GUYANA

Report

of

THE OMBUDSMAN

1967

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for the year ended

31st December, 1967

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Mr. Speaker,

I have the honour to submit a report on the work of my office for the year ended 31st December, 1967. This report concerns the first full year of my operations. In respect of the previous seven months' period ended 31st December, 1966, a preliminary report was submitted in 1967.

Cases Received

During the year I received 161 complaints. In addition one case was reopened and one brought forward from the previous seven months' period.

Of the 163 cases dealt with,

122 were determined to be outside my jurisdiction,
4 were withdrawn before investigation was completed,
2 were declined under article 53(3) on the grounds that the complainants had a remedy by way of proceedings in a court (one case),

and by way of appeal to an independent and impartial tribunal (one case),
31 were fully investigated, and
4 were still under investigation at the end of the year.

Results in Detail

(a) Cases declined

122 cases were declined as being outside my jurisdiction on the following grounds:-

14 under item 2 of the First Schedule to the Constitution as relating to the investigation of crime,
5 under item 3 of the First Schedule as concerning matters relating to the commencement or conduct of civil or criminal proceedings in a court,
30 under item 4 of the First Schedule as concerning action taken in respect of appointments to offices or other employment in the service of the Crown (5 cases) or action taken in relation to any person as the holder or former holder of any such office, employment or appointment (25 cases),
9 under article 53(1) as relating to dissatisfaction with the decisions of the Courts,
5 under article 53(6) as relating to action taken by the Public Service Commission (4 cases) and the Police Service Commission (one case),
43 as concerning private individuals,

2 concerning matters of policy, and
14 under article 53(1) as not relating to matters of governmental administration. Seven of those 14 were against the following public organisations and authorities - the National Aid Board (one case), the Guyana Airways Corporation (one case), Local Authorities (three cases), the Guyana Electricity Corporation (one case) and the Rice Marketing Board (one case).

The article referred to under this head, together with the First Schedule to the Constitution, appears as Appendix A.

(b) Cases fully investigated

Of the 41 cases in which I had jurisdiction to investigate,
31 were fully investigated,
9 were determined to be justified.

All but 1 were rectified by the departments concerned.

Appendix B contains a schedule of complaints into which an investigation was undertaken showing the department concerned, the subject matter of the complaint and the result of the investigation.

Summaries of some of the cases investigated are set out in Appendix C of the Report.

Of the 9 cases considered to be justified, 7 concerned complaints of delay. Delays were attributed to transitional

problems arising from the introduction of a new computerised system in one case, the transfer of Ministerial responsibilities in another and in a great number of cases to a build up of work due to shortages of staff. In all the cases but one it was possible for the department concerned to take remedial action, and in the majority of cases this was promptly done when I referred the matter to the department. In one case in which my investigation became prolonged I was far from satisfied with the length of time taken to remedy the injustice which I found the complainants had suffered. A careful study of the departmental file showed that the contributory causes of the delay complained of could be traced to a number of defects in working methods and administrative arrangements in the Ministry and its department. Taking into account the presence of the United Nations Advisers on Public Administration - in particular the Senior Public Administrative Adviser and the Adviser on Methods and Manuals - at present assisting the Public Service Ministry in its tremendous task in relation to the re-organisation of the Public Service, I made no recommendations in respect of those irregularities in the Administrative processes in so far as they occurred in the areas of review that fell within the terms of reference of the experts. I thought it proper to draw my report on the case to the attention of the Advisers and this move was welcomed by the department concerned. This was one of eleven cases relating to land matters which constituted the greatest proportion of the complaints investigated, and as it turned out, was

the only one of the eleven found to be justified. In view of the magnitude of existing and proposed land development schemes and their inevitable impact on the lives of the thousands of citizens involved in them I incline to agree with the view expressed in one department that here is an area in which the expertise of the United Nations Advisers on Public Administration in the field of management services might be of great service to the Administration.

In a number of cases the mistakes that came to light in the course of investigation were found to be due, in the main, to defective working methods - undue delay, misleading information, faulty procedure, excessive minuting, loss of papers, delay in decision making, deficiencies in the filing system and the need for clarification of office order.

The only complaint in which racial discrimination was alleged was considered to be unjustified.

Delay

While I continued for the most part to receive willing co-operation from officers of the Ministries and Departments, as time went by there seemed to be a growing tendency in some cases to regard communications from my office as not so urgent in consequence of which my investigations were held up while officers took their time to reply or in a few cases even failed to reply to requests for information. I, therefore, considered it necessary, in a circular issued to all Permanent Secre-

taries and Heads of Departments, towards the end of the year, to draw their attention to the occurrence of these delays and the extent to which they were impeding the effective performance of my functions. I pointed out that the office of Ombudsman was established to provide a simple, swift and inexpensive procedure for investigating complaints of mal-administration and mal-practice, that my office shared with the Administration the responsibility to provide the best possible service for citizens, that at the same time, it was as much my duty to protect the departments and officials from unfounded allegations of mal-administration and mal-practice as it was to seek rectification of faults committed by the Administration. I requested that every effort be made to expedite the handling of matters concerning complaints so as to ensure that the investigation of all complaints proceeded with the minimum of delay. The response, to date, has been encouraging.

General Comments

The results for the year under review are rather more encouraging than those for the first seven months' period. The intake was relatively constant, but there was an increase in the proportion of cases within my jurisdiction to those received, though the percentage of cases declined remained high.

No firm conclusions should be drawn at this early stage of the operation of the office. The institution of Ombudsman in Guyana, the first such to be estab-

lished in the Western Hemisphere, is a developing one, one to be adapted to the needs of the country. There is no doubt, however, that the effectiveness of the office would be greatly enhanced by a greater readiness on the part of the community to avail itself of the inexpensive and easily available protective machinery the office of Ombudsman provides to ensure both redress against governmental action and more efficient administration.

Ombudsman Act, 1967

The Ombudsman Bill (No. 14 of 1967) introduced to supplement the Constitutional provision was passed on the 30th August, 1967. The following bodies were added to the Ombudsman's jurisdiction:-

The Central Board of Health
The Central Housing and Planning Authority
The Drainage and Irrigation Board
The Sea Defence Board.

The Office

The office has moved into a more centrally located building at 18/20 Croal Street, Stabroek. During the year two officers were appointed to my staff which now consists of a Secretary to the Office of the Ombudsman, a junior clerk and a secretary/typist.

(G. S. Gillette)
OMBUDSMAN.

22nd February, 1968.

APPENDIX A

Text of Article of Constitution Referred to in the Report and the First Schedule to the Constitution

53. (1) Subject to the provisions of this article, the Ombudsman may investigate any action taken by any department of Government or by any other authority to which this article applies, or by Ministers, officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority on or after 26th May 1966.

53. (3) The Ombudsman shall not investigate under this Part -

(a) any action in respect of which the complainant has or had -

(i) a remedy by way of proceedings in a court; or

(ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than a court; or

(b) any such action, or action taken with respect to any such matter, as is described in the First Schedule to this Constitution:

Provided that the Ombudsman -

(i) may conduct an investigation notwithstanding that the complainant has or had a remedy by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take

or to have taken such proceedings;

(ii) shall not in any case be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to the High Court for redress under article 19(1) of this Constitution (which relates to redress for contraventions of provisions for the protection of fundamental rights and freedoms).

53. (6) For the purposes of this article the Judicial Service Commission, the Public Service Commission and the Police Service Commission shall not be regarded as departments of Government.

FIRST SCHEDULE

Action and Matters not Subject to Investigation under Part 2 of Chapter V

1. Matters certified by a Minister to affect relations or dealings between the Government of Guyana and any other Government or any international organization.

2. Action taken for the purposes of protecting the security of the State or of investigating crime including action taken with respect to passports for either of those purposes.

3. The commencement or conduct of civil or criminal proceedings in any court.

4. Action taken in respect of appointments to offices or other employment in the service of the Crown or appointments made by or with the approval of the Governor-General or any Minister, and action taken in relation to any person as the holder or

former holder of any such office, employment or appointment.

5. Action taken with respect to orders or directions to any disciplined force or member thereof as defined in article 20 of this Constitution.

6. The exercise of the powers conferred by article 49 of this Constitution.

7. The grant of honours, awards or privileges within the gift of the Crown.

8. Action taken in matters relating to contractual or other commercial dealings with members of the public other than action by an authority mentioned in subparagraph (a) of article 53(5) of this Constitution.

9. Action taken in any country outside Guyana by or on behalf of any officer representing the Government of Guyana or any officer of that Government.

10. Any action which by virtue of any provision of this Constitution may not be inquired into by any court.

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APPENDIX B

Schedule of Complaints investigated during the Yead ended 31st December, 1967

Agriculture and Natural Resources

32	Delay in granting leases .	Justified
102	Refusal of application for lease	Not Justified
132	Withdrawal of allocation of land	Not Justified
144	Refusal of application for lease	Not Justified
164	Interference with occupation of Crown Land . .	Discontinued

Co-operative

190	Mis-management of Co-operative Society . . .	Under action

Customs

186	Action under office circular	Not Justified
193	Rejection of claim	Not Justified

Education

84	Delay in despatching letter	Justified
148(a)	Delay in payment of salary	Not Justified
148(b)	Notification of termination of services . .	Not Justified
189	Refund of passage to bursar	Not Justified

Forestry

131(a)	Refusal of application for lease	Not Justified
131(b)	Dishonesty of officials .	Not Justified

Health

146	Delay in paying allowance	Justified
222	Compensation for negligence	Declined - article 53(3)(a)

Inland Revenue

129	Misleading information on Income Tax Forms . .	Rectified
153	Income Tax Refund . . .	Rectified
171	Income Tax Refund	Rectified
210	Income Tax Refund	Rectified

Labour

167	Discourtesy of official .	Withdrawn

Lands and Mines

133	Transfer of leases	Not Justified
233	Refusal of application for lease.	Under action

Land Settlement

147	Allocation of land	Not Justified
227	Overpayment of rent. . . .	Withdrawn

Official Receiver

95	Administration of Insolvent Estate.	Under action
126	Payment of legacy	Not Justified

Police

116	Compensation for false imprisonment	Declined - article 53(3)(a)
207	Delay in settling claim .	Rectified

Post Office

98	Misleading information on Licence	Rectified

Registrar

93	Conduct of Marshal	Withdrawn
198	Service as Juror	Not Justified
204	Attachment of money. . . .	Not Justified

Social Assistance

136	Delay in investigating claim	Not Justified
205(a)	Commencing date of old age pension	Not Justified
205(b)	Non-payment of old age pension	Not Justified
193(a)	Discourtesy of officers .	Not Justified
193(b)	Supplying misleading information	Not Justified

Works and Hydraulics

156(a)	Cost of effecting repairs	Declined - article 53(3)(a)
156(b)	Failure to obtain contract work	Not Justified
178	Failure to obtain contract work	Withdrawn

APPENDIX C

CASE NOTES

Agriculture and Natural Resources

Case No. 32

The complainants in this case were the heirs to two areas of land which had been sub-divided into three plots early in 1964. They sought my assistance to obtain their leases which they alleged they had been trying to obtain from the Ministry of Agriculture and Natural Resources for more than two years. They complained that they were experiencing great hardship as a result of their failure to secure a loan from the Credit Corporation for want of security.

On taking the matter up with the Ministry, I was informed that the file relating to the case could not be found. On investigation, I found that the search for the missing file had been going on intermittently over a period of ten months. Finally, at the request of the Permanent Secretary of the Ministry, the Department of Lands and Mines proceeded to reconstruct a file from available documents, correspondence and the recollection of officers of the department who had dealt with the matter.

My examination of the papers showed that two areas of land of 195 acres and 100 acres held under two leases, subject to renewal, were sub-

divided early in 1964 into three portions at the request of the heirs. One of the leases had expired - in respect of which there had been an application for renewal - and it was proposed that three new leases be issued to the heirs on the conditions attached to the existing lease. This seemed to be the position in October, 1965, when the file was lost or misplaced.

The Superintendent of Lands saw the complainants personally and explained the position to them. In October, 1966, the Commissioner of Lands and Mines in forwarding the re-constructed file to the Ministry recommended that the Minister advise the Governor-General to approve the grant of three new leases on the old terms and conditions.

Two months later the complainants wrote to me again informing me that they had not yet obtained their leases. Further inquiries revealed that certain officers of the Ministry were opposed to the recommendation of the Commissioner of Lands and Mines and had put forward counter proposals. A deadlock had ensued, and, as it turned out, remained unbroken for six months. A study of the file disclosed that on the one hand the department held the view that since no new rights were being created with the sub-division of the area under the expired lease for which a renewal application had been filed (though belated) and the other lease which was still in force, the new leases should be issued on the old terms and conditions. The Ministry, on the other hand, was of the view that the old terms of twenty cents per acre (revised to twenty-five cents per acre in 1960) subject to revision every five years from the effective date of the lease, such revision to be based on the value of the land excluding improvements made by the lessees, were "totally

unrelated to the values of the tracts in question" and favoured the new rentals at twenty-five cents per acre for the first five years, fifty cents per acre for the second five years and one dollar per acre thereafter. Moreover, any new lease issued in respect of the lease that had expired should be on the new terms and conditions and with the surrender of the existing lease new terms and conditions would also apply.

The department pointed out that the new leases could be issued on the old terms and conditions but at the new rentals. The parties were prepared to pay the new rentals.

The department's proposals were not accepted by the officers of the Ministry who now put forward at length, another proposal for the adoption of transfers which in effect would achieve by other means, the same ends as those contemplated by the department. The department was not consulted as to the merits of this new proposal. The Superintendent of Lands later recorded in the file that the adoption of transfers was not feasible in the special circumstances of the case. Meantime the complainants, in desperation, wrote to the Governor-General and the Minister. In a letter to me they complained that they were being told one thing by the Department, quite another by the Ministry and that it seemed that they were the victims of racial discrimination.

In an interview with the Permanent Secretary I observed that I had examined the files carefully and had had opportunities of conferring with the officers of both the Ministry and the Department, and had formed the view that the conflict of opinion was accentuated by an underlying friction between the officers of the Ministry and the Department and that certain attitudes in the Ministry were in no way conducive to a determination of the issue.

The Permanent Secretary regretted that the handling of the matter left much to be desired, and agreed with my view that the Department's recommendation that the new leases be granted on the old terms and conditions but at the new rentals seemed the most acceptable solution in this long drawn out issue. I suggested in my Report on the case that a joint conference of the officers of the Ministry with those of the Lands and Mines Department might have helped to break the deadlock and effected an early decision.

The Permanent Secretary took immediate action, and that same day the Minister gave his approval to the Permanent Secretary's recommendation for the grant of new leases.

This was not the end of the matter, however. There was a further delay of over six weeks before the papers were submitted for the Governor - General's approval as required by the Crown Lands Ordinance.

I found that the manner in which the Ministry dealt with the matter at this stage contributed substantially to this further delay and the attitude of certain of its officers open to criticism. I could not escape the conclusion that the officers concerned were oblivious of their obligation to implement the Minister's decision and unmindful of the hardship that was caused to the complainants who had been kept waiting for three years for the issue of their leases. I was satisfied that while the loss of the file and the time-wasting search for it were without doubt, a contributory factor in the delay, the principal cause was the delay on the part of the officers of the Ministry in submitting their recommendations

for a decision and in giving effect to the decision when made. I considered the complainant's allegation of racialism to be born of despair, but I was satisfied that the allegation was not justified.

I accordingly came to the conclusion that the complainants had sustained an injustice in consequence of a fault in administration. When the complainants eventually received their leases they expressed gratitude for the "valuable assistance" that I had rendered them.

In my Report to the Ministry I also referred to the contributory causes of the delay that had been disclosed in the course of investigation, in particular those attributable to deficiencies in the area of work methods (detailed in the Report). In the special circumstances of this case, I thought it proper to draw my Report to the attention of the United Nations Advisers on Public Administration at present assisting the Public Service Ministry. I accordingly forwarded a copy of my Report to the Permanent Secretary, Public Service Ministry, for the attention of the experts.

The Ministry of Agriculture and Natural Resources also expressed concern about the whole question of lands and welcomed the step taken to refer the matter to the United Nations Advisers. It was felt that this was an area in which their expertise in the field of management services could be most useful.

Case No. 102

A farmer complained in February, 1967 that he felt that he should be granted a lease of

12.52 acres of land in the South Section of a Land Settlement Scheme for which he had applied on the 30th June, 1966. The report submitted by the Ministry of Agriculture and Natural Resources in answer to my inquiry indicated that the area was not available for allocation as it was being used by them for research and coconut propagation and the complainant was informed accordingly.

The complainant wrote to me again on the 23rd August, this time alleging that the same area was being occupied by another farmer. The matter was again taken up with the Ministry and I asked for the file dealing with the matter.

I found that the Agricultural Division of the Ministry had formerly occupied an area of 254 acres of land for coconut cultivation and dairy farming. During January, 1966, the Chairman of a Co-operative Group applied for a lease of the entire area on behalf of the Group and submitted a co-operative farm plan. On the 28th March, 1966, the Minister approved the release of a part of the area to the Co-operative Group which was to be a registered Co-operative Society. The remaining portion was retained for use by the Agricultural Division of the Ministry for research and coconut propagation and it was a part of this area for which the complainant had made application. The Minister subsequently decided that the area retained by the Agricultural Division should be released to the Co-operative Society.

It was clear that but for the decision to reserve a portion of the land for research and coconut propagation, the entire area would have been leased to the Co-operative Society in March, 1966. It was therefore not unreasonable to expect the land to be leased to the Co-operative

Society when it was decided that the land was no longer required for the purposes for which it had been reserved. In the circumstances, I found the complaint to be not justified.

Case No. 132

A farmer complained that the Ministry of Agriculture and Natural Resources had taken five acres of rice land allocated to him in 1966.

The complainant who was a squatter was given an allocation of five acres of rice land at Tapakuma, Essequibo. A few months later he was granted a provisional lease for one hundred and twenty acres of cattle grazing land. Investigation showed that there was a shortage of cultivable land in the county and that it was the policy of the Ministry to allocate such land on the grounds of need. The Minister had decided to withdraw the allocation of five acres of rice land on the ground that the complainant was in possession of another area of land. I concluded that the complainant had not suffered injustice in consequence of a fault in administration.

Case No. 144

This complaint related to a decision by the Ministry of Agriculture and Natural Resources to refuse an application made by the complainant for a lease of land at Fear Not, Essequibo. The complainant applied on 4th June, 1966, for 75 acres of Crown Land at Fear Not for agricultural purposes and without permission cleared the area applied for at considerable expense. He referred to a statement made by the Prime Minister to farmers in the Corentyne as reported in the press that "there is land in the country for everyone

who sincerely wanted it" and "if you want the land you can have it." He said he did what the Prime Minister had advised but his application was refused and the area of land granted to a Co-operative Group which already occupied 276 acres of Crown land.

My investigation disclosed that the Co-operative Group had applied for the land nearly two months before the complainant filed his application. There was no truth in his report that the Group occupied 276 acres of Crown land. The needs of the Group were also greater than those of the complainant who is a shopkeeper. In the press report to which the complainant referred the Prime Minister was quoted as saying "if you want the land you can have it as long as you fulfil certain conditions". Nowhere in the report did the Prime Minister give anyone permission to occupy any land without the leave of the proper authority. I held the complaint was not justified.

Case No. 164

The complainant alleged that a squatter had interfered with his occupation of a portion of an area of 10 acres of land allocated to him by the Ministry of Agriculture and Natural Resources.

I discontinued my investigations on being advised by the Ministry that legal proceedings had been instituted against the squatter and that the complainant was able to resume undisturbed possession of the entire area.

Customs and Excise

Case No. 186

A Customs Guard who had reported to the Police a suspected breach of the Customs laws was asked by one of his senior officers why he had not reported the matter first to the Officer-in-Charge. The Guard, through his legal adviser, complained to me that he was afraid his future position as a Customs Guard would, as a result, be jeopardised.

The Guard had acted in pursuance of one of the provisions of an Office Order issued by the Comptroller of Customs and Excise. Under that Office Order the Comptroller of Customs and Excise also retained the right to take independent action against offenders if it was considered necessary. I found that there was nothing improper in the Guard being asked for a report and I saw no justification for the complaint.

I suggested a minor amendment to the Office Order so as to prevent future misunderstandings. This was readily accepted by the Department.

The Comptroller informed me that he had commended the Guard for reporting the irregularity and had assured him that he need have no fear that his action would in any way jeopardise his future in the service.

Case No. 193

(See case note included under TRADE).

Education

Case No. 84

This complaint related to the delay by the Ministry of Education in sending out information and was classified as not justified after an examination of the Ministry's files. The complainant made further representations and established to my satisfaction, that the letter he had received from the Ministry had been posted more than a fortnight after its heading date. The Permanent Secretary expressed regret for the delay and gave the assurance that attention would be given to the expeditious despatch of all letters and memoranda.

Case No. 189

A 1963/64 Commonwealth bursar complained that she was unable to recover from Government the sum of £107, the amount paid by her for her return passage from the United Kingdom to Guyana in 1964 for which she claimed Government was liable.

In April, 1963, the Ministry of Education informed the complainant by letter that she was awarded a Commonwealth Teacher Training Bursary tenable in the United Kingdom during the 1963/64 academic year. Enclosed with the Ministry's letter of award were a Notice of Award together with the form of acceptance and a handbook for bursars setting out the terms and conditions of the award. She was required like other bursars to sign and return the form of acceptance to the Secretary, Commonwealth Bursary Unit in London.

One of the conditions enumerated on the form of acceptance was that a bursar should return to

his country by the first available means of transport on the expiration of his bursary. I was unable to secure a copy of the handbook for bursars issued in 1963, but obtained copies of the handbook issued in 1962 and 1964. These contained substantially the same terms and conditions, and I thought it reasonable to assume that the conditions contained in these two handbooks also appeared in the 1963 issue.

Those 1962 regulations relevant to my investigation were regulation 1 which indicated that the bursary did not normally include the fares of bursars, regulation 13 under which the bursar's return to his country by the first available means of transport after the expiration of the bursary was a condition of the award, regulation 37 which required that early bookings be made for a return sea journey, and regulation 38 which stipulated that the student unit of dependent countries on the advice of the British Council should make the necessary advance booking which should be confirmed to the bursar.

In August, 1963, Government approved the complainant's application for a loan of $1,200 to meet the cost of her passage to and from the United Kingdom, and she received an advance of $600 to cover the cost of her passage to the United Kingdom. In mid 1964 Government accepted responsibility for the fares of bursars and the complainant's loan was accordingly adjusted.

The complainant's course of studies was completed in June, 1964. Her grant ceased in July. A passage was booked for her to leave the United Kingdom for Guyana on the 17th July, 1964, but she requested that the booking be cancelled as the date was not convenient. On the 18th August, 1964, she informed the Officer-in-Charge

Guyana London Office, that the reason for her request for a cancellation was that she was "awaiting a letter from the Minister of Education which was to be the deciding factor" if she was to return in July or later. I have not seen a copy of the letter addressed to the Minister, nor am I aware of the date on which it was written but it was not germane to my investigation. The complainant, however, submitted to me a copy of a letter dated 15th August, 1964, addressed to the Minister of Education in which she requested an extension of the time limit for her return "under the conditions of the bursary" in order to extend her knowledge and to gain further experience. Her letter further stated that as she had not received a reply to her last letter in connection with the completion of the course, she had concluded that her services were not yet required by Government.

On the 21st October, 1964, the complainant wrote the Officer-in-Charge, Guyana London Office requesting a passage to arrive in Guyana in December, 1964, but not later than the second week. The Guyana London Office acting on the advice of the Ministry of Education informed her that a passage could not be authorised. She eventually paid her own passage to Guyana at a cost of £107. Having failed to recover this sum from Government, the complainant came to me.

In my view the letters addressed to the Minister did not constitute any authority for her to remain in the United Kingdom, and I considered it her duty, on the completion of her course in June, 1964, to return to this country by the first available means of transport in accordance with regulation 13 and in accordance with the condition enumerated on the form of acceptance signed by her.

I therefore came to the conclusion that the complainant was not entitled to a refund of the cost of the passage for the reason that Government's responsibility for her return passage ceased when she failed to return to this country by the first available means of transport on the expiry of her bursary in June, 1964.

Forestry

Case No. 131

The complainant's petition dated 17th May, 1967 prayed that I advise the Conservator of Forests to grant him a lease of 7,700 acres of Crown Forests. On ascertaining that a decision was yet to be taken in the matter I informed the complainant that I could not intervene in his behalf.

The complainant subsequently complained that his application for the lease had been refused. He also alleged that the Conservator of Forest's letter to him refusing his application was received on 19th June, 1967, but was wilfully ante dated 16th May, 1967 in order to show that the application was refused one day before he had petitioned me and others.

The area of Crown Forests applied for was formerly held under lease which was due to expire in June, 1967, 14 months after the death of the original lessee. Subsequent to the lessee's death, the lessee's reputed wife was given provisional permission to carry out woodcutting operations. She, however, formally refused a lease when it was offered to her. The complainant then applied for the area and was told that the legal position had to be clarified. In accordance with the legal advice received, the

Conservator of Forests advised the complainant that the area was not available. I was satisfied that the department had acted properly and that there were no grounds for criticism. The legal view upon which the Conservator's decision was based was later reversed and I was informed that the complainant's application would be re-considered. I have since been advised that the complainant's application has been recommended for approval.

My investigation into the allegation that the Conservator of Forests or an officer of the department had wilfully ante dated the letter received by the complainant in June disclosed that a letter from the Conservator of Forests dated 16th May, was enclosed in an envelope addressed to the complainant. The envelope was posted on the 17th May and arrived at the Post Office in the area in which the complainant lived on the 18th May. On the 10th June it was returned to the Forestry Department by the Returned Letter Office with the following inscription on the envelole "Unknown" "Undelivered". The envelope was opened, the letter placed in another envelope and re-addressed to the complainant. It was this second envelope which the complainant claimed to have received on June 19th.

I informed the complainant that I was satisfied that there was no misconduct on the part of any officer in the Forestry Department and that he should, in future, first ascertain the facts before making allegations of such a serious nature.

Health

Case No. 146

This complaint related to the delay in pay-

ment of a house allowance to a Medical Orderly in a remote district.

When I referred the matter to the Public Service Ministry (now responsible for Establishment matters) I was informed that the Permanent Secretary, Ministry of Health, had recommended that the Medical Orderly be paid a house allowance and that approval had been granted for "Nurses" to be paid a house allowance at a specified rate. The Ministry of Health inquired whether the term "Nurses" included Medical Orderlies and Staff Nurses and it was confirmed in a telephone conversation that the designation "Nurses" for this purpose was to be interpreted to include Medical Orderlies. This, unfortunately was not confirmed in writing, with the result that effect was not given to the approval of the Medical Orderly's application for a house allowance.

The Permanent Secretary, Public Service Ministry, observed that the system of dealing with a multitude of related matters in a single file appeared to contribute to tardiness in disposing of some Establishment cases, and assured me that he was taking steps to remove this cause of delay.

The Medical Orderly received her house allowance.

Inland Revenue

Case No. 129

One of the instructions on the Income Tax Form for the Year of Assessment ending the 31st December, 1967, appeared to be misleading and I drew the attention of the Commissioner of Inland

Revenue to it. He assured me that the correction would be made on the Forms for 1968.

Case No. 153

The complainant had applied to the Commissioner of Inland Revenue for a refund of income tax overdeducted during the year 1965. He stated that in respect of this application he had paid several visits to the department and had written to the department time and again, but was unable, after a period of over eight months to get his refund.

I referred the complaint to the Commissioner who subsequently communicated with the complainant and invited him to call at his office to uplift the refund. The department regretted the inconvenience suffered by the complainant and explained that the delay was caused by a build up of work as a result of a shortage of staff.

Case No. 171

The complainant alleged that he had paid income tax twice in respect of the same Year of Assessment. His first payment was made about ten days after the due date and the second two months later in consequence of a letter from the Inland Revenue Department eight days after the first payment had been made. Before making the second payment the complainant went to the Inland Revenue Department and asked that a search of the records be made as he had lost his first receipt. A search of the Cash Book did not reveal any payment on the date given by the complainant - it later transpired that he had given the wrong date.

The complainant then wrote to the Commissioner of Inland Revenue asking that a further search be made and for a refund of the second payment made by him. He received no reply and complained to me some three months later.

A refund was made shortly after I took the matter up with the Commissioner of Inland Revenue who apologised to the complainant for any inconvenience caused to him. The error was due to the fact that the department had not yet credited the complainant's account with his first payment when the second payment was made two months later. The Commissioner explained to me that delays in his department resulted principally from a shortage of staff.

While I considered the complaint rectified I suggested that the officers of the department should be careful to ensure that the accounts reflected at all times the true state of a taxpayer's indebtedness.

Case No. 210

The complainant sought an investigation into the delay on the part of the Inland Revenue Department in effecting a refund of income tax overpaid. He alleged that during April, 1967 he had submitted his income tax returns for 1966 together with two dividend warrants showing that income tax had been deducted from his dividend by the Company. He claimed that he was entitled to a refund as he was unemployed during the relevant Year of Assessment.

The department expressed regret for the delay which had been due to transitional problems involved in converting its records to accommodate the new

computerised system that was being introduced. The department looked into the matter and mailed a cheque to the complainant for the amount of the refund due.

Lands and Mines

Case No. 133

The duty payable in effecting transfers of Crown Land leases was increased from 1% to 2% by the Tax (Amendment No. 2) Act, 1967, which came into operation on the 11th March, 1967.

A transferee of two Crown land leases complained to me that he was unjustly required to pay the increased duty. He stated that the transfers should have been effected before the duty was increased but that this was not done because of delay on the part of the Lands and Mines Department.

The leases provided for the payment of rent in two moieties in advance - on the 1st January and on the 1st July in each year until the termination of the leases. By regulation 14 of the Crown Lands Regulations no transfer of a lease can be completed by the Commissioner of Lands and Mines unless the rent for the current year is paid.

The applications for the transfers were made on the 31st August, 1966. After repeated demands by the Crown Lands Ranger the rents were paid in December, 1966. The applications were then published in the Official Gazette on three consecutive Saturdays. The rents for 1967 had by this time become due and under regulation 14 of the Regulations had to be paid before the transfers could be completed. Payment was made on the 14th April, 1967 after several demands by the Crown

Lands Ranger and after the duty had been increased. While I was of the view that there was some delay in the Lands and Mines Department I was of the opinion that the real reason for the delay in completing the transfers was the late payment of rents in 1966 and 1967. I held that the complaint was not justified.

An examination of the steps taken by the Lands and Mines Department in processing applications for transfers of leases disclosed that among other things the area is inspected and outstanding rents are collected before the applications are advertised in the Official Gazette on three consecutive Saturdays. I considered that this procedure unnecessarily prolonged the time taken to complete a transfer and pointed out to the Commissioner of Lands and Mines that while regulation 14 of the Crown Lands Regulations provided that no transfer of a lease could be completed unless the rent due for the current year had been paid it was not a condition precedent to the publication of the Notice of Application for transfer in the Official Gazette as required by regulation 12. I therefore suggested to the Commissioner of Lands and Mines that advertisements of the application for transfer and inspection of the area and collection of outstanding rents could be done simultaneously. The Commissioner of Lands and Mines accepted the suggestion.

Land Development

Case No. 147

The complainant stated that he was allocated a homestead plot and cultivation plot No. 18 B at Black Bush Polder Scheme. He claimed that when those plots turned out to be in the possession of other persons, he was given another homestead plot

and cultivation plot No. 232. There was no dispute over the homestead plot. The complaint centred around the cultivation plot, No. 232, which the complainant claimed had been allocated to him and to which he felt he was entitled. In support of his claim he tendered a receipt showing an alteration of the original numbers relating to both the homestead plot and the cultivation plot. The Field Foreman maintained that he had altered the number relating to the homestead plot but not the number of the cultivation plot. There were no means of finding out the person responsible for the second alteration as the Police were unable to find a sufficient number of characteristics in the altered number for comparison with specimens of handwriting submitted to them.

A study of the files showed that the complainant applied for Crown lands at Black Bush Polder on the 9th March, 1964, and was allocated, after drawing lots, a homestead plot and cultivation plot No. 18B. Two days later it was discovered that those plots were occupied by squatters whereupon the complainant was allocated another homestead plot and cultivation plot No. 19A. His application form was amended and the changes initialled. Attached to the application form was a document setting out the terms and conditions under which the plots were being granted. This document was signed by the complainant. Under those terms and conditions, it was stipulated that permanent and other crops as recommended by the Department of Agriculture were to be cultivated on the cultivation plot and that the cultivation of rice would not be permitted on either of the plots. Cultivation plot No. 232 which the complainant claimed had been allocated to him was intended for the cultivation of rice whereas cultivation plots Nos. 18B and 19A were classified as plots on which the cultivation of rice was not permitted.

On the 12th January, 1965, the Administrator of the Black Bush Polder Scheme sent the complainant a registered letter confirming the allocation of cultivation plot No. 19 A and suggesting that he contact the Field Foreman of the Scheme if he was in doubt as to the correct location of the plot. Meantime the complainant had assumed the cultivation of plot No. 232 and in October, 1964, wrote to the Attorney General informing him that the Rice Development Company had reaped his padi from the area on which he had planted. In May, 1965, he complained again that another crop of padi had been reaped by the Rice Development Company. The Permanent Secretary, Ministry of Agriculture and Natural Resources, to whom the two letters were forwarded, informed the complainant that his cultivation plot was 19 A and that in the circumstances he had no claim to the padi that was reaped by the Rice Development Company.

In March, 1965, the complainant filed an action in the Supreme Court against the Rice Development Company claiming $5,000 as damages for trespass. He also applied for a declaration of the Court that he was the tenant and person entitled to possession of cultivation plot No. 232. After several postponements the matter was fully heard on the 19th December, 1966, when the plaintiff's claim was dismissed.

I was satisfied that the complainant had signed a document on the 9th March, 1964, indicating that he was granted an area of land for the cultivation of permanent and other crops (excluding rice) as recommended by the Department of Agriculture, that plot No. 232 claimed by the complainant was for the cultivation of rice, and that the complainant was informed in writing on two occasions in 1965 that his cultivation plot was No. 19 A.

I found that the complainant was not entitled to cultivation plot No. 232 and concluded that he had not sustained injustice in consequence of a fault in the Administration.

Police

Case No. 207

On the 5th December, 1966, a child was injured in an accident with a Police vehicle. The legal adviser of the child's parents wrote to the Commissioner of Police claiming damages and was informed that legal advice was being sought by the Police. After some months the legal adviser complained to me alleging delay on the part of the Police and suggesting that the Police were not in fact awaiting legal advice.

My investigations disclosed that the papers had been sent to the Attorney General's Chambers. I communicated with the Solicitor General who assured me that he would endeavour to bring the matter to finality at an early date. The delay was caused by a build up of work in the Attorney General's Chambers as a result of shortage of staff. Discussions between the Law Officers and my complainant commenced soon after I drew the attention of the Solicitor General to this case.

Post Office

Case No. 79*

The complainant alleged that a Postmaster and his assistant had denied him information and that the Postmaster had treated him with discourtesy on the telephone.

*This case was completed in 1966.

A study of the file showed that the complainant, in his capacity as Attorney, sent one of his employees to enquire whether three letters containing cheques addressed to his principal who had changed her address had been returned to the Post Office undelivered. The postal assistant to whom the request was first made refused to give the information. The complainant subsequently telephoned the postmaster who doubted the complainant's identity, refused to give the information sought and asserted that his assistant had acted properly. The complainant later visited the post office and tendered his Power of Attorney.

The complainant in a letter dated 14th September, 1966 reported the matter to the Director of Posts and Telecommunications, requesting him to take steps to ensure that the public was properly treated. He further alleged that two of the packets, the subject of his inquiry, were lying at the post office at the time of his inquiry. The complainant again wrote to the Director on 21st November, 1966, expressing surprise that he had not received a reply to his first letter. The complainant complained to me on the 25th November, 1966.

On taking the matter up with the Department I found that a departmental investigation had commenced. The Department's findings, which were subsequently conveyed to the complainant, revealed that there was delay in dealing with one of the packets, and that appropriate departmental action had been taken to avoid a recurrence.

The Department regretted the incident that had occurred but pointed out that Postal Officers were forbidden to disclose information regarding mail unless such a request was made by the sender or the addressee. The Postmaster, however, in

his discretion might disclose such information if he was reasonably satisfied that the person effecting the inquiry was authorised either by the sender or the addressee. This seemed to me to be a reasonable safeguard for preventing mails being delivered to unauthorised persons.

I considered the complaint rectified but requested the Department to impress on the minds of its officers the need for the exercise of tact and discretion in their dealings with members of the public. It seemed to me that the complainant might not have found it necessary to write to the department on the 21st November, 1966 if an interim reply had been sent to him when it became apparent that departmental enquiries would be protracted and I so informed the department.

Case No. 98

I drew the attention of the Director of Posts and Telecommunications to an error appearing in the text of Broadcast Receiving Set Licences. The Director explained that the licences had been printed before an amendment had been made to the Wireless Telegraphy Regulations late in December of the previous year. Immediate action was taken to correct the error.

Registrar of the Supreme Court

Case No. 198

A citizen complained that he had not, for the past twenty years, been required to serve as a juror although other persons had served on several occasions during that period.

The procedure for selecting persons to serve as jurors is set out in section 30 of the Criminal Law (Procedure) Ordinance, Chapter 11, and under the provisions of paragraph (b) of that section, the numbers prefixed to the names in the juror's list are written on separate cards and placed in a box. The Registrar of the Supreme Court of Judicature then draws, in the presence of a Judge, not less than thirty cards to form a panel. On investigation, I was satisfied that this procedure had been followed in every case and that the complainant's non selection as a juror was not due to a fault in the administration.

In communicating my findings to the complainant I drew his attention to the fact that his name was included in the juror's list published in the Official Gazette on the 21st July, 1967.

Case No. 204

This complaint was referred to me for investigation by His Excellency the Governor-General to whom it was addressed. It concerned an allegation that the Head Bailiff of the Georgetown Judicial District had unlawfully paid over to someone else part of the monies recovered for the complainant under a writ of execution.

My investigations disclosed that on the 27th July, 1966 the complainant consented to judgment in an action brought against her and was given three weeks to pay. As she had defaulted in her payment, a writ of execution was issued on the 14th September, 1966. On the 13th July, 1967 the judgment creditor applied to attach a sum of money recovered for the complainant under a writ of execution issued against the property of someone else and the Head Bailiff did so in pursuance of the provisions of section 44(c) of the Summary

Jurisdiction (Petty Debt) Ordinance, Chapter 16.

I held that there was no foundation for the complainant's allegation and advised her accordingly.

Social Assistance

Case No. 136

This complaint concerned the length of time taken by the Social Assistance Department in investigating claims by the complainant and his sister for old age pension benefits.

Investigation showed that the complainant had previously applied for old age pension during 1965 and 1966; his sister had applied for old age pension during 1964 and 1966. In both cases the claims were declined on the ground that their monthly incomes exceeded the statutory requirement. The complainants were informed that they could appeal against these decisions but they did not do so.

They again applied for old age pensions in early 1967 and their claims were rejected on the same grounds. The Local Board of Guardians, which deals with such applications is not a body to which the jurisdiction of the Ombudsman extends. The Ombudsman does, however, have jurisdiction to investigate the actions of the Social Assistance Department which is charged by statute with the responsibility for investigating the claims of persons seeking old age pensions and I carried out investigations into the allegation of delay but not into the decisions of the Board.

I found that the investigations of the

District Public Assistance Officer entailed a careful study to ascertain full particulars of the claims and verification from all agencies of the statements made in the applications. I was satisfied that such investigations, though time-consuming, were necessary. In the circumstances, I did not consider the complaint of undue delay to be justified.

Case No. 205

The complainant alleged that a Public Assistance Officer had removed seven vouchers from his Old Age Pension Book, and that in January, 1967, the same officer had refused him payment of his pension for the months of August to December, 1966.

The complainant had applied for Old Age Pension in January, 1965. He produced no documentary proof of his age, which was assessed at 65 years on the 1st July, 1966 by the Local Board of Guardians acting in pursuance of the provisions of regulation 5 of the Old Age Pensions Regulations. His pension therefore commenced from August, 1966 in accordance with the provisions of section 7 of the Old Age Pensions Ordinance, Chapter 63. The complainant was notified of the Board's decision on the 4th November, 1966 and on the 12th November, 1966 he was given a book containing vouchers for the months of August to December, 1966 as provided by regulation 12 of the Old Age Pensions Regulations.

In December, 1966 the complainant refused to accept payment of his pension unless he was paid with effect from January, 1966, despite the fact that the Public Assistance Officer and the Paymaster had explained to him why a pension

was not payable before August, 1966. He accused them of fraud and reported the matter to the Police. Police investigations were conducted and the position was again explained to the complainant. The complainant still not satisfied, made further reports to the Police who renewed their inquiries with the same result.

I was satisfied that the removal of the vouchers for the months of January to July, 1966 from the Old Age Pension Book was correct under the Law.

As regards the complaint that in January, 1967, the Public Assistance Officer had refused him payment of his pension for the months of August to December, 1966, I found that the officer had acted on the receipt of certain information which led him to believe that the complainant was not eligible for old age pension and had submitted a supplementary report to the Local Board of Guardians. In consequence of that report payment of old age pension to the complainant was discontinued with effect from 1st January, 1967. I found that the officer had acted properly in this respect and concluded that the complaint was unjustified. I advised the complainant that he could, in accordance with the provisions of section 10 of the Old Age Pensions Ordinance, Chapter 63, apply for payment of his pension for the months of August to December, 1966.

Trade

Case No. 193

(This case also involved the Customs and Excise Department).

The Managing-Director of a company alleged that the Minister of Trade as Competent Authority had revoked two import licences granted to the company for the importation of steel from China. He submitted that in consequence of the revocation the company had incurred substantial expenditure amounting to $4,165.14 for want of entry and warehouse charges, legal fees and interest. He had sought re-imbursement of this sum in a claim made on the Comptroller of Customs and Excise, but his claim had been rejected. The complainant also alleged (a) discrimination in that the Competent Authority had permitted another company to take delivery of steel consigned to that company, (b) that the company's secretary was treated with discourtesy by two officers of the Ministry of Trade, and (c) that the Chamber of Commerce, acting in the interest of the company had been misled by information given by the Ministry of Trade to the effect that no final decision had been taken in the matter, when in fact the Ministry of Trade had already informed the company that permission could not be granted to import the goods.

An examination of the case showed that on the 15th April, 1966, the company was granted two licences by the Competent Authority for the importation of steel from China. On the 2nd July, 1966, a notice was published in the Official Gazette by the Competent Authority acting under the Trade Ordinance, 1958, revoking all licences granted for the importation of goods from the Sino-Soviet Bloc, subject to the right of the Competent Authority to take account of goods which had been confirmed against licences already issued and which were at dockside or afloat provided the importers submitted to the Competent Authority a statement of such goods supported by documents not later than 30th July, 1966. In those cases,

the Competent Authority would issue new licences to cover the specific goods.

The Competent Authority rejected the company's claim that their orders had been confirmed before the 1st July, 1966, and when the goods arrived on the 2nd November, 1966, the company offered a cheque to the Comptroller of Customs and Excise in payment of duty, but it was not accepted.

On further representation by the company, the Competent Authority, in the exercise of its discretion, granted permission for the entry of the goods, subject to compliance with the usual procedures relating to the payment of duty and other charges. The other charges were included in the total amount of $4,165.14 for which the company sought re-imbursement.

On investigation, I concluded that I was not concerned to inquire into the acts of the Competent Authority. The Competent Authority, appointed by the Governor-General under section 3 of the Trade Ordinance, 1958, is a creature of statute and not a department of Government as contemplated by article 53(1) of the Constitution. Nor is the Competent Authority prescribed by Parliament in terms of article 53(5). Even if it is held that the Competent Authority is a department of Government, under article 53(3)(a) I would have no jurisdiction to undertake an investigation, there being a remedy available to the company before the courts, and there being no special circumstances in the case to satisfy me that it was one which he could not reasonably be expected to take. In the circumstances, I concluded that I was not competent to examine the actions of the Competent Authority in relation to the question of re-imbursement or in regard to the allegation of discrimination.

I turned to a consideration of the actions of the Comptroller of Customs and Excise. I found that there was no duty on the Comptroller to question the legal validity of the revocation. Under the provisions of section 6 of the Trade Ordinance, 1958, the goods were deemed to be prohibited goods within the meaning of the Customs Ordinance, Chapter 309. I therefore concluded that the Comptroller of Customs and Excise acted properly in refusing to accept payment of the duty tendered by the company and could not be held liable for the charges claimed.

As regards the allegation that the secretary of the company had been treated with discourtesy, an allegation that was denied by the officer concerned, I found that the evidence in support of the allegation was not sufficient to enable me to make a finding one way or the other.

As regards the allegation that the Ministry had misled the Chamber of Commerce I concluded that, having regard to the fact that the matter was at the time under review by the Competent Authority and legal advice was being sought in consequence of further representations made by the company, the Ministry had acted correctly in informing the Chamber of Commerce that no decision had been taken in the matter.

Works and Hydraulics

Case No. 43*

The complainant, through his legal adviser, stated that in 1962 he deposited the sum of $500 with the Ministry of Works and Hydraulics for the hire of a dragline to excavate trenches on his estate. As a dragline was not readily available

*This case was completed in 1966.

the complainant made arrangements for the trenches to be excavated privately and wrote to the Ministry asking for a refund of the deposit, but without success. The complainant then sought my assistance.

I brought the case to the attention of the Ministry. The Ministry explained that as a result of the turbulent years of 1962 to 1964 there was a considerable build up of work in district offices; in addition there had been anumber of changes in the experienced staff, and, as a result, the records of district offices were not up to date. However, the Ministry agreed to make a refund provided the complainant swore to an affidavit that he did not have the use of the dragline. The Ministry asked me to convey its apologies for the delay and for any inconvenience caused to the complainant. The complainant recovered his deposit and later expressed thanks for my assistance.

Case No. 156

A contractor claimed that he was not paid by the Ministry of Works and Hydraulics for structural repairs done to a Government building and that he was unable since then to obtain any more work from the Ministry.

My investigation disclosed that a formal contract was not signed, but that after the broad scope of the work was explained to the complainant it was decided that payment would be effected at a mutually agreed rate. The repairs completed, the complainant submitted a claim which was considered excessive by the Senior Superintendent of Buildings who offered a much smaller sum. The complainant refused the offer with the result that

the Chief Architect of the Ministry was brought in to examine the work done and estimate its value. The complainant rejected the new assessment, and the Permanent Secretary advised him to seek the appointment of an arbitrator to determine the matter.

It was therefore open to the complainant either to take the matter to court or to seek the appointment of an arbitrator. In the terms of article 53(3) of the Constitution, there were no grounds on which I could proceed with the investigation of this aspect of the complaint.

In regard to the allegation that since the dispute, the complainant had not obtained work with the Ministry, I found that from the date of the dispute to the date the complaint was made to me, the complainant had submitted no tenders for work with the Ministry.

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