C. B. II No. 206

COMMITTEE
ON
SUBORDINATE LEGISLATION

FIRST REPORT

(FOURTH LOK SABHA)

(Presented on the 5th March, 1968)

LOK SABHA SECRETARIAT
NEW DELHI
March, 1968/Phalguna, 1889 (Saka)
Price : 55 Paise

LOK SABHA SECRETARIAT

C-O-R-R-I-G-E-N-D-A

to

the First Report of the Committee
on
Subordinate Legislation
(Fourth Lok Sabha)

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1. Page 8, first line, para 28,
   for "and" read "an".
2. Page 10, line 2 from bottom,
   for "authorise" read "authorises".
3. Page 12, line 16, para 38,
   for "very" read "every".
4. Page 13, line 13,
   for "OF" read "OR".
5. Page 13, line 19,
   for "BUILDING" read "BUILDINGS".
6. Page 17, lines 18-19,
   for "Consitution" read "Constitution".
7. Page 21, second line of para 71,
   for "inadvertance" read "inadvertence".
8. Page 24, last line,
   for "your labours" read "in your labours".
9. Page 25, line 9 from bottom,
   for "knowedge" read "knowledge".
10. Page 29, line 12 from bottom,
    for "Chairman" read "Chairmen".
11. Page 30, line 5,
    for "scisures" read "seizures".
12. Page 31, line 6,
    for "threfore" read "therefore".
13. Page 31, line 7,
    for "legislation" read "Legislation".
14. Page 32, line 2,
    for "Order" read "Orders".

New Delhi,
The 5th March, 1968.

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(1967-68)

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11. Shri N. K. Sanghi
*12. Shri Nuggehalli Shivappa
13. Shri Tulsidas Dasappa
14. Shri Balgovind Verma
15. Shri G. Viswanathan.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

*Nominated by the Speaker on 18th November, 1967 *vice* Shri N. Dandekar resigned.

REPORT

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their First Report.

2. The Committee was constituted on the 5th April, 1967, by the Speaker. At the first sitting of the Committee held on the 11th April, 1967, the Chairman welcomed the Members of the Committee and explained to them broadly the scope and functions of the Committee and the important role this Committee could play in acting as a check against the risks inherent in the process of delegation of legislative power to the Executive if the "germ of arbitrary Administration", as Sir Cecil Carr called it, was to be kept under control. The Chairman also acquainted the Members with the tradition of the Committee that all the decisions of the Committee were arrived at unanimously and party considerations never affected the deliberations in the Committee. The text of his address is reproduced in Appendix I.

3. The Committee have held 14 sittings and considered 2641 'Orders'. At their sitting held on the 13th February, 1968, the Committee considered and adopted this Report.

4. During the course of examination of various 'Orders', the Committee also heard the views of the representatives of the Ministries of Defence, Law, Railways (Railway Board) and Commerce at their sittings held on the 26th May, 12th August, 4th October, 1967 and 30th January, 1968.

5. Observations of the Committee on matters of special interest made during the course of their examination of the 'Orders', and matters which required to be brought to the notice of the House have been included in this Report.

A statement showing the summary of recommendations/observations of the Committee is appended to the Report (Appendix II). For facility of reference these have been printed in thick type in the body of the Report.

II

POWER OF THE UNION PUBLIC SERVICE COMMISSION TO DEDUCT MARKS FOR SUPERFICIAL KNOWLEDGE AFTER THE ANSWER-BOOKS IN A COMPETITIVE EXAMINATION HAD BEEN EVALUATED

6. New paragraph 8 of Appendix II to the Mechanical Engineering and Transportation (Power) Department of the Superior Revenue Establishment of Indian Railways Recruitment Rules, 1963, as introduced by G.S.R. 1770 of 1963, made under the proviso to Art. 309 of the Constitution, vested the power in the Union Public Service Commission to deduct such marks from the marks assigned to a candidate in each subject as it might consider necessary in order to ensure that no credit was allowed for merely superficial knowledge. After examining this provision and the justification advanced by the Union Public Service Commission for retention of the provision, the Committee on Subordinate Legislation made the following observations in paragraph 12 of their Fourth Report (Third Lok Sabha):

> "The Committee are not convinced of the justification advanced by the U.P.S.C. for assuming the power to deduct marks for 'superficial knowledge' which, in the nature of things, would be difficult to exercise for the purposes it seeks to achieve. The Committee feel that the U.P.S.C. should not have the power to deduct marks arbitrarily after the answer papers of a candidate have been assessed by the examiner, who is expected naturally to take all factors into account while assessing the answer papers. The Committee are, therefore, of the opinion that paragraph 8 of Appendix II of the aforesaid rule should be omitted".

7. On the matter being pursued further, the Ministry of Home Affairs sent the following reply:—

> "Since there has been no occasion so far when the Commission themselves have found it necessary to review the marks of any candidate in any particular subject on grounds of superficial knowledge after the answer books had been assessed by the examiners, the Commission have agreed to the deletion of the existing provision regarding deduction of marks by the Commission for superficial knowledge, which is incorporated in the rules for the various competitive examinations, and the incorporation therein of the following alternative provisions:—
>
> 'Marks will not be allotted for mere superficial knowledge'."

8. The Committee have considered the reply of the Ministry of Home Affairs and agree to the incorporation of an alternative provision in the Rules as suggested by them.

III

AMENDMENT TO THE INDIAN ADMINISTRATIVE SERVICE (FIXATION OF CADRE STRENGTH) REGULATIONS, 1955 (G.S.R. 59 of 1966).

9. The Amendment to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 (G.S.R. 59 of 1966) as published in the Gazette provided, in the amended Cadre strength of the Service relating to the State of Punjab at serial No. 2 thereof, that the "Senior Posts under the Central Government" shall be 32. It was, therefore, not clear as to which posts were covered by the expression "Senior Posts under the Central Government." It was felt that the details of the posts covered by this expression should have been given in the Regulations as had been done in the case of "Posts under the State Governments."

10. On their attention being drawn, the Ministry of Home Affairs stated that the needs of the Centre for Senior I.C.S./I.A.S. Officers to man posts at the Centre were met by drawing officers from the State Cadres. For this purpose, the Ministry added, in the I.A.S. Cadre of each State, a provision for 40 per cent of the senior posts in the State had been made to meet the requirements of the Centre. Against this, officers were drawn from the State Cadres for purposes of the Centre. The Ministry further stated that actually the item in question had provided for deputation of Officers from State Cadre to the Centre and could appropriately be described in the Schedule as "Central Deputation Reserve".

11. The Committee, after having considered the reply of the Ministry of Home Affairs, are of the view that the expression "Senior Posts under the Central Government" used in the Fixation of Cadre Strength Regulations relating to I.C.S./I.A.S. could be substituted by the expression "Deputation reserve for the posts under the Central Government". The Committee also feel that Government should do well in laying down the nomenclature of such "Central Deputation Reserve Posts" in each 'Order' promulgating the Fixation of Cadre Strength Regulations in respect of various All-India Services with a view to regulate properly not only the periods of tenure while on deputation to the Central Government but also to eliminate any element of favouritism which might creep in at the time of allocating such posts and the incumbents thereof to the various Central Ministries.

IV

CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES 1965—(S.O. 3703 of 1965)

12. The Central Civil Services (Classification, Control and Appeal) Rules, 1965 were made under proviso to Art. 309 and clause (5) of Article 148 of the Constitution.

Rule 2(k) thereof defined the word 'schedule' as "the Schedule to these Rules" and several matters, instead of being specifically provided for in the rules, had been referred to as "specified in the Schedule"; but there was no schedule appended to the Rules. However, after wading through all the rules, one could locate the schedule in rule 33 under the heading "Transitory Provisions". This rule provided that until the publication of Schedules under these Rules, the Schedules to the Central Civil Services (Classification, Control and Appeal) Rules, 1957 and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, as amended from time to time, shall be deemed to be the Schedules relating to the respective categories of Government Servants and that such Schedules shall be deemed to be the Schedule referred to in the corresponding rules of the new Rules. When attention of the Ministry of Home Affairs was drawn to the difficulty in locating and referencing the Schedules by those who were directly or indirectly concerned with the rules, the Ministry stated that since the attention of the authorities concerned with the administration of the Rules in question had been drawn to the transitory provision regarding the Schedules, it was not necessary to make any amendment in the Rules.

13. After considering the reply of the Ministry, the Committee feel that, in order to make the location and referencing of the Schedule easy and convenient, the contents of rule 33 of the rules ibid should have at least, been reproduced in the form of a Schedule at the end of these rules. This course would have been in consonance with the definition of the Schedules as given in the aforementioned Rule 2(k). The Committee have emphasised time and again that the rules should, as far as possible, be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing the rules. In the present case, it is not only the Administrative authorities but also the service personnel as well as the Advocates and Courts, who are concerned with the rules, as cases arise under the rules in the form of writ petitions etc. The Committee reiterate that the rules should be self-contained and 'legislation by reference'

should be avoided as far as possible. The Committee recommend that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 should be reprinted along with the necessary schedules.

V

CENTRAL SECRETARIAT CLERICAL SERVICES (UPPER DIVISION GRADE LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION) REGULATIONS, 1966 (G.S.R. 671 OF 1966)

14. The Central Secretariat Clerical Service (Upper Division Grade Limited Departmental Competitive Examination) Regulations, 1966 were framed under Regulation 2(3) of the Third Schedule to the Central Secretariat Service Rules, 1962.

15. Regulation 7(1) of these Regulations provided that the names of the candidates who were considered by the Union Public Service Commission *in their discretion* to be suitable for selection on the results of the competitive examination should be arranged in the order of merit and subject to the provisions of sub-regulation (3) of Regulation 8, they should be recommended for selection in that order. Sub-Regulation (3) of Regulation 8 provided that the candidates belonging to any of the Scheduled Castes or Scheduled Tribes who were considered by the Commission *in their discretion* to be suitable for selection on the results of the competitive examination with due regard to the maintenance of efficiency of administration shall be recommended for selection against the vacancies reserved for them irrespective of their ranks in the order of merit in the examination.

16. Again, in sub-regulation (1) of Regulation 8, it was stated that success in the examination shall confer no right to selection unless the Government of India in the Ministry of Home Affairs were satisfied after such inquiry as might be considered necessary that the candidate was suitable in all respects.

17. While the assumption of power by the Ministry of Home Affairs not to select a candidate, even though he had secured a position of merit in the examination for appointment, was understandable, conferring of discretionary power on the Union Public Service Commission to disregard his rank in the order of merit in the examination could not be appreciated.

18. The Committee note that the Ministry of Home Affairs, on being pointed out to them, have deleted the words 'in their discretion' **appearing in Regulations 7(1) and 8(3) of the aforesaid Regulations (vide G.S.R. 690 of 1967).**

VI

JAYANTI SHIPPING COMPANY (BOARD OF CONTROL) RULES, 1966 (G.S.R. 1159 of 1966)

19. The Jayanti Shipping Company (Board of Control) Rules, 1966, were made under Section 19 of Jayanti Shipping Company (Taking over Management) Ordinance, 1966, and continued to be operative under section 21 of the Jayanti Shipping Company (Taking over Management) Act, 1966.

20. Item 3(ii) of the Schedule appended to the Rules laid down that if the number of members of the Board of Control present at any meeting thereof was less than the required quorum, the meeting shall be adjourned and the adjourned meeting shall be held at such time, place and date as might be fixed by the Chairman of the Board and it shall thereupon be lawful to dispose of the business at such adjourned meeting whether the quorum was present or not. There was, however, no specific provision for giving notice to the absentee members of the Board about the time, place and date which might be fixed for holding the adjourned meeting. It was felt that in the absence of such a notice, absentee members would not know whether the meeting was adjourned and, if so, to what date and time and therefore they would not be able to attend the meeting of the Board.

21. The Committee note that, on being pointed out to the Ministry of Transport and Aviation, now Transport and Shipping (Transport Wing), a specific provision for giving notice to all the members of the Board about holding of the adjourned meeting thereof has since been made in the aforesaid rules.

VII

PARADIP PORT HARBOUR CRAFT RULES, 1967 (G.S.R. 980 OF 1967)

22. The Paradip Port Harbour Craft Rules, 1967 were made under section 6(1) of the Indian Ports Act, 1908 after having been previously published as required under sub-section (2) of the said section 6.

23. Rule 26 thereof empowered the Deputy Conservator of the Paradip Port to cancel all or any of the licences held by the owner of a licensed harbour craft, if in his opinion, the owner had violated any of the provisions of those rules, but there was no provision in the rules for giving an opportunity to the owner of being heard before his licence was cancelled. Further, there was no provision requiring the Deputy Conservator to record in writing the nature

of violation of the rules which might have given rise to the occasion for cancelling the licence.

24. Accordingly the views of the concerned Ministry of Transport and Shipping were sought whether the Ministry would provide in the rules for the following matters:—

(i) that the owner of a licensed harbour Craft should be given an opportunity of being heard before his licence was cancelled; and

(ii) that the reasons for cancellation were recorded in writing and communicated to such owner.

25. The Ministry of Transport and Shipping in their reply had stated that Rule 27 of the Paradip Port Harbour Craft Rules, 1967 provided for appeals to the Conservator against the orders of the Deputy Conservator being preferred within seven days from the date on which the decision of the Deputy Conservator was communicated to the party or parties. The Deputy Conservator, whose decision was thus open to appeal, the Ministry had added, was bound to exercise his powers under Rule 26 with restraint and care and the revocation of licences was envisaged only if, in the opinion of the Deputy Conservator, the owner of any licensed harbour craft had contravened any of the provisions of the rules. The Deputy Conservator had, therefore, to exercise his powers only under well defined circumstances. The Ministry had also informed that these rules were framed on the lines of similar Rules applicable to other major ports. The Ministry had further stated that before these Rules were notified finally they were published previously in the Gazette as required under Section 6(2) of the Indian Ports Act, 1908 for inviting objections or suggestions from the persons likely to be affected thereby and that no such objections or suggestions were received. The Ministry, therefore, did not consider it necessary to carry out the amendment suggested above.

26. The Committee, after having considered the matter at some length, feel that conferring the right of being heard to the party adversely affected by a decision of the Executive, recording in writing the reasons for such decision and communicating the same to the party concerned are the basic requirements of natural justice. Exercise of power with restraint, care, and under well-defined circumstances, at the discretion of the Executive, is no substitute to those basic requirements. The Committee, therefore, recommend that instead of leaving it to the good sense of the individual officers the basic requirements of natural justice viz., giving an opportunity of being heard, recording in writing the reasons for adverse decisions

and communicating the same to the party, whose business/trade is affected as a result of cancellation of licences etc., should be incorporated in the rules themselves.

Previous Publication of 'Orders'

27. The Committee have noted the prevailing practice with the Ministries of stating in the preamble to the final rules, as had been done in the present case, merely the fact of the rules having been previously published wherever it is so required by the parent Act, but the Ministries do not indicate the date of the Gazette on which the draft rules are published and the last date by which the comments/suggestions from the public are invited. Sometimes very little time is given to the public to make their suggestions to the Ministry concerned before the rules are finalised. In the present case, the draft rules were published by the Ministry of Transport in the Gazette of India dated the 15th October, 1966 and the comments of the public were invited by the 10th October, 1966, the date which had already expired (*vide* G.S.R. 1574 of 1966). Subsequently, however, the last date for receipt for comments from the public was changed to 10th November, 1966 by a corrigendum published in the Gazette dated the 29th October, 1966 (*vide* G.S.R. 1651 of 1966). In the past also, there were several cases, reported by the Committee, where the draft rules were made available to the public only after the expiry of the last date fixed for submission of suggestions by the public (*vide* Sixth Report, Committee on Subordinate Legislation, 1st Lok Sabha, para 30 at page 6).

28. It appears that some Ministries are labouring under an apprehension that the condition requiring publication of draft rules for inviting comments/suggestions from the public thereon is merely a formality but it is not so. The Committee feel that it would defeat the very object underlying the condition of publication of draft rules if adequate opportunities are not given to the public to go through the draft rules and offer their comments. It is imperative that the statutory requirements for previous publication of rules are strictly followed both in letter and spirit. The Committee, therefore, recommend that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this, Government may, perhaps, do well if they issue some standing instructions that the date of the Gazette in which the draft rules were published and the last date fixed for receipt of public comments thereon and also the date on which the Gazette copies containing the draft rules were made available to the public are specifically mentioned in the preamble to the final rules.

VIII

IMPOSITION OF FEE ON CANCELLATION OF RAILWAY TICKETS

29. At the First Sitting of the Committee held on the 11th April, 1967, a question was raised that financial loss was being caused to the Members of Parliament in the event of cancellation of Railway Tickets purchased by them on account of the extension of the session of the House by a day or so, as the cancellation fee charges levied by the Railway Administration in respect of unused tickets ranged from 10 per cent to 25 per cent of the fare. The cancellation charges were very much on the high side and caused great hardship to the *bona fide* passengers who had to get their reservations cancelled under some unavoidable circumstances at a short notice. The Committee then enquired from the Ministry of Railways (Railway Board) whether the cancellation fee was being imposed by the Railway Board in pursuance of any rules or regulations made under the Indian Railways Act, 1890 or under some other executive directions or orders.

30. The Railway Board took almost more than two months to supply a copy of the Rules made under the Indian Railways Act, 1890. This time-lag in the supply of Rules was surprising in view of a specific provision contained in section 47(6) requiring every Railway Administration to keep, at each station on its Railway, a copy of the General Rules for the time being in force and to allow any person to inspect it free of charge at all reasonable times. The Railway Board instead of explaining the position sent a cryptic reply to the Committee that "there was a Rule" which provided that Railway Administration may reserve a seat, berth, compartment or carriage, as the case may be, in passenger train, in accordance with conditions published in the Time Tables in force from time to time.

31. The Committee thereupon examined the representatives of the Ministry of Railways (Railway Board) on the 4th October, 1967 to seek further clarification as to the authority under which the cancellation charges were being levied by the Railways. During the course of their evidence, the representatives of the Ministry stated that the provisions of Section 47 of the Indian Railways Act, 1890 and Rule 1A of the Indian Government Railways (General Rules, Part II) were wide enough to include the power to levy the charges on cancellation of a railway ticket. The witnesses further stated that Section 47, read with notification No. 801, dated the 24th March, 1905, permitted the Railway Board to frame General Rules and under that power the Board had framed Rules in regard to the

reservation of a berth or a seat, which were published in the Railway Time Tables from time to time.

32. The witnesses sought to justify the levy of cancellation charges on the ground that the cancellation charges were not in the nature of a tax but in the nature of a fee. The attention of the witnesses was then drawn to the Supreme Court Judgement delivered by Mr. Justice Mukherjee in the case of Ratilal Panachand Gandhi and others *vs.* State of Bombay and others (A.I.R. 1954, S.C. 388, Vol. 41 CN. 93) wherein it was observed that:—

> "Fees are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of *'quid pro quo'* which is absent in a tax. In order that the collections made by the Government can rank as fees, there must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services. Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes."

33. The witnesses then endeavoured to explain that the charges in question had the element of *quid pro quo*. The Committee were, however, not satisfied with the replies given by the witnesses in the light of the two tests envisaged in the aforesaid ruling of the Supreme Court *viz.*, the fee must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and secondly, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes.

34. Considering the matter in all its aspects, the Committee are of the opinion that charges like the one levied for cancellation of unused Railway Tickets should not be levied or collected without any specific authorisation by an Act of Parliament. So far as Section 47 of the Indian Railways Act, 1890 is concerned, there is nothing which authorises the Railway Administration to levy cancellation charges on unused Railway Tickets.

35. The Committee also deplore the delay on the part of the Ministry of Railways (Railway Board) in supplying a copy of the Rules made under the Indian Railways Act, 1890, which, under Section 47(6) thereof, were required to be kept at every Railway Station and made available to any person for inspection free of charge at all reasonable times. If the Ministry of Railways, who are the rule-making authority, do not themselves possess up-to-date copies of the Rules, the Committee fail to understand how they can ensure compliance of the statutory requirement of Section 47(6) by the Railway Administrations.

IX

RAILWAY SERVICE COMMISSIONS (CHAIRMEN AND MEMBERS) RECRUITMENT RULES, 1965 (G.S.R. 128 OF 1966)

36. Railway Service Commissions (Chairmen and Members) Recruitment Rules, 1965 were framed under Proviso to Article 309 of the Constitution. It was noted that the scales of pay of Chairmen and Members had been given in the schedule appended to the Rules as Rs. 1,800 (fixed) and Rs. 1,300 (fixed) respectively. As the retired Railway/Government Officers were also included in the field of choice for appointment to the above posts, it was not clear whether pay of these retired officers would be inclusive of pension or not in case of their appointment as Chairmen or Members of the Railway Service Commissions.

37. It was suggested to the Ministry of Railways (Railway Board) that a clear provision might be made in the rules to obviate any ambiguity in the interpretation thereof. The Committee note that the Ministry of Railways have since amended the rules in consultation with the Ministry of Finance and the Union Public Service Commission and substituted the existing footnote by three new footnotes (vide G.S.R. 1811 of 1967). Now the rules as amended make it clear that the retired Railway/Government Officers, when appointed as Chairmen/Members of Railway Service Commissions, would be permitted to draw separately pensions sanctioned to them subject to the condition that pay plus gross amount of pension and/or pensionary equivalent or other retirement benefits do not exceed the pay last drawn on retirement.

X

IRON AND STEEL (CONTROL) AMENDMENT ORDER, 1965 (S.O. 3147 OF 1965)

38. The term "Controller" contained in clause 2(a) of the above 'Order' was defined to mean "the person appointed as Iron & Steel

Controller by the Central Government and includes any person or body of persons authorised in writing by the Central Government to exercise all or any of the powers of the Iron and Steel Controller with regard to all or any of the categories of iron and steel or scrap." This definition gave very wide discretion to the Government to appoint any person, irrespective of his rank and position in life, to exercise the powers of the Iron & Steel Controller including powers of conducting searches and seizures. The Committee on Subordinate Legislation (Third Lok Sabha), in para 15 of their 5th Report had, in a similar case, made the following observations:

> "..... It should specifically be stated in the Order that a Government servant, not below a specified rank or equivalent officer, might be authorised to conduct searches and seizures etc. under the aforesaid Order. It should not be left worded in a manner which would give the Executive the power to authorise any and every Government servant to exercise the power of conducting searches and seizures under the aforesaid Order".

39. The Ministry of Iron and Steel (now Ministry of Steel, Mines and Metals), on being asked to clarify the implications of the aforesaid rule, have stated that the main difference that has been brought about by the amendment in regard to clause 2(c) of the Iron and Steel (Control) Order, 1956 is that whereas in the 1956 Order, the Central Government was authorised to appoint *any person* as Iron and Steel Controller exercising all or any of the powers of Iron and Steel Controller, in terms of the amended order, the Central Government can authorise *any person* or *body of persons* to exercise all or any of the powers of the Iron and Steel Controller with regard to all or any of the categories of iron and steel or scraps. The Ministry have further stated that there has been no material change in regard to the provision of powers of Government relating to the appointment of the Controller. The phrase "body of persons" has been interpolated in the said Order with the specific view of transferring a part of the work of Controller to the Joint Plant Committee. Further, although in theory, the Central Government can authorise any person to exercise powers of the Iron and Steel Controller, in practice these powers have not been given to any private individual etc. According to the Ministry, it is not necessary to specify in the definition the categories of persons who could be authorised to exercise the powers of the Iron and Steel Controller.

40. The Committee considered the matter in detail in the light of the following observation of Justice Chandrasekhara Aiyar of

the Supreme made in The State of West Bengal v. Anwar Ali [A.I.R. (1952) S.C. 75 at p. 100], which was brought to their notice by the Chairman:—

> "(75c) Discrimination may not appear in the statute itself but may be evident in the administration of the law. If an uncontrolled or unguided power is conferred without any reasonable and proper standards or limits being laid in the enactment, the statute itself may be challenged and not merely the particular administrative act."

41. The Committee feel that it would not be proper to leave the uncanalised and unregulated power to the Executive to pick and choose any categories of officers, irrespective of their status and authority, to exercise all or any of the powers of the Iron and Steel Controller. The Committee, therefore, recommend that it should be specifically laid down in the Order itself that no Government servant below a particular rank or its equivalent specified therein would be authorised to conduct searches and seizures, etc.

XI

BYE-LAWS FOR REGULATING ERECTION OR RE-ERECTION OF BUILDINGS IN KASAULI CANTONMENT (S.R.O. 234 OF 1965)

42. Bye-laws 16 and 21(b) of the Bye-laws for regulating the erection or re-erection of buildings in Kasauli Cantonment (S.R.O. 234 of 1965) were not intelligible and clear in view of certain omissions therein. That is, in the last line of Bye-law 18, between the words "constructed" and "purpose" the words "for" appeared to be missing. Similarly, in Bye-law 21(b) after the words "religious building" the words "provided that the Board may" were missing.

43. The Committee note that the Ministry of Defence have, on being pointed out to them, issued the necessary corrections in the aforesaid Bye-laws 18 and 21(b) (Vide **S.R.O. 86 of 1967**).

XII

RULES REGULATING RECRUITMENT TO VARIOUS POSTS UNDER THE COMMODITY BOARDS

44. At their sitting held on the 11th November, 1967, the Committee had noted that the Ministry of Commerce, when requested to supply an *up-to-date* copy each of the rules/bye-laws regulating the recruitment to the various posts under the respective Commodity

Boards set up under the Coffee Act, 1942, Rubber Act, 1947, Tea Act, 1953 and Coir Industry Act, 1953 etc. for purpose of scrutiny, had stated that the rules/bye-laws regulating recruitment to the posts under the Coir Board were being finalised and that no separate recruitment rules for the Tea Board had been framed. (In respect of other Boards the information was not supplied by the Ministry till then).

45. In the circumstances the Committee were unable to appreciate as to how the appointments to the various posts under these Commodity Boards were being regulated in the absence of definite recruitment rules/bye-laws. For instance, Section 49(2)(d) and Section 50(1)(d) of the Tea Act, 1953 clearly envisage making of rules/bye-laws for the regulation of appointment to the various posts under the Tea Board. It was considered that in the absence of such rules/bye-laws, making of appointments under the Tea Board constituted a clear violation of the provisions of the Act itself. Accordingly, the Ministry of Commerce was asked: (i) to explain as to how, in the absence of such rules/bye-laws, appointments to the various posts under the Commodity Boards had been regulated so far, though these Boards were set up years ago, and (ii) when such rules/bye-laws were expected to be finalised by them.

46. The Ministry of Commerce, however, did not give any explanation as to how, in the absence of recruitment rules, they have been regulating appointments to the various posts under these Commodity Boards. As regards the finalisation of the rules, the Ministry stated that the recruitment rules for the Coffee and Rubber Boards had been framed. The recruitment rules for the Tea Board were being finalised by the Tea Board and the recruitment rules for the posts under the Cardamom Board had been sent to the Government of India Press for publication in the Gazette and would be laid before Parliament soon.

47. The representatives of the Ministry of Commerce in the course of their evidence before the Committee on the 30th January, 1963, expressed their regret for not having complied with the provisions of Section 49(2)(d) of the Tea Act, 1953, which envisaged making of Rules to provide *inter alia* for the pay of the Secretary and other Officers of the Tea Board. They explained that although the Act was passed in 1953, no rules were framed, because the draft rules which were prepared round about 1956-57 remained under discussion between the Tea Board and the Central Government at a leisurely pace for quite some time. The change in the incumbent of the Chairmanship of the Tea Board in 1962 also came in the way. The representatives further stated that the draft rules finalised by the

Tea Board in 1967 were again returned to the Tea Board with certain queries seeking clarification.

48. The representatives of the Ministry informed the Committee that in the absence of recruitment rules, pay scales of various posts under the Tea Board were fixed in consultation with the Finance Ministry and there were regular executive instructions in this behalf. They, however, admitted that these orders had not been notified in the Official Gazette.

49. As to the method of recruitment, it was explained that the appointment to a post which carried a salary of more than Rs. 1,000 p.m. was made by the Central Government on the recommendation of the Chairman, Tea Board. Before the person recommended by the Chairman was appointed, a panel of officers, suggested by the Establishment Officer of the Government of India, was formed to consider his suitability to the job. But it was admitted that there was a lacuna in the implementation of the Tea Act in so far as the terms, conditions and method for appointment to various posts under the Tea Board were not incorporated in any rules. It was also admitted that there was an inordinate delay in framing the rules and had the Ministry been aware that the absence of rules was against the Act, they would have given top-priority to this matter.

50. The representatives, however, gave an undertaking that the draft Recruitment Rules under the Tea Act, 1953 would be finalised by the end of February, 1968. They assured the Committee that the matters relating to fixation of pay of various officers, methods of recruitment, ratios of posts to be filled up by different methods, qualifications etc. would be incorporated in the Recruitment Rules.

51. As regards the other Commodity Boards, the Committee were informed that the rules regarding the Coffee Board, the Rubber Board and the Central Silk Board had been framed and published in the Gazette of India and laid on the Table of the House. The Rules regarding the Cardamom Board had also been framed and published in the Gazette, but they would be laid on the Table of the House during the current session. As regards the recruitment rules relating to the Coir Board, the Committee were told that they were covered by the Bye-laws which were still with the Ministry of Home Affairs and were awaiting their approval.

52. While the Committee have now been assured by the representatives of the Ministry that the recruitment rules under the Tea Act, 1953 would be finalised by the end of February, 1968, nevertheless, they are distressed at the lackadaisical manner in which both the

Ministry of Commerce and Tea Board have acted in this case. It appears incredible that a period of more than 14 years should have elapsed without the recruitment rules having been framed and, in the meanwhile, files containing draft recruitment rules tossed to and fro between the Ministry and the Tea Board. The Committee need hardly point out that the main purpose of vesting autonomy in the Commodity Boards is to enable them to transact their business more efficiently and if red-tapism and chronic delays of this nature were to occur, the very object of setting up these Boards would be defeated.

The Committee are also unhappy over the dormant role played by the Ministry of Commerce in dealing with this case and they wonder how it did not strike them at all, at any stage, that some of their actions in the matter of appointments to the various posts in the higher echelons of Tea Board were 'vulnerable' in the absence of the Rules in question.

XIII

AMENDMENTS TO RULES REGULATING DIRECT RECRUITMENT TO THE CENTRAL ENGINEERING SERVICE CLASS I AND CLASS II AND CENTRAL ELECTRICAL ENGINEERING SERVICE CLASS I AND CLASS II (G.S.Rs. 250-53 of 1967)

53. Amendments to the Rules regulating direct recruitment to the Central Engineering Service Class I and Class II and Central Electrical Engineering Service Class I and Class II were issued under Proviso to Article 309 of the Constitution

54. It was noted that these amendments did not bear short titles nor were they given any number. This was not in consonance with the recommendation of the Committee on Subordinate Legislation, First Lok Sabha, made in Para 44 of their Third Report. It was felt that the absence of short titles and serial number of amendments was likely to cause inconvenience to the persons concerned in tracing the amendments made in the original rules.

55. On being pointed out, the concerned Ministry of Works, Housing and Supply furnished the following note recorded by the Ministry of Law:—

> "... These amendments have been given no short title as is usually given to other amending rules. In the absence of a short title to the principal rules, a short title is not given to any amendments effected to the principal rules. It is for this reason that no short title was given to the amendments effected under the aforesaid G.S.Rs."

56. When the Ministry's attention was again invited to the aforesaid recommendation, the Ministry communicated the following opinion of the Ministry of Law:—

> "....The reference given in the preamble is by way of description which is resorted to only in cases where the principal rules do not have a short title. A description in the preamble is no substitute for a short title and as such it is not possible in such cases to give a short title to the amending Rules as we had stated in previous note referred to above."

The Ministry of Works, Housing and Supply further observed:—

> "Incidentally, rules framed under article 309 of the Constitution are not required to be placed on the Table of the House. In fact, this was not done in the case of amending rules pertaining to Central Engineering Services referred to above. Under Rule 320 of the 'Rules of Procedure and Conduct of Business in Lok Sabha', after the Regulations, Rules, Sub-Rules etc. framed either under the Constitution or the Legislative function delegated by the Parliament have been laid before the House, the Committee on Subordinate Legislation shall consider with reference to certain aspects as laid down in the said Rules of Procedure. It is presumed that since the amending rules of the Central Engineering Services Class I referred to above have not been laid on the Table of the House, the said Rules will not be placed before the Committee on Subordinate Legislation for examination by that Committee."

57. The Committee have considered the matter and feel that it should present no difficulty if the amending rules are given short titles and numbered serially even though the principal rules do not bear short titles.

58. As regards the Ministry's observation that the rules in question were not required to be laid on the Table of the House and, therefore, they should not be placed before the Committee on Subordinate Legislation for examination, the Committee would like to point out that Rule 317 of the Rules of Procedure and Conduct of Business in Lok Sabha read with Direction 103(1) of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, leaves no room for doubt as to the competence of this Committee to examine any 'Order' made in pursuance of the Legislative powers delegated by an Act of Parliament or the Constitution, irrespective of the fact whether it is required to be laid on the Table of the House or not.

XIV

CENTRAL EXCISE (FOURTH AMENDMENT) RULES, 1966 (G.S.R. 1042 OF 1966)

59. The Central Excise (Fourth Amendment) Rules, 1966 were issued by the Central Government in exercise of the powers conferred by sections 6, 12 and 37 of the Central Excises and Salt Act, 1944 inserting a new section, "E-VIII-Plywood-Special Procedure" in the principal rules.

60. The new rule 96ZA(1) provided for making an application by a manufacturer to the Collector to avail of special procedure regarding the calculation of excise duty on coarsegrain plywood. Sub-rule (2) of rule 96ZA provided that such application shall be made so as to cover a period of not less than six consecutive calendar months, but may be granted for shorter period in the *discretion* of the Collector.

Rule 96ZG, which gave power to the Collector to condone failure to apply for special procedure, read as under:—

> "96ZG. *Power to condone failure to apply for special procedure*—Notwithstanding anything contained in this section, the Collector may, at his *discretion* and subject to such conditions as he may lay down, apply the provisions contained in this section to a manufacturer who has failed to avail himself of the special procedure or to comply with any condition laid down in this section within the prescribed time limit."

61. It was noticed that under the above rules the Collector had been empowered to exercise his discretion even without recording the reasons in writing.

62. The Committee note that, on being pointed out, the concerned Ministry of Finance have since amended the rules by substituting the words, "for reasons to be recorded in writing by the Collector" and "for reasons to be recorded in writing" for the words "in the discretion of the Collector" and "at his discretion" occurring in rules 96ZA(2) and 96ZG respectively (vide GSR 887 of 1967).

XV

GRIEVANCES OF COOKS AND WATER-CARRIERS IN DEFENCE ESTABLISHMENTS

63. A question was raised before the Committee that Rules relating to the service conditions of the Cooks and Water-carriers, working

in the various Defence Establishments, made by the Ministry of Defence were in contravention of the Industrial Disputes Act, 1947. In this connection, the Committee heard the oral evidence given by the representatives of the Ministries of Defence and Law

64. During the course of evidence, the representatives of the Ministry of Defence stated that Cooks and Water-carriers were rendering service of a personal nature in respect of combatants and as such they could not be classified as workers under the Trade Unions Act. It was essential in the interests of efficiency and discipline in the Armed Forces that the non-combatants employed in the Unit lines and messes should be subject to the same restrictions which were applicable to the combatants under Article 33 of the Constitution and it was, therefore, urged that Cooks and Water-Carriers could not be treated as workers for the purposes of Trade Unions. The representatives of the Ministry of Defence further explained that the prohibition imposed on the Cooks and Water-Carriers attached to the Army Units from forming trade unions etc. was in consonance with the provisions of Article 33 of the Constitution read with Section 21 of the Army Act, 1950. He referred to a decision of the Supreme Court in Ajwani *vs.* Union of India, Civil Appeal No. 1185 of 1965 decided on 6-2-1967. wherein the Court had pointed out that the expression "Post connected with Defence" in Article 310 of the Constitution meant posts which were auxiliary to or were directly related, or incidental, to the tasks performable by the Defence Forces, or required performance of duties on which the effective functioning of the Defence Forces both in time of peace and war depended.

65. The Committee were also told that although the cooks and water-carriers were not specifically represented in the Joint Consultative Machinery applicable to Government employees, Government had no objection to the two All-India Federations of Civilian workers employed in the Defence Organisation representing, of their own accord, the cause of any category of such civilians.

66. After considering the matter in all its aspects at some length, the Committee agree with the contention of the Ministry of Defence that having regard to the present conditions, it was not possible to extend the existing rights of Defence civilians to form Unions/Associations to the non-combatants working in the various Defence Establishments and to grant recognition to such bodies when formed. Attention of the Committee was also invited to the instructions issued by the Ministry of Defence that since Trade Unions/Associations of Defence civilians were not permitted to function in the

Training Establishments and certain other Installations for security or other reasons, welfare Committees in such Installations should be constituted and that, at the meetings of those Welfare Committees, the civilian employees, who were members of such Committees, could raise both individual and collective grievances and that individual grievances should be settled at Installation level and if the collective grievances could not be settled at that level, such grievances should be forwarded by the Head of the Installation, through the appropriate higher Service authority, to the Ministry of Defence for final decision.

67. The Committee, however, trust that the Ministry of Defence would ensure that the service rules applicable to the various categories of Defence personnel are so administered as to afford adequate redress to the grievances of the Defence personnel, who came within the category of non-combatants.

XVI

CASES OF MISSING SCHEDULES FROM THE RECRUITMENT RULES (G.S.Rs. 469 AND 1390 OF 1966)

68. The Committee have noted with satisfaction that the concerned Ministries of Home Affairs and Railways, on being brought to their notice, have issued corrigenda providing for the schedules to (i) the Central Secretariat Sports Control Board (Assistant Secretary) Recruitment Rules, 1966 (G.S.R. 469 of 1966) and (ii) the Family Welfare Planning Officer (Railway Board) Recruitment Rules, 1966 (G.S.R. 1390 of 1966), which were not published in these Rules.

XVII

DELAY IN LAYING OF 'ORDERS' ON THE TABLE OF THE HOUSE

69. The Committee on Subordinate Legislation, Third Lok Sabha, in their Sixth Report, Para 38 had reiterated that the Ministries should ensure that all 'Orders' required to be laid before the House were so laid within a period of 15 days after their publication in the Gazette if the House was in session, and if the House was not in session the 'Orders' should be laid on the Table of the House as soon as possible (but within 15 days) after the commencement of the following session. The Committee had noted with regret that a large number of 'Orders' (shown in the Appendix to the Sixth Report) were laid on the Table of the House after considerable delay and desired the Ministries concerned to furnish the Committee with the reasons for the delay caused in laying such 'Orders' on the Table of the House.

70. In pursuance of this recommendation, the concerned Ministries have given one or the other of the following reasons:

(1) Adjournment of Lok Sabha before the Scheduled date;

(2) Oversight or administrative difficulties;

(3) Late receipt of printed copies of 'Orders' from the Press;

(4) Heavy rush of Parliamentary work;

(5) Late receipt of Hindi translation of the rules in the Ministry;

(6) Delay in getting the 'Orders' authenticated by the Minister;

(7) Preference by the Minister concerned to lay the rules on a particular day;

(8) The procedure obtaining in the Ministry was such that it normally took about 30 days to lay the rules before the House. [However a new procedure was being evolved to avoid such delays in future.]

71. Thus the reasons for the delay in laying the 'Orders' before the House were, in the main, inadvertence on the part of the Ministries or some administrative delays in getting copies of the 'Orders' from the Press etc. The Committee, however, observe that the reason given by the Ministries of Home Affairs, and Food, Agriculture, Community Development and Cooperation that the delay took place because of heavy Parliamentary work with them is not convincing, because laying of the 'Orders' before the House is also a part of the Parliamentary work and it does not require much time on the part of the Ministries except that they have to procure the requisite number of copies of the 'Orders' for being forwarded to the Lok Sabha along with an authenticated copy thereof.

72. The Committee reiterate the recommendation made by their predecessors that delay in laying of the 'Orders' before the House should be avoided.

NEW DELHI;
The 13th February, 1968.

N. C. CHATTERJEE,
Chairman,
Committee on Subordinate Legislation.

APPENDIX I

(Vide para 2 of the Report)

ADDRESS BY THE CHAIRMAN TO THE MEMBERS OF THE COMMITTEE

Friends,

It gives me great pleasure to meet you today in our common effort to advance the efficient functioning of parliamentary democracy and to work for necessary parliamentary supervision and control on the exercise of the rule-making powers given to Government by Parliament through various enactments.

2. Our Committee has very important functions to perform. As elected representatives of the people we have to safeguard the interests of the people. We have a written Constitution and certain broad limits have been laid down within which the Parliament is to function as the highest legislative body in the Republic. There is the Judiciary to declare whether any limits have been transgressed. Then as the Supreme Legislature of the land, Parliament enacts laws and directs the Executive to administer those laws. In a Welfare State, the spheres of activity of the State are increasing and the administration pervades every walk of a citizen's life.

3. The pressure on Parliamentary time, the technicality of the subject matter, the need to meet unforeseen contingencies, the requirement of flexibility etc. compel the legislature of a modern welfare State to lay down the policy of a measure and leave details to be worked out by the Administration. The greater the social welfare activities of the State, the greater is the delegation of powers to Administration to make subordinate laws.

4. It is quite common to leave subsidiary matters to be settled by subsidiary legislation. Tables of fees, scale of railway charges, various forms and other procedural matters are generally provided for by the rules and regulations. They provide flesh and blood, as it were, to the statutes. The object of the supplementary legislation is to carry out the purposes of the Act and not to lay down any policy.

5. However inevitable subordinate legislation may be, there must be certain safeguards against the risks inherent in it so that it could be reconciled with the Parliamentary processes. Certain safeguards

exist and should exist if, what Sir Cecil Carr has called, "the germ of arbitrary Administration" has to be kept under control. D. J. Hewitt, in his book "The Control of Delegated Legislation" classifies these safeguards under four heads, namely, (a) legislative, (b) judicial (c) administrative, (d) supervision over local authorities by a Central Government Department.

6. Parliamentary control over subordinate legislation is exercised in four ways. Firstly, Parliament has an opportunity of examining the power to make such legislation when it appears in a Bill. Secondly, many subordinate laws are required by the parent Acts to be laid before Parliament and in certain cases made subject to Parliamentary procedure and Parliamentary sanction. Thirdly subordinate laws may in other ways be questioned or debated by Parliament. Lastly, Parliament may keep a watch over such legislation through a scrutiny committee which may report to the House whether the powers to make subordinate laws are being properly exercised. The most effective control that Parliament exercises over subordinate legislation is through this Committee in which we will have privilege to work.

7. We shall have to see whether the authority delegated by Parliament in the Statutes has been properly exercised to the extent permissble and in the manner envisaged. We shall be making our reports to Lok Sabha advising it for taking any action which may be deemed necessary.

8. But in discharging our duties, I should like to make it clear, we would not be acting in hostility to the Executive. Our objective is implementation of the will of Parliament and our efforts would be complementary. The executive ought to comply with the wishes of the Parliament and frame rules and regulations in exercise of the authority vested in them by law. Sometimes in their eagerness to discharge their duties more expeditiously and effectively the Executive may commit mistakes, and it does make mistakes. Maybe sometimes out of thirst for greater power, they might go astray. We have to keep them on the right track. We are the friendly critics of the Executive and not their enemies. We have to help them in the proper discharge of their duties for the benefit of the masses.

9. There is another danger. The Subordinate Legislation, namely the rules, regulations, bye-laws and orders, are mostly framed by the officials confined within the four walls of the Secretariat. These officials have a different approach. They have little contact with the masses, and seldom know what is the effect of a particular legis-

lation on those who are affected by it. We know the intentions of the legislature as well as the interest of the people and hence we are best suited to advise in these respects.

10. The Committee has another peculiar feature. There are no parties and no factions here. Once a law is enacted by the vote of the majority, it becomes the combined will of Parliament. Then it is the concern of all parties to see that it is administered properly. It is the tradition of the Committee, I may emphasise here having a personal and intimate knowledge of the working of this Committee as its Chairman in its formative stages, that all the decisions are arrived at unanimously and party considerations never affect our deliberations. I hope this tradition would be continued by us too and we would be able to pull on, in a combined and co-operative manner and with the same will and determination as is expected of us. I welcome you all and wish you all success your labours.

APPENDIX II

(*Vide* para 5 of the Report)

Summary of recommendations/observations

Sl. No.	Para Numbers	Ministry concerned	Summary of recommendation/observation
1	2	3	4
1.	7-8	Home Affairs	The Committee agree to the incorporation of the following alternative provision in the rules for the various competitive examinations in place of the existing one which empowered the U.P.S.C. to deduct such marks assigned to a candidate in each subject as it might consider necessary after the answer papers of a candidate have been assessed: "Marks will not be allotted for mere superficial knowledge".
2.	11	Home Affairs	The Committee are of the view that the expression "Senior Posts under the Central Government" used in the Fixation of Cadre Strength Regulations relating to I.C.S./I.A.S. could be substituted by the expression "Deputation reserve for the posts under the Central Government". The Committee also feel that the Government should do well in laying down the nomenclature of such "Central Deputation Reserve Posts" in each 'Order' promulgating the Fixation of Cadre Strength Regulations in respect of various All-India Services with a view to regulate properly not only the

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			periods of tenure while on deputation to the Central Government but also to eliminate any element of favouritism which might creep in at the time of allocating such posts and the incumbents thereof to the various Central Ministries.
3.	13	Home Affairs	The Committee feel that, in order to make the location and referencing of the Schedules easy and convenient, the contents of rule 33 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 published under S.O. 3703 of 1965, should have, at least, been reproduced in the form of a schedule at the end of these rules. This course would have been in consonance with the definition of the schedule as given in Rule 2(k) thereof. The Committee have emphasised time and again that the rules should, as far as possible, be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing the rules. In the present case, it is not only the Administrative authorities but also the service personnel as well as the Advocates and Courts, who are concerned with the rules, as cases arise under the rules in the form of writ petitions etc. The Committee reiterate that the rules should be self-contained and 'legislation by reference' should be avoided as far as possible. The Committee recommend that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 should be reprinted along with the necessary schedules. While the assumption of power by the Ministry of Home Affairs not to select a candidate, even though he had secured a position of merit in

			the examination for appointment, was understandable, conferring of discretionary power on the Union Public Service Commission to disregard his rank in the order of merit in the examination could not be appreciated.
4.	17-18	Home Affairs	The Committee note that the words *'in their discretion'* appearing in Regulations 7(1) and 8(3) of the Central Secretariat Clerical Services (Upper Division Grade Limited Departmental Competitive Examination) Regulations, 1966 (G.S.R. 671 of 1966), on being pointed out to the Ministry of Home Affairs, have since been omitted (*vide* G.S.R. 690 of 1967).
5.	21	Transport and Shipping (Transport Wing)	The Committee note that, on being pointed out to the Ministry of Transport and Aviation [now Transport and Shipping (Transport Wing)], a specific provision for giving notice to all the members of the Board of Control about the time, place and date for holding the adjourned meeting of the Board has now been made in the Jayanti Shipping Company (Board of Control) Rules, 1966 as published originally under G.S.R. 1159 of 1966. (vide G.S.R. 877 of 1967).
6.	26	Transport and Shipping	The Committee feel that conferring the right of being heard to the party adversely affected by a decision of the Executive, recording in writing the reasons for such decision and communicating the same to the party concerned are the basic requirements of natural justice. Exercise of power with restraint, care, and under well-defined circumstances at the discretion of the Executive, is no substitute to those basic requirements. The Committee, therefore, recommend that, instead of leaving it to the good sense of the individual officers, the basic requirements of natural justice, *viz.*, giving an opportunity of being heard, recording in writing the reasons for adverse decisions and communicating the same to the party, whose busi-

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			ness/trade is affected as a result of cancellation of licences etc. should be incorporated in the Paradip Port Harbour Craft Rules, 1967 (G.S.R. 980 of 1967).
7.	28	All Ministries	It appears that some Ministries are labouring under an apprehension that the condition requiring publication of draft Rules for inviting comments/suggestions from the public thereon is merely a formality but it is not so. The Committee feel that it would defeat the very object underlying the condition of publication of draft rules if adequate opportunities are not given to the public to go through the draft rules and offer their comments. It is imperative that the statutory requirements for previous publication of rules are strictly followed both in letter and spirit. The Committee, therefore, recommend that sufficient time should be given to the public to sudy the draft rules and send their comments thereon before the rules are finalised. To ensure this, Government may perhaps do well if they issue some standing instructions that the date of the Gazette in which the draft rules were published and the last date fixed for receipt of public comments thereon and also the date on which the Gazette copies containing the draft rules were made available to the public are specifically mentioned in the preamble to the final rules.
8.	34	Railways	(i) The Committee are of the opinion that charges like the one levied for cancellation of unused Railway Tickets should not be levied or collected without any specific authorisation by an Act of Parliament. So far as

			Section 47 of the Indian Railways Act, 1890 is concerned, there is nothing which authorises the Railway Administrations to levy cancellation charges on unused Railway Tickets.
8.	35	-do-	(ii) The Committee also deplore the delay on the part of the Ministry of Railways (Railway Board) in supplying a copy of the Rules made under the Indian Railways Act, 1890 which under Section 47(6) thereof were required to be kept at every Railway Station and made available to any person for inspection free of charge at all reasonable times. If the Ministry of Railways, who are the rule-making authority, do not themselves possess up-to-date copies of the Rules, the Committee fail to understand how they can ensure compliance of the statutory requirement of Section 47(6) by the Railway Administrations.
9.	37	-do-	The Committee note that the Ministry of Railways, on being pointed out to them, have amended the Railway Service Commissions (Chairman and Members) Recruitment Rules, 1965 (G.S.R. 128 of 1966), in consultation with the Ministry of Finance and the Union Public Service Commission, to make it clear that the retired Railway/Government Officers, when appointed as Chairmen/Members of Railway Service Commissions, would be permitted to draw separately pensions sanctioned to them subject to the condition that pay plus gross amount of pension and/or pensionary equivalent or other retirement benefits do not exceed the pay last drawn on retirement.
10.	41	Steel, Mines and Metals	The Committee feel that it would not be proper to leave the uncanalised and unregulated power to the Executive to pick and choose any categories of officers, irrespective of their status and authority, to exercise all or any

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			of the powers of the Iron and Steel Controller. The Committee, therefore, recommend that it should be specially laid down in the Iron and Steel (Control) Order itself that no Government servant below a particular rank or its equivalent specified therein would be authorised to conduct searches and seisures, etc.
11.	52	Commerce	While the Committee have now been assured by the representatives of the Ministry of Commerce that the recruitment rules under the Tea Act, 1953 would be finalised by the end of February, 1968, nevertheless, they are distressed at the lackadaisical manner in which both the Ministry of Commerce and the Tea Board have acted in this case. It appears incredible that a period of more than 14 years should have elapsed without the recruitment rules having been framed and, in the meanwhile, files containing draft recruitment rules tossed to and fro between the Ministry and the Tea Board. The Committee need hardly point out that the main purpose of vesting autonomy in the Commodity Boards is to enable them to transact their business more efficiently and if red-tapism and chronic delays of this nature were to occur, the very object of setting up these Boards would be defeated.
			The Committee are also unhappy over the dormant role played by the Ministry of Commerce in dealing with this case and they wonder how it did not strike them at all, at any stage that some of their actions in the matter of appointments to the various posts in the higher echelons of Tea Board were 'vulnerable' in the absence of the Rules in question.

12.	57-58	Works, Housing and Supply	(i) The Committee feel that it should present no difficulty if the amending rules are given short titles and numbered serially even though the principal rules do not bear short titles. (ii) As regard the observation made by the Ministry of Works, Housing and Supply that the rules in question were not required to be laid on the Table of the House and, threfore, they should not be placed before the Committee on Subordinate legislation for examination, the Committee would like to point out that Rule 317 of the Rules of Procedure and Conduct of Business in Lok Sabha read with Direction 103(1) of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, leaves no room for doubt as to the competence of this Committee to examine any 'Order' made in pursuance of the legislative powers delegated by an Act of Parliament or the Constitution, irrespective of the fact whether it is required to be laid on the Table of the House or not.
13.	62	Finance	The Committee note that, on being pointed out, the Ministry of Finance have amended the Central Excise Rules, 1944 *by substituting* the words, "for reasons to be recorded in writing by the Collector" and "for reasons to be recorded in writing" *for the words* "in the discretion of the Collector" and "at his discretion" occurring in rules 96ZA (2) and 96ZG respectively (*vide* G.S.R. 887 of 1967).
14.	67	Defence	The Committee trust that the Ministry of Defence would ensure that the service rules applicable to the various categories of Defence personnel are so administered as to afford adequate redress to the grievances of the Defence personnel, who came within the category of non-combatants.

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15	71	Home, Food, Agriculture Community Development and Cooperation All Ministries.	The Committee note that the reasons for the delay in laying the 'Order' before the House were, in the main, inadvertence on the part of the Ministries or some administrative delays in getting copies of the 'Orders' from the Press etc. The Committee, however, observe that the reason given by the Ministries of Home Affairs, and Food, Agriculture, Community Development and Co-operation that the delay took place because of heavy Parliamentary work with them is not convincing, because laying of the 'Orders' before the House is also a part of the Parliamentary work and it does not require much time on the part of the Ministries except that they have to procure the requisite number of copies of the 'Orders' for being forwarded to the Lok Sabha along with an authenticated copy thereof. The Committee reiterate the recommendation made by their predecessors that delay in laying of the 'Orders' before the House should be avoided.

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fifth Edition) and printed by the General Manager, Government of India Press, Minto Road, New Delhi.