

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(FOURTH LOK SABHA)

FIFTH REPORT

(Presented on the 29th April, 1970)



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1970/Vaisakha, 1892 (Saka)

Price 50 Paise

.25R

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1969-70)

1. Shri Anand Narain Mulla—*Chairman*
2. Shri J. B. S. Bist
3. Shri N. T. Das
4. Shri Bimalkanti Ghosh
5. Shri Shri Chand Goyal
6. Shri Arjun Shripat Kasture
7. Shri Narendrasingh Mahida
8. Shri M. Meghachandra
9. Shri V. Viswanatha Menon
10. Shri Srinibas Mishra
11. Shri G. S. Reddi
- *12. Shri Bishwanath Roy
13. Shri N. K. Sanghi
14. Shri Nuggeshalli Shivappa
15. Shri G. Viswanathan.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

*Nominated by the Speaker on the 26th February, 1970, vice Shri Deorao S. Patil resigned.

FIFTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTH LOK SABHA)

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on its behalf, present its Fifth Report.

2. The Committee held two sittings on the 9th and 28th April, 1970 and considered several 'Orders'. Observations of the Committee on the following matters, which required to be brought to the notice of the House, are embodied in this Report:

- (i) All-India Services (Fixation of Cadre Strength) Regulations providing for 'Central Deputation Reserve'.
- (ii) Postal ballot facilities for Indian Merchant Navy Officers and Crew.
- (iii) Question of treatment of expenses incurred by a Member of Parliament in the discharge of his duties as such member as an allowable expenditure for purposes of income-tax.
- (iv) Implementation of recommendations regarding framing of rules in respect of Indian Museum, Calcutta.
- (v) Giving of retrospective effect to rules.

3. The Committee considered and adopted this Report at its sitting held on the 28th April, 1970.

II

ALL-INDIA SERVICES (FIXATION OF CADRE STRENGTH) REGULATIONS PROVIDING FOR "CENTRAL DEPUTATION RESERVE"

4. The Committee had recommended in para 11 of its First Report (Fourth Lok Sabha) 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'.....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."

5. The Committee considered, in this connection, the following note submitted by the Ministry of Home Affairs:

"Government have decided to accept the recommendation of the Committee on Subordinate Legislation made in para 11 of their First Report (Fourth Lok Sabha) that the words 'Central Deputation Reserve' should be substituted for the existing entry 'Senior Posts under the Central Government' in the Cadre Schedules issued under the IAS/IPS (Cadre) Rules, 1954 and also to Indian Forest Service (Cadre) Rules, 1966. The strength and composition of the cadres are reviewed every three years and on the basis of such triennial reviews, the strength and composition of the various cadres undergo considerable changes according to the needs of the different Cadres. Therefore, this change will be incorporated at the time of the next triennial reviews which are due in 1969. The Committee has also suggested that the posts included in the Central Deputation Reserve should be shown by nomenclature as has been done in the case of posts under the State Government. It is clarified in this connection that posts under the Central Government are filled on the basis of selection from among the suitable officers eligible for those posts. The staffing of the Central posts is not made by drawing officers only from the All India Services as Officers belonging to various Class I Services are also appointed to the vacancies in Central Posts, depending on the requirements of the different Ministries and departments of the Government of India. It is thus impossible to show the exact posts in a Ministry at the Centre to be filled in by the officers belonging to a particular Service or to a State Cadre of an All India Service. Moreover, deputation to the Centre from the States is not automatic for each officer. It is dependent on the exigencies of the State's own requirements from time to time.

Hence the number of posts under the Central Government which are held by the officers of All India Services and other Services are bound to fluctuate from time to time. Even in the case of IAS alone, some States may show an excess and some a deficit in their Central Deputation Quota at a particular point of time. The Establishment Officer in the Ministry of Home Affairs endeavours to keep in touch with the State Governments with a view to ensuring that a sufficient number of All India Service officers of different levels of seniority, will be available for posting at Centre from each of the State Cadres. Further, the names suggested by the State Governments are suggested to the Ministry concerned, quite often, together with the names of available eligible officers of Class I Central Services as well. Appointments are then made with the approval of the Central Establishment Board and, in the case of senior appointments, with the approval of the appointments Committee of the Cabinet.

This arrangement eliminates the possibility of any element of favouritism in the matter of posting officers to various posts|Ministries. It will be apparent from the above clarifications that it is not possible for Government to accept this part of the recommendation made by the Committee.”

6. The Committee noted the assurance given by the Ministry of Home Affairs to substitute the existing entry “Senior Posts under the Central Government” by the words “Central Deputation Reserve” at the time of the next triennial review of the Cadres. The Committee was, however, not convinced of the “clarification” advanced by the Ministry in finding it difficult to show the posts included in the Central Deputation Reserve by nomenclature as was done in the case of posts under State Governments.

7. In this connection, the Committee examined the representatives of the Ministry of Home Affairs on 21st October, 1969. During the course of his evidence, the representative of the Ministry explained to the Committee that for filling up the senior posts in the Government of India, Officers were drawn from a number of Services and, while selecting officers, emphasis was laid upon their qualifications, experience and suitability. This was done in order to keep an element of flexibility for the purpose of selection and appointment of the right person to the right job.

8. When asked whether it would not be feasible to select and appoint officers cadre-wise on seniority basis, the representative of the Ministry explained that if cadre-wise quotas were fixed, they would have to take an officer for appointment to a particular post from the respective cadre of service alone irrespective of his fitness for that post.

9. In reply to a question whether officers of Engineering Services were working as Deputy Secretaries or Joint Secretaries, the Ministry's representative informed the Committee that two persons of the Engineering Services had been appointed to the posts of Joint Secretaries, one on 31st December, 1966 to deal with electronics in the Defence Ministry and the other on 12th June, 1969 to deal with disputes on irrigation matters with Pakistan in the Ministry of Irrigation and Power.

10. In regard to the duration of posting of officers of I.A.S. and other Services in Delhi, the Committee was informed that there was a tenure system i.e. for Under Secretary—three years, for Deputy Secretary—four years, for Joint Secretary—five years and for officers above Joint Secretary's rank, there was no fixed tenure, but extensions were given in the public interest and the matter was placed before the Appointments Committee of the Cabinet for taking a final decision. After completion of the tenure period, the officers went back to the States.

11. The Committee, after considering the matter in all its aspects feels that it should not be difficult for the Ministry of Home Affairs to lay down the nomenclature of the "Central Deputation Reserve Posts" in each Regulation fixing cadre strength of various All India Services. This will go a long way in regulating properly the periods of tenure of officers brought from States on deputation for manning posts under the Central Government and to eliminate any element of favouritism which might creep in at the time of allocation of such posts and the incumbents thereof to the various Central Ministries. The Committee also sees no reason why it should not be possible for Government to fix the tenure in respect of officers appointed to the posts above Joint Secretary's rank in the interest of providing healthy and clean administration. It also considers that the duration of tenure in one post should be kept in view while sanctioning another tenure to the same incumbent against the next higher post.

III

POSTAL BALLOT FACILITIES FOR INDIAN MERCHANT NAVY OFFICERS AND CREW

12. Shri Narendrasingh Mahida, M.P., a member of the Committee

on Subordinate Legislation and formerly Chairman, National Shipping Board, had pointed out that the Indian Merchant seamen had to move around from place to place because of the very nature of their profession, and therefore, they could not exercise their right to vote in the absence of postal ballot facilities for them under the existing provisions of the Election Law. The matter was referred to the Ministries of Shipping and Transport (Transport Wing) and Law who were asked to indicate whether there was any objection to their making the necessary amendments in the Conduct of Election Rules to afford postal ballot facilities to the Indian Merchant seamen.

13. The Committee considered the reply of the Ministry of Shipping and Transport (Transport Wing) in which it was stated that the Ministry strongly supported the provision of postal ballot facilities for the Indian Merchant Navy Officers and Crew by suitable amendment of the Conduct of Election Rules. The Committee also considered the following letter of the Election Commission of India, a copy of which was furnished by the Ministry of Law along with its own reply that the proposals of the Election Commission for amendment of the election law referred to therein, were under consideration of that Ministry:

“.....it will be possible to enrol the officers and seamen of the Indian Mercantile Marine as voters having service qualification so as to entitle them to postal ballot facilities only *after* the Representation of the People Act, 1950 is suitably amended by the Parliament. In this connection, I am to add that necessary recommendation to amend the Representation of the People Act, 1950 to give effect to the proposal under reference has since been made by the Commission to the Government of India. It is proposed to insert a new clause, after the existing clause (d), in sub-section (8) of section 20 of the said Act, on the following lines, namely:

‘(e) being an officer or seaman of the Indian Mercantile Marine to whom the Merchant Shipping Act, 1958 (54 of 1958) applies.’

Further, the registration of the aforesaid personnel in the electoral rolls will also require consequential amendments in the Registration of Electors Rules, 1960, which can be settled only after the said Act is amended. There-

fore, the question of issuing necessary instructions to the Chief Electoral Officers and the Electoral Registration Officer to prepare electoral rolls for the Indian Merchant Navy Officers and seamen will be taken up after the above formalities are completed."

14. The Committee desires that Government should take early steps to amend the Representation of the People Act, 1950, as recommended by the Election Commission, so that the Registration of Electors Rules, 1960, could also be amended suitably to enable the Indian Merchant Navy Officers and Crew to exercise their right to vote.

IV

QUESTION OF TREATMENT OF EXPENSES INCURRED BY A MEMBER OF PARLIAMENT IN THE DISCHARGE OF HIS DUTIES AS SUCH MEMBER AS AN ALLOWABLE EXPENDITURE FOR PURPOSES OF INCOME-TAX

15. The Committee on Subordinate Legislation had considered the question of treatment of expenses incurred by a Member of Parliament in the discharge of his duties as such member as an allowable expenditure for purposes of income-tax and in this connection had recommended in paras 20 and 21 of its Fourth Report (Fourth Lok Sabha), as follows:—

"20. As regards evolving of an appropriate formula for fixing a specific proportion of the remuneration of a Member of Parliament, which may be adopted for the purpose of allowing a deduction in computing his taxable remuneration, the Committee is of the view that such a formula would neither be reasonable nor a practicable one. In actual practice, the expenses may be incurred differently by different Members of Parliament and it is only the actual expenses, which are liable to be deducted and not a certain fixed proportion of the salary of a Member of Parliament without having regard to the actual expenditure incurred by him. The Committee feels that each case, would, therefore, have to be decided on its merits on the basis of proved and verified facts relating to such expenditure.

21. The Committee, therefore, recommends that Income-tax Rules, 1962 should be amended to the effect that in computing the taxable income of a Member of Parliament from his salary, the expenditure incurred by him as such member on postage, stationery, conveyance, telephone, stenographic

assistance, etc. in Delhi or in his constituency shall be deductible for purposes of payment of income-tax. The Committee suggests that the Government may take early steps to prepare draft rules in this regard and forward the same to the Committee for their prior approval before being published in the Gazette of India and laid on the Table of the House."

16. The Committee perused the following letter of the Minister of State in the Ministry of Finance (Shri P. C. Sethi) addressed to the Hon'ble Speaker on the above subject:—

"There have been persistent demands from Members of Parliament that tax should be deducted at source from their monthly remuneration. In order to fully appreciate this demand of the Hon'ble Members of Parliament, it is necessary to have an idea of the background of the problem.

2. Upto March, 1968, the remuneration of Rs. 500 per month received by a Member of Parliament was treated as income from "salary" and tax was being deducted at source. The person paying the salary could make a standard deduction in respect of Life Insurance premia for these years. The Income-tax Officer, however, could allow expenses within certain limits in respect of conveyance, books etc. Though u/s 139(1) of the Income-tax Act, it is obligatory on the part of every person whose income is above the maximum amount exempt from tax, to file his income-tax return irrespective of whether or not tax has been deducted at source, in the case of those persons whose only income is from salary from which tax has been deducted at source, non-filing of the return is only a technical default.
3. In October, 1967, one of the Hon'ble Members (Shri C. C. Desai) made a representation in which he claimed that the salary received by him was not taxable under the "Salaries" but should be taxed either under the head "Profits and gains of business or profession" or as "income from other sources" and the expenses incurred on the maintenance of an office in Delhi and another in the constituency should be allowed as also election expenses, expenses incurred on nursing the constituency and expenses on the maintenance of conveyance for attending Parliament.

4. As regards the deductions allowable out of the allowance received by the Members of Parliament, the Attorney General advised that expenses incurred in maintaining an office in Delhi or in his constituency as also on postage, stationery, conveyance, telephone, stenographic assistance, etc. in Delhi or in his constituency qualifies for deduction from the gross remuneration. However, expenses incurred in contending the election, in nursing the constituency, on conveyance for attending Parliament from his place of residence to Delhi and *vice-versa* were not allowable as deductions.
5. The Law Minister while endorsing the Attorney General's opinion had advised that it may be appropriate to consider allowance of a portion of the salary on a flat basis as expenditure. This aspect of the matter was referred to the Parliamentary Committee on Subordinate Legislation for their advice whether a formula could be evolved and laid down in the Income-tax Rules for determining the quantum of the deduction for such expenditure either as a proportion of the gross remuneration or otherwise. Such a formula would obviate the need on the part of Members of Parliament to maintain detailed accounts of the expenditure incurred by him under the qualifying heads and prove such expenditure to the satisfaction of the Income-tax Officer. The Committee did not favour any specific formula for this purpose.
6. The Income-tax Appellate Tribunal has decided in a recent case (Shri C. C. Desai's case) that the monthly remuneration received by Members of Parliament was assessable under the head "profits and gains of business or profession". After consulting the Ministry of Law which adhered to their earlier advice that salaries of Members of Parliament was assessable under the head "other sources", this decision of the Income-tax Appellate Tribunal has not been accepted and a reference has been filed by the Department for getting the issue adjudicated upon by the High Court.
7. In the meanwhile, there have been persistent demands from Members of Parliament that the earlier practice of withholding tax from their monthly remuneration should

be resumed. If this is to be done, the Income-tax Act will require amendment. While making such amendment, it will be necessary to provide a standard deduction for expenditure incurred by the Members of Parliament in earning the remuneration. If no such standard deduction is laid down in the law, tax will have to be deducted at source from the gross salary income and every Member of Parliament who incurs some expenditure in connection with his work, will be obliged to claim deduction for such expenditure at the time of assessment. This will defeat the very purpose of recovering tax at source from the remuneration which apparently is that once the tax is withheld at source, it should not be necessary for the Member to prove his accounts before the Income-tax Officer unless he has income from any other activity.

8. In my opinion, it will be better if the Committee on Subordinate Legislation are requested to reconsider their earlier recommendation or if you so desire, you may like to consult the Hon. members of Parliament who had desired the deduction at source and suggest a suitable formula for a standard deduction in respect of expenditure incurred by a Member of Parliament. It may be mentioned that if the standard deduction is allowed in an amount equal to say Rs. 100 per month (which would be the minimum expenditure which a Member of Parliament would be incurring for maintenance of an office at Delhi for the purposes of his work), the net remuneration will be reduced to Rs. 4,800. In that event, a Member of Parliament who has no other income will not be liable to pay any tax whatsoever and he will be relieved of the burden of furnishing a return of income and proving his accounts before the Income-tax Officer."

17. The Committee has reconsidered the matter in all its aspects and agrees with the suggestion made by the Minister of State in the Ministry of Finance (Shri P. C. Sethi) that a standard deduction of Rs. 100 per month, as the minimum under Section 57(iii) of the Income-tax Act, 1961 may be treated as an allowable expenditure incurred by a Member of Parliament in the discharge of his duties as such member for purposes of income-tax.

IMPLEMENTATION OF RECOMMENDATIONS REGARDING FRAMING OF RULES IN RESPECT OF INDIAN MUSEUM, CALCUTTA

18. The Committee had observed in para 15 of its Second Report (Fourth Lok Sabha) that although section 15A of the Indian Museum Act, 1910, which empowered the Central Government to make rules covering the matters relating to the preservation and safe custody of antiquities, rare exhibits etc. in the Indian Museum, Calcutta, was inserted in 1960 by Act 45 of 1960, it was strange that no steps had been taken to frame the rules till then, either by the Government or by the Board of Trustees, Indian Museum, Calcutta. The Committee had stressed upon the urgent need of framing rules in this regard and urged the Government to expedite the matter.

19. In this connection, the Committee perused the following reply furnished by the Ministry of Education and Youth Services:

“...The Board of Trustees, Indian Museum, Calcutta have been requested to take immediate action for framing regulations relating to preservation and safe custody of art objects of the Indian Museum, Calcutta under Section 8(1) of the Indian Museum Act, 1910. The Indian Museum authorities have informed this Ministry that as ~~the~~ said Bye-laws have to be approved by members of the Board by circulation, finalisation of the same will take some time more. However, efforts are being made to finalise these bye-laws as expeditiously as possible.

The Indian Museum Rules, 1968 (now 1969) have since been finalised by this Ministry in consultation with the Board of Trustees, Indian Museum, Calcutta as required by Section 15A of the Indian Museum Act, 1910. These draft rules have been sent to the Ministry of Law for vetting and also for giving Hindi translation so that these Rules may be notified in the Gazette of India and laid on the Table of each House of the Parliament.”

20. The Committee is glad to note that the Ministry of Education and Youth Services has taken necessary action to get the rules framed. The Committee, however, desires the Ministry to expedite the finalisation of the relevant rules and bye-laws.

VI

GIVING OF RETROSPECTIVE EFFECT TO RULES

21. During the course of examination of various 'Orders' issued by the Ministries of Home Affairs, etc., the Committee noticed that some rules were given retrospective effect, e.g. the Redeployment of Surplus Staff against vacancies in the Central Civil Services and Posts, Class III, Rules, 1967 (G.S.R. 1847 of 1967) and the Shipping Seamen's Employment and Welfare Officers (Recruitment to Class I and Class II Posts) Second Amendment Rules, 1967 (G.S.R. 1890 of 1967).

22. The Committee reiterates its earlier recommendation made in para 10 of its Second Report (Fourth Lok Sabha) that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication in the Gazette. If, however, due to certain unavoidable reasons, it becomes absolutely necessary to give retrospective effect to any rule, the fact that no one will be adversely affected by such retrospective effect, should always be stated by way of an explanatory note appended to such rules. The committee also desires that the Ministry of Law to whom 'Orders' are sent by the Ministries of Home Affairs, etc., for vetting before their publication in the Gazette, should ensure that the aforesaid recommendation is followed in future.

NEW DELHI;
the 28th April, 1970.

ANAND NARAIN MULLA,
Chairman.
Committee on Subordinate Legislation..

**SUMMARY OF RECOMMENDATIONS/OBSERVATIONS MADE
BY THE COMMITTEE**

S. No.	Para Numbers	Summary
1	2	3
1.	11.	The Committee feels that it should not be difficult for the Ministry of Home Affairs to lay down the nomenclature of the "Central Deputation Reserve Posts" in each Regulation fixing cadre strength of various All India Services. This will go a long way in regulating properly the periods of tenure of officers brought from States on deputation for manning posts under the Central Government and to eliminate any element of favouritism which might creep in at the time of allocation of such posts and the incumbents thereof to the various Central Ministries. The Committee also sees no reason why it should not be possible for Government to fix the tenure in respect of officers appointed to the posts above Joint Secretary's rank in the interest of providing healthy and clean administration. It also considers that the duration of tenure in one post should be kept in view while sanctioning another tenure to the same incumbent against the next higher post.
2.	14	The Committee desires that Government should take early steps to amend the Representation of the People Act, 1950, as recommended by the Election Commission, so that the Registration of Electors Rules, 1960, could also be amended suitably to enable the Indian Merchant Navy Officers and Crew to exercise their right to vote.
3.	17	The Committee agrees with the suggestion made by the Minister of State in the Ministry of Finance (Shri P. C. Sethi) that a standard

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deduction of Rs. 100 per month, as the minimum under Section 57 (iii) of the Income-tax Act, 1961 may be treated as an allowable expenditure incurred by a Member of Parliament in the discharge of his duties as such member for purposes of income-tax.

4. 20. The Committee is glad to note that the Ministry of Education and Youth Services has taken necessary action to get the rules and bye-laws framed under the Indian Museum Act, 1910. The Committee, however, desires the Ministry to expedite the finalisation of the relevant rules and bye-laws.

5. 22. The Committee reiterates its earlier recommendation made in para 10 of its Second Report (Fourth Lok Sabha) that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication in the Gazette. If, however, due to certain unavoidable reasons, it becomes absolutely necessary to give retrospective effect to any rule, the fact that no one will be adversely affected by such retrospective effect, should always be stated by way of an explanatory note appended to such rules. The Committee also desires that the Ministry of Law to whom 'Orders' are sent by the Ministries of Home Affairs, etc., for vetting before their publication in the Gazette, should ensure that the aforesaid recommendation is followed in future.

MINUTES

XXIV

MINUTES OF THE TWENTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(1969-70)

The Committee met on Monday, the 21st October, 1969 from 14.00 to 17.00 hours.

PRESENT

Shri Anand Narain Mulla—*Chairman*.

MEMBERS

2. Shri J. B. S. Bist
3. Shri Shri Chand Goyal
4. Shri Arjun Shripat Kasture
5. Shri Narendrasingh Mahida
6. Shri Srinibas Mishra
7. Shri Deorao S. Patil
8. Shri G. S. Reddi
9. Shri Nuggehalli Shivappa

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

WITNESSES

I * * * *

II. *Representatives of the Ministry of Home Affairs*

1. Shri H. Lal, *Secretary (Services)*.
2. Shri V. Kumar, *Establishment Officer*.
3. Shri R. D. Thapar, *Joint Secretary*.
4. Shri N. L. Dugal, *Under Secretary*.

2-9. * * * *

*Omitted portions of the Minutes are not covered by the Fifth Report. The relevant portions of the Minutes of the Twenty-fourth Sitting and the Minutes of the Twenty-fifth and Twenty-sixth Sittings were appended to the Fourth Report of the Committee.

(The representatives of the Ministry of Home Affairs were called in and examined.)

10. Shri H. Lal, Secretary (Services), Ministry of Home Affairs, explained to the Committee that they had accepted the Committee's recommendation regarding the substitution of words 'Central Deputation Reserve' for the existing entry 'Senior Posts under the Central Government'.

11. The representative of the Ministry of Home Affairs informed the Committee that it was extremely difficult to earmark particular posts in the Government of India for deputation from the States as it would create a number of complications. While explaining this point, he stated that in case of States, the posts to which those people were appointed were earmarked and those were exclusively reserved for All India Services Officers, whereas in case of Government of India, posts were not earmarked for any particular service. He further explained that for filling up the senior posts in the Government of India Officers were drawn from a number of Services and while selecting officers emphasis was laid upon their qualifications, experience and suitability. This was done in order to keep an element of flexibility for the purpose of selection and appointment of the right person to the right job.

12. When asked whether it would not be feasible to select and appoint officers cadre wise on seniority basis, the representative of the Ministry explained that if cadre-wise quotas were fixed, they were found to take officer from that cadre of service irrespective of his fitness for that particular post. He further explained that it was not possible to foresee the number of posts in the developing economy in the country.

13. While explaining the procedure of selecting officers, the representative of the Ministry explained that the selection did not depend upon any individual's choice or will. From the post of Deputy Secretary and upwards, firstly a demand from the Department concerned was made to the Establishment Officer of the Ministry of Home Affairs who maintained a list of I.A.S. and I.A. & A.S., Central Secretariat Service, Defence Accounts Service and Income Tax Service Officers. The Establishment Officer selected, on the basis of experience and qualifications, four or five officers who were considered best suited for the post and sent their names to the Ministry for their approval and usually the concerned Minister himself made or approved the choice. The representative further stated that after that the matter was placed before the Central Establishment Board and Appointments Committee of the Cabinet, respectively. He emphasised that this procedure eliminated any possibility of favouritism.

14. In reply to a question whether officers of Engineering Services were working as Deputy Secretaries or Joint Secretaries, Shri H. Lal stated that two persons of the Engineering Services had occupied the posts of Joint Secretaries, one person was dealing with electronics in Defence Ministry and the other one who was an Irrigation Engineer had been appointed as Joint Secretary in the Ministry of Irrigation & Power to deal with disputes on irrigation matters with Pakistan. He further pointed out that they were getting large number of Engineers in I.A.S. every year. When asked for the circumstance under which these two officers were selected, Mr. Lal promised to send a note.

15. In reply to a question as to how the Engineering Services officers were considered good for administration work, Shri Lal stated that administrator now-a-days was not the kind of a generalised administrator as it used to be 10 or 20 years back. Now specialisation was involved in every sphere of administration. He further stated that Engineers were recruited mainly for the Engineering jobs. But when there was a job in the Secretariat requiring some engineering knowledge, then Engineers were posted for that particular job.

16. In reply to a question whether they have made any rules prescribing qualifications for the selection of officers for senior administrative posts of and above the rank of Deputy Secretary, Shri Lal stated that the question of sources and method of selections to those posts was under consideration of Government.

17. When asked why an examination should not be prescribed for such selection, Shri Lal stated that examination might be suitable in certain cases but it was not an ideal way of selecting people for the top jobs where experience was more important than the kind of knowledge which could be scored in an examination. He further explained if there was one class of people then there could be an examination. But if they started holding examination for each kind of job there would be no end to the examinations. The examination might eliminate chances of favouritism but it might not be good for selecting a talented person for a particular job.

18. In reply to a question regarding the duration of posting of officers of I. A. S. and other Services in Delhi, Shri Lal stated that there was a tenure system i.e. for Under Secretary—three years, for Deputy Secretary—four years, for joint Secretary—five years and for officers above Joint Secretary's rank, there was no fixed tenure, but extensions were given in the public interest and the matter was placed before the Appointments Committee of the Cabinet for taking final decision. After completion of the tenure period, the officers went back to the States.

19. The witness promised to send a note indicating (i) the number of cases where an officer, who came from a State under tenure system as Deputy Secretary and was promoted as Joint Secretary before completing his tenure period of four years; and (ii) the number of cases where officers of I.A.S. who had been reverted to their respective States after serving their full tenure as Deputy Secretary or in equivalent posts but were again selected for appointment as Joint Secretaries or to equivalent posts in the Government of India.

(The witnesses withdrew.)

The Committee then adjourned.

XXVII

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(1969-70)

The Committee met on Thursday, the 9th April, 1970 from 17.00 to 18.00 hours.

PRESENT

Shri Anand Narain Mulla—Chairman

MEMBERS

2. Shri Shri Chand Goyal
3. Shri Narendrasingh Mahida
4. Shri M. Meghachandra
5. Shri N. K. Sanghi
6. Shri G. Viswanathan.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee considered Memoranda Nos. 65 to 75 on the following subjects and 'Orders':—

- (i) * * * *
- (ii) Postal ballot facilities for Indian Merchant Navy Officers and Crew.
- (iii) All-India Services (Fixation of Cadre Strength) Regulations providing for 'Central Deputation Reserve'.
- (iv)—(vii) * * * *

*Omitted portions of the Minutes are not covered by the Fifth Report

- (viii) Rules relating to preservation and safe custody of art objects in the Indian Museum, Calcutta, to be framed under Section 8 and 15A of the Indian Museum Act, 1910—Implementation of recommendations of Committee on Subordinate Legislation (Fourth Lok Sabha) contained in para 15 of its Second Report.
- (ix) The Redeployment of surplus Staff against vacancies in the Central Civil Services and Posts, Class III, Rules, 1967 (G.S.R. 1847 of 1967)—Giving of retrospective effect to rules.
- (x) The Shipping Seamen's Employment and Welfare Officers (Recruitment to Class I and Class II Posts) Second Amendment Rules, 1967 (G.S.R. 1890 of 1967)—Giving of retrospective effect to rules.
- (xi) * * * *
- 3—7 * * * *
- (ii) *Postal ballot facilities for Indian Merchant Navy Officers and Crew.*

8. Shri Narendrasingh Mahida, M.P., a member of the Committee on Subordinate Legislation and formerly Chairman, National Shipping Board, had pointed out that the Indian Merchant seamen had to move around from place to place because of the very nature of their profession, and therefore, they could not exercise their right to vote in the absence of postal ballot facilities for them under the existing provisions of the Election Law. The matter was referred to the Ministries of Shipping and Transport (Transport Wing) and Law who were asked to indicate whether there was any objection to their making the necessary amendments in the Conduct of Election Rules to afford postal ballot facilities to the Indian Merchant seamen.

9. The Committee considered the reply of the Ministry of Shipping and Transport (Transport Wing) in which it was stated that the Ministry strongly supported the provision of postal ballot facilities for the Indian Merchant Navy Officers and Crew by suitable amendment of the conduct of Election Rules. The Committee also considered the following letter of the Election Commission of India, a copy of which was furnished by the Ministry of Law along with its

*Omitted portion of the Minutes are not covered by the Fifth Report

own reply that the proposals of the Election Commission for amendment of the election law referred to therein, were under Consideration of that Ministry:

".....It will be possible to enrol the officers and seamen of the Indian Mercantile Marine as voters having service qualification so as to entitle them to postal ballot facilities only after the Representation of the People Act, 1950 is suitably amended by the Parliament. In this connection I am to add that necessary recommendation to amend the Representation of the People Act, 1950 to give effect to the proposal under reference has since been made by the Commission to the Government of India. It is proposed to insert a new clause, after the existing clause (d), in subsection (8) of section 20 of the said Act, on the following lines, namely:

'(e) being an officer or seaman of the Indian Mercantile Marine to whom the Merchant Shipping Act, 1958 (54 of 1958) applies.'

Further, the registration of the aforesaid personnel in the electoral rolls will also require consequential amendments in the Registration of Electors Rules, 1960 which can be settled only after the said Act is amended. Therefore, the question of issuing necessary instructions to the Chief Electoral Officers and the Electoral Registrar Officer to prepare electoral rolls for the Indian Merchant Navy Officers and seamen will be taken up after the above formalities are completed."

10. In view of the above reply, the Committee decided that the Ministry of Law might be asked to take early steps to amend the representation of the People Act, 1950, as recommended by the Election Commission, so that the Registration of Electors Rules 1960, could also be amended suitably to enable the Indian Merchant Navy Officers and Crew to exercise their right to vote.

(iii) *All India Services (Fixation of Cadre Strength) Regulations providing for "Central Deputation Reserve"*

11. The Committee had recommended in para 11 of its First Report (Fourth Lok Sabha) 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'.....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."

12. The Committee considered, in this connection, the following note submitted by the Ministry of Home Affairs:

"Government have decided to accept the recommendation of the Committee on Subordinate Legislation made in para 11 of their First Report (Fourth Lok Sabha) that the words 'Central Deputation Reserve' should be substituted for the existing entry 'Senior Posts under the Central Government' in the Cadre Schedules issued under the IAS/IPS (Cadre) Rules, 1954 and also to Indian Forest Service (Cadre) Rules, 1966. The strength and composition of the cadres are reviewed every three years and on the basis of such triennial reviews, the strength and composition of the various cadres undergo considerable changes according to the needs of the different Cadres. Therefore, this change will be incorporated at the time of the next triennial reviews which are due in 1969. The Committee has also suggested that the posts included in the Central Deputation Reserve should be shown by nomenclature as has been done in the case of posts under the State Government. It is clarified in this connection that posts under the Central Government are filled on the basis of selection from among the suitable officers eligible for those posts. The staffing of the Central posts is not made by drawing officers only from the All India Services as Officers belonging to various Class I Services are also appointed to the vacancies in Central Posts, depending on the requirements of the different Ministries and departments of the Government of India. It is thus impossible to show the exact posts in a Ministry at the Centre to be filled in by the officers belonging to a particular Service or to a State Cadre of an All India Service. Moreover, deputation to the Centre from the States is not automatic for each officer. It is dependent on the exigencies of the State's own requirements from time to time. Hence the number of posts under the Central Government which are held by the officers of all India Services and other Services are bound to fluctuate from time to time. Even in the case of IAS alone, some States may show an excess and some a

deficit in their Central Deputation Quota at a particular point of time. The Establishment Officer in the Ministry of Home Affairs endeavours to keep in touch with the State Governments with a view to ensuring that a sufficient number of All India Service officers of different levels of seniority, will be available for posting at Centre from each of the State Cadres. Further, the names suggested by the State Governments are suggested to the Ministry concerned, quite often together with the names of available eligible officers of Class I Central Services as well. Appointments are then made with the approval of the Central Establishment Board and, in the case of senior appointments, with the approval of the appointments Committee of the Cabinet.

This arrangement eliminates the possibility of any element of favouritism in the matter of posting officers to various posts/Ministries. It will be apparant from the above clarifications that it is not possible for Government to accept this part of the recommendation made by the Committee".

13. The Committee noted the assurance given by the Ministry of Home Affairs to substitute the existing entry, "Senior Posts under the Central Government" by the words "Central Deputation Reserve" at the time of the next triennial review of the Cadres. The Committee, was, however, not convinced of the "clarification" advanced by the Ministry in finding it difficult to show the posts included in the Central Deputation Reserve by nomenclature as was done in the case of posts under State Governments.

14. In this connection, the Committee examined the representatives of the Ministry of Home Affairs on 21st October, 1969. During the course of his evidence, the representative of the Ministry explained to the Committee that for filling up the senior posts in the Government of India, Officers were drawn from a number of Services and, while selecting officers, emphasis was laid upon their qualifications, experience and suitability. This was done in order to keep an element of flexibility for the purpose of selection and appointment of the right person to the right job.

15. When asked whether it would not be feasible to select and appoint officers cadre-wise on seniority basis, the representative of the

Ministry explained that if cadre-wise quotas were fixed, they were bound to take officer from that cadre of service irrespective of his fitness for that particular post.

16. In reply to a question whether officers of Engineering Services were working as Deputy Secretaries or Joint Secretaries, the Ministry's representative informed the Committee that two persons of the Engineering Services had been appointed to the posts of Joint Secretaries; one on 31/12/1966 to deal with electronics in the Defence Ministry and the other on 12/6/1969 to deal with disputes on irrigation matters with Pakistan in the Ministry of Irrigation and Power.

17. In regard to the duration of posting of officers of I. A. S. and other Services in Delhi, the Committee was informed that there was a tenure system i.e. for Under Secretary—three years, for Deputy Secretary—four years, for Joint Secretary—five years and for officers above Joint Secretary's rank, there was no fixed tenure, but extensions were given in the public interest and the matter was placed before the Appointments Committee of the Cabinet for taking a final decision. After completion of the tenure period, the officers went back to the States.

18. The Committee considered the matter at some length and then approved the following observations/recommendations to be made in connection with the above matter:

"The Committee, after considering the matter in all its aspects, feels that it should not be difficult for the Ministry of Home Affairs to lay down the nomenclature of the "Central Deputation Reserve Posts" in each Regulation fixing cadre strength of various All India Services. This will go a long way in regulating properly the periods of tenure of officers brought from States on deputation for manning posts under the Central Government and to eliminate any element of favouritism which might creep in at the time of allocation of such posts and the incumbents thereof to the various Central Ministries. The Committee also sees no reason why it should not be possible for Government to fix the tenure in respect of officers appointed to the posts above Joint Secretary's rank in the interest of providing healthy and clean administration. It also considers that the duration of tenure in one post should be kept in view while sanctioning another tenure to the same incumbent against the next higher post."

19—31. * * * *

*Omitted portions of the Minutes are not covered by the Fifth Report.

(viii) *Rules relating to preservation and safe custody of art objects in the Indian Museum, Calcutta, to be framed under Sections 8 and 15A of the Indian Museum Act, 1910—Implementation of recommendations of Committee on Subordinate Legislation (Fourth Lok Sabha) contained in para 15 of its Second Report.*

32. The Committee had observed in para 15 of its Second Report (Fourth Lok Sabha) that although section 15A of the Indian Museum Act, 1910, which empowered the Central Government to make rules covering the matters relating to the preservation and safe custody of antiquities, rare exhibits etc. in the Indian Museum, Calcutta was inserted in 1960 by Act 45 of 1960, it was strange that no steps had been taken to frame the rules till then, either by the Government or by the Board of Trustees, Indian Museum, Calcutta. The Committee had stressed upon the urgent need of framing rules in this regard and urged the Government to expedite the matter.

33. In this connection, the Committee perused the following reply furnished by the Ministry of Education and Youth Services:

“...The Board of Trustees, Indian Museum, Calcutta have been requested to take immediate action for framing regulations relating to preservation and safe custody of art objects of the Indian Museum, Calcutta under Section 8(1) of the Indian Museum Act, 1910. The Indian Museum authorities have informed this Ministry that as the said Bye-laws have to be approved by members of the Board by circulation, finalisation of the same will take some time more. However, efforts are being made to finalise these bye-laws as expeditiously as possible. The Indian Museum Rules, 1968 (now 1969) have since been finalised by this Ministry in consultation with the Board of Trustees, Indian Museum, Calcutta as required by Section 15A of the Indian Museum Act, 1910. These draft rules have been sent to the Ministry of Law for vetting and also for giving Hindi translation so that these Rules may be notified in the Gazette of India and laid on the Table of each House of the Parliament.”

34. The Committee was glad to note that the Ministry of Education and Youth Services had taken necessary action to get the rules framed. The Committee, however, desired the Ministry to expedite the finalisation of the relevant rules and bye-laws.

(ix) *The Redeployment of Surplus Staff against vacancies in the Central Civil Services and Posts, Class III, Rules 1967 (GSR 1847 of 1967)*—Giving of retrospective effect to rules.

35. During the course of examination of the above mentioned rules, it was noticed that they were published in the Gazette of India on the 16th December, 1967, whereas by rule 1(ii) thereof, they were brought into force with retrospective effect from the 25th February, 1966.

36. The Committee perused the following reply of the Ministry of Home Affairs to whom the matter was referred for stating the reasons for giving retrospective effect to the said rules and whether any one had been adversely affected by the retrospective effect of the rules:

“...The scheme for the redeployment of surplus staff was approved by the Cabinet in 1965 and certain executive instructions in the matter were issued *vide* this Ministry's O.M. No. 3|27|65-CS.II, dated the 25th February, 1966 and 1|2|66-CC.II, dated the 23rd June, 1966. It was later on, however, felt that these administrative instructions should be given a statutory basis. Hence a notification promulgating under the Proviso to Art. 309 of the Constitution, the Redeployment of surplus staff against vacancies etc. etc. Rules, 1967 was issued on 30th November, 1967. These Rules incorporate the main provision of the two O.M. referred to above and has been brought into force w.e.f. 25th February, 1966; the date on which the scheme for Redeployment of Surplus staff came into force. As the scheme is already in force from that date, no one has been adversely affected by giving retrospective effect to the said Rules.”

37. The Committee considered the matter and decided to reiterate its earlier recommendation made in para 10 of its Second Report (Fourth Lok Sabha) that if due to any unavoidable reason, it became absolutely necessary to give retrospective effect to any rules, the fact that no one would be adversely affected by giving retrospective effect to such rules should be specifically stated by way of an explanatory note appended to such rules. The Committee also observed that it should be impressed upon the Ministry of Home Affairs etc. to follow the aforesaid recommendation strictly in future.

(x) *The Shipping Seamen's Employment and Welfare Offices (Recruitment to Class I and Class II Posts) Second Amendment Rules, 1967 (G.S.R. 1890 of 1967).*

38. During the course of examination of the above mentioned rules, it was noticed that they were published in the Gazette of India on the 23rd December, 1967, whereas by rule 1 (2) thereof they were brought into force with retrospective effect from the 29th July, 1967.

39. The Committee perused the following reply furnished by the Ministry of Shipping and Transport (Transport Wing), to whom the matter was referred for stating the reasons for giving retrospective effect to the said rules and whether any one had been adversely affected by the retrospective effect of the rules:

"...The need to amend the Rules and to give a retrospective effect to them arose because there was no enabling provisions in the original Rules for their relaxation by the Central Government in consultation with the Union Public Service Commission as in the normal practice for providing relief in individual cases of hardship. According to a strict interpretation of the rules there was only one officer who could be considered and there were two long term vacancies. There were, however, other officers with requisite qualification and experience and it was decided to consider them also for promotion in consultation with the Union Public Service Commission in relaxation of the rules. Accordingly the Departmental Promotion Committee presided over by a member of the Union Public Service Commission met on 12th September, 1967 and made the selections. There was some time lag in the issue of the gazette notification as further references to the Union Public Service Commission and Ministry of Law were necessitated to decide the actual working thereof. The notification had, therefore, to be given retrospective effect. No person has been adversely affected by giving retrospective effect to the rules."

40. The Committee considered the matter and decided to reiterate its recommendation referred to in the preceding paragraph 37.

41. * * * * *

The Committee then adjourned.

*Omitted portions of the Minutes are not covered by the Fifth Report.

XXIX

*MINUTES OF THE TWENTY-NINTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION

(1969-70)

The Committee met on Tuesday, the 28th April, 1970 from 16.00 to 17.00 hours.

PRESENT

Shri Anand Narain Mulla—*Chairman*.

MEMBERS

2. Shri N. T. Das
3. Shri Narendrasingh Mahida
4. Shri V. Viswanatha Menon
5. Shri N. K. Sanghi
6. Shri Nuggehalli Shivappa.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

2. The Committee considered Memorandum No. 76 regarding question of treatment of expenses incurred by a Member of Parliament in the discharge of his duties as such member as an allowable expenditure for purposes of income-tax in the light of a suggestion made by the Minister of State in the Ministry of Finance (Shri P. C. Sethi) in his letter addressed to the Hon'ble Speaker on the subject. After some discussion, the Committee decided to agree with the suggestion made by Shri P. C. Sethi that a standard deduction of Rs. 100 per month, as the minimum under section 57(iii) of the Income-tax Act, 1961, might be treated as an allowable expenditure incurred by a Member of Parliament as such member for purposes of income-tax. This would have the effect of reducing the net remuneration of an M.P. to Rs. 4,800. In that event, a Member of Parliament who had no other income would not be liable to pay any tax whatsoever and he would be relieved of the burden of furnishing a return of income and proving his accounts before the Income-tax Officer.

3. Accordingly, the Committee modified para 17 of the draft Fifth Report to read as follows:

"17. The Committee has reconsidered the matter in all its aspects and agrees with the suggestion made by the Minister

*Minutes of the Twenty-eighth sitting of the Committee are not covered by the Fifth Report.

of State in the Ministry of Finance (Shri P. C. Sethi) that a standard deduction of Rs. 100 per month, as the minimum under Section 57 (iii) of the Income-tax Act, 1961, may be treated as an allowable expenditure incurred by a Member of Parliament in the discharge of his duties as such member for purposes of income-tax."

4. The Committee then considered its draft Fifth Report and adopted it.

5. The Committee authorised the Chairman and, in his absence, Shri N. K. Sanghi to present the Report to the House on its behalf on the 29th April, 1970.

6-7. • • • • •

The Committee then adjourned.

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PUBLISHED UNDER RULE 383 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.
