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# MANUAL

FOR

# CONCILIATION OFFICERS
# GOVERNMENT OF PUNJAB, LABOUR DEPARTMENT
# CHANDIGARH
# 1974

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## PREFACE

Industrial conflicts are ruinously wasteful and are the most serious obstacles to efficiency in production. If not properly resolved, industrial conflicts result in work stoppages in the form of strikes and lock-outs which seriously dislocate production programmes. Industrial harmony is an essential requirement for economic and social development. The Conciliation Officer is the main watch-dog of industrial peace and bears the greatest burden of maintaining industrial harmony, which is likely to be disturbed at slightest pretext because of rising prices, scarcity of essentials of life and growing consciouness among working classes. The efficiency with which the Conciliation Officers perform their duties can considerably influence industrial peace which has assumed new and complex dimensions in the country particularly in the context of present economic and development needs.

The system of industrial conciliation has worked well in Punjab during the last two decades and a half. Majority of industrial disputes have been settled in conciliation without interruption in production. The Conciliation Officers, as a body, have developed practices and procedures and built up traditions which have been very useful in the settlement of industrial disputes. There has accumulated the experience of devoted officers who have tried their best to work conciliation methods in their proper spirit.

When I took over as Labour Commissioner, Punjab, about two years back, I felt that guidelines for efficient discharge of duties were not available in consolidated form to the Conciliation Officers. I, therefore, decided to incorporate the accumulated experience of Conciliation Officers over a number of years in the form of a ready reference book. This manual, therefore, seeks to give in brief the various requirements and details of the procedure to be followed while conducting conciliation proceedings and attempts to present a synthesis of various requirements of the relevant provisions of law as well as departmental instructions.

I hope and trust that the guide lines laid down in the Manual will be of help to the Conciliation Officers in their difficult task of handling industrial disputes. I am sure the experience gained by senior officers in the settlement of disputes would be of considerable value to their colleagues and juniors, who will thus be saved of the long and costly process of learning by 'trial and error'.

This Manual is liable to be revised from time to time. As such, I shall appreciate any suggestions which the users of this Manual might offer so as to improve its practical utility.

I am greatly indebte to S. Joginder Singh, Deputy Labour Commissioner, Punjab, and S. Attar Singh Talabgar Labour-cum-Conciliation Officer, for helping me to prepare this Manual.

HARI RAM,
I. A. S.,
Labour Commissioner, Punjab.

Chandigarh,
Dated the 14th January, 1974.

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## CHAPTER I

### PRELIMINARY—WHAT IS CONCILIATION—RELEVANT STATUTORY PROVISIONS—ABILITIES WHICH A CONCILIATION OFFICER SHOULD POSSESS

What is Conciliation.

The term 'conciliation' is better understood than defined. It is a diplomatic procedure which endeavours to settle a controversy by assisting parties to reach a voluntary agreement. Conciliation in industrial disputes is a process by which the representatives of workmen and employers are brought together before a disinterested third person or body of persons with a view to persuade the parties to come to an agreement among themselves, by mutual discussions to the satisfaction of both and in the larger interests of industry and community as a whole, when there are impediments or hindrance which the parties cannot surmount unaided. It involves the balancing and harmonising of conflicting interests of the parties by offers and counter-offers resulting in the progressive narrowing down of the range of differences between the parties and ultimately bringing them to an amicable settlement by process of give and take.

Relevant Statutory Provisions.

2. The conciliation of industrial disputes is one of the main functions of the officers of the Labour Department. This statutory function is required to be performed in pursuance of the provisions laid down in the Industrial Disputes Act, 1947. The relevant provisions of the law are :—

1. Section 2(e).....Definition of conciliation proceedings.
2. Section 2(n) First....Definition of Public Utility Services. Schedule.....
3. Section 2(p), Rule 58—Definition of settlement.
4. Section 4.....Appointment of Conciliation Officer.
5. Section 9A, Rule 34.... Notice of change to be given by the employer—Fourth Schedule.....
6. Section 11, Rules 10-A. ....Procedure and power of Conciliation Officers.
7. Section 12, Rules 11 and 12.....Duties of Conciliation Officers.
8. Section 20, Rules 9 & 10 .... Commencement and conclusion of conciliation proceedings.
9. Section 21.....Matters to be kept confidential.
10. Section 29.....Penalty for breach of settlement or award.
11. Section 30.....Penalty for disclosing confidential information.
12. Sections 33, 33A, Rules 59, 60 and 61 ....(Alteration in conditions of service during the pendency of conciliation proceedings.
13. Section 36, Rules 36 and 37....(Representation of Parties during conciliation proceedings.

The most important of the above cited provisions in so far as they relate to conciliation are sections 11 and 12 which, interalia, lay down the procedure, powers and duties of Conciliation Officer who is appointed under section 4 of the Act.

Abilities which a Conciliation Officer should possess.

3. Although the law prescribes qualifications for Labour Courts and Industrial Tribunals, yet no minimum educational qualifications or other criteria have been laid down for the appointment of Conciliation Officers. However, since the success of Conciliation Officer depends so largely on the intimate understanding of the real issues involved and timing, the abilities of the Conciliation Officer are crucial, patience, perseverence, resourcefulness, a bit of tact, initiative and discretion are some of the qualities he should try to cultivate, if he is to be affective. This is so because in industrial disputes, the human relationship aspect plays a significant role, and herein lies a wide field for the Conciliation Officer to show originality, tact and understanding.

Knowledge General.

4. By and large success of Conciliation depends on an intimate understanding of the real issues involved in the dispute and the reasons combining into a deadlock. Besides sound knowledge of the industry, situation of the work, its economics, as well as a fair appreciation of the working and living conditions of the employees concerned will make a geat deal for the success of the Conciliation Officer. He should be able to furnish information to the parties that may assist them in evaluating the principal consequences of alternative decisions. He has to consider a variety of demands coming up from the sponsoring parties and therefore, he needs to know the entire range of industrial relations and conditions prevailing in similar establishments/industries in the neighbourhood. He needs to acquire extensive background knowledge on which he can draw at short notice and situations in which on the spot decisions must be taken. A Conciliation Officer should be well informed and be in a position to offer assistance and guidance to the parties. Where he does not have the information, he should be able to obtain for the benefit of the parties.

Knowledge.

5. Conciliation is governed by statute and adjudication which generally follows its failure is also governed by statute. It is, therefore, important for the Conciliation Officer to know the law and follow it scrupulously in his day to day work. He cannot discharge his duties effectively unless he has adequate knowledge of law and the current decision on various labour matters. Knowledge of the trend of the judicial decisions in respect of various demands coming up before him is as an asset for the Conciliation Officer. He should, therefore, regularly read all the decisions of Labour Courts, Industrial Tribunals, High Courts and Supreme Court being published from time to time in various Government Gazettes, Law Journals and Reporters.

Impartiality.

6. The success of a Conciliation Officer lies to a great extent in the amount of confidence he inspires in the parties to the dispute. With this end in view his approach to problems and attitude towards parties should be tempered with a high degree of impartiality. He cannot be successful unless he is equally respected by both the sides. While presiding over joint meetings, he should regard himself as an independent chairman of the negotiations. He should handle the case in such a manner that an impression is created that he is a friend of both the parties and has not aligned himself with either of the contestants before him and that only fairness and justice should be expected from him. He should not take sides in the dispute. His independence, impartiality and sense of fairness should be beyond doubt. He is expected to be strictly impartial in his approach and methods.

Objectivity.

7. The value of the Conciliation Officer lies in the fact that he enters the scene with a fresh viewpoint, can see both sides without prejudice and draw upon his experience to suggest possible compromises in an objective manner. In making his suggesions to the parties, the Conciliation Officer should not be influennced by any personal prejudices, but must be guided by fairness and reasonableness. He should not let his own feelings about the problem limit

his efforts to find a workable solution. He must avoid both personal bias and other social objectives. That does not mean that a Conciliation Officer is without opinions on successful relationship between management and the union. But he should eliminate from his judgement on the dispute before him, whatever, bias he may have whether that be economic or social.

8. To be successful the Conciliation Officer must be gifted in his ability to meet and deal with people in such a way as to inspire confidence in him. He must have integrity and they must believe in his integrity. He should have strength of character to resist pressures from well-to-do employers or even from the powerful trade union leaders and other influences. Integrity.

9. A flexible and informal approach produces best results. The points to be considered in respect of demands in dispute are not by their very nature common and the Conciliation Officer has to be very adaptable in considering a variety of demands. There is no single panacea that will usher in a utopia of conciliation, as a method may produce different and even diametrically opposite effects, according to the persons and situations to which it is applied. For example 'Novices' and 'professionals' have to be handled in different ways. More often than not the parties to the disputes look upon conciliation as merely a hurdle to be crossed for reaching the next stage-adjudication. There is therefore, a casualness about it in the parties. The Conciliation Officer should not be discouraged by that attitude ; do his job seriously even when there is no possibility of a compromise and must never consider conciliation merely as a formality to be gone through before adjudication. Rigid adherence to a 'set drill' 'undue formality' and 'conciliation by correspondence' should be avoided as these hamper speedy settlement of disputes. It has to be borne in mind that Conciliation Officer is not a judicial or even a semi-judicial officer. Though certain necessary powers are given to the Conciliation Officer under the Act, the atmosphere before him is not sought to be made unduly formal. Conciliation may be rightly described as an art and therefore, Conciliation Officer should not be too much legalistic in the performance of his duties. Flexibly and Informal Approach.

10. The difficult and delicate job of Conciliation Officer requires tact, patience and ability to bring about an atmosphere of friendliness between the opposite parties. A calm and cool temperament is essential to handle conflicting personalities and possibly violent emotions. He needs a keen insight into reasons why people act as they do and a sympathetic understanding. Parties expect outright acceptance of their versions. Their legal advisors make their attitudes rigid, whereas flexibility is a necessity in conciliation. He should keep the parties in good homour with occasional witty remarks. He has to create the necessary climate and conditions in which employers and workers can sit together and solve their differences. His job becomes more trying and difficult during strikes and lock-outs, as his main job is to bring both the parties together to resolve their differences by promoting a continuing dialogue in a calm atmosphere, to clear the air of personality factors and to focuss the attention of disputants on the issues to be resolved. He needs a good deal of fact to control the progress of proceedings either directly or by suggestion.

## CHAPTER II

## POWERS AND DUTIES OF CONCILIATION OFFICERS

Powers.

To enable the Conciliation Officer to discharge the duties cast upon him under the Act, he has been vested with the following powers under Section 11 :—

(a) A Conciliation Officer is deemed to be a Public Servant within the meaning of Section 21 of the Indian Penal Code (*vide* Annexure "A").

(b) He may, for the purpose of enquiry into any existing or apprehended dispute, enter the premises occupied by any establishment to which the dispute relates, after giving reasonable notice. He can interrogate any person for his enquiry in the premises.

(c) He may call for and inspect any documents which he may consider relevant to the dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. The provisions further confer upon the Conciliation Officer, for the aforesaid purpose, the same powers as are vested in the Civil Court, under Code of Civil Procedure, 1908 in respect of compelling the production of documents (*vide* Annexure "B").

However, in practice by the very nature of his duties, he should not ordinarily invoke such powers. Moreover, he can not enforce these powers as he has no machinery to ensure compliance with his summons through the process servers while the machinery of the Civil Courts cannot be utilized by him.

2. There is no provision in law which empowers the Conciliation Officer to compel the parties to attend the conciliation proceedings or call witnesses and examine them on oath.

3. A Conciliation Officer has no authority or power over the parties to force or order them to agree. He cannot substitute his judgement for those of the parties. He cannot decide for them what their goals are and at what point their divergent goals should be balanced. He cannot force his suggestions on them. His basic task is to find a solution acceptable to both the parties rather than to determine the rights and wrongs of a problem. He merely helps the parties to see more seriously and vividly their own self interest in a peaceful settlement. He can simply persuade them to believe that his proposals are reasonable and workable. He only suggests answers to the problems, leaving to the parties to be convinced and to work out the solutions voluntarily.

Duties.

The duties of a Conciliation Officer have been specified in Section 12 of the Industrial Disputes Act, 1947. Conciliation Officer is required to investigate without delay the industrial disputes and all matters affecting the merits and the right settlement thereof. The Conciliation Officer has a wide discretion under the law and he may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

2. When the Conciliation Officer takes up an industrial dispute, it is his responsibility to collect full facts of the dispute from the parties themselves and size up the reasons why a deadlock has developed. He has to

help both the parties to get around the deadlock by assisting each of them to clarify its own objectives and problems, to the other party and aiding them in reaching a situation in which they can realistically make their own choice of alternatives. He has to assist the parties at the appropriate moments to continue their discussions by removing obstacles and clearing out facts of the dispute whereby an amicable settlement may be arrived at.

3. As a representative of public interest, he represents the common interests of both the labour and management for peaceful, and therefore constructive industrial relations. Thus he has to avoid strikes and consequent loss of national production and loss of wages to the workmen as well as emotional conflicts which embitter labour management relation.

## CHAPTER III

## CONCILIATION—COMPULSORY AND DISCRETIONARY ; DISPUTES IN PUBLIC UTILITY AND NON-PUBLIC UTILITY SERVICES ; POINTS FOR PRELIMINARY SCRUTINY AND ENQUIRY

**Conciliation —Compulsory and Discreationery.**

Under Section 12, when an industrial dispute exists or is apprehended, the Conciliation Officer is given the discretion to hold conciliation proceedings. Where, however, the dispute relates to a public utility service and notice of strike or lock-out under Section 22 has been given, the Conciliation Officer is bound to initiate the conciliation proceedings. But, over the years the optional provision appears to be acquiring compulsory status in non-public utility services also. Even where no notice of strike or lock-out has been given in public utility services, it is desirable that Conciliation Officer initiates conciliation proceedings in order to avoid work stoppage. Therefore, the Conciliation Officer is expected to exercise his discretion in a realistic manner which would help the maintenance of industrial peace. If the Conciliation Officer comes to a conclusion that it is not desirable to admit a dispute in conciliation, he should send a report to the Labour Commissioner within a week giving specific reasons. Mere silence or attitude of prolonged indecision is not desirable.

**Disputes in Public Utility Concerns.**

With a view to assure more special attention to the disputes relating to 'public utility services' special provisions have been enacted in the Industrial Disputes Act, 1947. Section 2(n) defines the expression 'public utility service'. In addition to the industries specifically enumerated therein clause (vi) of Section 2(n) further provides that the industries specified in the first Schedule to the Act may be declared to be public utility services by the Government by notification in the Official Gazette. Besides, sub-section (1) of Section 40 empowers the Government to add to the First Schedule any industry, if it is of opinion that it is expedient or necessary to do so in public interest. In addition to the circumstances in which the commencement of strikes and lock-outs is prohibited under Section 23 in general industrial establishments, Section 22 lays down additional restrictions for strikes and lockouts in public utility services so as to provide safeguard to the running of public utility services and to obviate the possibilities of inconvenience to the general public and society. Section 12(1) makes it obligatory on a Conciliation Officer to hold conciliation proceedings, when the dispute relates to a 'public utility service' and notice under Section 22 has been given. The proviso to Section 10(1) enjoins on the Government that it must make a reference of an industrial dispute when the dispute relates to a 'public utility service'.

2. As the dispute affects 'public utility services' the Conciliation Officer should exercise utmost care and diligence in dealing with them. When a notice in respect of a dispute in a public utility service is received by the Conciliation Officer, he should scrutinize it whether it is in the prescribed form N and *primafacie* it is regular and not frivolous or vexatious. If it broadly meets the requirements, it is incumbent on the Conciliation Officer to initiate proceedings in the dispute without any preliminary enquiries, as under Section 20(1) in such cases, conciliation proceedings automatically commence on the date of receipt of notice of strike or lock-out by the Conciliation Officer. Conciliation proceedings should be completed as early as possible and report should be sent to the Labour Commissioner, without avoidable delay. If however, the notice of strike or lock-out is found to be patently defective, frivolous, vexatious or otherwise materially irregulate,

Conciliation Officer may not entertain the dispute into conciliation and advise the parties about proper recourse to be adopted in this regard.

In regard to disputes in concerns which are not public utility services within the meaning of the Industrial Disputes Act, 1947, the admission of disputes in conciliation is discretionary and not obligatory, as in the case of public utility services. Therefore, the Conciliation Officer should apply his mind to the facts of the case so as to satisfy himself that the dispute is capable of being admitted in conciliation. Normally such disputes are admitted in conciliation after preliminary scrutiny and enquiries, the purpose of which is broadly to see whether the subject-matter of the dispute and its sponsorship is such that the admissibility of the dispute in question would not be in contravention of any statutory provisions and would not mitigate against any of the directions, confidential or otherwise, issued by, or under the instructions of Government from time to time. The main object of preliminary examination of a dispute case is to ensure that conciliation proceedings are not rendered invalid. Disputes other than those in Public Utility services.

The points in regard to which preliminary scrutiny and enquiries are required to be made by the Conciliation Officer are stated below *in seriatum* :— Points for Preliminary Scrutiny and Inquiry.

(i) whether the industry is within the purview of the Act ;

(ii) whether the concern to which the dispute relates falls within his jurisdiction ;

(iii) whether the subject-matter of the dispute is an industrial matter and a real issue ;

(iv) whether the employees on whose behalf the disputes has been sponsored are workmen ;

(v) whether sufficient time was allowed by the workman union to the management to consider the demand(s) ;

(vi) whether the body raising a dispute is competent to do so ; and

(vii) whether there is any estoppel in taking the dispute in conciliation.

The Conciliation Officer should first of all see that the concern with which dispute has been raised is an 'industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947. Re : (i) Industry.

Before commencement of conciliation proceedings, the Conciliation Officer should find out whether the concern to which the dispute pertains is within the jurisdiction of the State Government conciliation machinery or the Central Government conciliation machinery. Re : (ii) Appropriate Government.

A dispute can be admitted in conciliation only if it is in respect of a dispute relating to an industrial matter. For example, recognition of union is not an industrial matter and therefore, the Conciliation Officer should not initiate action in such disputes. Re : (iii) Subject-matter.

The dispute should not be admitted in conciliation if employers on whose behalf it has been sponsored are not workmen within the meaning of the Act. Teachers, Civil Servants, persons employed in a supervisory capacity drawing wages exceeding Rs 500 per month and those employed mainly in a managerial or administrative capacity are not workmen as defined under section 2(s) of the Industrial Disputes Act, 1947. Similarly, non-employement of persons Re : (iv) Workmen.

who were promised employment can not raise an industrial dispute as they do not fall under the definition of workman.

2. If the workman/union have not served the demand(s) under dispute on the management or have not allowed sufficient time to consider the demand(s), the workman/union be advised to do it in the first instance. If the trade union does not receive satisfactory response from the employer within a fortnight of the service of tne demands on the employer, it may be assumed that the employer is not disposed to discuss the matter mutually with the union and it may be taken that the existence of the dispute is established. If the receipt of demand notice is disputed by the employer, the union should be asked to produce evidence in regards to the service of the demands such as an acknowledgement receipt from the employer, certificate of posting or receipt of postal registration. The burden to prove the service of demand notice on the management lies on the union.

The Conciliation Officer should see whether the body raising the dispute is competent to do so and whether the constitution of the union raising the dispute allows enrolment of members from the industry affected by the dispute.

The Conciliation Officer should see that there is no estoppel in taking the dispute in conciliation. The demands in respect of which Government have refused adjudication should not be taken up for conciliation afresh ordinarily within one year unless changed circumstances reasonably justify such earlier intervention. The issues which are *sub-judice* or are covered by a provision of law, award or settlement in force are not fit for conciliation.

## CHAPTER IV

## GUIDE POINTS FOR INTERVENTION IN DISPUTES

Coercive behaviour of the parties.

The Conciliation Officer should not normally hold conciliation proceedings, if on enquiries it is found that the workmen or their union had resorted to sit down strike, illegal strike, hunger strike or go slow tactics for forcing the employer to concede their demands or had adopted coercive behaviour, like violent demonstration, preventive or obstructive or coercive picketing and distribution of abusive and scurrilous pamphlets, circulars, etc., directed against the management. The Conciliation Officer will also not normally intervene in a dispute where the workers involved have indulged in acts of violence, indiscipline, coercion, criminal intimidation and 'Gherao' or confinement tactics.

2. The Conciliation Officer should press and persuade the union to first withdraw the agitation, call off the illegal strike and create normal peaceful conditions so that formal conciliation proceedings could be started.

3. However, the public interest is of paramount importance in a democratic set-up, particularly when an industrial dispute leads to a work-stoppage, affecting not only the workers and the production but also the consumer, which class constitutes a major portion of the public. Therefore, the Conciliation Officer may act sometimes even in cases where the workmen have defaulted. It should always be endeavour of the Conciliation Officer to intervene formally or informally and settle as many dispute as possible, considering their importance to the industry and the workmen.

4. The Conciliation Officer should immediately intervene on receiving information of strike from any source, and make efforts to avert the same. Each strike case should atonce be brought to the notice of Labour Commissioner giving details of the establishment, number of workmen involved, the date on which strike started as well as the cause of the strike. This should be followed by daily report till the strike comes to an end.

Representation of Parties.

The Conciliation Officer should allow the office-bearers of the union or other representatives of the workmen and management to appear in conciliation proceedings only in accordance with the provisions of section 36 of the Industrial Disputes Act, 1947. Before commencement of negotiations the formal letter of authority in Form "F" (*vide* Annexure "C") should be called for, from the representatives of the parties checked and placed on record by the Conciliation Officer.

2. In case a demand notice is received without letter of authority, the Conciliation Officer should write to the union to furnish the same. It is the duty of the workmen/union to produce the power of attorney duly signed by the workmen. It is not for the Conciliation Officer to run after the union for letter of authority, and if after repeated demands, the workman/union does not furnish letter of authority, the dispute should be recommended for filing to the Labour Commissioner.

3. It should be ensured that the signatures of the workmen affected (where the demand is not of a general nature) invariably appear in the letter of authority. In case of individual demand notice under section 2A of the Industrial Disputes Act, 1947, letter of authority must be signed by the concerned workman.

Sponsorship of Dispute.

By virtue of the Amendment Act No. 35 of 1965, an individual workman can himself raise a dispute regarding his discharge, dismissal, retrenchment

or termination of services, notwithstanding that no other workman or any union of workman is a party to the dispute (*vide* Section 2A). Subject to this any other dispute between an individual workman (or a group of workmen) and his employer is not an industrial dispute unless it is backed up or raised by a substantial number of employees.

2. There is no hard and fast rule signifying as to what constitutes a substantial number, but if the demand notice does not have the support of at least 15 per cent of the total workers on the rolls of an establishment or 40 per cent of a particular section of that concern, conciliation proceedings may not be commenced.

3. In case where the representative character of a union serving a demand notice has been challenged by the management without any documentary proof in the form of signatures of workmen concerned or by producing their affidavit in support of their assertion, a recourse to physical verification of their character should not be taken by the Conciliation Officer.

**Issues covered by Statutory Provisions.**

No conciliation proceedings be initiated on demands forming the subject matter of the dispute which are *prima facie* covered by statutory provisions such as the Payment of Wages Act, 1936, Workmen's Compensation Act, 1923, Minimum Wages Act, 1948, Factories Act, 1948, Industrial Employment (Standing Orders) Act, 1946 or any of other labour laws. The party espousing the dispute may be advised that the question of conciliation on a benefit conferred by law does not arise and that relief for denials of a statutory previlege lies in praying for action under the Act and not in raising a fresh dispute. Therefore, the party sponsoring the demands should seek remedy under the existing specific labour laws or standing orders.

2. The concerned Labour Inspector should be directed to take suitable action to settle the grievances of workers arising out of non-implementation of the statutory provisions of labour laws. A report on action taken in the matter should be sent to the Labour Commissioner.

3. Where the action taken by the management is not in conformity with the Certified Standing Orders of the Company, it should be examined whether or not the union could directly refer the question/irregularity directly to the Labour Court under section 13-A of the Industrial Employment (Standing Orders) Act, 1946.

**Issue covered by subsisting settlements and awards.**

No dispute shall be seized in conciliation if the subject matter is already covered by a valid and subsisting settlement or award or is subject matter of any conciliation or arbitaration or adjudication proceedings before a court of Law, Labour Court, Industrial Tribunal, National Tribunal or any other authority duly constituted. To conciliate over the demands which are already covered by settlements and awards amounts to sawing the saw dust.

2. In case of a clear breach of an award or settlement, formal conciliation should not be held. After ascertaining the correct position, proposal for legal action may be initiated by way of prosecution under section 29 or recovery proceedings under section 33-C. The concerned Labour Inspector may be directed accordingly and a report sent to the Labour Commissioner.

3. In case of a genuine difference of opinion between the parties regarding provisions of an award or settlement, discussions may be held to settle the differences and in case of an agreement, a settlement may be signed.

4. Where no agreement is reached, the Conciliation Officer may inform the parties of the position as appears to him to be reasonable and if differences

still persist, action may be suggested under section 36A for getting the same interpreted. He can, if necessary, make a reference to the Labour Commissioner, before taking a rigid stand in this regard. In making such a reference, he should give his own views in the matter.

*Frivolous Demands*

Demands of petty and frivolous nature should be discouraged and therefore, need not be admitted in conciliation.

2. In cases of demands which are excessive un-conventional and have been included either due to inter-union rivalry or due to other extranuating circumstances, it is worth while to advise the party concerned, in confidence to drop the demands as there is no justification in demands of this nature.

3. Conciliation proceedings may not be commenced, if any of the demands, despite request to the contrary by the Conciliation Officer, still continue to be put forth in ambiguous and vague terms.

Neither the law of limitation as applicable to civil cases applies to industrial disputes nor any rule of limitation has been enacted for raising industrial disputes in any other statute. But ordinarily demands raised after a lapse of reasonable period should not be entertained unless convincing reasons are given for not doing so earlier. As a rule belated and stale claims should not be entertained. Whether a demand has become too stale or not will depend upon the circumstances of each case. Where a dispute has been raised long after the event giving rise to the dispute., the reasons for the delay should be ascertained and comments offered whether the same can be accepted as satisfactory. However, when there is a delay in raising a dispute, the Conciliation Officer should exercise his jurisdiction wisely. That, however, is not a matter of jurisdiction but only a matter of discretion.

## CHAPTER V

## PROCEDURE TO BE FOLLOWED WHEN THERE ARE MORE THAN ONE UNION IN THE CONCERN

The Trade Union Act, 1926, does not ensure the existence of one union in one unit with the result that there is multi-unionism. The rivalry that often exists between the unions creates new problems, which the Conciliation Officer is expected not to ignore. In the following lines, procedure to be followed in regard to disputes pertaining to concerns where there is evidence of existence of more than one union, will be discussed. Cases of this type may be of following six categories :—

(i) Where there are more than one union ; but only one of them raises an industrial dispute ;

(ii) Where there are more than one union and they submit different demands on the same subject-matter more or less simultaneously;

(iii) Where there are more than one union and the dispute raised by one union has already been admitted in conciliation and during the pendency of conciliation proceedings, the employer and another (rival) union sign an agreement in respect of the same dispute ;

(iv) Where there are more than one union and while an agreement is in existence between one of the unions and the employer ; another union which is not a party to the said agreement brings up a dispute relating to a matter covered by the agreement, for being admitted in conciliation ;

(v) Where there are more than one union and one of the unions is recognized by the employer as a sole bargaining agent ;

(vi) Where there is only union but there are two different office-bearers of the same union and both group of office bearers raise an industrial dispute.

**Re: (i) Where there are more than one union only one of them raises an industrial dispute.**

The Conciliation Officer can straightway begin his work if the dispute pertains to only individual members of the union.

2. But the Conciliation Officer must make every union in an establishment a party in the matters that affect all the workers of the concern. A union especially a minority union can only speak for its members. Therefore, in case of general demand notice, the Conciliation Officer should summon all the unions for discussions before the agreement is actually signed. In case any union refuses to participate in the conciliation proceedings, there should be definite proof with the Conciliation Officer about his having called all the unions for participation in the conciliation proceedings and having given them opportunity to place their point of view with regard to general demands proposed to be settled in conciliation.

3. If there are more than one union and a formal dispute has been raised by one of them and the management points out that they are negotiating with the rival union(s), due weight should be given to *bona fide* negotiation between the employer and the workmen. However, devices to delay the progress of a case in conciliation such as plea by the management that they

are negotiating with other union(s) in respect of demands or they are negotiating directly with the workmen should not be entertained. In such cases, the Conciliation Officer should be guided by his own assessment of the strength of the union raising the dispute.

4. When the demands are initiated at the instance of one union and another union is subsequently allowed to join as a party, the discussions should be strictly confined to the original set of demands.

Re : (ii) When more than one union submit different demand notice.

Efforts should be made to induce the parties to agree to a common charter of demands as that would facilitate smooth course of negotiations. Where the same demand is raised in different forms by more than one union functioning in the establishment, the Conciliation Officer should attempt to frame a common demand. If that is not possible and the unions fail to present agreed demands, the following procedure should be adopted —

(a) The demands may be divided into two parts; demands in respect of which there is agreement and demands in respect of which there is no agreement between the unions.

(b) In the case of demands of the latter type; the Conciliation Officer may exercise his own discretion as to which of the demands may be admitted in concliation and which should not be so admitted. In exercising his discretion, he may take, among other, the following considerations into account :—

(i) existing agreement or previous decisions, if any ;

(ii) norms prevailing in the industry concerned ;

(iii) degree of representative character of the union making the damands; ande

(iv) *prima facie*, reasonableness of each of such demands;

(c) Having made such a list, he may inform the parties and take in conciliation the demand mentioned in the list.

Re : (iii) Where the Employer signs a Mutual Settlement with the Rival Union during the pendency of Conciliation Proceedings.

There are occasions when there are more than one union and the dispute raised by one union has already been admitted in conciliation and during the pendency of the conciliation proceedings the employer and another rival union sign an agreement in respect of the same dispute. In such cases, the conciliation proceedings already initiated will most likely end in failure.

2. Under section 18(1) a settlement signed mutually by the management and the union otherwise than in the course of conciliation proceedings, binds only the members of the union concerned. Therefore, the Conciliation Officer is not in a position to discontinue his case although he may be of the opinion that the agreement reached is a fair and reasonable one. In such circumstances the Conciliation Officer should continue the conciliation and submit his report to Government, after incorporating his remarks on the mutual agreement reached.

Re : (iv) Where the Rival Union Raises A Dispute After Settlement has been arrived with other Unions

In certain situations there are more than one union and while the agreement is in existence between one of the unions and the employer, another (rival) union which is not a party to said agreement brings up a dispute relating to a matter covered by the agreement, for being admitted in conciliation. If the subsisting settlement was arrived at during conciliation proceedings and hence memorandum of settlement was signed in the presence of Conciliation Officer, then the Conciliation Officer need not intervene in a dispute in respect of matters covered by the settlement.

2. If the settlement was a mutual one signed by the management and union under Section 18(1), otherwise than during conciliation proceedings, no dispute raised by another union on a point covered by the agreement may be taken into conciliation, if.—

(i) the agreement is signed by a union having a majority of workers as its members at the time of signing the agreement, or

(ii) a majority of workers have in fact acquiesced in that agreement.

Re : (v) Where there are more than one Union and one of them is recognised by the Employer.

There is at present no statutory provisions governing the question of recognition of trade union by the management as a representative bargaining agent on bahalf of the workmen employed in any industrial establishment very few of the registered trade union have been recognized by the employers. According to the position obtaining in law it is not necessary that for a dispute to constitute an industrial dispute, it should be sponsored by a recognized union. Therefore, the Conciliation Officer should not refuse to conciliate a dispute raised by an un-recognized union as an un-recognized union may have a large following in an important sector or plant and may be capable of precipitating a strike or creating a serious situation. Even where the dispute has been raised by a recognized union, a dialogue may be started with the un-recognized union and their reactions may be ascertained and mentioned in the Concluding Report. The employer should be persuaded to accept this position as it will leave no room for inter-union rivalry and agitation over settled disputes.

Re : (vi) Where two different groups of Office bearers of the same Union raise dispute.

Some times, as a result of intra-union rivalry two different groups office bearers of the same union raise a dispute. At present, there is no machinery incorporated in the Trade Union Act, 1926 or Industrial Disputes Act, 1947 or under any other labour law whereby disputes can be settled between rival factions of a trade union claiming under the same registration. The Conciliation Officer should not enquire into or settle such a dispute as only a competent a Civil Court can determine such a dispute.

2. In such situations the Conciliation Officer should entertain a dispute raised by a group who is *de-fecto* controlling the affairs of the union. The dissident group may be politely informed accordingly. Pendency, of a dispute concerning office bearers, before the Court is of no significance unless interim stay order in the favour of the party is operative.

## CHAPTER VI

## TECHNIQUE OF CONCILIATION

Joint and separate discussions.

The technique of conciliation has been described as one of the 'unselling' and 'selling'. The Conciliation Officer bargains for both sides though at the same time both the sides bargain with the Conciliation Officer and try to impress upon him the justice of the particular case. His role is that of a catalyst in setting the bargaining process in motion and in keeping it moving towards agreement. For this, it is essential for him to hold discussions with the parties jointly as well as separately. Discussions separately with the parties are useful as there can be free full and fair exchange of views. A joint meeting saves time and also affords an opportunity to the parties to face each other and put forward their respective view points and comments about a dispute. At times separate meetings with the parties become absolutely necessary, if one of the parties is unwilling to attend joint discussions for some reasons or the other.

2. The facts of the dispute should be obtained in the beginning independently from each of the parties. In the First Round of Separate talks, the Conciliation Officer should inform himself of the exact nature of the dispute and the view point of the disputants. Through separate initial interviews, he should be able to win their confidence, establish himself as a benevolent, experienced and non-partisan participant in the negotiations and assess bargaining points in which it will be most helpful to come to a settlement. At separate meetings, the Conciliation Officer should try to ascertain the feelings of the parties, the extent of differences, and the persistance with which each party is likely to adhere to its view points and how far each is accommodative to resolve the dispute. Separate talks give a Conciliation Officer enough inclination and idea of a possible basis of compromise. Attempts to bring out facts in joint meeting in the initial stages sometimes carry the risk of provoking acrimonious and irrelevant discussions. In a straight way joint meetings the parties try to increase their negotiating power by increasing the magnitude of their real demands. The Conciliation Officer should ordinarily meet the party raising the dispute, first.

3. After collecting all the relevant basic information the Conciliation Officer should invite the parties to a Joint Meeting as only joint discussions promote understanding and settlement. He should convey the view points of both the parties in such a manner that differences look narrow. Narrowing down the gulf between the two parties may show the hope of resolution of the dispute.

4. If nothing concrete appears to be emerging from the first round of joint meeting, the Conciliation Officer may hold another session of Separate discussions with the parties to know their real demands more frankly. In a joint meeting, each party fears that if he tells the Conciliation Officer in the presence of the other party the extent of his willingness to compromise, this may be interpreted as a sign of weakness and may cause the other party to take a stiffer position. Situation may arise when the Conciliation Officer feels that the persons he is talking to wants his opinion on the merits of the dipute. In such instances but not in the presence of the other party it might be helpful to point out the weakness of the position of the particular party. He should set to find how far each party is going to settle the dispute and the proposals that may finally command the emotional support of both the parties

As such besides joint meetings, separate confidential talks with individuals and parties to find out the trend of thinking will contribute in resolving the dispute.

5. Having ascertained the limits that each side will concede and having known the common grounds of settlement, the Conciliation Officer should create favourable and appropriate circumstances for a Subsequent Joint Meeting. He should then propose solutions which each side has privately indicated would be acceptable to him. In subsequent joint sessions the Conciliation Officer should work out compromise alternatives from ideas of which he had inclination from the sides during his separate talks. In this way, he should be able to draw forth further offers and counter-offers which would nearly coincide. He should be able to think of compromise proposals which have not occurred to either of the parties; and it may include concessions which neither party would grant to other in his absence. An argument coming from a Conciliation Officer is received with attention while the same argument advanced by an evoked opponent might be rejected without even a hearing.

**Sense of Timing**

Another important secret of conciliation is the sense of timing. This means withholding the proposal of an employer or the union until it is likely to be entertained with approval by the opposite party. The Conciliation Officer should have an objective assessment of the situation and offer a recommendations if and when he believes that there is a sufficient likelihood of its acceptance. The problem of settling industrial disputes is mainly psychological and a suggestion for resolving the dispute should be introduced when the right moment for settlement is at hand. It should not be either premature or too late.

2. Too early an intervention may not permit seriousness of negotiations between the parties and a Conciliation Officer may exhaust his effectiveness and may not be effective at all at the crucial stage of negotiations. When the dispute shows signs of defying solution, the Conciliation Officer need not be excited with worry and be impatient to seek achievement before the hour of effective action has struck as pre-maturity in conciliation is as dangerous as in child birth. In some situations, a trial of strength may be the only way to clear the air and bring the parties into a more reasonable frame of mind. Intervention when the parties are determined to have a show-down is not likely to be successful if made at too early a stage.

3. If the intervention is too late, the attitude of the parties may get hardened. The job of Conciliation Officer becomes very difficult when parties have locked themselves into a too tight position. Therefore, the Conciliation Officer should avoid delayed intervention.

**Venue of Conciliation**

The place where conciliation is held is important for the final results. As far as possible, the conciliation meetings should be held in or near the town where the dispute arises. It is very much desirable to select a central and neutral place for conciliation proceedings. The disadvantages of utilising management office or guest house are both physical and psychological. The workmen feel greater restrain and get a feeling that perhaps the employer is attempting to dominate the proceedings. Moreover, there is the inconvenience of interruptions which are likely to occur when meetings are held in the factory office as in such circumstances there is tendency on the part of the management to carry on their regular work. Special messages and telephone calls interrupt the flow of thought and disrupt proceedings. Therefore, as a rule the Conciliation Officer should hold conciliation proceedings in his office or government rest house to maintain an atmosphere of impartiality.

maintenance of Proper Decorum :

The principal aim of the Conciliation Officer is to bring about a settlement of the industrial dispute before him and for this purpose, he may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. This pre-supposes that he must create an atmosphere of cordiality and friendliness between the parties during the proceedings and make the atmosphere generally propitious for a free, frank and friendly discussion. Conciliation procedings should be conducted in cordial and friendly atmosphere avoiding heated arguments and banging of the table and thereby affording reasonable opportunity to the parties to sit together and present their respective points of view and themselves arrive at agreements to resolve their differences.

2. Some of the trade union leaders and representatives of employers have a tendency to trigger off emotionally either as a matter of tactics or on account of temperamental make up. Utmost tact and politeness combined with judicious firmness on the part of the Conciliation Officer will go a long way towards bringing the parties together on controversial issues. The Conciliation Officer should not submit to corcion and should ensure that proper official decorum is maintained in his presence. It is the responsibility of the Conciliation Officer that there are no quarrels in the meetings and discussion are held in a disciplined atmosphere.

3. At occasions certain representatives of the parties to the dispute do not maintain proper decorum, exchange hot words and use abusive language during conciliation proceedings. There have been instances where certain persons have not hesitated to even man handle and assault the representatives of the other parties. This reflects badly on progress of conciliation proceedings and does not inspire confidence of the parties even for attending the conciliation proceedings. Therefore, any body who is found violating the normal rules of conduct should be advised very strongly by the Conciliation Officer to maintain proper decorum and if necessary, the matter may be brought to the notice of Labour Commissioner. If on any occasion the Conciliation Officer feels that the situation is going out of control, the meeting should be postponed immediately and the defaulting parties should be warned that in case they distrub the normalcy in the meetings, the Labour Department would withdraw their assistance in settling their disputes.

## CHAPTER VII

# CONCLUSION OF CONCILIATION PROCEEDINGS INCLUDING MEMORANDUM OF SETTLEMENT ; FAILURE REPORT AND ARBITRATION AGREEMENT

**Conclusion of Conciliation Proceedings :**

Once conciliation proceedings commence they must end at one stage in one way or the other. A case before the conciliation Officer terminates in one of the following seven ways :—

(a) when an agreement is arrived at between the parties otherwise than during the conciliation proceedings ;

(b) when an agreement is arrived at and the parties sign a memorandum of settlement before the Conciliation Officer ;

(c) when the party sponsoring the dispute specifically withdraws it;

(d) when the party sponsoring the dispute neither pursues the same nor withdraws the dispute specifically ;

(e) when despite the efforts made by the Conciliation Officer, no settlement is arrived at and a failure report is sent to the Labour Commissioner ;

(f) when there is a settlement in respect of only part of the dispute in which case a partial memorandum of settlement as referred to in (b) above is signed while a failure report as mentioned in (e) would have to be submitted to the Labour Commissioner ; and

(g) when the parties agree to refer the dispute to arbitration.

All the above seven types of cases are dealt with in the following pages :—

*Re* : (a) When a party sponsoring the dispute informs the conciliation officer that it has settled the issue directly with the management, his written statement should be obtained to that effect and a report sent to the Labour Commissioner (*vide* Annexure D).

*Re*. (b) When an agreement has been reached, the Conciliation Officer should end the meeting quickly before second thoughts become manifest He should be able to draft the settlement at once with the help of careful notes kept by him during the course of proceedings. All settlement arrived at during the course of conciliation proceedings shall be drawn up in Form H (*vide* Annexure "E"). All reports relating to a settlement arrived at in the course of conciliation proceedings shall be forwarded by the Conciliation Officer under section 12(3) to the Labour Commissioner as per Annexure "F". A copy of Memorandum of settlement should also be supplied to the parties concerned as a matter of course.

2. Only those agreements which are brought about by the Conciliation Officer, during the Conciliation proceedings should be signed by him. In case an agreement is signed by the parties under Rule 58 read with section 18(1), it should not be attested or signed by the Conciliation Officer.

3. The Conciliation Officer should not be a party to settlement providing for grant of benefits lower than those recommended by Wage Boards or awarded by Courts and Tribunals. In such situations, the matter may be reported to the Labour Commissioner explaining the facts of the case.

4. No settlement should be brought about on issues which do not form the subject matter of an industrial dispute like recognition of a union. if the parties insist on having a settlement on a such issues, they may be advised to have a separate mutual settlement.

5. There are certain settlements which require payment of petty amounts. Efforts should be made to arrange payment on the spot in such cases.

6. Following points should be borne in mind while drafting the Memorandum of settlement :—

(a) The wording of the settlement should be as far as possible, precise clear, unambiguous and such as would not allow any scope for further dispute as to the meaning or interpretation of any term, clause or phrase used in the settlement.

(b) Terms of the settlement should be —

(i) capable of implementation ;

(ii) fair and just to the parties ; and

(iii) not in conflict with the provisions of any other law.

(c) The correct designations of the representatives of the employers and workers in their respective organisations should be mentioned in the settlement.

(d) Complete addresses of the witnesses should be recorded on agreement so as to avoid any complication at the time of implementation in the event of non tracing of the witnesses.

(e) Signatures of the parties and the witnesses should be legible or the names written clearly below the signatures for proper identification.

(f) The date by which a particular clause of settlement is to be implemented should be specifically mentioned in the settlement.

(g) The settlement should indicate disposal of all demands. Where there is no settlement on some of the demands it should be reported whether the same were dropped or kept pending for further consideration.

(h) In the interest of better implementation of settlements arrived at during the course of conciliation proceedings, it would be desirable that such settlements should also provide as one of their clauses, that differences, if any, arising between the parties out of the contents of the agreement or on the interpretation of any of its clauses would be settled by voluntary arbitration.

*Re.* (c) If a party intends to withdraw any of the demands or the whole of the dispute as such from conciliation, this withdrawal should be obtained from the party concerned in writing.

2. Where a dispute is wholly withdrawn in the above manner, the conciliation proceeding may be treated as closed and a report sent to the Labour Commissioner, (*vide* Annexure "G") alongwith the written withdrawal.

3. Where, however, only a part of the dispute is withdrawn, a report in respect of the remaining part, settlement or failure as the case may be would have to be submitted to the Labour Commissioner and in the report it would be necessary to mention the fact of the withdrawal of a particular demand or demands.

4. It may be mentioned here that the withdrawal of demands is of two types. In one case, the demand is withdrawn either wholly or partly not by way of bargaining and the second type where a party agrees to withdraw its demands or claims, because of the negotiations, as a matter of 'give and take'. In the case of the first type of withdrawal, the withdrawal should be mentioned in the short recital of the case in the memorandum of settlement or in the failure report, as the case may be. While in the second type it has to be specifically stated in the body of settlement as a term of over-all agreement clearly mentioning that such and such demands are not pressed in consideration of the agreement reached on other issues and that these demands will not be reagitated during the period of operation of the settlement. The implication of different treatment is obvious that while in the first type of cases, registration of demands would not be barred, if otherwise permissible in the latter type of the case, the matter would not be open to reagitation as long as the settlement subsists.

*Re.* (d) If the Conciliation Officer considers that the party raising the dispute is not pursuing it diligently, he may persuade the party to withdraw the dispute and to raise a fresh dispute later if need be.

2. In case the sponsoring party fails to respond to the communications of the Conciliation Officer and does not turn up to attend the conciliation proceedings without reasonable cause, it may be presumed that the party concerned is not desirous of pursuing the case in conciliation. In such cases the conciliation proceedings may be closed and a recommendation made to the Labour Commissioner for filing the demand notices.

3. The power of filing the demand notice rests with the Labour Commissioner and the Conciliation Officer is not empowered to file any demand notice at his own level.

*Re.* (e) If no settlement is reached despite the efforts made by the Conciliation Officer he is required to submit to Labour Commissioner as soon as practicable after the close of the investigation, a failure report *Vide* Annexure "H". The material submitted by the Conciliation Officer in his report should as indicated by section 12(4) contain the following description :—

(a) Steps taken by him (i) for ascertaining facts and circumstances relating to the dispute and (ii) for bringing about a settlement thereof ;

(b) A full statement of such facts and circumstances ; and
(c) The reasons on accont of which in his opinion, a settlement could not be arrived at.

2. While preparing his failure report, the Conciliation Officer, will have to be most careful and must faithfully give all the details of the dispute and the proceedings held by him in regard to it, as the material submitted by him through his failure report will be the basis for Government to consider, under section 12(5), whether any of the demands involved in the dispute deserves to be referred for adjudicaion. To give a full picture of the dispute it will be necessary for the Conciliation Officer to keep a careful note of all the points made by both the parties during the conciliation proceedings. It is, therefore, advisable that as soon as a dispute is seized in conciliation an elaborate fact finding memo is drawn eliciting as much factual information from the representatives of both the employers and workers as is possible in respect of specific matters involved in the dispute.

3. In certain cases, the parties to the dispute submit their written statements. The Conciliation Officer should attach these documents with the failure report and also give his comments on all the points raised in the written statements.

4. The report of failure of conciliation is to be submitted in two parts, viz. Part I (nonconfidential) and Part II (confidential). In Part I, the Conciliation Officer should refrain from apportioning any blame for the failure to reach a settlement or recommending what further action should be taken by Government, such matters should find place in Part II.

5. The Conciliation Officer should initmate to the parties concerned in the dispute the date of sending of the failure report to the Labour Commissioner. Copies of Part I only of the concluding report submitted by the Conciliation Officer may also be supplied, on demand, to the parties concerned simultaneously.

6. The concluding report must be sent with documents with tag so that these do not get detached or astray in transit or while being processed and dealt with in the office of the Labour Commissioner.

7. In certain cases after the submission of the failure report but before reference of the case to adjudication, the Conciliation Officer received copy of the agreement arrived at between the parties or withdrawal request from the sponsoring party. The Conciliation Officer should immediately bring this fact to the notice of the Labour Commissioner, so that labour in making unnecessary reference to Labour Court/Industrial/Tribunal can be saved and their time is also not wasted.

**Part I of the Failure report.**

In the Part I of the Report, the Conciliation Officer sholuld take particular care to confine himself to reproduce faithfully the gist of respective stands of the parties. It will contain in brief the statements made and arguments advanced by the parties to the dispute in course of conciliation proceedings on the issues in dispute and indicate in an objective manner the reasons why no settlement could be arrived at. The report should be factual rather than argumentative, giving no indication, as to the opinions or recommendations of the Conciliation Officer. No apportionment of blame between the parties should be done in Part I of the failure report except that which would be implied in the representation of factual data.

2. Part I of the concluding report should contain a complete history and nature of the dispute with full facts there of, to what extent the parties had fruitful discussions during negotiations, what were offers and counter-offers and where lay the knot or dead lock which warranted the intervention of the third party like the Conciliation Officer. Next comes the depiction of efforts made by the Conciliation Officer to bring the parties together and narrow the differences by way of suggestion for acceptance of the parties.

3. Each of the demands covered by the dispute should be discussed seriatim indicating :—

(i) its exact wording ;

(ii) categories, occupations or departments covered by it ;

(iii) number of workmen affected by it ;

(iv) the current position that obtains in the concern in respect of each demand ;

(v) justification advanced on behalf of the workmen for the same ;

(vi) the counter arguments put forth by the employer ;

(vii) offer, if any, made by the employer as a result of discussion before the Conciliation Officer ;

(viii) suggestions, if any made by the Conciliation Officer to resolve the difference between the parties ; and

(ix) reaction of the parties there to, indicating in brief the reasons why the party/parties could not accept the suggestions of the Conciliation Officer.

4. In cases involving personnel problems such as transfer, suspension, demotion, lay off, retrenchment, discharge or dismissal of the workman, the length of service, wages drawn, job performed and whether the record of his service was good, bad or indifferent should be ascertained in variably and included in the failure report. In case his record of service was bad, the specific offences with which he was charged and the penalties imposed on him should be reported. It should be ensured that the signatures of the workmen, whose transfer, lay off or termination of services etc., has been challenged invariably appear in letter of authority, Form "F".

5. A list of workmen affected by any demand (when the demand is of general nature and therefore does not relate to all the workmen) should invariably be furnished alongwith the concluding report.

6. The Conciliation Officer should ensure that the names and addresses of the paties are correctly given in the report. As he negotiates directly with the parties and examines their record during conciliation proceedings, he should be able to find out inaccuracies, if any in the charter of demands or other documents.

**Confidential Note :** The confidential note (part II) is meant to supplement the failure report by such information which by its very nature cannot be included in Part II of the Report. As its nomenclature indicates, the confidential note is intended

for the exclusive use of the Government and is not a public document. The confidential note should aim at giving more intimate glimpses into the whole dispute which it may not either be advisable or parcticable to be included in the failure report. Part II of the report should as far as possible give correct picture of each of the demands and an assessment as a whole of the dispute for the information of the Government. section 12(9) lays down that "where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor" This is an important provision which should always be borne in mind by the Conciliation Officer and full and correct justification should be made available to Government complying with tl e law. This note should enable the Government to decide whether it is a fit case or reference to adjudication, and if not, the reasons for not making such a refeience.

2. Part II of the report should be marked confidential and the Conciliation Officer should neither divulge his recommendations to the parties nor he should try to settle the issue by holding out premises that he would make certain recommendations to the Labour Commissioner. His recommendations may or may not be accepted by the Labour Commissioner and/or Government and therefore, he has to be very cautious in this regard.

This confidential note should contain a detailed account of the merits of each demand and what further action should be taken by the Government on each item. The Conciliation Officer should therefoie briefly comment on the arguments putforward by both the parties and his own opinionon the merits and demerits of each issue in dispute alongwith his recommendations whether all or any of the issues are fit for reference to adjudication. The Conciliation Officer must in all cases narrate the basis for his recommendations comparative position prevailing in like units, legal provisions and case-law etc. Full justification needs to be given for reference to adjudication or rejection of each demand contained in charter of grievances. He may also discuss the effect on the industrial relations and peace in the industry concerned if a reference is not made to adjudication

4. The Conciliation Officer shouldexamine. each demand discreetly and state specifically in his confidential note which of the demands in his opinion seems to have been raised a simply to put pressure and which of the demands are really genuine.

5. Where any of the demands covered by the dispute is such as is likely to cast some financial burden on the employer, it is necessary that financial capacity and standing of the concern should be examined in detail before any recommendation is made in this behalf. The Conciliation Officer should discuss the approximate extent of such a burden with the parties and give detailed comments on their view points in this behalf.

6. In respect of a demand pertaining to bonus, the Conciliation Officer is required to go into not only the aspect of financial capacity and the standing of the concern ; but also to obtain from both the parties their calculations on the basis of formula laid down under the Payment of Bonus Act, 1965. The Conciliation Officer should also make his own calculations on the basis of material available with him concerning 'available surplus'.

7. As far as possible, in cases of general demands, factual data regarding the position in concerns of comparable standing should be ascertained and reported. This information would very much facilitate the Government coming to a decision regarding reference of the matter to adjudication or turning it down, giving reasons thereof.

8. The plea of illiteracy and ignorance on the part of workmen in cases of victimization on account of ignorance of law on their part (signing of blank papers under pressure and temptations from the management) should not ordinarily be accepted except in most hard cases, as ignorance of law is no excuse before law. It is for the union to educate workers and impress on them the seriousness of affixing their signatures or putting their thumb impressions without knowing the contents. When a worker is found to have acted voluntarily, he cannot be allowed to play loose and fast.

9. In cases of retrenchments and lay off, it should be reported whether the same was bonafide and whether legal provisions had been observed.

10. The Conciliation Officer should also add a para containing a brief statement regarding the general behaviour, attitude and demeanour prior to and during the course of conciliation proceedings. He should specifically but precisely mention whether the approach and attitude of the parties was reasonable and constructive or otherwise. If top authorities on either sides from the employer and workers organisations were brought into picture in the conciliation proceedings, it should also find specific mention with the role played by them. Finally, it should be pin pointed as to what, in his assesment, were the reasons and grounds which hampered the resolution of the dispute and what should be done to settle the same or any other matter that he would like to bring to the notice of the Government.

**Terms of proposed reference.**

In case the Conciliation Officer is of the opinion that a dispute merits adjudication, he should also suggest a suitable term of reference in Part II (Confidential Note) of the Concluding Report. Proper care must be taken in framing the term of reference and the question intending to be decided must not leave any scope for controversy regarding its nature, The draft adjudication order must set out in precise terms of the demands or issues involved in the dispute and must not suffer from such defects or other infirmities such as inaccuracies, vagueness, ambiguity or equivocalness. Rerference which does not embody the names of concerned workmen is too vague and hence bad in law. An order of reference in respect of a dispute as to the payment of bonus must specify in the order the year in respect of which the reference is made. A reference involving a claim for bonus "for future years" or in general terms for introduction of profit bonus is not good in law. The adjudicator cannot determine the issue when there are lacunas in the subject matter of reference. Therefore, the draft adjudication order should neither be of general nature nor indefinite. An order of reference improperly drawn gives rise to unnecessary disputes and prolongs the life of industrial adjudication, which must always be avoided. Some of the common terms of references are given in Annexure "I".

**Secrecy of Information:**

Under Section 21, the Conciliation Officer should not include in his report any information obtained by him in the course of any investigation or enquiry as to a trade union or as to any individual business which is not available otherwise than through the evidence given before him, if the party concerned has made a request in writing that such information shall be treated as confidential. Any person present at or concerned in the proceedings is also debarred from disclosing such confidential information. Such information can, however, be disclosed for purposes of prosecution for perjury under Section 193 of the Indian Penal Code. Wilful disclosure of confidential information in violation of the provisions of Section 21 is an offence which is punishable under Section 30 with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000 or with both.

2. When the documents and or items of information supplied by a party are marked 'confidential', the party concerned may be asked to show the same to a few selected representatives of the other party, with a view to giving an opportunity to the other party to offer remarks thereon. If the first party declines to do so, it may be impressed upon that party that in that case the documents concerned can not be formally taken notice of by the Conciliation Officer. In such cases, the Conciliation Officer should incorporate a remark in the report that the documents concerned were produced by one party but that it refused to give inspection thereof to the other party although the former party was specifically requested to do so.

3. Where a party gives its consent to give an inspection of confidential documents etc., to the other party, a difficulty is sometimes encountered inasmuch as the first party does not permit the other party to take out copies of such documents or to take them home, whereas the other party insists on doing so stating that it will not otherwise be in a position to offer its remarks on the subject-matter contained in the confidential documents. In such cases, a few selected representatives of the other party may be allowed to make note but verbatim copies. Such selected representatives may be permitted to take such notes out with them for further and fuller examination if necessary, under the stipulation that the notes are to be returned to the office after they have been done with.

*Re*: (f) It is sometime notices that Conciliation Officer give up their attempts to bring about a settlement in respect of some of the demands which are comparatively of a minor nature because their attempts to bring the parties together on overall disputes or important demands have been frustrated on account of attitude adopted by the parties. The Conciliation Officer should guard against this tendency, as even a partial settlement in respect of less important demands is certainly better than no settlement at all.

2. In case settlement has been possible only on a few items, a partial memorandum of settlement be drawn and a separate failure report should be sent in respect of issues on which no settlement could be reached.

*Re* : (g) Section 10 A of the Industrial Disputes Act, 1947 provides that where any industrial disputes exist or is apprehended, the parties to the dispute may, at any time before the dispute has been referred to a Labour Court, Tribunal or National Tribunal by a written agreement, refer the dispute to arbitration by a single arbitrator or arbitrators. In case, the arbitration agreement provides for reference to an even number of arbitrators, it shall also provide for the appointment of another person as umpire, who shall enter upon the reference, if the arbitrators are equally divided in thier opinion, and the award of umpire shall prevail and shall be deemed to be the arbitration award for the purposes of the Act.

2. Voluntary arbitration enables the disputing parties to select an arbitrator of their own choice, a person in whom they have faith and confidence. It cuts down delays and results in prompt settlement of disputes or differences. As compared to adjudication, it allows a good measures of informality in procedures and practices. Awards are capable of ungrudging implementation without further recourse to litigation. Being based on the consent of the parties voluntary arbitration would help the promotion of healthy industrial relations, mutual understanding and co-operation.

3. Therefore, if conciliation efforts fail, the Conciliation Officer should persuade the parties to accept arbitration under Section 10-A of the Industrial Disputes Act, 1947. In case the parties agree to this proposal, the arbitration agreement should be drawn up in the prescribed form "C" (vide

Annexure "J") and got signed by the duly authorised and competent representatives of the parties. In case parties refuse to accept arbitration, the reasons for such refusal should be ascertained and a mention of it should be made in part I of the Concluding Report submitted under Section 12(4). An agreement to refer the dispute to some body for his determination should be in Section 10-A and not under section 12(3) to make the same enforceable under Section 17-A.

4. While forwarding an arbitration agreement, the Conciliation Officer should ensure that consent of an arbitrator is obtained in writing. It should also be ensured that fees, if any, or the journey expences of the arbitrator (s) are agreed to be paid by the party/parties concerned. It creates a complicated situation if the arbitrator(s) refuse (s) to arbitrate and the published agreement becomes null and void.

**Time Limit For Disposal of Disputes.**

Section 12 contemplates two types of reports, namely (i) settlement report under sub-section (3) and (ii) a failure report under sub-section (4). Sub-section (6) prescribed the period of submission of either of these reprots. In the first instance, either of the reports is to be submitted within fourteen days of the commencement of conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. Till this date, no such shorter period has been fixed by the Punjab Government.

2. Provision, however, exists for the extension of this time-limit of fourteen days by such period as may be mutually agreed upon in writing by all the parties to the dispute, subject to the approval by the Conciliation Officer.

3. The time-limit laid down for disposal of disputes, under departmental instructions is thirty days for the Conciliation Officer. The Conciliation Officer should, therefore, finalize the dispute within a month from the receipt of the demand notice. Even when both the parties press for further time, the Conciliation Officer may not accede to the request unless it is reasonable and in the interest of industrial harmony. However, when the Conciliation Officer feels that there are good chances of a settlement, he may extend period by fifteen days and he may continue the conciliation proceedings. In the meanwhile he may send progress report to the Labour Commissioner. If in a particular case, the Conciliation Officer finds this time insufficient, he should seek an extension of the time limit from the Labour Commissioner explaining the compelling reasons in support of the same.

4. Time is the essence of conciliation. The Conciliation Officer should therefore, ensure that he acts with proper speed so that the faith of the parties in his efficiency is not lost. It is of vital importance for the maintenance of industrial peace that disputes are dealt with and disposed of expeditiously. Therefore, there should not be many adjournments and no postponements for more than fifteen days. Care should be taken to see that the proceedings are not unnecessarily prolonged owing to the intransigence or non-cooperative attitude of either of the parties to the dispute. Any extension of proceedings should be mainly aimed at exploring possibilities of affecting a settlement of the dispute.

5. Where a dispute is not finalized within thirty days of receipt of demand notice, the reasons for delay should be explained in Part I of the Concluding Report. The joint request in writing by the parties to the dispute should be sent to the Labour Commissioner along with the Concluding Report.

6. The Conciliation Officer should submit his report to the Labour Commissioner as soon as there is breakdown of negotiations but in any case not later than 48 hours of close of conciliation proceedings. This is essential to save time in making reference to adjudication with a view to avoid precipitate action by either workman or employer after the failure of conciliation proceedings. The submission of failure report should not be delayed merely for want of written comments from the parties concerned. In fact, it is not at all necessary to obtain written comments either from the workers or management.

## CHAPTER VIII

## GENERAL HINTS AND SUGGESTIONS TO THE CONCILIATION OFFICERS

This last chapter is intended to give to the Conciliation Officer general guidance and tips as regards the conduct of conciliation proceedings, which could not be included in the preceding main chapters.

2. Although the Assistant Labour Commissioners (Central) deal with disputes of distinct categories of industries in their capacity as Conciliation Officers, the State Conciliation Officers should maintain close contact with the former and their immediate juniors, namely, Labour Enforcement Officers (Central).

3. A Conciliation Officer is not a judicial or even a semi-judicial officer. He prepares a report on which Government decide and take action under Section 12(5) of the Industrial Disputes Act, 1947. He should not, therefore, do any thing which goes against the policy of the Government.

4. In the event of any practical difficulty, the Conciliation Officer should not hesitate to seek promptly the guidance and directions of the Labour Commissioner ; if urgency so demands even over the telephone.

5. The Conciliation Officers should keep a note of interesting cases and abnormal views in demand notices coming up before them. They should exchange these notes in their periodical staff meetings and also discuss the same with the Labour Commissioner and other senior officers of Head Office.

6. The Conciliation Officer should make a point not to allow the parties to argue on legal points during the conciliation proceedings, since the object of conciliation is not to discuss law, but to bring about a settlement, of course not contrary to the law. The digressions on legal points should be checked in time and representatives of the parties should be requested to help in conducting the proceedings not as if the chambers of Conciliation Officer was a court of law. In any case, the Conciliation Officer should never allow his mind to be confused by intricacies and technicalities of law.

7. If the management fails to turn up and attend conciliation proceedings on two successive dates without any reason, in spite of reasonable opportunities, an adverse inference may be drawn and the case finalized ex parte. Annexure "K" "L" and "M" are the model of letters which should be sent by the Conciliation Officer to the management for participation in preliminary and subsequent conciliation meetings.

8. It is the duty of the Conciliation Officer to personally ensure that the form of objective review is correctly filled in and that particulars given therein are not inconsistent with the contents of the main report and other relevant dispute documents. Separate objective review proformas have been prescribed for individual dispute cases covered under Section 2 A [vide Annexure "N" and for general demand notices covered under Section 2 (k) (vide Annexure "O"].

9. Every labour dispute is not, nor need it necessarily develop into a law and order proposition. But the possibility of it so developing should not be over-looked. The Conciliation Officer should therefore, keep the district administration informed about important developments in industrial relations within his territorial Jurisdiction. For this purpose, liaison with the district administration is very essential, that would guide the district

administration in taking preventive measures if the situation arising out of a dispute to turn into a law and order problem. The Conciliation Officer is, therefore expected to establish personal report with the Deputy Commissioner and the Sub Divisional Officer (Civil) so that these officers who are mainly responsible for maintaining law and order in the district/sub division are well posted with the trend of industrial relations. In this connection attention is also invited to a Government Letter No. 110051-L&E-III-67/26873, dated 31st July, 1967 from the Secretary to Government, Labour and Employment Departments to the Deputy Commissioners in the State regarding police interference in industrial disputes, (Annexure "P").

10. The Conciliation Officer should not begin his task only when the dispute is brought to his notice. His role in the prevention of disputes is no less important. He should be able through his own intelligence to feel the pulse of employers and workmen which would enable him to anticipate disputes and take appropriate preventive action, including conciliation, to deal with imminent disputes in proper time before they assume bigger proportions. The Conciliation Officer should therefore watch the trends and developments in industrial relations. He should keep himself in close touch with the employers, their labour law advisers and with trade union leaders to know their policy and attitudes. Thereby he would keep himself continuously informed as to the state of relations between employers and the workmen and the developments likely to affect these relations as also their professional thinking through their periodicals, circulars and press statements.

11. When a Conciliation Officer is transferred from a station, he should furnish a certificate to the Labour Commissioner to the effect that he has submitted the concluding reports in all the cases in which conciliation proceedings had ended and should hand over a list of all demand notices pending at the time of his transfer together with their progress to his successor, endorsing a copy to the Labour Commissioner.

## ANNEXURE 'A'

## THE INDIAN PENAL CODE

**(45 of 1860)**

Public servant.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely — * * * * *

Second .....

Third .....

Fourth .....

Fifth .....

Sixth .....

Seventh .....

Eighth .....

Ninth .....

Tenth .....

Eleventh .....

Twelfth Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956.

### ILLUSTRATION

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Explanation 1: .....

Explanation 2. Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3: .....

## ANNEXURE 'B'

## THE CODE OF CIVIL PROCEDURE, 1908

## (Act V of 1908)

## THE FIRST SCHEDULE

### Order XI Rule 14

14. *Production of documents.*—It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced in such manner as shall appear just.

## ANNEXURE 'C'

## FORM F

**(See Rule 36)**

Before (Here mention the authority concerned).....

Reference No. .....

of .....

.....

.....Workmen.

.....

*Versus*

.....

.....Employer.

.....

In the matter of.....

.....

I/We hereby authorise Shri/Sarvshri..... to represent me /us in the above matter.

Dated this ..... day of

..... 19 .

Signature of person(s)
nominating the representative (s).

Accepted :

Signature of representative (s)

Address.

Address.