of Mauritius. At the Conference there had been suggestions for the creation of a "Council of State" or "high-powered tribunal".

27. The Constitutional Commissioner was no less a person than Professor A. S. de Smith of the University of Cambridge. He visited Mauritius with a view to making an on-the-spot study and made proposals which are contained in Sessional Paper No. 2 of 1965. It would not be out of place to give here certain extracts from the Sessional Paper :

THE OMBUDSMAN

37. In 1961 suggestions were being made for the creation of a high-powered tribunal to inquire into abuses of power by those in positions of authority. I found that in 1964 those who had been putting forward this idea were instead advocating the appointment of an Ombudsman. I found, also, that no Minister belonging to any party was opposed to the principle of establishing an Ombudsman in Mauritius, and that many Ministers were strongly in favour of this principle. Shortly after my arrival in Mauritius I circulated to Ministers a paper entitled "An

Ombudsman for Mauritius ? " I received a number of helpful comments on this paper from Ministers, officials and the Chairman of the Public Service Commission. I am now in a position to make detailed proposals which, I believe, will command a very wide measure of agreement in Mauritius.

40. In New Zealand, as in Denmark, the main reason for establishing the new office was a widespread feeling that existing parliamentary, judicial and administrative safe-guards against improper, unfair and negligent action (or inaction) by public authorities and their officers were inadequate. Ministers were responsible to Parliament; the courts dispensed justice to aggrieved persons; statutory tribunals had been set up to deal with special classes of claims and controversies; yet each kind of remedy had significant limitations, and there was no doubt that some legitimate grievances entertained by ordinary citizens against the administration were not being redressed. It was hoped that the appointment of an independent officer to investigate complaints would rectify isolated cases of injustice and strengthen confidence between administrators and the man in the street without impeding the business of government. These hopes have already been substantially fulfilled both in Denmark and in New Zealand.

44. He should be authorised to investigate complaints made against all Government Departments and their officers, tender boards, the police, and prison and hospital authorities. I found that there were differences of opinion over the question whether he should be empowered to investigate the acts and decisions of Ministers themselves. In view of this conflict it might be better to exclude the personal acts and decisions of Ministers from his purview in the first instance. I also found that many people thought that he should be entitled to investigate the recommendations and decisions of the Public Service Commission, the Police Service Commission, certain public corporations and local authorities; though nobody thought that he should be allowed to encroach upon the preserves of the Judiciary or the Judicial and Legal Service Commission. There is, however, an important reason why he should not be empowered to investigate the recommendations of the Service Commissions (or their decisions, when they acquire executive powers). At present no reason is given for the appointment or promotion of A, or for the refusal to appoint or promote B, C and a hundred others, to any given post. If persons who had been passed over were entitled to complain to the Ombudsman, the Commissions would be obliged to give him reasons for their decisions in every such instance; and the burden cast upon them, which in any event would be heavy with responsibility, would, I believe, become insupportable. The question whether the Ombudsman

should have power to investigate the acts and decisions of public corporations which are not direct organs of the Central Government presents difficulties which I was not able to explore adequately during my time in Mauritius. In some instances (perhaps, for example, the Central Electricity Board and the Mauritius Broadcasting Corporation) outside scrutiny might be inimical to independent initiative; in others the balance of advantage may be tilted towards outside scrutiny. This is matter which could well receive further consideration locally. There is no reason of principle why the Ombudsman should be denied jurisdiction over the acts and decisions of local authorities, but there is a possibility of his being overloaded with complaints in the early stages; and if he is a non-Mauritian it may take him some time to find his feet. I suggest that, for the first year at least, local authorities (but not Civil Commissioners) should be outside his province; the matter of his jurisdiction could then be reconsidered.

28. Finally, after the Constitutional Conference of 1965 and in accordance with Chapter IX of the Constitution of 1968, the first Ombudsman was appointed in 1970.

The Ombudsman's Appointment and Jurisdiction in Mauritius

29. The provisions relating to the appointment and the jurisdiction of the Ombudsman are set out in Chapter IX of the Constitution which reads as follows—

CHAPTER IX

THE OMBUDSMAN

Office of Ombudsman. 96. (1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the Governor-General, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons, if any, as appear to the Governor-General, acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as Ombudsman if he is a member of, or a candidate for election to, the Assembly or any Local Authority or is a local government officer, and no person holding the office of Ombudsman shall perform the functions of any other public office.

(4) The offices of the staff of the Ombudsman shall be public offices and shall consist of that of a Senior Investigations Officer and such other officers as may be prescribed by the Governor-General, acting after consultation with the Prime Minister.

Investigations by
Ombudsman.

97. (1) Subject to the provisions of this section the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken and in which—

- (a) a complaint under this section is made;
- (b) he is invited to do so by any Minister or other member of the Assembly; or
- (c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities—

- (a) any department of the Government;
- (b) the Police Force or any member thereof;
- (c) the Mauritius Prison Service or any other service maintained and controlled by the Government or any officer or authority of any such service;
- (d) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;
- (e) such other officers or authorities as may be prescribed by Parliament:

Provided that it shall not apply in relation to any of the following officers and authorities—

- (i) the Governor-General or his personal staff;
- (ii) the Chief Justice;
- (iii) any Commission established by this Constitution or their staff;
- (iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;
- (v) any person exercising powers delegated to him by the Public Service Commission or the Police Service Commission being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

(3) A complaint under this section may be made by any individual, or by any body of persons whether incorporated or not, not being—

- (a) an authority of the Government or a Local Authority or other authority or body constituted for purposes of the public service or local government; or
- (b) any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds.

(4) Where any person by whom a complaint might have been made under the last preceding subsection has died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Mauritius (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to any of the following matters, that is to say—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Mauritius; or
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:
Provided that—
 - (i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right or remedy; and

- (ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of this Constitution has been contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister or Parliamentary Secretary in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him—

- (a) that the complaint is merely frivolous or vexatious;
- (b) that the subject-matter of the complaint is trivial;
- (c) that the person aggrieved has no sufficient interest in the subject-matter of the complaint; or
- (d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Mauritius.

(10) In this section "action" includes failure to act.

Procedure in respect of Investigations.

98. (1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 102 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or attorney-at-law or otherwise, in the investigation.

Disclosure of
information etc.

99. (1) For the purposes of an investigation under section 97 of this Constitution the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Ombudsman shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Mauritius or any rule of law shall apply to the disclosure of information for the purposes of any such investigation; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this subsection a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(6) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under section 97 of this Constitution to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

Proceedings after investigation.

100. (1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject-matter of investigation was—

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

(2) If any case to which this section applies the Ombudsman is of opinion—

- (a) that the matter should be given further consideration;
- (b) that an omission should be rectified;
- (c) that a decision should be cancelled, reversed or varied;
- (d) that any practice on which the act, omission, decision or recommendation was based should be altered;
- (e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;
- (f) that reasons should have been given for the decision; or
- (g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering the comments (if any) made by or on behalf of any department, authority, body or person affected, may send a copy of the report and recommendations to the Prime Minister and to any Minister concerned, and may thereafter make such further report to the Assembly on the matter as he thinks fit.

Discharge of
functions of
Ombudsman.

101. (1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, continue or discontinue an investigation under section 97 of this Constitution the Ombudsman shall act in accordance with his own discretion; and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the Governor-General concerning the discharge of his functions, which shall be laid before the Assembly.

Supplementary
and ancillary
provision.

102. There shall be such provision as may be prescribed for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision—

- (a) for the procedure to be observed by the Ombudsman in performing his functions;
- (b) for the manner in which complaints under section 97 of this Constitution may be made (including a requirement that such complaints should be transmitted to the Ombudsman through the intermediary of a member of the Assembly);
- (c) for the payment of fees in respect of any complaint or investigation;
- (d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff; and
- (e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

COMMENT ON SECTION 97 OF THE CONSTITUTION

30. Section 97, quoted above, needs some comments in order to clarify some of its provisions. The action complained of must be action taken in the course of administrative and not judicial functions. An administrative act includes the application of departmental rules, so that any member of the public aggrieved by the mis-application of any such rules would be entitled to complain to the Ombudsman who would then decide whether the action complained of amounts to maladministration.

31. The two words "maladministration" and "injustice" occurring in the section would appear to have sinister and rather grave connotations. Maladministration has been held to cover, *inter alia*, grave cases such as corruption, neglect, perversity, turpitude, arbitrariness as well as lesser types, e.g. unreasonableness (delay, act, omission), improper discrimination, mistake, failure to inform or explain when it was unreasonable to refuse, carelessness etc. It is evident that maladministration, in the Ombudsman context, does not always imply turpitude. Injustice, equally, has no rigid meaning. Any legitimate sense of frustration or outrage or having been adversely affected may amount to injustice. But it must be the result of the alleged maladministration.

32. The person complaining need not be a citizen of Mauritius. Any person who is resident in this country may present his grievances against any Government Department or officer, the Police, the Prisons Department or the Tender Board to the Ombudsman. In other words, even, a foreigner who is residing here can complain. But the complainant need not be present in Mauritius at the time of his complaint. It suffices that the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

33. The present jurisdiction is, broadly speaking, in accordance with the Constitutional Commissioner's recommendation contained in Sessional Paper No. 2 of 1965, the main reasoning being that the institution might be overburdened if its field of scrutiny were wider right at the start. There is provision in Section 97 (2)(e) of the Constitution for Parliament to extend at its discretion this field of scrutiny over other *officers* or authorities by the passing of a mere Act. In answer to Parliamentary Question No. B/565 of 1975, in the Legislative Assembly, the Right Honourable the then Prime Minister said:

"There can be no question of empowering the Ombudsman to investigate the actions of Ministers or Parliamentary Secretaries.

On the other hand it is not necessary to amend the Constitution to bring para-statal bodies within the jurisdiction of the Ombudsman. This could be done by an Act of Parliament within the framework of our present Constitution."

34. The activities of the modern Welfare State spread almost everywhere and they are bound to affect the members of the public in one way or another. They are so multifarious that the rules and regulations and the administrative acts that result therefrom sooner or later give rise to complaints. These complaints cannot always be taken to Court as, in many cases, no properly defined rights in the legal sense have been infringed. Litigation is often time-consuming too. This is not to say that the Ombudsman's Office can ever be a substitute for Courts of law. It simply means that not all grievances against Government Departments are cognisable by Courts and a great number of them are dealt with at Ombudsman level in an informal

way. Legal remedies, wherever they exist, should be resorted to unless in the particular circumstances of any given case it is not reasonable to expect the complainant to avail or have availed himself of such remedies. Of course, the Ombudsman's Office cannot take sanctions but can only recommend in appropriate cases what steps could be taken to remedy the grievances. Generally, complaints if justified are rectified in the course of the investigation and whenever recommendations are made they are given careful attention. The Ombudsman performs a useful function in the sense that a mere letter addressed to him (with copy to a Member of the Legislative Assembly) sets in motion the machinery of investigation and he can, for this purpose, require and have access to files and documents, although privileged in the legal sense. There are, of course, provisions where such scrutiny is ousted but, generally speaking, investigation by the Ombudsman means going to the source.

CONCLUSION

35. In conclusion, paragraph 27 of the Ombudsman's Report published in 1974 may be reproduced below as the observations contained therein will always have their importance:

"27. Finally, there is a grave misconception about the Ombudsman which must be dispelled. He should not be regarded as someone prying into the affairs of the Administration for the sole purpose of fault-finding. Although primarily appointed to secure the redress of grievances, the Ombudsman can be a friend of the public and of the administration at the same time. He may tender advice to complainants whose complaints he cannot investigate. He may even conciliate with the administration in such matters. Indeed, I have done so in certain cases to the mutual satisfaction of the administration and of the *administré*. There is also an important factor which should not be overlooked. In Mauritius and elsewhere a very high percentage of the complaints made are rejected and, in rejecting those complaints, the Ombudsman, is in effect, showing justification for the official action taken. In this connection, it would be pertinent to refer to the following observations which Professor K. W. R. Wade, Q.C., of the University of Oxford made—

"So for the time being the Commissioner's productivity factor, if I may so describe it, may be taken to be about 10%. One would like to think that this modest figure is due to the standard of public administration in Britain. However that may be, there are those who say it is excessively wasteful to hold a hundred investigations in order to remedy ten grievances.

But this overlooks an important factor. In the 90 negative cases the Commissioner is by no means doing nothing. He is explaining to the *administré*, as the French call him, that in fact the official action was right, even though this was not understood and a sense of injustice resulted. This is a valuable

service, since it is just as desirable to remove genuine grievances where the action is right as where it is wrong. In all his investigations, accordingly, the Commissioner is pouring oil on some point of friction between government and citizen. Government departments are, generally speaking, very good at avoiding mistakes. What they are often not good at is explaining themselves. In the Ombudsman they have, as to nine-tenths of him, a public relations officer who justifies their doings to those who are most aggrieved at them. This shows that the public service ought to look on the Ombudsman as a friend rather than an enemy. He is a lightning-conductor for *bona fide* grievances and will keep the departments out of many political storms in the long run."

36. Professor Wade's reference to the "Commissioner" is of course to the "Parliamentary Commissioner for Administration" who performs the functions of Ombudsman in Great Britain. His observations were made in 1971 in a paper entitled *The Ombudsman: The Citizen's Defender*, published in *Law and The Commonwealth* a collection of occasional papers for the Fourth Commonwealth Law Conference, New Delhi, India.

R. SEWGOBIND

Ombudsman

19th March, 1985.

APPENDIX A

CASE NOTES

AGRICULTURE, FISHERIES AND NATURAL RESOURCES

*Case No. C/51/84***Crown land leases unjustly terminated**

Ten lessees of Crown land at Palmar Land Settlement complained to me on 19th March, 1984 that after 30 years of occupation and cultivation of their plots, they had been served by the Ministry of Agriculture, Fisheries and Natural Resources notices informing them that their leases had expired and that their plots would be taken back by the Ministry. They had left their native villages with high hopes, they averred, and had toiled hard to eke out a more or less decent living from their leaseholds. But after the service of the above notice their hopes had vanished and they saw thorny problems of displacement of whole families including school-children looming large.

The truth which came to light after my investigation was that these 10 complainants had each about 12A of land leased of which about 7A were planted with sugarcane and about 3A with vegetables. All the other tenants of the said land settlement were cultivating an average of 1A of land each.

The region had a period of severe moisture deficit for about six months and consequently yields of sugarcane were very low. Onions and other vegetables were grown in one season only and the land remained fallow for the rest of the year.

The Ministry of Agriculture was in 1984 implementing an irrigation project to benefit all planters at Belle Mare/Palmar. The project covered an area of 517A and it would cost about Rs 29 million. The planters would be required to pay for running costs and refund the capital investment over a period of 30 years. The total irrigation costs would vary between Rs 2,000 and Rs 3,000 per arpent per year. However, the planters would derive additional income as their land would be cultivated throughout the year and the yields would increase substantially.

In the project, provision had been made for the gradual replacement of all sugarcane plantation at Palmar Land Settlement by foodcrop production. In view of the high labour and capital requirements to cultivate the land throughout the year under irrigated conditions for the production of vegetables and foodcrops, it would be impossible for the above 10 persons to utilize fully the 12A they were leasing at the time. Without irrigation facilities, they had not made full use of the area allotted to them. Moreover, they had been sub-letting part of the 12A for high rents (Rs 1,000—1,500 per arpent per year) to genuine planters who worked hard to obtain the maximum benefit from the limited resources available to them.

It was noted that the lessees were paying Rs 120 per arpent annually as rent for sandy soil and Rs 60.00/arpent for sugar cane land.

APPENDIX A—continued

The policy of the Ministry was not to resume complete possession of the 12A of land as leased originally, but to reduce the acreage allotted to each of the 10 persons concerned to about 3-4A. The additional land would be redistributed to needy planters in the region.

The financial analysis of the project had shown that with the availability of irrigation water, a motivated planter could earn a decent income from 1A of land cultivated intensively.

Additional background information obtained by me was:—

- (i) according to the Lease Agreement, four arpents should have been under foodcrops and eight arpents under fodder. The leases had expired in 1969 and since then they had been running on *tacite reconduction*. The tenants had failed to comply with the conditions of the Lease Agreement and it had been difficult to make them vacate the lands. In fact, portions of the land reserved for fodder had been bulldozed by them and devoted to foodcrop production.
- (ii) The Solicitor General's Office had been consulted by the Ministry regarding the taking back of the land from the tenants before redistributing it and it had advised that Government could put an end to the leases concerned by signifying its intention to do so by virtue of Articles 1738 and 1736 of the Civil Code. In line with Article 1736 of the Civil Code, the lessees had on 1st February, 1984 been given three months' notice of the termination of their leases.

On 4th May, 1984 five of the complainants called at my Office at my request. I explained to them all the facts as revealed above. The most aged of them would not understand, arguing that he had invested a lot of money in converting a rocky and sandy Crown land into an arable land and had even built a house in concrete thereon. Among them was a graduate who told me that, instead of remaining arms folded waiting for a job, he had chosen to go back to the land and was happy with his situation and glad to hear of the promising outlook. The other complainants present also agreed with him that the new scheme would be to their advantage, although new leases on terms different from those obtaining before would be introduced by Government subsequent to the date of termination (3rd May 1984) and that according to the notice served they would be contacted in due course by the Ministry for the necessary formalities. They appreciated the measures taken by the Ministry and conceded that the abundant supply of water on the completion of the irrigation project, which was already in an advanced state of execution, would clearly further their interests and not jeopardize them as they had unjustifiably apprehended so far.

APPENDIX A—*continued***CO-OPERATIVES***Case No. C/102/83***Undue delay in regularizing sale procedure regarding a plot of land**

The purchaser of a plot of land with a building thereon complained to me on 15th July 1983 that (a) the officials of the Ministry of Co-operatives were delaying the drawing up of the notarial deed of sale even after the payment of the final instalment of the purchase price on 16th March 1983 at the Office of the Notary in presence of the officials, (b) the reason was the vendor "was in business with . . . co-operative store" and (c) his Notary told him that neither the officials nor the vendor had called upon him to collect the money, thus delaying matters unduly.

The Registrar replied to me on 7th February 1984 that the parties concerned would call on an Attorney-at-Law on 5th August 1984 for advice. Another reply signed by the Principal Co-operative Officer was made to the Secretary of my Office on 6th January, 1984 who had sent a reminder to the Registrar of Co-operative Societies whose comments on the complaint had been required by me on 15th July, 1983. The officer stated that "the parties concerned have already signed the erasure of bond except Mr D. (the vendor) and added that (a) at that stage the intervention of the Ministry of Co-operatives was over, (b) the purchaser should make personal arrangements with Mr D. in order to regularize the situation and (c) the purchaser had been so informed.

When I questioned the Registrar about the manifest delay in taking official action, he sent me a full explanation as follows:—

"Mr D. was employed as salesman of the . . . Co-operative Stores (a Co-operative Society) on 1st November, 1979.

In compliance with the law he had to furnish a security to work as salesman. He was owner of a portion of land of the extent of 50 perches in the district of Flacq and transcribed in vol. . . . on which he subscribed a bond in favour of society.

During his period of employment he made shortages and Committee instituted arbitration proceedings to recover the shortages due and an award of Rs 23,514.55 was made against him.

He sold the land which was bonded to Mr. . . . (the complainant) and out of the proceeds of the sale only Rs 20,000 was paid to society in two instalments—1st instalment of Rs 12,000 at time of sale and eight thousand about one year later.

As Mr D. was still indebted to the . . . Co-operative Stores in the sum of Rs 3,514.55, Committee was unwilling to grant release unless he make good the whole amount.

It was after several interventions of this Ministry in an advisory capacity that the committee accepted to effect the release of the bond. The delay does not therefore rest with the Ministry".

I found the explanation reasonable.

APPENDIX A—continued

Case No. C/188/83

**No action on complaint about actions of Secretary and
President of a Co-operative Society**

A member of a Co-operative Society complained to me in a letter dated 15th March 1983, with copy to the Registrar of Co-operatives, about certain acts and omissions of the President and the Secretary of the Society but had not received any reply from him or seen any sign of any action.

When asked by me on 21st January 1984 to let me have his comments the Registrar sent me the following reply on 21st February, 1984:—

“A letter dated 13th December 1983 addressed to me by Mr D. (the complainant) reached this Ministry on 20th December 1983 and immediately a senior officer was drafted to deal with the case.

A committee was subsequently convened by Principal Co-operative Officer . . . for Tuesday 14th February 1984 when Mr D. was invited to air his grievances. All points raised have been fully discussed to the satisfaction of all parties concerned.

Furthermore I would like to point out that Mr D. could have raised these points himself in committee but due to his strained relations with the committee this exercise could not be done in time. In case Mr D. still feels dissatisfied with the present arrangement, he could refer the dispute to me under section 62 of Act 10 of 1976”

After communicating the reply to Mr D., I did not hear any further from him. I therefore concluded that the Registrar could not be blamed for inaction in the matter of Mr D's complaint.

EDUCATION, ARTS AND CULTURE

Case No. C/150/84

Not allowed to sell ice-cream in schoolyard

A man's application for permission to sell ice-cream in the yard of a State secondary school had been rejected. He complained to me about this and spoke of his financial difficulties and responsibilities as the head of a family.

My investigation showed that there was a school canteen there and ice-cream was one of the various items sold. The proceeds were credited to the school fund which was used for the general running of the school. It would therefore, said the headmistress, not be in the interest of the school to allow “outside hawkers” to sell similar goods on the premises as that would naturally make the canteen sales go down.

I could not find any fault with the official action.

APPENDIX A—*continued**Case No. C/162/84***Daughter not selected unjustly**

A mother complained to me on 22nd November, 1984 that her daughter was not selected for admission in January 1985 to the pre-primary school of her choice although she lived in the "catchment area" of the school. She contended that of the 35 registered pupils only 15 were to be selected and that, according to "Government Policy", wards who would have attained their third year by the 31st December, 1984 and who lived in the appropriate area would be considered for selection. She felt aggrieved by the non-selection of her daughter and was of opinion that the selection "had not been made on merit".

My investigation showed that there were 35 applications for 14 admissions. Every child's age was taken into consideration for selection purposes. The complainant's daughter was born on 1st November 1981 and, being younger, was not selected. Photocopies of a list of the selected pupils as well as of a waiting list were sent to me by the Permanent Secretary, Ministry of Education, Arts and Culture. I was satisfied that the selection was made as stated above. Of the 14 selected, 11 were born in 1980 and were therefore 4 years of age and three were born in January or February 1981. The complainant's daughter was on the waiting list.

I invited the complainant to come and consult the photocopies in my file. But she wrote back to say that as she was in an advanced state of pregnancy she would not be able to call at my Office and that her daughter had been admitted to a private pre-primary school. I therefore communicated the explanation of the Ministry to her informing her that either her husband or a close relative could come and consult the official photocopies in my file.

I found the action of the Ministry reasonable.

FINANCE (Customs)*Case No. C/82/84***Unjust seizure of goods**

The Chairman of a new hotel company complained that they had bought "hotel materials and equipments" from a company which could not get the green light for starting its own hotel project.

The purchasers also alleged that they could not clear the goods from the Customs as they did not have any Development Certificate. At last when they obtained such a Certificate they tried to put the goods in a Bonded Store but were informed that the Ministry of Finance had ordered them to be seized and handed over for use by the Ministry of Works. The purchasers said they did not understand how these goods could be of any use to this Ministry.

APPENDIX A—*continued*

My investigation revealed that the goods had been unlawfully imported inasmuch as they had been imported in breach of Supplies (levy of Fees) Regulations 1979, as subsequently amended, and the Supplies (Import Licences) Regulations 1981. The goods had therefore been seized by the Comptroller of Customs in accordance with Section 160(a) of the Customs Act. Section 153(2) of this Act also provides that goods so seized shall, *inter alia*, be reserved for the public service as directed by the Minister of Finance. The Ministry of Works, a public service, took delivery of certain items for the furnishing of Government quarters which are meant for housing foreign experts serving under a technical assistance scheme.

I found the complaint not justified.

HEALTH

Case No. C/1/84

Sewer Problem

“Sludge gushing from the water closet of premises No..... at..... is polluting the surrounding atmosphere. The Sanitary Authority and the Ministry of Works Sewerage Office are already aware of this recurrent nuisance . . .” That was the complaint dated 3rd January, 1984 of a citizen of Port Louis who also alleged delay in abating the nuisance.

The reply of the Permanent Secretary, Ministry of Health, to my query was as follows :—

“The nuisance was linked with a Sewerage problem. The last letter which was addressed to the Ministry of Works in this connexion is enclosed for your information.

Inspections made on the 16th and 17th January reveal that the Ministry of Works has completed its works and the nuisance has now been abated.”

As the Sewerage Division of the Ministry of Works was mainly concerned, I also took up the matter with the Permanent Secretary, Ministry of Works, and a case note will be found under “Works” in this Appendix.

Case No. C/36/84

Admitted to mental hospital against his will

A young man’s complaint to me on 6th March, 1984 was substantially as follows :—

“My wife has had me shut in Brown Sequard Hospital without having me appearing before any magistrate and without me doing her any physical harm.

APPENDIX A—*continued*

My life has been a nightmare since that time and, today, my mother has succeeded in having me back at our family house which belonged to my father.

I am asking for your protection so that I may not be taken again into Brown Sequard Hospital PERMANENTLY. I agree to follow all the treatment provided by the administration and hereforth engage myself to full cooperation with the authorities."

The explanation of the Consultant (Psychiatry) of this case after I had raised the matter with the Permanent Secretary, Ministry of Health, was as follows :—

"The complainant suffers from a severe psychotic state (paranoid Schizophrenia) and has no insight in his condition, and had to be admitted under an Interim Order of Detention (issued by the District Magistrate concerned) on 27th January, 1984.

He was first seen in the out-patient of Brown Sequard Hospital on 5th January, 1984 and was prescribed medication. He came back to the hospital on 24th January, 1984 and was unmanageable at home and though advised to admit the patient, the wife was not willing for patient to be admitted and again medication was prescribed.

He was brought back to the hospital on 27th January, 1984 at 00.45 a.m. accompanied by his wife and Police Constable of Police Station in a complete confused state and had to be admitted as an emergency.

He was kept under Interim Order from 27th January, 1984 to 14th March, 1984 having improved and was discharged on medication.

On 17th March, 1984 he was brought to the hospital by his mother, having relapsed in an acute psychotic state and has had to be re-admitted under an Interim Order and is being treated accordingly.

The prognosis is poor and the complainant will have to be under psychiatric supervision for a long time."

It will be appreciated that it would have been improper for me to summarize this explanation in my way and hence its reproduction in its integral form. The complainant obviously did not realize the good that was being done to him by providing him with the treatment necessitated by his mental ill-health.

APPENDIX A—continued

Case No. C/55/84

Inadequate action regarding nuisance

1. *The Complaint.* An association of the inhabitants of a small village in the coastal region of the West complained on 28th March, 1984 about the proliferation of piggeries in their residential area, which was causing a health nuisance e.g. stench and the dumping of refuse from the piggeries into the common stream used for washing purposes by them. They alleged that the problem had existed since 1981 and that the Ministry of Health had been made aware of it but despite a few visits by the Regional Sanitary inspectors several pig-farms were cropping up to the detriment of the inhabitants.

2. *The Investigation.* A written complaint against the operation of a pig-farm was received by the Forests Department some time before December 1981 and the complaint was redirected to the Ministry of Health which received it on 22nd October, 1981. This case related to only *one* pig-farm and a case note appears in my Annual Report for 1981 at pages 22-23.

As regards the appearance of other piggeries, only two new ones were operating thus making a total of three. One of the pig-farms was situated behind the village at about 600 feet from a Government Experimental Station and at about 60 feet from the stream in question. This farm was the largest of the three with about 1200 pigs.

The Ministry's Inspectors served three notices on the owners in order to enforce compliance with the law. The owners took immediate steps to comply with the notices and with the legal standards. By April 1984 most of the nuisances related to the waste from the farm had been abated and work was still in progress on improvements of the pit used for the disposal of the waste.

The owners of the second pig-farm too had started work to put the waste disposal pit in proper working condition.

The third farm was a small one-man concern and was situated at about 25 feet from the nearest human habitation. It had not caused any nuisance yet. However, the owner's attention had been drawn to the fact that, as the land from his pigsty sloped towards a stream 50 feet away, there was a risk of pollution. He was therefore advised by the Inspectors to choose another site.

In a report dated 12th July, 1984 the Regional Public Health Superintendent stated that he and his Inspectors had visited the three farms and found that their recommendations made in April 1984 to improve sanitary conditions thereon were being implemented satisfactorily. They found that

APPENDIX A—continued

"intensive works had been done to dispose of all the faecal matter and urine issuing from these pigsties in a satisfactory manner." Indeed, two more biogas plants were being put up on the first farm to "combat radically the offensive smell usually associated with pig breeding. The third farmer, the smallest, had not yet moved his pigsty and asked for further delay of two weeks. The public health inspection team found all the pigsties clean and "devoid of foul smell."

The complainants expressed their satisfaction to me in a letter dated 25th June, 1984 about the official action but blamed the third farm for its continued nuisance.

3. *Conclusion*: They really wanted the removal of all the three pig-farms from their village area. However, they were explained that the pig breeders were engaged in a legal business activity profitable to the economy of the country so long as they respected the norms laid down by law and removal could not be imposed upon them. The villagers understood the point but finally suggested that the three farms should be required by the Ministry to be fenced by a wall. The Ministry found no merit in that suggestion "for the reason that a wall, however high, cannot contain smell nuisance nor dispose of sanitary nuisances as such". The Ministry was also advised by the Solicitor-General that the Trades and Industries Regulations (Government Notice No. 47 of 1954) made under the Trades and Industries Classification Act applied only to Municipal areas and could be extended to any other area by an Order of the Governor-General. The Regulations provide conditions to be laid down for the operation of piggeries, *inter alia*, regarding distances, etc., from any inhabited place. Consultations were under way between the Ministry and the Ministry of Local Government for extension to rural areas after obtaining such an Order.

On 15th October, 1984 the Permanent Secretary of the Ministry assured me that "a close watch on the situation was being maintained". As a result the owner of the small farm had been prosecuted on the ground that his pigsty was situated close to a stream used by the villagers and was found guilty and sentenced to pay a fine of Rs 150+Rs 20 costs. Subsequently, the pigsty was moved to an acceptable distance.

I classed this complaint as "Explained".

Case No. C/113/84

Irresponsible and arrogant behaviour of Records Clerk

The complaint from a lady was that on 25th July, 1984 the Medical Records Clerk of a State hospital behaved towards her in an irresponsible and arrogant manner and did not make any effort to trace her case file which would have enabled her to be examined by a Specialist who was to

APPENDIX A—*continued*

see her on that day on previous appointment. The patient—a lady cardiac out-patient—had to go back and forth from the Clerk's counter to the consultation room more than five times between noon and 2 p.m., the Clerk insisting, on the strength of his list, that her file had been sent to the Consultation room.

I examined carefully the statements and comments of the Medical Records Clerk and the Acting Medical Records Officer. The explanation of the Clerk was on the whole a generalization and was unconvincing as he was silent on the important allegation, as rightly emphasized by the Acting Principal Medical Officer and the Medical Records Officer, of irresponsible and arrogant behaviour towards a cardiac patient—the complainant.

The latter's second important allegation that she had to go for more than five times between 1200 hrs and 1400 hrs to the Clerk's desk and sent back by him to the nurse in the Consultation room for her file stood un rebutted and therefore tacitly admitted by him. There was not the slightest indication that he lifted even a finger to look for the file either in the lot that was on, or coming to, his desk or might be lying underneath. He chose to take refuge behind his list as if his duty was limited to that. The sad result was that the complainant could not be examined by the Specialist, in the absence of her file, in spite of a previously fixed appointment. It can easily be imagined how excruciating that experience must have been to her a cardiac patient that she undoubtedly was, especially at a moment when, as alleged, she was not feeling well. I am sure that the Clerk would not have liked to undergo such a tribulation himself.

The version of the Clerk that the patient's file had been sent to the Consultation room and must have been there was stoutly denied by the Charge Nurse and Nursing Officer who were on duty and who strongly asserted that had the file been sent, it would certainly have been found by either of them after the thorough search they had been effecting while the patient was being driven, as it were, from pillar to post. To the discharge of the nurses, it must be recorded that both of them did accompany the patient to the Clerk's desk to get the file but in vain. Curiously enough, the file was found on his desk after the departure of the Specialist from the hospital. She was then examined by a general practitioner who fixed another appointment for her to see the Specialist.

Further, the version of the Clerk that mixing up of files was *common* was refuted by the Medical Records Officer who was emphatic that such cases were *rare*. The averment about the common occurrence of mixing up of files and pressure of work was indeed a sad reflection on the Records Clerk's own diligence and ability to cope with the exigencies of his duties.

APPENDIX A—continued

From the whole evidence emerged the picture of a callous clerk unmindful of all the implications of his duty, *inter alia*, to assist patients. I therefore found that the Clerk was guilty of a manifestly unjust act in failing to assist the patient as regards the tracing of her file within a reasonable time and that her complaint to me was justified.

As required by Section 100 of the Constitution, I reported my finding to the Permanent Secretary, Ministry of Health, with copies to the Prime Minister and the Minister of Health on 7th September, 1984. I also recommended that appropriate departmental action should be taken in this case against the Clerk so that if he chose to continue working in a health establishment like a hospital amidst suffering human beings, he should always adopt a humane approach to the most difficult situation.

On the 31st October, 1984 the Permanent Secretary, Ministry of Health, informed me that action was being taken "to inflict a severe reprimand" on the Clerk concerned in accordance with Regulation 42 of the Public Service Commission Regulations 1967.

HOUSING, LANDS AND THE ENVIRONMENT

Case No. C/122/84

Unjustly refused transfer of a lease

Mr. H. alleged that his late grand-father, had transferred a portion of Crown land under onion plantation to his name by contract and he thus became a lessee, as could be verified at the Land Use Division, Reduit.

In 1975 the said grandfather decided to transfer his "Pas Geometriques" Land lease Lot No. 9 to his name and they both made a joint application to the Ministry of Housing, Lands and the Environment to that effect. Subsequently, the District Council of his region took up the matter and made him fill in a form. But, to his great astonishment and grief, he received a letter from the Ministry informing him that the transfer would not be effected and that the lease had become void since 1980. Yet, he had been paying the required rent till the date of his complaint to me i.e. August 1984.

He had built a concrete house on the plot of land and he was in a desperate situation after receipt of the Ministry's letter.

My investigation showed that the plot of land of an extent of 0A10 was part of *Pas Geometriques* and was leased to one Mr. W. whom Mr. H. considered as his grandfather. This relationship was mutually nurtured. The lease was to expire on 30th January 1980 but on 30th April 1975 Mr. W. applied for the transfer of the lease on the name of his "adopted" grand-son, Mr. H. The District Council concerned was consulted by the Ministry in

APPENDIX A—*continued*

order to determine whether Mr. H. was eligible for a building site lease on a Pas Geometriques. It was then brought to light that Mr. H. was a primary school teacher and as such did not belong to the low-income category for which a building site lease on Crown land was meant.

The lease could not for the above reason be transferred to Mr. H. But the renewal of the lease on the name of the sitting tenant Mr. W. was approved by the Minister and Mr. W. was informed accordingly and was requested in September 1981 to pay rent (Rs 25.00 annually) for the period 1st July 1980 to 30th June 1982 pending the drawing up of the necessary deed.

On 19th October 1981, Mr. W. declined the offer of renewal in his name and reiterated his request to transfer the lease to his grandson, Mr. H.

In December 1982, Mr. H. applied for the transfer of Mr. W.'s lease to him but he was informed by the Ministry that his application could not be entertained as building site leases are personal to the lessee (in this case Mr. W.) and expires on his death.

On 28th July, 1983 Mr. H. applied again for the transfer to his name of Mr. W.'s lease saying that he had "inherited" the house standing on the plot after the death of Mr. W., his "grandfather".

In the meantime, with the exception of Rs 26.50, rent for the land had been paid up to 30th June 1984 according to the Ministry. In September 1984 the income ceiling qualifying applicants for a building site as in the present case was Rs 1500 per month and as Mr. H.'s income exceeded that sum he was not eligible for the lease.

But, finally, considering that the building found on the leased plot of the late Mr. W. had been left to Mr. H. by Mr. W. by a will, the Ministry decided to lease the plot to Mr. H. at an annual rent of Rs 500.

He was informed accordingly by the Ministry in writing on 6th December 1984 stating the various conditions. Mr. H. again complained to me of these conditions but added that he would accept the lease if nothing could be done about it. I replied that a lease was a matter of contract based on the consent of both parties and it was up to him to decide. He thanked me eventually for my intervention.

I found that the initial refusal to transfer the lease by the Ministry was not an unjust act.

APPENDIX A—*continued*

INCOME TAX

*Case No. C/140/84***Two Income Tax Return Forms**

Mr. G., a Government pensioner, had been receiving two Income Tax Return Forms with two different file numbers and he had been completing them both and sending them to the Income Tax Department.

He complained to me on 27th July, 1984 about it and said he had received a form 51 requiring him to pay Rs 576.00 tax on his income for the year ending June 1980. As he had come personally to my Office with a copy of his letter of complaint addressed to the Commissioner of Income Tax, I spoke to the Deputy Commissioner on the phone about this case and his reply was that he would look into it and let me know the position.

Subsequently, the Deputy Commissioner informed me as follows:—

“The opening of a second file for the abovenamed taxpayer happened as a result of a wrong conversion of the latter’s old file which was. . .

The error has been corrected and I am pleased to confirm that Mr . . . has never been doubly charged to income tax.

I would like to renew my apologies for the inconvenience caused by the delay to take the necessary action after your phone conversation”.

Mr. G. too was informed accordingly by the Deputy Commissioner. Although there had been an administrative error yet no injustice had resulted.

*Case No. C/158/84***Unjust deduction of tax**

A Government pensioner’s complaint to me was that on 13th November, 1984 he noticed that there was a deduction of Rs 118.00 from his pension for the month of September 1984. On enquiring at the Accountant-General’s Office he learnt that his name appeared on a list sent by the Income Tax Office for deduction of Rs 118.00 for a period of nine months and that the said deduction would cease as from October 1984.

He then contacted an officer at the Income Tax Office who told him that a second income tax return had been made in his name which caused the deduction to be effected. He was taken aback as he had duly filled in and submitted his return for the year of assessment 1984-85 together with a remittance of Rs 106.00. He had the receipt for that payment. On 14th November, 1984 he protested against the deduction which he considered to be unjustified. He sent me a copy of his protest to the Commissioner of Income Tax.

APPENDIX A—*continued*

I took up the matter with the Commissioner on 28th November, 1984 and the reply was that "Income Tax has erroneously been deducted from the pension of the abovenamed in September 1984. Remedial action was taken up immediately and the tax deducted has been duly refunded to him on 19th November 1984".

In fact the complainant confirmed to me that he had received on 27th November, 1984 a cheque for the sum of Rs 118.00 dated 19th November, 1984 from the Commissioner of Income Tax. It was therefore clear that the Income Tax Office immediately rectified its error and that before my intervention.

LABOUR AND INDUSTRIAL RELATIONS

Case No. C/28/84

Undue delay in dealing with complaint of non-payment of retiring benefits by employer

A retired labourer of a small sugar-cane planter complained that the Labour Inspector of his region was delaying to finalize his case regarding end-of-year bonus and retiring benefits. He had not been paid a single cent by his employer in this respect on retirement in September 1983. The Labour Inspector, he alleged, had made him understand that it was most likely that he would get about Rs 7,000.00 which sum he found unacceptable as he had heard of the case of a retired woman-labourer who had received Rs 13,860.00 as retiring benefits from her employer.

My investigation showed that the complainant had registered a complaint at the Labour Office of his area on the 23rd September 1983. The Labour Inspector met him and his employer on the 30th September and 5th October 1983. A formal statement was recorded from the complainant on the 7th November, 1983.

As the employer was not inclined to pay the worker's due, action was initiated to prosecute him. However, in order to compute the severance allowance payable, it was necessary to ascertain first the contributions made by the worker under the National Pensions Act. The employer having failed to submit the information, a correspondence had to be exchanged with the Ministry for Employment and of Social Security and National Solidarity. All the required information was obtained on the 25th January, 1984.

The parties were again convened at the Labour Office on the 9th March when the employer agreed to pay the severance allowance due to the complainant, i.e. Rs 8,976.40. A part payment of Rs 5,000 was effected on the 16th March and the balance was to be paid on the 1st June.

For the worker's "summary" dismissal, the employer had refused to pay the wages in lieu of notice, which amounted to Rs 3,054.90, contending that he *had* given proper notice of termination of employment according to law. A further inquiry was carried out into this issue.

APPENDIX A—*continued*

On 10th April 1984, a Senior Labour Officer and the Labour Officer concerned called at my Office at my request with the relevant files and documents to explain the computation of the severance allowance (Rs 8,976.40). It transpired that the complainant had been in the employ of the planter for a continuous period of 20 years which was not contested by the latter.

The Senior Labour Officer said that the severance allowance had been calculated in accordance with Section 36 (3) (a) (1) of the Labour Act (No. 17 of 1983). At the time of his retirement the complainant was drawing a monthly salary of Rs 1,018.30. His severance allowance would therefore be 1018.30×20 i.e. Rs 10,183.

2

In virtue of Section 37 (1) (a) (iv), the employer may deduct from the severance allowance payable five times the amount of the annual contributory retirement pension produced by the employer's share of the contributions payable in respect of the worker under the National Pensions Act.

In a letter dated 25th January, 1984 the Ministry of Social Security had informed the Labour Inspector that the complainant qualified for payment of Rs 20.11 per month as pension produced as stated above. The sum of Rs 1,206.60 ($Rs\ 20.11 \times 12 \times 5$) was therefore deducted from the gross amount of Rs 10,183. as calculated above ($Rs\ 10,183 - Rs\ 1,206.60$). Consequently, the severance allowance that was due to the complainant was Rs 8,976.40.

On the question of the alleged disparity as pointed out by the complainant between his severance allowance and that of the woman-labourer referred to by him (the complainant could neither give me the name or place of work of the latter), the Senior Labour Officer explained that presumably she must have been employed by an employer who owned more than 100 arpents of land or a sugar-factory estate whereas the complainant was employed by an employer who owned more than 25 arpents but less than 100 arpents. The mode of computation of retiring benefits differ in each case according to law. In the case of those employed by owners of more than 100 arpents or by big sugar estates, their retiring benefits are calculated according to paragraph 20 (2) (a) of Government Notice 214 of 1983 and the formula 30 (W-1.23P) is used for the calculation. Had this formula applied to the case of the complainant, he would have been entitled to receive about Rs 29,000. But, unfortunately, he was employed by a small planter (owning 47 arpents).

During a visit to my Office, the complainant agreed with the whole explanation.

His claim for balance of wages in lieu of notice was referred to the Industrial Court as he had been given admittedly only 35 days' notice of termination of employment instead of three months' notice.

APPENDIX A—*continued*

Finally, the Permanent Secretary, Ministry of Labour and Industrial Relations, informed me that the complainant had been paid the sum of Rs 8,976.40 as severance allowance and that the complainant had accepted a sum of Rs 500 offered by his employer as balance of wages in lieu of notice. Payment was effected in Court.

The Sugar Industry (Agricultural Workers Remuneration Order) Regulations 1983—Government Notice No. 214 of 1983—which *inter alia* regulate eligibility for bonus in respect of workers retiring before the end of the year were made on the 30th December 1983 and given retrospective effect as from 1st October 1983. The complainant having retired on the 15th September 1983 was therefore not entitled to the end-of-year bonus.

I found that the Labour Inspector had not remained idle with regard to the complainant's case.

POLICE*Case No. C/182/83***No action regarding declaration of threats of violence by neighbours**

Owing to repeated threats of violence by his neighbours, the complainant was, according to him, compelled to leave his house and family and live almost like a tramp out of fear. The origin of this, he said, was a dispute regarding a portion of land and an adjoining path near his house.

There was no trace of any declaration or request for Police assistance during 1983 while he was living with his family. There was only a letter dated 9th February, 1983 addressed to the Superintendent of Police, Plaines Wilhems—Black River, in which he complained of the threats of his neighbours. The Police attended to his request and warned those concerned to keep the peace.

In February 1983 the complainant left his family and went to live successively at two different places. When questioned, his wife and his son told the Police that in their opinion the complainant was mentally affected as a result of an abuse of alcoholic drinks. Hence the abandonment of the matrimonial home. They did not support the version of threats by the neighbours given by the head of the family who was behaving as a fugitive obviously tracked by hallucinations engendered by his addiction to alcohol.

*Case No. C/104/84***Unjust prosecution**

The gist of Mr C's complaint was that the Police had taken no action on his declaration that (a) he had been made to serve a sentence of 12 months' imprisonment with hard labour and to pay a fine of Rs 30 under a false charge of wounds and blows levelled against him by the victim at the instigation of a woman who had evil designs against him, (b) after his

APPENDIX A—*continued*

imprisonment one Mr. R. met him by chance near a temple and told him that he (Mr. R.) had seen the whole incident and that neither Mr. C. nor his two co-accused were the authors of any aggression upon the victim and (c) Mr. R. swore an affidavit to that effect drawn up by an Attorney-at-Law adding that the victim while cycling had been injured in colliding with another cyclist who was carrying an iron bar. The proceedings of the Court were not questioned. I told Mr. C. that in our law there is no provision for reopening a criminal case. All he could have done was to appeal but the time had elapsed and no new evidence could have been allowed on appeal e.g. Mr. R.'s evidence.

When asked for comments, the Acting Commissioner of Police explained to me that the case of wounds and blows occurred on 30th September, 1979 and that an Information with three counts were laid before the appropriate District Court. In Counts 1 and 2, Mr. C's brother B was accused of inflicting wounds and blows on one X and in Count 2 the same brother was accused of a similar offence upon the person of one P. In Count 3 Mr. C and his brother B and another brother were accused of wounds and blows upon the person of one G causing incapacity from personal labour for more than 20 days. The accused were found guilty as charged on 11th January 1982 and Mr. C. was sentenced as mentioned above. The latter had adduced evidence of his alibi which was rejected by the Court.

Mr. C. had made *three* declarations, namely, on 3rd December 1983, 21st January 1984 and 3rd August 1984. The local Police had taken statements from him and his witness Mr. R. and the latter maintained what he had stated in his affidavit.

On my suggestion the Commissioner of Police sought the advice of the Director of Public Prosecutions as to the course the Police should follow in the light of the inquiry after the above three declarations. The Director of Public Prosecutions eventually advised the Police that Mr. R. should be prosecuted for swearing a false affidavit.

Mr. C. was calling at my office very often and had an adverse feeling that he had been a victim of evil machinations on the part of the woman referred to above and was eager to vindicate his innocence on the strength of the affidavit of Mr. R. I wrote to him to inform him of the imminent prosecution by the Police as advised by the Director of Public Prosecutions.

Taking all the facts into consideration, I concluded that the Police had done what it could in this case.

Case No. C/130/84

No action for false and malicious denunciation

A prisoner's complaint to me was that before his imprisonment, a declaration was made at a Police Station against him that he and another man had demanded money from the declarant while he (the complainant) was armed with a revolver and after pressing it under the declarant's chin.

APPENDIX A—*continued*

The Police had made a full inquiry into several connected declarations about detaining a young man of 18 years of age without lawful authority, assault on a young girl of 19 years of age (declarant's sister), demanding money with threats as above etc.

Finally, the Director of Public Prosecutions to whom the Police inquiry had been submitted advised prosecutions for three offences including that of making a false and malicious denunciation against the complainant in writing to a public officer.

The cases were tried by the District Court concerned and the author of the denunciation who was found guilty of false and malicious denunciation in writing to a public officer was sentenced to pay a fine of Rs 1,000.— + Rs 25 costs.

I informed the complainant-prisoner accordingly. I found his complaint not justified.

PRIME MINISTER'S OFFICE

Case No. C/49/84

Non-payment of passage benefits after retirement; increments not taken into account

A former officer of the public service wrote to me on 26th March, 1984 to say that he had joined the public service in 1951 and was made to retire in the public interest with effect from March 1980 and complained to me that (a) he had not been paid his "emoluments" during the period of his interdiction i.e. from 25th January 1977 to 28th March 1980 (effective date of his retirement), (b) not been granted his leave and passage credits following his retirement, (c) the increments to which he was entitled had not been taken into account for the computation of the passage credits and (d) the passage credits offered (Rs 6,829.27) were derisory and totally unacceptable.

When required under Section 97(8)(d) of the Constitution to explain why he had complained to me more than 12 months after his retirement in 1980, he said that he was in continuous correspondence with the Secretary to the Cabinet pleading his cause. I accepted this as reasonable since I had evidence of it and I started investigation.

I took up his case with the Secretary to the Cabinet on 18th April 1984 emphasizing as regards (a) above that in a letter dated 25th January 1977 the then Secretary to the Cabinet had clearly stated that the officer had been interdicted *on full pay*.

APPENDIX A—continued

After investigation I replied to the complainant on 8th May, 1984 as follows :—

“(i) You were paid your full salary while under interdiction. Indeed, letter No. PCF. 1112 of 25th January, 1977 of the then Secretary to the Cabinet to you clearly stated that you were interdicted “on full pay.” But if by using the term “emoluments” you mean to include increments, then the answer is naturally that this question of increments was adjudicated upon by the Supreme Court in its judgement of 5th December, 1980 when it found that you were not entitled to the increments you were claiming. This is the view of the Secretary to the Cabinet which I fully endorse. This issue cannot be investigated by me at it is *res judicata*, (i.e. it has *autorité de la chose jugée*) and as I have no jurisdiction to question judicial acts or omissions. You rightly stressed that you were not asking me to intervene in the matter of the Supreme Court judgment.

(ii) The question of leave was disposed of by the Public Service Commission by not acceding to your request for approval of such leave (your letter of 19th April, 1983 and the letter of the Secretary of the Public Service Commission dated 27th May, 1983 refer). Your contention seems to be that the question of leave is not a matter for the Public Service Commission to consider. Whether in this particular case the Commission acted beyond or without jurisdiction is not for me to decide. I derive my powers from the Constitution and they do not include the power to investigate the acts or omissions of the Public Service Commission. I regret therefore that this question too cannot be investigated by me since it has already been determined by the said Commission as admitted by you in paragraph 3 of your letter of 16th April, 1984 to me.

(iii) with regard to passage benefits, the Secretary to the Cabinet has given the following explanation:—

“These are governed by General Orders Establishment (GOE) 4/1/31 and 4/1/41 (i) as conveyed under Establishment Circular Note No. 14 of 1969. In this connexion, attention is invited to the specific provision in G.O.E. 4/1/41 (i) to the effect that the grant of passages will be conditional on the officer using the outward passage before the expiry of his pre-retirement leave. As Mr.....(the complainant) was retired forthwith by the Public Service Commission, this resulted in Mr.....not being granted any pre-retirement leave. In view thereof Mr.....was advised by my predecessor by letter dated 20th February, 1981 to say when he intended to make use of his passage benefits. Mr.....

APPENDIX A—*continued*

did not act on that suggestion, and if he did he would have been authorised to make use of his passage benefits until the end of financial year 1981-82 in accordance with standing establishment practice, which practice was formally conveyed subsequently in Establishment Circular Note No. 2 of 1981.'

It is safe to assume that you must have become aware of this Circular (i.e. Establishment Circular No. 2 of 1981) which was issued on 27th May, 1981 since you state in paragraph 2 of your letter of 16th April, 1984 to me that by that time you were in consultation with the Civil Service Unions. The latter could not have failed to apprise you of it as, you will no doubt appreciate, it is one of their functions to keep abreast of all Establishment developments.

Further there is no evidence of any reason for which you did not ascertain the mode of computation of your passage benefits by contacting the Supervising Officer of the Ministry concerned as suggested by Mr..... in his letter dated 20th March, 1981 signing for the Establishment Secretary. It would appear that you now accept the quantum offered; otherwise you would have stated what, in your view, should have been the right one and the reasons therefor.

On the other hand, you were duly assisted by your legal advisers and the Civil Service Unions who could have no doubt helped you to find out the exact quantum in time to allow you to avail yourself of your passage benefits. There is no indication at all in your complaint to me of the views or actions of the Unions (and their results) as regards your alleged claims.

However, if you consider you have a legal right to enjoy the three items as specified by you, then you have a remedy by way of legal proceedings. You should therefore consult your legal advisers, if you wish, and act accordingly. Indeed, you had such proceedings in mind as far back as 1981 (vide your letter of 28th February, 1981 to the Secretary to the Cabinet). In an ultimate effort, I am querying further the Secretary to the Cabinet to find out how the passage benefits could have legally lapsed. I shall write to you again as soon as I hear from him but this should not preclude you from seeking and following legal advice as suggested above.

APPENDIX A—*continued*

However, if you have any remarks to make, please let me have them in a concise and precise manner at your earliest."

Subsequently, the complainant called at my Office accompanied by his Counsel. We discussed his case in the light of the explanations of the Secretary to the Cabinet and Counsel seemed to agree reluctantly that they were reasonable and at the same time spoke vaguely of injustice. On the question of passage credits, I asked complainant why he questioned the official computation and he replied that it had been based only on the period 7th September 1970 (date on which he had resumed duty after returning from overseas leave) to 24th January 1977 and that the interdiction period should have been taken into account in the computation. I pointed to him that passage credits are granted for active service and that, strictly speaking, I could not investigate personnel matters in the public service. I showed to his Counsel the opinion of the then Solicitor-General given in 1970 in this respect to the then Ombudsman and told him that I agreed with the Solicitor-General.

Nothing solid resulted from this interview. However, I continued my correspondence with the Secretary to the Cabinet on the question of lapsing of the passage benefits of complainant and the grant of such benefits to two retired officers mentioned by him alleging discrimination against him.

On 19th July, 1984 I wrote to him as follows :—

"As I intimated to you and to your Counsel, when we met at my office on 25th May, 1984 I took up again the question of lapsing of your passage benefits with the Secretary to the Cabinet.

The explanation of the Secretary to the Cabinet is as follows :—

"Passage Benefits:

The first point relates to passage benefits which according to Mr. should have been computed for the period September 1970 to March 1980. Mr. was informed by my predecessor on the 20th February 1981 that his passage benefits amounted to Rs 6,314.26 (Appendix A). That covered the period from resumption of duty following return from his last vacation leave (7th September 1970) to the date preceding his interdiction (24th January 1977). The period subsequent to that date (25th January 1977 to 27th March 1980) during which he was interdicted was not reckoned because periods of leave do *not* generally qualify for passage credit earnings in accordance with Establishment Circular Note No. 5 of 1974 supplemented by Note No. 1 of 1975 (Appendix B)."

APPENDIX A—continued

As regards the two cases mentioned by you, the explanation is that the Chief Executive Officer retired from the Service on medical grounds and the Female Prison Officer was retired in the public interest, after the grant to her "forthwith of any leave for which she may be eligible" as decided by the Public Service Commission. These cases are therefore not similar to yours.

The Secretary to the Cabinet goes on to say:—

"Droit Acquis:

With regard to your observations about earned passage benefits and 'droit acquis', the General Orders (GOE. 4/III/2(i) provide that nothing in these Orders shall give an officer a right to any leave, passage or other privilege (Appendix E.).

Regulations:

The conditions of service of public officers are governed by:

- (a) the relevant Service Commission Regulations in respect of appointments, promotions and discipline;
- (b) the Civil Establishment Act and the Estimates in respect of salary; and
- (c) the General Orders Establishment (supplemented from time to time by establishment instructions) in respect of other conditions of service, such as leave and passages".

On receipt of these explanations on 22nd June, 1984 I wrote again to the Secretary to the Cabinet to point out that your passage benefits as computed by the Permanent Secretary, Ministry of . . . , (Letter No. . . dated 5th May 1981) amounted to Rs 6,829.27 and not Rs 6,314.26 and to express the view that as a comparatively small sum was involved, it would be *equitable* if you could be allowed even now the use of that sum as passage benefits. I suggested a reconsideration of your case on this point.

In reply I received a letter dated 12th July, 1984 reading as follows:

"I have reconsidered the case of Mr . . . in the light of the points made in your letter (C/49/84) of the 26th June. I regret I do not feel able to vary the decision previously conveyed to him.

I must again emphasise that, in spite of my predecessor's request, Mr . . . never indicated when he intended to make use of his passage benefits. His argument that he was discussing his case with his legal advisers and his trade union is to say the least suprising. The Supreme Court, as you are aware, delivered judgement in that case on the 5th December, 1980".

APPENDIX A—continued

It would appear that you could never get reconciled to the idea of accepting even the slightly revised sum because you had been all the time telling yourself that the passage benefits should have been computed after taking into consideration all the increments which, according to you, should have accrued to you. Unfortunately, the Supreme Court had adjudicated unfavourably on the question of increments.

As I explained to you at the meeting referred to above, you have raised purely personnel matters in your complaint to me, albeit *ex post facto*. I regret I cannot pursue the matter any further."

The explanations of the Secretary to the Cabinet are, in my view, reinforced by the Supreme Court Cases *Sèvremont v Williams* (1947) MR 35 and *Courau v Colonial Secretary* (1932) MR 227 cited in *Yerriah v Public Service Commission* (1974) MR 24 where the Supreme Court said at page 25: "We further agree that administrative regulations like the local General Orders or the Colonial Regulations are not laws within the meaning of Section 119 of the Constitution". Citing again *Courau* in *Yerriah v Public Service Commission* (1978) MR 57 the Supreme Court said at page 61: "Colonial Regulations and G.O.E. are not laws for those purposes. Nor do they create any enforceable contract between Government and a Civil servant".

Further, it is well known that even equity does not help those who are guilty of laches (e.g. delays). Indeed, I had made this clear to the complainant in presence of his Counsel at the meeting of 25th May 1984 at my Office. From 1981 to 1984 the complainant never intimated, although requested to do so, the date on which he inteded to make use of the passage benefits offered.

PRISONS

Case No. C/190/83

Reprisal measures after deposing before Basset Fact-Finding Committee

A prisoner who had deposed before the Basset Fact-Finding Committee complained to me that he was a victim of the following reprisals:—

- (a) no action regarding his deposition alleging bribery on the part of a top-grade prison officer when the latter was in the Criminal Investigation Division of the Police;
- (b) unfairly charged with unauthorized possession of cigarettes in cell;
- (c) as a consequence of (b) he was found guilty and made to forfeit two days remission and canteen facilities for two weeks;
- (d) issue of mangoes instead of bananas;
- (e) not allowed to use his *private cash* to purchase greeting cards; and
- (f) not allowed to write to the Minister of Justice or other persons.

APPENDIX A—continued

My investigation revealed the following facts—(I quote from the official version):—

- “(a) the allegation of bribery was duly referred to the Police and was still pending inquiry;
- (b) and (c) on Sunday 11th December, 1983 at about 18.00 hrs, a special search was carried out in his cell after lock up of the Prison and 18 canteen cigarettes were found therein. As he had committed a disciplinary offence, he was reported accordingly. On 12th December, 1983 the case was heard by the Acting Commissioner of Prisons. The prisoner pleaded not guilty and the case was postponed to the 13th December, 1983, as the witness in the case, Prison Officer Grade II . . . was not available. On 13th December, 1983 the case was tried and he was subsequently found guilty and awarded the following punishments viz forfeiture of two days’ remission and removal from the Earnings Scheme for a period of two weeks;
- (d) the Prison Diet provides *inter alia* the issue to prisoners of two bananas daily *for the morning meal only*. Before the recent cyclone mangoes were available in profusion from the Prison Gardens. It was therefore decided *in consultation with the Prisons Medical Officer* to issue mangoes in lieu of bananas to prisoners whenever available, for their morning meal. This issue the object of which was to dispose of the substantial quantity of mangoes available and also to effect a saving on this item (bananas), was done on five occasions only namely on the 17th, 19th, 23rd, 27th November, 1983 and on 1st December, 1983;
- (e) in December, 1982 the prisoner applied to purchase greeting cards from his earnings, *not* from his private cash. As he had no funds available in his earnings account, the Officer-in-Charge Earnings Scheme arranged to provide him with four greeting cards *on credit* on the understanding to settle the amount gradually from his earnings. He accepted this proposal. No prisoner is allowed to purchase greeting cards from his private cash. The object of granting prisoners the privilege of purchasing greeting cards etc. from the Earnings Scheme is precisely to get them to save in order to meet their own requirements.

If prisoners were allowed to use private cash to purchase Xmas and New Year cards this would create a disparity and would give an unfair advantage to those who have the means and many applications would come forth from prisoners to allow them to ask their relatives and friends to send them money. For obvious reasons money from individuals for a prisoner could not be accepted;

APPENDIX A—*continued*

- (f) Section 2 of G.N. 10 of 1959 makes specific provision for convicted prisoners who wish to make representations on matters connected with their trial or conviction. It would therefore be contrary to the Law to allow prisoners to depart from this legal provision”.

Section 2 of the Government Notice of 1959 introduced a Regulation 51F into the Prison Regulations made by the Governor in Council under the then Prisons Ordinance (now the Prisons Act). Regulation 51F reads as follows:

“Convicted prisoners who wish to make representations on matters connected with their trial or conviction may do so by petition to His Excellency the Governor, but shall not be allowed to make such representations to a Judge, Member of the Legislative Council, foreign Consul, or public department or authority in the colony or abroad, or to request any person to approach such person, department or authority on their behalf”.

Now this power to make regulations is exercised by the Minister of Reform Institutions. As is well known, the Minister of Justice is a Member of the Legislative Assembly.

I informed the complainant-prisoner of the above facts and of my finding that his complaint was unreasonable and therefore not justified.

Case No. C/11/84

Visiting Orders to relatives not issued

A prisoner complained to me in January 1984 that despite many requests made officially by him to send visiting orders to his parents and relatives, no such orders were sent with the result that he received no visits from them. Indeed, he alleged that one visiting order addressed to his father was received at his house after the latter's death.

My investigation which included inspection of certified true copies of Requests and Complaints and Visit Sheets of the prison concerned and a comprehensive explanation of the officer-in-charge showed the following situation:—

The officer-in-charge of visits at the Records Office since September 1982 attended all association yards, kitchen, hospital wards and bakery to record particulars about visits in order to despatch the orders. The prisoners at that particular prison were entitled to a visit of thirty minutes every four weeks. After receiving the visiting order, the relatives come to visit the requesting prisoner on any date convenient to them (the relatives) between 1100 hrs. and 1600 hrs. and three persons are allowed to visit a prisoner at one time.

APPENDIX A—*continued*

As far as the complainant-prisoner was concerned, a total of 55 visiting orders including special visiting orders and duplicate visiting orders had been sent to his relatives since his imprisonment on 28th May, 1980. His relatives paid visits on 21 occasions with visiting orders and his friends paid him visits on only two occasions i.e. on 5th and 25th May, 1982.

Out of 7 visiting orders which had been despatched from July 1983 to January 1984, his relatives paid him visits on two occasions only i.e. on 24th September 1983 and 21st January 1984.

His relatives had been visiting him at irregular times and, on some occasions, although they called at the Main Gate at irregular intervals, yet they were allowed to visit him.

It was clear that he did not receive the visit of his father before the latter passed away as since the complainant's admission to prison, his father had never visited him although visiting orders had been sent to the parents' address as given by him to the officer-in-charge. It was also clear that his relatives including his father were not willing to visit him presumably of the opprobrium that his term of 12 years' imprisonment must have brought to the family. This presumption is reinforced by the fact that I have received several letters from prisoners to help them get a house from the CHA (which obviously I cannot do; I only ask them to apply direct on the proper form through the Commissioner of Prisons) for the reason that their parents are not willing to receive them back in their homes.

I found that the prison authorities were not to blame in any way in this case.

*Case No. C/18/84***Disappearance of a prisoner's jacket from the Prison's Reception Office**

A man who was remanded to jail on 22nd October, 1980 surrendered his personal garments consisting of a blue shirt, a pair of jean trousers, a slip and a brown jacket. He went several times to Court with the same garments and each time he returned to prison with the same property. He was sentenced to imprisonment after conviction in November 1980 and all the above garments were duly recorded at the Reception Office of the prison as his private property. The same procedure was followed more than once as he was in and out of prison depending on his sentences.

On 11th August 1982 he was returned to the ordinary prison after spending some time at the Phoenix prison—a high security prison. Again his garments were recorded exactly as listed above. But to his dismay, between July and October 1983, when he had to see the dentist his brown jacket was not to be found and he reported the matter to the officer-in-charge and had to see the dentist wearing his prisoner's garb as he did not want to wear his other garments without his jacket.

APPENDIX A—*continued*

On 25th January 1984, he complained to me that after his report about the missing jacket a departmental inquiry was made but after that he did not see any sign of any action in that connection.

My investigation showed that the prisoner had made his report on 2nd September 1983 and this was referred to the Reception Officer of the Prison who, after investigation, confirmed that the jacket was missing from the prisoner's private property. A departmental inquiry was held, as stated by the prisoner.

On 28th February 1984, the Commissioner of Prisons wrote to me to say that there was a *prima facie* case of neglect of duty on the part of the officer-in-charge of the Reception Office and that the latter would be "defaulted accordingly". Indeed the latter admitted the charge of neglect of duty, adding that that was due to pressure of work. A top-grade officer heard the plea and a severe warning was given to the officer found guilty who was also surcharged with Rs 240, the market value of the prisoner's missing jacket, i.e. 75% of the purchase price as alleged by the prisoner (Rs 325 in June 1980). The surcharge of the market value was accepted by the prisoner and on 11th July 1984 the officer paid this amount into the prisoner's account at the prison.

I therefore found the complaint justified but rectified and in accordance with Section 100 of the Constitution, I reported my opinion to the Commissioner of Prisons that the disappearance of the jacket was the result of a manifestly unreasonable act i.e. neglect of duty. The only recommendation which I could make was that a prisoner's private property should always be kept in safe custody and under constant review in order to avoid any tampering. I also sent copies of my report to the Prime Minister and the Minister of Reform Institutions.

*Case No. C/34/84***Negligent medical treatment of client-prisoner**

A Barrister-at-Law complained to me on 1st March, 1984 on behalf of his client—a male prisoner of 23 years of age—that the latter (a) had been assaulted by some prison officers (b) had been seriously injured, (c) did not receive the required medical treatment, (d) was not allowed to be examined by a private doctor, and (e) that he (the lawyer) was not allowed to visit his client at the Phoenix prison.

My investigation revealed that the prisoner was one of nine prisoners who had effected an escape from Beau Bassin Prison on 28th December, 1983 at about 13.50 hrs by escalating the prison security wall by using a trestle top from the tailor's workshop, after beating the officer-in-charge of that shop and threatening officers on the way with carpenters' chisels and screw-drivers.

APPENDIX A—*continued*

He and six other escapees were re-captured within an hour by search parties consisting of prison officers. He resisted arrest and force had to be used. After arrest he was transferred on the same day to the Phoenix Prison and was seen by the Prison Medical Officer on 29th December, 1983. This was evidenced by the Prisoners' Complaint Sick Book which was produced to me.

The Barrister saw the prisoner at this prison on 3rd January, 1984 and subsequently made an allegation of assault on his client by Prison Officers. The matter was referred to the Police by the Prison Authorities and the Police inquiry was in progress.

On 16th January, 1984 the prisoner was seen by the Orthopaedic Surgeon at the Princess Margaret Orthopaedic Centre following complaint of pain in his left foot. The foot was placed in POP as ordered by the Surgeon. On 1st February, 1984 the prisoner himself removed the plaster saying "mo li pied ine bien, li pé amerde moi" (my foot is well, it, (i.e. the POP, is hindering me). Thereafter he never complained of the same pain. However, he was referred again to the Orthopaedic Surgeon as per appointment for review on 14th February, 1984 and the latter prescribed Dolex tablets for administration in case of pain.

The Barrister who saw him again on 21st February, 1984 made a complaint to the Commissioner of Prisons that his client had been complaining of stomach pain and blood vomiting but had not been given appropriate medical attention. The truth was that he was seen by the Prison Medical Officer on 11th and 18th February, 1984 and in between by the Senior Prison Hospital Officer on duty and no blood vomiting was observed.

The prisoner had been eating regularly and no loss of weight was noticed. In fact his weight record was as follows:—

			Kg
on admission	...	...	85
25th May 1983	...	...	85
15th September 1983	...	...	90
11th February 1984	...	...	90

He was transferred back to the Beau Bassin Prison on 27th March, 1984. He had at no time showed any evidence of blood vomiting and his general appearance was good.

APPENDIX A—*continued*

On 11th May, 1984 the Chief Hospital Officer, two Senior Hospital Officers called at my request at my Office and produced the prisoner's medical file and the Complaint Sick Book. The entries, made almost daily, supported the report of the Prison Medical Officer which was sent to me. The latter had ordered an X-Ray of the left ring finger on 14th January, 1984 which was done on 16th January, 1984 at the Princess Margaret Orthopaedic Centre and a fracture of the proximal phalanx was revealed; the casualty officer of Victoria Hospital referred the case to the Orthopaedic Surgeon at the PMOC for further management and the Surgeon was to review the case on 31st January, 1984.

On the question of blood vomiting, the following extract from the Prison Medical Officer's report dated 13th April, 1984 is instructive:—

"From there on (i.e. after 11th February, 1984), the prisoner kept on complaining of stomach pain and blood vomiting but could not produce any evidence or indication of such. On Sunday 12.2.84 an hospital officer was expressly sent to verify the prisoner's complaint of blood vomiting but did not find any evidence to that effect. On 14.2.84 the prisoner was sent to PMOC for review. The surgeon noted that the prisoner had removed his POP and prescribed an analgesic.

On 25.2.84 in view of the prisoner's persistent complaint of blood vomiting and passing dark stool without any evidence to that effect he was given a plastic bowl to collect his vomitus. I carried out a stool examination for occult blood and blood examination for Hb and FBC. The result of the stool examination proved to be negative and the blood examination was found to be normal. Further, he never did produce any evidence of blood vomiting. Besides no loss of weight was observed."

The stomach pain was found to be epigastric pain and appropriate treatment was given. On the morning following their re-capture, the prisoner and the other escapees were examined by the Prison Medical Officer and the various injuries sustained by each one of them were noted. The examination confirmed the findings noted by the Prison Hospital Officer. In our prisoner's case the Prison Medical Officer further stated "I found no bone injury clinically; his vision was normal although he had a black eye (left). Appropriate treatment was prescribed and thereafter his state of health was satisfactory and he was daily attended to by the Senior Hospital Officer of Phoenix Prison. On 3rd January, 1984 the latter removed all stitches, had registered no complaint from him and informed me that his general health was satisfactory."

As regards the Barrister's allegation at (d) and (e) above, the Commissioner of Prisons explained to me that "the request to allow a private doctor to visit a prisoner had never been entertained before. The Prison Act provides at paragraph 5A for the medical care of prisoners. The grant of such a request would have been a departure from the usual practice. It was decided

APPENDIX A—*continued*

that the advice of the Solicitor-General should be sought on this matter.” In the meantime, after instructions received from higher quarters, through the intervention of the Barrister, he allowed the prisoner to be examined on 5th January, 1984 by a private doctor in the presence of the Prison Medical Officer and the Chief Prison Hospital Officer and the Senior Prison Hospital Officer. The private doctor and the Prison Medical Officer discussed the case and the former agreed that the treatment that was being given was the appropriate one.

Further, after receipt of a letter dated 30th December, 1983 from the lawyer and a subsequent telephone conversation, the Commissioner of Prisons granted his request to visit his client at the Phoenix Prison on 3rd January, 1984 at 11.00 a.m.

Finally, after examining all the relevant documents, medical reports and hospital sheets showing entries from the date of the prisoner's admission to Beau Bassin Prison on 23rd May, 1983 to 27th March 1984 (period 28th December, 1983 to 27th March, 1984 spent at Phoenix Prison), I had no hesitation in reaching the conclusion that the Barrister's client-prisoner had received continuous, regular and appropriate medical care and attention which entailed references to the Orthopaedic Surgeon of the PMOC and the Dental Clinic at the ENT hospital.

The Barrister too consulted my case file at his convenience at my request and, after examining the photocopies of all the documents submitted to me officially, could not but agree that the prison authorities including the Prison Medical Officer and the hospital officers had done all they could to attend to this particular case in a satisfactory manner.

Case No. C/39/84

Consecutive terms of imprisonment for no reason

The prisoner's complaint was that he saw no valid reason for his serving two terms of imprisonment *consecutively* and that the Court proceedings were highly unsatisfactory.

My investigation revealed that on 31st May, 1983 the prisoner was sentenced by the Intermediate Court to undergo 5 years Penal Servitude plus 15 days for costs of Rs 150 for larceny being more than two in number. On the same day he applied for leave to appeal *in forma pauperis* and was subsequently remanded to jail pending the decision of the Appellate Court.

On 6th June, 1983 he was again sentenced by the Intermediate Court to 3 years Penal Servitude plus 15 days for costs of Rs 150 for larceny being more than two in number. On the same day he withdrew the application to appeal *in forma pauperis* he had lodged on 31st May, 1983 and was therefore admitted to Prison with the two warrants of commitment of 31st May, 1983 and 6th June, 1983 and started to serve these sentences *concurrently* as from 6th June, 1983.

APPENDIX A—*continued*

On 17th October, 1983 he was again convicted and sentenced by the Intermediate Court to undergo 5 years Penal Servitude on each of Counts 18 and 29 plus 15 days for costs of Rs 150 for (a) Larceny by Breaking (Count 18) and (b) Larceny being two in number (Count 29). Sentences on counts (a) and (b) were to run *concurrently* but to start *after any other sentence* he was undergoing at the time.

It was clear that according to the Court Order the prisoner had to serve the 5-year sentence he was already undergoing as from 6th June, 1983 and on completion would have to serve the 5-year sentence passed upon him on 17th October, 1983, i.e. 10 years in all.

He was due for discharge under the Remission System on 6th March, 1990. Photocopies of the relevant Commitment Warrants were sent by the Commissioner of Prisons for my perusal.

The Secretary of my Office had, at my request and with the authority of the Master and Registrar of the Supreme Court, verified the judgment delivered on 17th October, 1983 and the relevant part read as follows:—

“Accused No. 6 (i.e. the complainant) to undergo 5 years penal servitude. . . . The sentence of accused No. 6 shall be consecutive to any sentence he is presently undergoing.”

His consecutive terms of imprisonment were therefore in accordance with the judgment of the Intermediate Court. As regards the proceedings in Court where he was prosecuted along with other co-accused, I replied to him that I derive my powers from the Constitution and they do not include the power to investigate judicial proceedings or the acts of the Director of Public Prosecutions. I therefore could not intervene any further in the matter of his complaint.

I also informed him that he might apply to the Commissioner of Prisons to allow him to petition the Commission on the Prerogative of Mercy to grant him a remission but I could not say what would be the result.

Case No. C/93/84

Reported; diet of bread and water without medical certificate

A prisoner complained to me that he was unjustly reported on 19th May 1984 and placed on a diet of bread and water without a medical certificate as required by the prison rules and wanted to know whether he could complain to the Prisons Board.

APPENDIX A—*continued*

I found that the prisoner had never complained that he was sick on 18th May or 19th May 1984. Otherwise he would have been referred to the Prisons Medical Officer for care and treatment according to established practice. On the 18th May, 1984 at about 18.30 hrs a special search was carried out on his person in Cell No. ... where he was located and a Blendax toothpaste refilled with pattex glue was found in his cell. He was placed on report for this offence. Every prisoner under report has to be seen by the Prison Medical Officer the next day regarding his fitness to undergo cell confinement on reduced diet. On 19th May 1984, he was accordingly sent before the Prison Medical Officer who found him fit for such confinement and issued the certificate of fitness. He subsequently appeared before the Adjudicating Officer, pleaded guilty to the charge and was awarded two days cell confinement on bread and water diet. It was therefore not true to say that his case had been adjudicated upon without a certificate of fitness from the Prison Medical Officer.

The prisoner had the right to complain to the Prisons Board if he elected to do so. I informed him accordingly.

Case No. C/94/84

Unfair warning about purchase of additional writing pads

The complaint from a prisoner was in substance as above. When asked for his comments, the Commissioner of Prisons sent the following reply:—

“A prisoner who wish to write a letter to a relative or friend in keeping with his normal entitlement do so on the official “Letter Book”, the original of which is sent after censor to the addressee, and the duplicate kept in the “Letter Book” for record purposes.

However, prisoners may apply for the privilege of writing *additional letters*, in which case the relevant Standing Order provides that “the cost of envelope and postage shall be met from their earnings or private cash”.

Lately, prisoners have also been allowed to write such additional letters on plain pads at their own costs instead of the official letter forms because of their concern for possible opprobrium vis-a-vis their correspondents. It is not intended in such cases to ask prisoners to buy pads to produce duplicates for record. Yet, personal investigations have led me to believe that a newly appointed officer may have led prisoner..... to believe that this would be so, although actually the prisoner has not been required to use his own pads for the purpose.

I have since taken steps to avert prisoners’ misgivings on this score. If prisoner.....had used channels of complaints available to him, like complaining to the Officer in charge of.....Prison or even to me I have no doubt that the matter would have been streamlined there and then.”

I found the explanation reasonable.

APPENDIX A—continued

Case No. C/102/84

Unjust confinement in cell on diet of bread and water: issue of stale cakes and irregular supply of bananas etc., bought from earnings

A prisoner complained that (a) he had been unjustly placed in cell confinement on a diet of bread and water; (b) he was issued with stale cakes; (c) he was searched while entering his cell, and (d) he was not supplied with bananas regularly.

My investigation showed that on 5th May, 1984 at about 08.05 hours near the Hindu Temple at Central Prison, the prisoner was found leaving his gang working at the lavatory, under the charge of an officer, and handing over four cakes of toilet soap "Smart" to a Remand prisoner. He was stopped and reported for disobedience to Prison Regulations. He was adjudicated upon by the Officer-in-Charge, after pleading guilty to the charge. He was awarded 2 days Confinement in Cell on bread and water diet and the toilet soap was forfeited as prohibited article. Again on 24.5.84 at about 12.45 hours in front of the Chief Officer's Office at the Prison, he was searched and a canteen cigarette was found in his possession. Prisoners are allowed to be in possession of such cigarettes only in Association Yards. He was therefore reported. The adjudication was carried out. He pleaded guilty and was awarded forfeiture of two days' remission and removal from the Earnings Scheme for one week.

According to Standing Order 28, paragraph 11, any prisoner found guilty of a prison offence under Prison Regulations may, in addition to, or in lieu of other punishments be awarded by the officer in charge the following punishments:—

- (a) forfeiture of earnings up to the amount he would have earned in a week;
- (b) reduction in grade;
- (c) removal from the Earnings Scheme for a period not exceeding one month.

Bananas: Bananas were not issued on certain days as there was an irregular supply from the contractor whose explanation was that banana plantations had been severely hit by cyclone "Bakoly" with the result that there was a shortage of this fruit. The matter was reported to the Tender Board.

Search: A rubdown search is carried out on each prisoner entering the block. After the rubdown search, the prisoner proceeds to his cell where he is locked up.

A special search is carried out on a prisoner if he is suspected of having a prohibited article or articles in his possession or in his cell. Such a search was in fact carried out in this case and was normal.

APPENDIX A—continued

Cakes: These were brought from a Patisserie. The requests of prisoners are noted down on week-days and they get the cakes of their choice during the week-end i.e. Saturdays. The cakes were as usual freshly prepared. No complaint had been received yet from prisoners who bought cakes from their earnings. Prisoners are allowed to appear on application before the Officer-in-Charge of the prison on Mondays, Wednesdays and Fridays when they can put forward their complaints or requests.

Case No. C/132/84

Could not pray in cell

A prisoner's complaint was that he could not say his prayers in his cell as it was shared by two other prisoners of different faiths. He also alleged that the cell was not clean enough for that purpose and that sometimes the two other prisoners would be answering calls of nature while he was engaged in the act of prayer.

At my request, the Secretary of my Office called at the prison in question at 10.15 a.m. and made a surprise visit in the cell occupied by the three prisoners. He found that the cell was well polished, clean and tidy. The water cans, chamberpots and the mattresses were also all clean. The prisoners were given each two blankets, one for use as bedsheet and the other as cover. He also spoke to the complainant and told him that he had just visited his cell and that everything was clean and tidy. To this, the complainant replied that his main complaint was that he could not pray with two fellow-prisoners in the same cell and that he would like to have a single cell.

The Secretary pointed out to him that in view of the increasing prison population accommodation was really causing great concern to the authorities and Government had plans to construct other blocks.

The Secretary later spoke to two high-grade prison officers about the complainant's problem and the latter said they would study the possibility of accommodating him in a single cell whenever one would become available.

In fact the complainant was placed alone in a cell sometime afterwards. But here was a man whom it was not easy to satisfy and who was bent on being treated in a very special way unmindful as he was of the undesirable reaction of the other prisoners in the establishment. He again complained to me that the single cell was too small for him. I found that his complaint was becoming vexatious and was therefore not justified.

APPENDIX A—continued

Case No. C/154/84

Few Indian film shows; no sports-magazine

The complaint from a prisoner was that "it is sad that Indian films which are very much on demand are shown but on every third week-end after two consecutive European films during two consecutive week-ends". He also asserted that most prisoners of a certain faith preferred to watch Indian films because of their entertaining and educational value and because of the fact that most of the time the Western films shown were in English and were difficult to follow. Their request for a weekly sports-magazine was also not heeded by the responsible officers.

The official explanation to me was as follows:

"Video Cassette films shown during the preceding six week-ends were as follows:—

27th–28th October ...	... French film "L'inconnu de Las Vegas"
3rd–4th November...	... Indian film "Andar aur Bahar"
9th–10th November	... English film "Stone Killer"
16th–17th November	... English film "Adventure of Stolen Axe"
23rd–24th November	... Indian film "Anand aur Anand"
1st December	... French film "Détournement du Ciel"
	... English film "The Stranger and the Gun Fighter"

This pattern is fair and reasonable in an effort to suit common and not individual liking. Furthermore good quality films are not readily available and we have a problem of selection as not all films can be shown in a prison set-up. We have therefore to screen the film first to see if there is anything objectionable. The average attendance of prisoners at all film-shows is practically the same. There has not been several applications and prisoner's (the complainant's) record does not show that he has made an application to the prison authorities on the issues raised by him with you.

The following dailies are issued for use by prisoners:

1. Le Socialiste
2. L'Express
3. Le Nouveau Militant
4. Le Mauricien

They amply cover local and sports news and it is not proposed to extend beyond these publications at public expense. You will agree that the

average citizen cannot afford to have access to that much daily.

May I point out that prisoner.....(the complainant) is assuming the role of a leader with his statement that he is writing on behalf of the greatest majority of his fellow inmates. This is unacceptable in prison and it may render him liable to disciplinary action".

The letter of explanation also stated statistics showing the religious denominations of the prison inmates. They showed that the majority were of a particular faith and therefore this factor combined with other considerations (discipline, financial constraints, etc.) amply justified the procedure adopted by the Prison Authorities and I found the explanation quite reasonable.

I informed the prisoner accordingly and drew his special attention to the last paragraph of the official explanation.

APPENDIX A—continued

*Case No. C/164/84***Not received review sent by mother**

L.M.B., a prisoner, alleged that two copies of "Paris March" and two air-letter forms sent for him to the prison by his mother had not been delivered to him by the authorities.

I found that by the end of October 1984, one copy of "Paris-Match" No. 1773 dated 30th March, 1983 and not two was received by ordinary mail at the prison and was addressed to B. There was no mention of the sender's name and there were no air-letter forms enclosed. In the absence of the full name of the prisoner in the address, the review was registered at the prison under the name of J.C.B. and handed over for censorship. After that it was sent to the prison library for issue. Subsequently, the "Paris-Match" was issued to J.C.B. It so happened that both L.M.B. and J.C.B. were brothers, bearing the surname B, and were each serving his term of imprisonment at the same time and at the same prison.

Finally, on the complaint of L.C.B. officially, J.C.B. admitted that during her last visit, his mother had told him that she had sent the review for L.C.B. J.C.B. therefore agreed to hand it over to his brother who expressed his satisfaction. He also accepted the explanation that no air-letter forms had been sent together with the review.

In this case, therefore, error there was in the delivery but it was due to the sender's error inasmuch as she had not addressed the postal packet properly.

SOCIAL SECURITY*Case No. C/21/84***Not paid Industrial Injury Allowance for two months by the Ministry despite Medical Certificate**

A stone-breaker, employed by a private contractor, got injured in his little finger at work on 29th December, 1982. He went to the Victoria Hospital where he stayed for two days and his employer paid him his wages for the first fortnight. Afterwards he was paid the Industrial Injury Allowance by the National Pensions Department of the Ministry of Social Security on production of medical certificates up to 5th October 1983.

His little finger had to be amputated but did not heal. He alleged that he was examined by a Medical Board on 14th November, 1983 at the Ministry and it was found that he had sustained 5% permanent incapacity and a lump sum of Rs 2,930 was paid to him. He was further treated by a Government Specialist in surgery at the Victoria Hospital who gave him medical certificates covering his temporary incapacity for November and December 1983. He complained that he had not been paid any Industrial Injury Allowance for these two months.

APPENDIX A—continued

The sequence of events as found by me was as follows:—

The complainant applied to the Ministry of Social Security for the Industrial Injury Allowance on the 26th January and he was subsequently awarded an Industrial Injury Allowance of Rs 20.52 a day up to the 27th June 1983. On the 9th May 1983, the complainant applied for a Disablement Pension. He was examined by the Medical Board on the 16th June 1983 and the Board found that there was 4% permanent incapacity. Consequently, a lump sum of Rs 2,930 was paid to him on the 11th July 1983. Thereafter, he produced other medical certificates to this Ministry. His case was reconsidered and he was paid a reduced Industrial Injury Allowance at the rate of Rs 19.85 a day up to the 5th October, 1983. On the 14th November 1983, the Medical Board reviewed the case and found that there was 5% permanent incapacity. On this basis, a lump sum of Rs 732, representing the additional 1% incapacity was paid to him on the 14th December, 1983.

In view of the Medical Board's decision in his case on the 14th November, 1983 the two medical certificates dated 7th and 28th October 1983 were not considered for the payment of Industrial Injury Allowance. As a matter of fact, on the 5th January 1984 the complainant appealed against the non-payment of Industrial Injury Allowance in the light of the above-mentioned medical certificates but did not appeal against the decision of the Medical Board.

Ultimately, on the 25th January, 1984 the Medical Director and the Chairman of the Medical Tribunal took the following decisions:

- (i) the appeal could not be entertained because the Medical Board had already taken into consideration the two medical certificates before recommending 5% permanent incapacity; and
- (ii) the appeal against the non-payment of Industrial Injury Allowance does not fall under the jurisdiction of the Medical Tribunal.

On 14th March, 1984 the Ministry's file and the personal file of the complainant were produced to me by the Principal Social Security Officer and it appeared therefrom that the medical certificates that were submitted to the Medical Board on 14th November 1983 were as follows:—

<i>Date</i>	<i>Period</i>
12. 8.1983 ...	... 12. 8.1983 — 11. 9.1983
5. 8.1983 ...	... 4. 8.1983 — 5. 8.1983
26. 8.1983 ...	... 17. 8.1983 — 16. 9.1983
16. 9.1983 ...	... 6. 9.1983 — 5.10.1983
7.10.1983 ...	... 7.10.1983 — 6.11.1983
28.10.1983 ...	... 28.10.1983 — 27.11.1983

APPENDIX A—continued

The Board composed of two FRCS Specialist Surgeons and one FRCS Specialist Surgeon and a general practitioner on 14th November, 1983 and 25th June, 1984 respectively, had duly reconsidered the medical certificates dated 7th October 1983 and 28th October 1983 and after examining the complainant it had not approved the *temporary* incapacity for industrial injury allowance payment for the period of 7th October 1983 to 27th November 1983 covered by these medical certificates. In view of the 5% *permanent* incapacity found, there was no question of payment for *temporary* incapacity for November and December 1983.

I found the Ministry's action reasonable in the light of the Medical Board's decision which I had no jurisdiction to question.

Case No. C/56/84

**Undue delay in taking action against father for
abandonment of under-age children**

Miss D, a young unmarried girl of 23 years of age, wrote to me on 30th March, 1984 to say that her father had abandoned her and eight other children since 25th December, 1983. Of these five were below 18 years of age: two daughters and three sons. She called at the local office of the Ministry of Social Security to report the fact and ask for social aid for her younger brothers and sisters. She was advised that as the father was still alive and had abandoned them to "marry" another woman, she should report the matter to the Police. She did so and, to use her own words, she attended the Court of Rose Hill on 7.1.84, 14.1.84, 16.1.84 and 16.2.84. On the last date she was given "certain documents" by the Clerk to produce to the Bambous Police Station, which she did. Subsequently, three officers of the Ministry called at her place to enquire as to her means. She said that for all property there was only one bed in the house.

The Permanent Secretary of the Ministry explained to me that their enquiry had revealed that it was a fact that the children..... had been forsaken by their father who had gone away with a second "wife". Miss D had applied for free legal assistance to sue the father for alimony. An enquiry into her financial circumstances had been forwarded to the District Magistrate of Rose Hill on 6th February 1984.

Pending action by the Court a Social Aid of Rs 200 was given to Miss D on 18th April in favour of the children and Rs 152 monthly would be paid to her as from May 1984.

It was clear that the Ministry was doing what it could to assist the complainant. I replied to her that it would be advisable for her to co-operate with the authorities and the legal advisers in the Court proceedings which would subsequently start.

APPENDIX A—continued

Case No. C/117/84

Inadequate social aid to wife

A prisoner complained to me that he was serving two consecutive terms of imprisonment amounting to twelve years and he had his wife and four children who needed help. One of the children was attending a secondary school and the others were at primary schools. His wife had an income of Rs 400 per month. She was drawing children's allowances amounting to Rs 50 and a social aid of Rs 28 per month. He then catalogued the minimum expenses of the family and advanced the figure of Rs 1,010 p.m. He deplored the fact that only Rs 28 per month was being paid as social aid and he mentioned vague cases where higher sums were paid.

The Ministry of Social Security explained to me that the prisoner's wife was a knitwear factory worker drawing a monthly salary of Rs 454.75 and was receiving family allowance of Rs 50 per month. In view of these facts and in accordance with the Social Aid Act (No. 2 of 1983), she was entitled to the minimum social aid which had recently been increased from Rs 28 to Rs 50 a month. Accordingly, arrears for the months of July to August would be paid in September next.

I communicated the explanation to the prisoner and I found that the Ministry had been acting in accordance with the law.

Case No. C/152/84

No pension from National Pensions Fund

Mrs R's complaint dated 29th October, 1984 to me was that her husband had died on 31st March, 1981 after having worked as a labourer of the Tea Development Authority. She had to support herself and two young daughters. Although he had contributed to the National Pensions Fund, she had not received any pension from that Fund in spite of her representations to the Ministry of Social Security since 1982.

In fact, Mrs R. applied for the basic widow's pension and the contributory widow's pension on the 23rd April, 1981 and the 16th November, 1982 respectively. The basic widow's pension was awarded to her as from March, 1981 and she had since been drawing an amount of Rs 314 monthly (Rs 184 as basic widow's pension and Rs 130 representing children's allowance in favour of her three children).

The claim of Mrs R. for a contributory pension was disallowed by the National Pensions Officer because her late husband had never contributed to the National Pensions Fund. For the same reason, her appeal against the decision of the National Pensions Officer was also turned down.

APPENDIX A—*continued*

Further, she called at my Office on 4th December, 1984 at my request, and it transpired that she was not civilly married to the man whom she called her late husband. Their religious marriage had been authenticated on 11th April, 1983 after the death of the husband. She also felt that as the departed man was a labourer on the permanent and pensionable establishment of the Tea Development Authority, he must have contributed to the Widows and Children Pension Fund. Upon enquiry it was found by this Office that Mrs R. had been paid the sum of Rs 414.18 representing her late husband's contribution to this Fund for the period 1st July, 1978 to 31st March, 1981.

Her complaint against the Ministry of Social Security was therefore found not justified.

TELECOMMUNICATIONS

Case No. C/44/84

No reconnection of telephone despite payment of fee

Mrs J., a subscriber, complained that she had been "victimized" by the Telecommunications Department as her telephone had not been reconnected as at 19th March 1984 despite payment of the prescribed reconnection fee before 15th March 1984.

The official version was that Mrs J.'s telephone service was disconnected on 20th December 1983 for non-payment of various bills. A registered letter was sent to her on 26th January 1984 granting her a delay up to 10th February 1984 to settle her bills; otherwise her telephone service was to be recovered.

She called at Headquarters some time in February 1984, and was given a bill for the reconnection fee as she had already settled all the outstanding bills. She was told to pay this reconnection fee and then her telephone service would be restored. She did not do so until the 7th March 1984. In the meantime instructions had been issued (on 16th February 1984) to recover the telephone service.

Since she paid the reconnection fee Mrs J. had not enquired about her service at the Telecommunications Office. In view of the special circumstances of this case, the Director had caused the cancellation of the Advice Note for recovery of the service and had given instructions to reconnect the service, which was done on 6th April 1984.

I communicated the above version to Mrs J. and expressed the hope that she was satisfied. I did not hear again from her. I marked this case as "Explained".

APPENDIX A—*continued*

TRADE AND SHIPPING

Case No. C/10/84

**Unreasonable delay in dealing with application
for increase of price of newspaper**

The complaint dated 15th January, 1984 from the Director of a daily newspaper read thus:

“I am dissatisfied with procedures of price control of newspapers instituted by the Ministry of Trade and Shipping in November 1983.

The bureaucratic delay in considering a price increase application lodged on December 9th 1983 is becoming intolerable in the face of operative increased outlays imposed by a new customs duty.

The Ministry's refusal to consider the comparative price range of other newspapers smacks of partiality and raises strong doubts as to the motivation of the price control exercised.”

He alleged maladministration and requested me to investigate the complaint.

After my intervention on 17th January, 1984 the Permanent Secretary, Ministry of Trade and Shipping, sent me the following detailed explanation dated 31st January, 1984:—

“1. With a view to providing you with a complete picture, I set out below in chronological order the sequence of events pertaining to the application made by the complainant.

- (a) It was the practice until November 1983 to require newspapers' owners to give prior notice to this Ministry of any proposed price increase of newspapers with full justification thereof — (Document A).
- (b) On the 26th November, 1983 the complainant in his capacity of Director of.....(company's name), owner of the daily newspaper, gave written notice to this Ministry of a revision in the price from Rs 1.50 to Rs 2.00 as from 1st December 1983 — (Document B).
- (c) My Minister informed the complainant that he wished to inform his colleagues in Cabinet of the request. However, the government decided to control the price of newspapers and the relevant regulations were published as Government Notice No. 179 of 1983 effective on the 16th December, 1983.
- (d) On Friday the 9th December, 1983, the complainant as General Manager of..... (the Company), proprietors of..... (the newspaper) applied for authorisation to increase the price of the daily newspaper.....from Rs 1.50 to Rs 2.00 — (Document C).
- (e) On Tuesday 13th December, 1983 he was requested in writing to supply additional information about balance sheet, trading and profit and loss account and related data — (Document D).

APPENDIX A—*continued*

- (f) On the 14th December, 1983 the company submitted the balance sheet and figures about the cost of paper as per last consignment.
- (g) On the 27th December, 1983 the remaining information required viz. production and sales of newspapers and consumption of newsprint was supplied to this Ministry — (Document E).
- (h) On Friday 13th January, 1984 the complainant had a meeting with the Principal Assistant Secretary and the Economist of this Ministry and the discussions which took place shed light on various aspects of the issue that were not revealed in the correspondence exchanged between the company and this Ministry.
- (i) On Monday 16th January, the company submitted the data asked for as well as the supporting documentary evidence.

2. The preceding paragraph indicates that the matter has been actively followed up till the end of December 1983. During the first week of 1984, the data obtained from the company were analysed and consequently it was deemed appropriate to convene a meeting for the 13th January, 1984 at which the complainant was requested to give complementary information. The allusion of complainant to intolerable bureaucratic delay does not therefore stand.

3. As regards the alleged refusal to consider the comparative price range of other newspapers, this is considered as an unwarranted criticism. In practice this Ministry calls for appropriate information only when a request for varying the selling price is received and each request is examined on its merits. It would therefore be pointless for this Ministry to undertake a study of the comparative price range of other newspapers, the more so as newspapers are not considered to be the type of commodity which lends itself to such comparative price exercises.

4. You may wish to know that after the complaint the complainant has lodged with you, he was granted an appointment with the Acting Minister of Trade and Shipping on the 20th instant. The substantive Minister returned from mission on the 21st instant and after analysis of the data, he has approved the increase in the price of newspaper..... to Rs 2.00 per copy with effect from 1st February, 1984. ”

No doubt the complainant was fully aware of the contents of documents A-E mentioned in the above explanation.

The important thing was that his application had been granted and the delay had been fully explained. Further, the Permanent Secretary was abroad on fmission with the Minister.

I conveyed the above explanation to the complainant on the 3rd February, 1984 and did not hear any further from him. I therefore concluded that there was neither a manifestly unreasonable delay nor any sort of ‘ partiality ’.

APPENDIX A—continued

Case No. C/98/84

Inaction regarding unsatisfactory fixing of awnings by a trader

A trader complained that (a) another trader had fixed tarpaulin awnings at his residence in a most unsatisfactory way which had resulted in some damage to him and (b) the Ministry's Inspectors were not taking strong steps to deal with what he considered to be in breach of the Fair Trading Act of 1980.

The tarpaulin awnings' frame consisting of galvanized pipes of about 1½ inch diameter had come off the concrete wall to which it had been fixed on 2nd August, 1984 and on that day a particularly strong wind (40 m.p.h) was blowing, according to the Meteorological Services.

The Ministry's Inspectors investigated the complaint with a view to finding whether an offence under the Fair Trading Act had been committed. They found no such offence. Nevertheless, they tried to bring the parties to an amicable settlement but in vain. In their opinion the complainant did not seem to be prepared for any such settlement and apparently was bent on seeing the tarpaulin dealer being prosecuted under the relevant Act.

In my view, they were right as a mere installation (which the fixing of the awning undoubtedly was) was not one of the "services" mentioned in the Schedule to the Fair Trading Act. The complainant, being a prolix writer, made comments as lengthy and verbose as his original complaint.

He called at my Office, at my request, and I explained to him that the Ministry's Inspectors had done what they could in the circumstances and that his remedy lay in a civil action against the tarpaulin trader for damages for any wrong done to him and that he should consult his legal advisers.

WORKS

Case Note No. C/2/84

Not paid any retirement gratuity

A retrenched officer of the former Railways Department complained that after nine years' service in that Department and subsequent service as Works Overseer in the Sewerage Section of the Ministry of Works, he had not been paid any "lump sum or gratuity" on his retirement at the age of 60.

My investigation showed that before joining the Ministry of Works, the complainant reckoned service in the former Railways Department from the 17th July 1959 to the 17th April 1966. He was employed there as Casual Watchman when the retrenchment of Railway personnel took place. He then retired and was awarded a gratuity of Rs 998.97.

APPENDIX A—continued

He joined the Ministry of Works on the 5th May 1966 as Relief Supervisor. He was appointed Casual Works Overseer with effect from the 1st July 1976 and Works Overseer on the Permanent and Pensionable Establishment with effect from the 1st July 1978. The complainant was born on the 27th January 1914 and therefore reached the age of 60 years on the 27th January 1974. He was repeatedly called upon to produce his birth certificate for verification of his date of birth but he failed to do so.

In the records of the Ministry of Works his date of birth was stated as the 19th January 1919. Later on it transpired that his correct date of birth was the 27th January 1914 and that he had been concealing his age. He should have been retired from the service on ground of age with effect from the 27th January, 1974, whilst in fact he was made to cease working as from the 24th April 1980.

After advice from the Solicitor-General, the whole period of his employment from 5th May 1966 to the 23rd April 1980 was taken into account in computing his retiring benefits. He was awarded a gross compassionate allowance of Rs 3,542 p.a. with effect from the 24th April 1980.

I conveyed the above information to the complainant and asked him to call at my Office but he did not turn up. It was clear that his case had been dealt with fairly by the Government Departments concerned.

Case Note No. C/4/84

Prosecution time-barred through negligence

Mr X complained that the local Works Inspector was using delaying tactics in dealing with his complaint that his neighbour had built a lavatory at less than the statutory distance, nay, just on the boundary line. He had first complained to the Inspector on 29th August 1983 but the site was visited by him only on 30th October 1983 i.e. more than *one month* after the complaint.

My investigation showed that it was only on 23rd January, 1984 that Mr X was requested to produce a memorandum of survey to enable the Inspector to make a case against the presumed offender.

The Inspector's explanations were that he had just been posted in that region and had to learn everything about the enforcement of the provisions of the Building Act "by trial and error" and that he was faced with more work than he could cope with, especially as the official vehicles he had to use were frequently out of order or were used by other officers too.

Section 48 of the Act which governed this case and the stumbling block it creates to late prosecutions had been well known to the Ministry for several years. Indeed as far back as May 1980 I had made the recommendation in another case started in 1979 that complaints such as the one in the present case should be attended to promptly.

APPENDIX A—*continued*

The Ministry of Works had in fact issued a Circular dated 2nd May 1979 to the Inspectors of Works but no steps were taken to ensure that its contents were brought to the notice of all officers concerned with the enforcement of the Building Act. The Circular laid down the guidelines with the object of preventing prosecutions from being time-barred under Section 48. But it appeared that a single transfer of an officer to a new region resulted in reducing the efficiency of the service, albeit temporarily, at regional level. To crown it all, the immediate superior officer was difficult to contact as he was busy in another neighbouring district and later was on sick leave for a long time as he was following treatment for mental illness.

In this case the prosecution under Section 48 fell through in Court as the Information was lodged more than six months after the Inspector of Works had cognizance of it, thus flouting (through sheer ignorance of the Circular) the provisions regarding time-limit of Section 48 of the Building Act.

I therefore found the complaint of Mr X to me justified as he had to suffer perhaps indefinitely the existence *cum* nuisance of an uncovered lavatory on the boundary line of his land, which lavatory was for the use of the customers of his neighbour's shop which sold liquor for consumption *on* the premises. The complainant and his family could not use the terrace of their house as there would be no privacy — the sober or drunken (more likely the latter) using the lavatory would certainly not offer an innocuous spectacle! It was true that Mr X could start a *civil* action for damages and the removal of the lavatory but that would have entailed a lot of expenses which could have been avoided had the Ministry enforced the law as it should have.

The only redeeming feature, administratively speaking, was the issue of a more felicitously worded circular with the injunction that it should be brought to the notice of all officers and *be kept in the duty file*. That, of course, could only remedy subsequent evils of the sort!

*Case No. C/19/84***No action regarding defective sewerage system**

A citizen of Port Louis complained to me on 3rd January, 1984 of the existence of a sanitary nuisance caused by the defective sewerage system in the vicinity of his house and of the inaction of the Sewerage Division of the Ministry of Works although the matter had been brought to its notice since long.

My investigation revealed that the complainant had made an application on the 5th September, 1983 to the Sewerage Division of this Ministry at Caudan for necessary repairs to be effected to a damaged sewer pipe on his premises.

An estimate of cost of the work had been prepared and the complainant was so informed orally on several occasions. As there was no response from him, a letter was sent to him on the 8th October, 1983 requesting him to effect payment of a sum of Rs 1,775.26 which represented the cost of the works involved. On the 12th October, 1983 the complainant made a proposal for effecting an initial deposit of Rs 500 and pay the outstanding amount in monthly instalments of Rs 200 until settlement.

APPENDIX A—*continued*

He was informed that the whole amount should be paid before the start of the works. However, a suggestion was made to him that he could supply the materials for the work. He, in fact, provided some of the materials required. Consequently, the cost of the works was brought down to Rs 761.00 and necessary payment was effected on the 17th November, 1983. The works were put in hand on the same day and completed on the 18th November, 1983.

It was clear that the complainant himself was guilty of laches. Otherwise, the works would have been effected much earlier.

Case No. C/69/84

No payment from Widows' and Children's Fund

The complaint of the widow of a labourer of the then Public Works and Surveys Department was that her husband, a permanent employee since 3rd December 1958, had passed away on 22nd August 1979 after retirement in 1966 and that he had been paid a "lump sum" and had been drawing a monthly "pension" of Rs 250 after his retirement. But she, as his widow, was not receiving a single cent from the Widows' and Children's Fund.

The answer was that her late husband was only a permanent employee as defined under the Government Servants (Allowances) Regulations 1962 (Government Notice No. 59 of 1962) and as such he could not and did not contribute to the above Fund. Only employees on the permanent and pensionable establishment can contribute to that Fund. Consequently, the complainant-widow was not entitled to any payment from the Fund.

Case No. C/105/84

Wrong computation of retiring benefits

A labourer of the Ministry of Works alleged that he joined the then Health Department on 5th May 1947 and in 1954 he was transferred to the then Public Works Department, now Ministry of Works, where he worked till 7th June 1967. He then retired as he was 60 years old. In view of his 20 years of continuous service with the Government he felt that the "pension" of Rs 416.75 he was drawing per month was too meagre and the computation thereof must have been based on wrong "data".

In fact the service of the complainant for the full period i.e. from 5th May 1947 to 7th June 1967 was taken into account for the computation of his retiring benefits. Before July 1984 his "pension" was Rs 416.75 per month and subsequent increases granted by the Government had brought it to Rs 452.54 per month. Actually, it was a compassionate allowance paid under the Government Servants (Allowances) Regulations 1962 (Government Notice No. 59 of 1962) and not the Pensions Ordinance that applied to his case. There were two breaks (i) 9th March to 31st December 1953, i.e. 298 days and (ii) 1st January to 11th January 1954 i.e. 11 days.

APPENDIX A—*continued*

The above Regulations were made during the Colonial days and not under the authority of a locally enacted statute to provide for "Government servants who, but for these regulations, would not be eligible for the grant of any pension, gratuity or other allowance on the cessation of his employment".

The complainant was given full explanation as above and as to the mode of computation both by the Ministry of Works and by my Office. He was satisfied.

Case No. C/160/84

Unreasonable shifting of bus stop

Some inhabitants of an urban area P complained that they had protested in vain to the National Transport Authority and the Ministry of Works against the shifting of a bus stop from its original place which had been found convenient to the inhabitants for a number of years. The new position was causing, it was alleged, great inconvenience to the public.

The explanation of the Permanent Secretary, Ministry of Works, to me was as follows:—

- “(a) One of the reasons which prompted the shifting of the bus stop under reference was that a request was received from one Mr C who was occupying the house where the bus stop originally stood. This house was initially a shop. People who stood under the open verandah while waiting for buses inconvenienced Mr C and his family;
- (b) Besides, other reasons advocated in favour of shifting the bus stop namely
 - (i) the proximity of R... Lane and
 - (ii) the existence of a highly frequented restaurant on the opposite side of the road of the former bus stop;
- (c) Passengers do not encounter more problems as a result of the shifting of the bus stop because, at the new site, there is actually a shelter for those who wait for the buses.
In point of fact, the shifting of the bus stop was even welcomed by the inhabitants of the region who expressed their appreciation in a letter signed by some 50 of them;
- (d) The fact that the bus crews wait at the former stopping place at 4.30 in the morning is just a question of habit. It has been confirmed that *all* passengers use the approved stopping place;

APPENDIX A—*continued*

- (e) The request of the petitioners for the bus stop to be shifted back to the original site has been examined but it cannot be retained from the social and traffic points of views;
- (f) It is to be noted that Mr X has just opened a tobacco shop near the former bus stop. ”

I saw certified true copies of the request of (i) Mr C., (ii) the letter from the inhabitants of P in favour of the shifting of the bus stop and (iii) a rough sketch showing the past and present locations of the bus stop.

I did not find any fault with the action of the Ministry.

APPENDIX B

Statistical Summary of Complaints

Ministries/Departments	Justified	Justified/ Recitified	Not Justified	Discontinued	Explained	Explained/ Recitified	Declined for Jurisdiction	Recitified	Withdrawn	Being Investigated	Total No. of Complaints
Agriculture, Fisheries and Natural Resources ...	—	—	1	1	—	—	—	—	—	1	3
Attorney-General's Office ...	—	—	—	—	1	—	—	—	—	—	1
Co-operatives ...	—	—	2	—	—	—	—	—	—	—	2
Education, Arts and Culture ...	—	—	2	1	—	—	1	—	—	1	5
Employment ...	—	—	4	—	—	—	—	—	—	—	4
Energy and Internal Communications ...	—	—	—	—	2	—	—	—	—	—	2
Finance ...	—	—	1	—	—	—	—	—	—	—	1
Government Printing ...	—	—	—	—	—	—	—	—	—	—	—
Health ...	1	—	1	—	5	1	2	—	—	2	13
Housing, Lands and the Environment ...	—	—	1	2	1	—	—	1	—	1	5
Income Tax ...	—	—	—	—	—	—	—	—	—	—	—
Labour and Industrial Relations ...	—	—	1	2	—	—	—	—	—	2	5
Local Government ...	—	—	1	—	—	—	—	—	—	1	1
Police ...	—	—	13	3	2	—	5	—	—	3	26
Prime Minister's Office ...	—	—	1	—	—	—	—	—	—	—	1
Prisons ...	—	1	21	1	6	—	—	—	—	—	29
Registry of Associations ...	—	—	—	1	—	—	—	—	—	—	1
Social Security ...	—	—	3	—	4	—	—	—	—	—	7
Telecommunications ...	—	—	2	5	7	—	3	—	1	1	19
Trade and Shipping ...	—	—	1	—	1	—	—	—	—	—	2
Works ...	1	—	7	1	—	—	—	—	—	1	10
Officers and Authorities outside the jurisdiction of the Ombudsman ...	—	—	—	1	4	—	40	—	—	—	45
TOTAL	2	1	61	18	34	1	52	2	1	13	185

APPENDIX C

Schedule of Complaints for Period 1st January 1984—31st December 1984

AGRICULTURE, FISHERIES AND NATURAL RESOURCES

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/ 51/84	Leases of Crown Land to planters to be unjustly terminated after notice served in spite of heavy investments	Not justified
C/139/84	Not allowed to re-occupy house on tea allotment (evicted by Court)	Discontinued
C/161/84	Bills not yet paid for delivery of shoes	Being investigated

ATTORNEY-GENERAL'S OFFICE

C/ 75/84	No guardian appointed yet regarding disposal of retiring benefits of father — an interdict at the Brown Seagard Hospital (quasi-judicial matter)	Explained
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CO-OPERATIVES

C/102/83	Ministry's officials delaying to regularise sale procedure at a Notary's office concerning a plot of land	Not justified
C/188/83	No action on complaint that the local Co-operative Society's Secretary and President were acting arbitrarily towards complainant — a member	Not justified

EDUCATION, ARTS AND CULTURE

C/ 48/84	Transfer to another school as a Deputy Head Teacher unjust	Declined
C/120/84	Unreasonable delay in deciding equivalence of his qualifications as Land Surveyor	Being investigated
C/150/84	Unjust refusal of permission to sell ice-cream at a Government Secondary School	Not justified
C/156/84	Reprehensible conduct of Invigilator at C.P.E. examination who was advising a candidate regarding answers — (Anonymous)	Discontinued
C/162/84	Improper discrimination in selecting pupils for a pre-primary school	Not justified

EMPLOYMENT

C/ 21/84	Not paid for two months by the Ministry despite Medical Certificate	Not justified
C/ 50/84	Not referred for a job despite long registration	Not justified
C/ 61/84	Not referred for a job as tailor despite long-standing registration	Not justified
C/ 72/84	Not referred to prospective employers despite regular and long-standing registration	Not justified

ENERGY AND INTERNAL COMMUNICATIONS

C/118/83	Unwarranted claims for alleged use of water for commercial purposes	Explained
C/ 89/84	No water supply at C.H.A. Estate despite repeated requests	Explained

FINANCE

C/ 82/84	Imported goods unjustly seized and delivered to a public service	Not justified
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GOVERNMENT PRINTING OFFICE

C/125/84	Not appointed as "Compositor"	...	...	Declined
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APPENDIX C—continued

HEALTH

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/141/82	No action on complaints regarding dust pollution caused by stone crushing plant near residence	Explained
C/154/82	No action by Sanitary Authority on declaration of health nuisance in a village caused by pig-breeding at less than 100 feet from residence (The Regulation applies only to Municipal areas)	Discontinued
C/177/83	No satisfactory action regarding complaint of water nuisance caused by neighbour (CWA also concerned)	Explained
C/ 1/84	Sanitary nuisance not abated despite repeated requests	Explained
C/ 5/84	Lavatory of bar run by neighbour built just on the boundary of his land and with no absorption pit	Discontinued
C/ 7/84	No action regarding health nuisance caused by a shoe factory close to residence in a Municipal area	Explained
C/ 36/84	Admitted to mental hospital against his will (in fact, admitted under an Interim Order of a Magistrate)	Not justified
C/ 55/84	Nuisance caused by pig-breeders near residences and common stream	Explained
C/ 90/84	Undue delay in implementing Remuneration Order regarding Dispensing Assistants; mistaken view of the Order	Being investigated
C/ 97/84	Nurses on call who worked at night not paid their allowance	Being investigated
C/113/84	Irresponsible and arrogant behaviour towards complainant — a cardiac out-patient at a state hospital and not assisting patient in the tracing of her file; Result — patient not examined by specialist despite fixed appointment	Justified
C/116/84	Not granted leave with pay to do post-graduate studies in USSR on a direct scholarship	Declined
C/131/84	Committed assault or indecent act on wife while doing anti-malaria work at her house. Declaration made to Police.	Declined

HOUSING, LANDS AND THE ENVIRONMENT

C/ 57/84	Pigsties too close to residential area	Rectified
C/ 84/84	No adequate water supply at C.H.A. settlement despite repeated requests	Explained
C/122/84	Unjustly refused transfer of a lease of a plot of Crown Land	Explained and Rectified
C/157/84	No action regarding complaint about removal of sand and construction of 'jetée' on public beach	Being investigated
C/163/84	Inaction regarding illegal squatters in front of bungalows on Crown Land	Not justified

INCOME TAX

C/140/84	Two separate Income Tax Return Forms bearing two different file numbers sent and required to be returned duly filled in	Explained
C/158/84	Unjustified deductions of tax (already paid) from pension	Rectified

APPENDIX C—continued

LABOUR AND INDUSTRIAL RELATIONS

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/ 61/83	Unsatisfactory conditions of work of employees (complainants) of a private company	Discontinued (after causing Ministry of Labour to investigate)
C/ 28/84	Undue delay in dealing with declaration of non-payment of severance allowance, end of year bonus and wages in lieu of notice	Not justified
C/129/84	Computation of retiring benefits by Labour Inspector of complainant's region not fair	Being investigated
C/147/84	No adequate action on complaint of non-payment of severance allowance to late husband	Being investigated
C/159/84	No action regarding declaration of wrongful dismissal as driver of bus	Discontinued

LOCAL GOVERNMENT

C/ 47/84	Improper discrimination in ordering removal of shop from public beach	Being investigated
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POLICE

C/182/83	No adequate action regarding a declaration of threats of violence by neighbour	Not justified
C/193/83	Not allowed to hold a private seminar-debate among party members at a private secondary school	Not justified
C/194/83	Prosecution for mere assault of aggressor of complainant in spite of resulting prolonged sickness (DPP advised Police)	Declined
C/16/84	Misapprehension about imminence of another police case against him	Explained
C/ 25/84	No judicial inquiry into case of fatal accident of son (Police advised by DPP: no further action)	Declined
C/ 27/84	Discriminatory acts regarding plying of taxis	Discontinued
C/ 33/84	Unfair prosecution (case pending before Court)	Declined
C/ 37/84	Undue delay in taking action on a declaration of wounds and blows involving fracture of the arm	Not justified
C/ 40/84	No adequate action regarding declarations of wounds and blows; abusive phone calls and general hostility by brother-in-law	Not justified
C/ 43/84	No action on declaration; unjustly prosecuted	Not justified
C/ 54/84	No adequate action regarding declaration about the sale of a car	Being investigated
C/ 70/84	No effective action by local Police regarding unreasonable noise created by a neighbour through panel-beating of cars	Not justified
C/ 78/84	No prosecution of persons involved in embezzlement of property of complainant or of forgery — (DPP advised no prosecution)	Not justified
C/ 91/84	Forced to accuse certain persons in statement made to Police	Not justified
C/104/84	No action on declarations — (connected case pending in Court)	Discontinued
C/107/84	No further action on declaration of forgery committed by the Treasurer of Society of which complainant is President. (DPP advised no further action)	Declined
C/123/84	No action on several declarations made to the Police Station of his locality (connected case pending before Court against him)	Discontinued
C/128/84	No action on declarations about throwing of stones on house by unknown person/s and about wounds and blows	Not justified
C/130/84	No action after inquiry for false and malicious denunciation in writing to a police officer made against complainant	Not justified
C/141/84	No prosecution after several declarations: unfair treatment	Not justified

APPENDIX C—continued

POLICE—continued

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/142/84	No satisfactory action on declaration regarding disturbances at a place of prayer	Being investigated
C/149/84	Inaction of Police regarding complaint about unauthorized use of school playground as football ground by youngsters thus causing trouble and annoyance to adjacent residents	Not justified
C/165/84	No further action on a declaration of rape of minor daughter (DPP advised no further action)	Declined
C/168/84	Delay in prosecuting pending cases ...	Explained
C/169/84	No sufficient action regarding declaration of immoral act on person of son (school boy) by a young man	Not justified
C/171/84	No sign of any action regarding death of son in a lorry accident	Being investigated

PRIME MINISTER'S OFFICE

C/ 49/84	Passage benefits not computed and not paid after retirement in light of increments	Not justified
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PRISONS

C/190/83	Forfeiture of two days' remission and denied facilities of canteen as a reprisal	Not justified
C/ 8/84	Food, showers etc. not adequate and not in order ...	Not justified
C/ 9/84	Mattress not changed, chamber pot and mug not cleaned	Not justified
C/ 11/84	Visiting orders to relatives not issued as requested ...	Not justified
C/ 14/84	Unjust forfeiture of two remission days ...	Not justified
C/ 17/84	Wrong application of remission system ...	Not justified
C/ 18/84	Disappearance of jacket from prisoner's property at prison	<i>Justified: Rectified</i>
C/ 34/84	Negligent treatment of prisoner (client) at prison by the Prison Medical Officer	Not justified
C/ 35/84	Not allowed to write to Minister of Education, Arts and Culture for "permission" to write a book in prison	Not justified
C/ 39/84	Being made to serve <i>consecutive</i> terms of imprisonment without any reason	Not justified
C/ 41/84	Unjustly made to serve two <i>consecutive</i> terms of imprisonment	Not justified
C/ 45/84	Unfairly transferred to Phoenix prison and ration of cigarettes stopped	Not justified
C/ 65/84	Vague statements that complainant has several grave problems (when requested to complain in writing, he did not write)	Discontinued
C/ 74/84	Request through Commissioner of Prisons for free legal aid to start proceedings for complainant (a prisoner) to be allowed to receive visits of child in prison	Explained
C/ 76/84	How to obtain a remission of period spent on remand from sentence	Explained
C/ 85/84	Not issued with a new pair of sponge sandals ...	Not justified
C/ 93/84	Was reported and put on diet of bread and water without medical examination	Not justified
C/ 94/84	Warned that prisoner will have to purchase additional writing pads	Explained
C/ 96/84	Unjustly put on bread and water diet ...	Not justified
C/102/84	Unjust confinement in cell on diet of bread and water, issue of stale cakes and irregular supply of bananas etc. bought from earnings	Not justified
C/111/84	Not allowed to write to DPP or Chief Justice or Minister of Education; letter to Commissioner of Police probably not sent	Not justified
C/112/84	Doubts as to whether his letter addressed to the Commissioner of Police was in fact sent by Prison Authorities	Not justified

APPENDIX C—continued

PRISONS—continued

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/118/84	Wishes to be transferred to Phoenix Prison because of problems at Beau Bassin prison	Explained
C/119/84	A first letter meant for the "Public Assistance Commissioner" unjustly cancelled on the subject of social aid to wife	Not justified
C/121/84	Not allowed to write to the Chief Justice for legal aid for divorce	Explained
C/132/84	Three fellow prisoners in the same cell thus causing moral hindrance for saying prayers	Explained
C/154/84	In prison Indian film shows few compared with western films shows; no sports weekly magazine available	Not justified
C/164/84	A review sent for complainant by mother handed to brother who was also a prisoner	Not justified
C/167/84	Not referred to specialist for "sinusitis"	Not justified

REGISTRY OF ASSOCIATIONS

C/151/84	No action regarding failure to hold annual General Meetings	Discontinued
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SOCIAL SECURITY

C/195/83	No social aid to wife since complainant's imprisonment except old age pension	Explained
C/ 12/84	No social aid granted to wife with a child	Explained
C/ 56/84	Undue delay in taking action against father for abandoning under-age children without any alimony and no grant of social aid	Not justified
C/ 92/84	Wife not granted any social aid	Explained
C/109/84	Inadequate social aid	Explained
C/117/84	Grant of social aid to wife inadequate and amounts to improper discrimination	Not justified
C/152/84	No pension from the National Pensions Fund after husband's death despite his contribution	Not justified

TELECOMMUNICATIONS

C/ 26/84	Undue delay in transfer of telephone	Discontinued
C/ 44/84	No reconnection despite payment of reconnection fee for telephone service	Explained
C/ 52/84	Application for a telephone not duly considered	Not justified
C/ 64/84	No telephone provided despite long standing application: improper discrimination	Explained
C/ 77/84	Discrimination in providing telephone	Not justified
C/ 79/84	No provision of telephone despite long-standing application: discrimination	Explained
C/ 87/84	No provision of telephone in spite of application since 1982	Explained
C/ 95/84	Grossly exaggerated telephone call bills	Discontinued
C/103/84	Unfair allocation of telephones (Minister's decision: S. 97(7) of Constitution)	Declined

APPENDIX C—continued

TELECOMMUNICATIONS—continued

No.	Subject of Complaint	Result
C/106/84	Unsatisfactory operation of telephone on carrier system ...	Discontinued
C/108/84	Unfair allocation of telephones (Minister's decision: S. 97(7) of Constitution)	Declined
C/134/84	Not provided with a telephone despite long standing application	Explained
C/135/84	No provision of a telephone	Explained
C/136/84	Non provision of a telephone in spite of long-standing application (Copy of complaint not sent to an MLA although requested by this Office to do so)	Discontinued
C/144/84	No provision of telephone despite long standing application	Discontinued
C/146/84	Improper allocation of telephones (Decision of Minister under Section 97(7) of Constitution)	Declined
C/153/84	Grossly exaggerated call bills	Explained
C/166/84	Undue delay in providing a telephone: Discrimination ...	Withdrawn
C/172/84	Improper discrimination in granting a telephone ...	Being investigated

TRADE AND SHIPPING

C/ 10/84	Undue delay in dealing with application for price increase of newspaper; partially	Not justified
C/ 98/84	Inaction regarding defective installation of a tarpaulin awning by a trader	Explained

WORKS

C/178/83	No sufficient action regarding complaint about building by neighbour at less than statutory distance from boundary	Being investigated
C/ 2/84	Not paid any gratuity for service in former Railways and Ministry of Works	Not justified
C/ 4/84	Prosecution regarding building at less than statutory distance (time-barred)	Justified
C/ 19/84	No action regarding defective sewerage system causing sanitary nuisance	Not justified
C/ 69/84	Not paid any pension by Widows and Childfen's Pension Fund, although late husband was a permanent employee of the Ministry of Works	Not justified
C/ 86/84	Imported goods unjustly seized and delivered to the Ministry	Not justified
C/105/84	Inadequate retiring benefits	Not justified
C/115/84	No action on declarations to regional office of building at less than statutory distance	Not justified
C/145/84	No action on declaration against neighbour regarding building at less than statutory distance from the boundary (Complainant failed to supply particulars as requested by Ombudsman)	Discontinued
C/160/84	Unreasonable shifting of bus stop	Not justified

APPENDIX D

CASES DECLINED FOR WANT OF JURISDICTION AND IN EXERCISE OF DISCRETION

<i>Complaints registered against:</i>					<i>No. of Complaints</i>
Attorney-at-Law	...	...	...	...	2
Central Housing Authority (Explained) (2) *	...	...	...	...	3
Crown Counsel (D.P.P.)	...	...	...	...	1
Development Works Corporation...	...	...	...	...	2
Insurance Company	...	...	...	...	1
Judicial Department	...	...	...	...	8
Magistrates	...	...	...	...	4
Mauritius Examinations Syndicate	...	...	...	...	1
Municipality	...	...	...	...	2
National Transport Authority	...	...	...	...	2
Police Service Commission	...	...	...	...	1
Private Individual	...	...	...	...	2
Public Service Commission	...	...	...	...	8
Road Transport Commissioner (Explained)*	...	...	...	...	1
Sugar Industry Labour Welfare Fund Committee and former Minister	...	...	...	...	1
Sugar Insurance Fund Board	...	...	...	...	1
Supreme Court (Explained) *	...	...	...	...	1
Town and Country Planning Board and District Council	...	...	...	...	1
Trade Union	...	...	...	...	1
University of Mauritius	...	...	...	...	1
Vague (Discontinued)	...	...	...	...	1
Cases falling under proviso of SS. 97(2), 97(8), 101(2) of the Constitution, cases outside S. 97(1) of the Constitution	...	...	...	...	12
TOTAL					<u>*57</u>
<i>Discontinued</i>					
1					
<i>Explained</i>					
4					
<i>Declined</i>					
40					

*Of these, 5 were mere requests for information which were referred to the authorities concerned.



