

*Supply—Pensions*

afternoon the minister dealt with a resolution providing for amendments to the Pension Act, adding to the machinery particularly with regard to pension tribunals and the number of what are called commission counsel. Regardless of the fact that the legislation was concurred in by all sides of the house and was at least to be tried out, I believe there is one radical defect in this system of using commission counsel. I do not believe anyone realized just how far we were going in that respect when the legislation was passed.

To place my point clearly before the committee I want to submit that the term "commission counsel" is a misnomer, and that the function of commission counsel is entirely out of place in any scheme of judicial administration. The situation is this: Under the statute the Board of Pension Commissioners entertain an application for pension, and if they do not see their way clear to grant the pension the application is automatically referred to the pension tribunal. As I understand it they do not exercise any detailed judicial function with regard to investigation which they previously exercised, perhaps feeling that there is another tribunal which can consider the matter further. But this is what I feel is wrong: After the pension commissioners have refused the application or have decided that the applicant has not made out a case, the matter goes to the tribunal. Then counsel on the staff of and instructed by the Board of Pension Commissioners, which has made the refusal, appears before the tribunal and objects to the pension being granted, or at least puts before the tribunal all the factors which might possibly be invoked in opposition to the granting of the pension. It is exactly the same as if a court of primary jurisdiction were so far interested in upholding its decision that it engaged a lawyer to appear before the appeal court to plead its case and see that its decision was upheld.

I submit, Mr. Chairman, that this places the board of pension commissioners in an invidious position, and I do not think it is of assistance to the ex-service man. On the contrary it is a detriment to him. This idea of counsel being counsel for the commission should be done away with. If counsel are to appear before the tribunal to present the state's side of the case, call them federal counsel or whatever you like but let them appear in their true position. I repeat that when they appear as commission counsel it is not fair either to the commission or to the ex-service man.

As I said previously, I do not think we realized the unsoundness or the implications of our action when we provided for the

[Mr. Ralston]

appointment of these gentlemen as commission counsel. I do not want to labour the point, but I am sure a statement of the case will convince the committee that the present position in this respect is not a sound one. I understand that those men take their instructions, as they are bound to do, from the board of pension commissioners, who say what case is to be appealed and what case is not to be appealed. The Board of Pension Commissioners give them the facts and arguments, and that is not a position in which a court should find itself, even though it is authorized by statute and called upon to perform that duty. The board of pension commissioners should be relieved from the duty of instructing these counsel, who should be put upon some other basis. I have been trying to think of some other title for them; I suggest "federal counsel" for want of a better name, and I submit that suggestion to the minister because I believe it is the cause of a great deal of heart burning, and probably some recrimination and criticism of the Board of Pension Commissioners which may not be justified. Ex-service men think it is the cause of their not getting pensions to which they believe they are entitled.

Mr. SPEAKMAN: Perhaps I might be permitted to follow that argument a little before the minister replies. When this matter was dealt with by the committee last year the question referred to by my hon. friend (Mr. Ralston) was fully discussed, and it was the impression of a number of members of the committee, and also of the legion, that it would be to the advantage of the applicant were such an official to appear. The legion apparently felt that if there were no officer whose duty it was to point out to the tribunal the weaknesses of any case, the tribunal itself might feel called upon to do so, and it was thought that this would detract from the position of the tribunal as a judicial body. A number of us did not hold that opinion, and certainly no one expected it to be carried to the extent that commission counsel should in such cases act as opposing counsel.

Going a little further, I should like to direct the attention of the minister to another evil which has resulted from the granting to the commission of the right of appeal. That is, the commission through their counsel may appeal to the federal appeal board from a favourable decision of the tribunal. It was the impression of many of us that, the tribunal itself being in the best position of any of the pension granting bodies to pronounce definitely on a case, since the tribunal is the only body before which the applicant