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COMMITTEE
ON
SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

FIRST REPORT

(Presented on the 10th August, 1971)

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New Delhi
the 23rd October, 1971

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1971-72)

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SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

FIRST REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

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 27th May, 1971, by the Speaker. They have held 4 sittings on the 9th June, 30th June, 22nd July and 5th August, 1971, and considered 1,758 'Orders'. At their sitting held on the 5th August, 1971, the Committee considered and adopted this Report. The Minutes of the sittings, which form part of the Report, are appended to it.

3. In connection with certain points arising out of the Railway Servants (Discipline and Appeal) Rules, 1968, the Committee (1969-70) had heard the views of the representatives of the Ministry of Railways (Railway Board) at their sitting held on the 21st October, 1969. The relevant minutes of that sitting relating to these Rules have also been appended.

4. A statement showing the summary of recommendations|observations of the Committee is appended to the Report (Appendix I).

II

THE RAILWAY SERVANTS (DISCIPLINE AND APPEAL) RULES, 1968 (S.O. 3181 OF 1968)

5. It was noticed that sub-rule (2) of rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 (S.O. 3181 of 1968) provided for imposition of certain penalties, *viz.,* (i) withholding of the privilege of Passes or Privilege Ticket Orders or both; and (ii) fine, on the non-gazetted railway servants only.

6. The Ministry of Railways (Railway Board), who were requested to indicate the reasons for exclusion of Gazetted railway servants from the application of sub-rule (2) of rule 6, stated as follows:—

> "..........relevant records have been looked into as far back as 1937, from which it is observed that even in the then

> rules, imposition of the penalties of withholding of Passes/ PTOs and fine were not considered as penalties in the case of gazetted officers. Thus, this position has been continuing at least since 1937 and the reasons for doing so are not available at this distant date."

7. The Committee heard the views of the representatives of the Ministry of Railways (Railway Board) at their sitting held on the 21st October, 1969. In his evidence, the Secretary, Railway Board stated that "withholding of privilege passes or privilege ticket orders, or both were prescribed as penalties only in respect of non-gazetted staff but not in respect of gazetted officers. This rule was in force since 1935, but there was no specific reason for excluding the gazetted officers from these penalties being imposed on them." He further stated that "the probable reason might have been that fine by its very nature, perhaps was a quick and effective method of disciplining workers of the industrial type as that was something where action could be taken quickly within the framework of certain rules. But it was only a guess and he could not find anything as such on the record."

8. The Committee were not satisfied with the reply of the representative of the Ministry of Railways and were of the view that at the time when the rules were framed in 1934-35 there was an alien rule in the country, but now under the Constitution some reasonable justification for continuance of this differentiation between the Gazetted and non-gazetted railway servants for the purpose of imposing penalties was necessary or, otherwise, these rules should be suitably amended so as to do away with such differentiation.

9. The matter was taken up with the Ministry of Railways (Railway Board) who in their reply dated the 15th January, 1971, *inter alia*, stated as follows:

> "........so far as the minor penalty of 'withholding of privilege of Passes or Privilege Ticket Order or both' is concerned, the Railway Ministry have decided that this penalty, which is at present applicable only to non-gazetted staq, should be made applicable to gazetted officers also."

As regards the penalty of 'fine', the Ministry stated:

> "......It was understood that this penalty is being imposed only on non-gazetted staff in some other organisations,

such as in P & T Department and the Ministry of Defence ....the only difference being that, according to the railway rules, 'fine' can be imposed on *all* non-gazetted staff (including those who are not governed by Payment of Wages Act but excluding those who are utilised on clerical job), whereas in the P & T Department and in the Ministry of Defence, 'fine' can be imposed only on certain non-gazetted staff governed by the Payment of Wages Act."

The Ministry further stated:

"Under the Payment of Wages Act, a fine not exceeding 1/32 portion of the wages due in a wage period can be imposed on an employee for committing any of the acts and omissions, mentioned below, within a period of 60 days and after giving him a show cause notice:—

(i) Disregard or disorbedience of orders.

(ii) Insubordination and breaches of discipline.

(iii) Late or irregular attendance.

(iv) Improper behaviour such as drunkenness, quarrelling or sleeping on duty.

(v) Incivility or causing inconvenience to the public.

(vi) Making false or misleading statements.

(vii) Inefficient, dilatory, careless, wasteful, dangerous or obstructive working.

(viii) Malingering

(ix) Failures to observe rules and regulations and not involving more severe disciplinary action.

(x) Causing loss of or|damage to Railway property where the full or partial loss is not recovered under Section 7(2) (c) of the Payment of Wages Act, 1936.

The above acts and omissions are of such a nature as are generally committed by the employees in the lower cadres and even the senior non-gazetted staff normally do not commit them. These acts and omissions also gernerally do not merit more severe disciplinary action and the imposition of a mere fine would meet the ends of justice. In view of these considerations and also the fact that this punishment exists in some other Government organisa-

tions in the case of non-gazetted staff only, the Railway Ministry consider that the differentiation between the gazetted and non-gazetted staff in the matter of imposition of the penalty of fine existing on the Railways may continue.

The Railway Ministry have, however, decided that the penalty of fine should be imposed only on such non-gazetted railway servants as are governed by the Payment of Wages Act and for such acts and omissions as are notified under the said Act, but not on those railway servants who are exclusively employed on clerical work. When this is done, the position on the Railways in the matter of imposition of fines will, more or less, be on par with that obtaining in the P & T Department and the Ministry of Defence."

In conclusion, the Ministry have stated:—

"........The Railway Ministry have taken the following decisions on consideration of the observations made by the Committee on Subordinate Legislation:—

(i) Sub-rule (2) of rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968, may be so amended as to permit of the minor penalty of 'withholding of Privilege of Passes or Privilege Ticket Orders, or both' being imposed on any railway servant—gazetted or non-gazetted; and

(ii) the penalty of 'fine' may be deleted from the existing sub-rule (2) of rule 6 and a separate sub-rule introduced, permitting of the penalty of fine being imposed on railway servants governed by the Payment of Wages Act for certain specified acts and omissions notified under the Payment of Wages Act, but not on those who are exclusively employed on clerical work."

10. The Ministry have added that necessary amendments to the Railway Servants (Discipline and Appeal) Rules, 1968 will be carried out on hearing from the Committee.

11. The Committee are glad to note that the Ministry of Railways (Railway Board) have decided to impose the penalty of 'withholding of privilege of Passes or Privilege Ticket Orders or both' on the gazetted officers also, which would eliminate the differentiation between the Gazetted and non-gazetted railway staff in this regard.

12. As regards the penalty of fine, the Committee see no justification for a differentiation between the gazetted staff and non-gazetted staff or between the staff governed by the Payment of Wages Act and the staff not governed by that Act. They feel that such distinctions in the matter of penalty of fine should not be allowed, and the rules amended to this end.

III

NEW APPLICATION FORM FOR TELEPHONE CONNECTIONS (RULE 414 OF INDIAN TELEGRAPH RULES, 1951)

13. Prior to 1970, there was no prescribed form for making application for a telephone connection. Any letter on plain paper asking for a telephone connection was taken as an application for registration on the waiting list. A declaration giving essential detailed particulars of the subscriber was taken subsequently from the applicant at the time of giving the connection to the effect that the applicant will abide by the Indian Telegraph Rules.

14. In 1970, the Department of Communications introduced a new application form for telephone connections which could be obtained on a payment of Rs. 10|. The new application form was required to be filled in not only by new applicants but also by the existing applicants on the waiting list. The latter category of applicants were given a period of three months for filling in the new application form, failing which, their applications were to be treated as fresh applications. The aforesaid amount of Rs. 10|- was neither refundable nor adjustable.

15. The matter was raised by the Members in the House on a number of occasions and in reply to a question on the 16th April, 1970, the Minister of State for Communications stated that the Government had received a few representations against the imposition of the fee, but that these representations did not contain substantial grounds to warrant a reconsideration of the decision.

16. The P&T Board, with whom the matter was taken up, have given the following background for the introduction of the new application form for which a payment of Rs. 10|- was required to be made:

> "A Committee known as 'Telephone Committee' was set up by the Government in April, 1966 for making a sample survey of the commercial work of the Telephone Department and to examine the existing procedures for suggesting changes for giving telephone connections in order to minimize the scope for corruption or mal-practices. Be-

sides three Government officers, three Members of Parliament were also associated with this Committee.

It was observed by this Committee that the waiting list for telephone connections was somewhat unrealistic as:

(a) There were persons who got themselves registered but did not care to take telephones. This not only entailed unnecessary work but made future planning of telephone systems rather unrealistic.

(b) Some manipulations were noticed concerning the dates of priorities.

The Committee was, therefore, of the view that as the Department was not in a position to meet the full demands from the public for new telephone connections in the foreseeable future, the Department might consider the desirability of prescribing a deposit at the time of registration of an application for a telephone connection to ensure that persons apply for telephones only if in genuine need of the same. It was recommended by the Committee that an applicant for a new telephone connection should be required to register the demand for the telephone in a standard prescribed form, machine numbered and issued on payment of Rs. 25|-. The P&T Board on considering this recommendation, decided to introduce a standard application form as suggested by the Committee throughout the country. It was decided that the form will be machine numbered and will be supplied on payment of Rs. 10|- which will not be refundable or adjustable. It was also decided in accordance with the recommendations of the Committee that all the existing applicants on the waiting list will also be required to fill the new application form within a period of three months, in which case their original dates of registration will remain unchanged for the purpose of priority."

As regards the statutory or executive power under which the aforesaid amount of Rs. 10|- per application form was being charged by the Department, the P&T Directorate have stated as follows:—

"Indian Telegraph Rule 414 provides that the application for provision of telephone and other similar service or for alteration to any existing service shall be made in writing and in such form and manner as may, from time to time, be prescribed by the Telegraph Authority. The introduc-

tion of the standard application form prescribed above has been made under the abovementioned statutory power vested in the Telegraph Authority *i.e.* Director-General, Posts and Telegraphs."

17. The Committee note that while rule 414 of the Indian Telegraph Rules, 1951, authorises the Telegraph Authority to introduce a new application form, it does not confer on that authority any power to levy a charge therefor. The Committee are of the opinion that for charging the amount of Rs. 10|- per application form, there should have been an express provision in the Rules, backed by an express authorisation in the parent law. The P & T Board have not indicated any provision in the Act from which the power to make the above charge flows. The Committee feel that if the Department of P & T want to continue the above charge, the proper course for them is not only to amend the Rules to the necessary effect but also to ensure that an express authorisation for its levy is available in the parent law.

IV

NORTHERN RICE ZONE (MOVEMENT CONTROL) ORDER, 1968 (G.S.R. 623 of 1968)

18. Clause 5(1) of the Northern Rice Zone (Movement Control) Order, 1968, provides that any Police Officer not below the rank of Head Constable and *'any other person'* authorised by the State Government concerned or the Central Government "may", with a view to securing compliance with the Order, carry out search|seizure or authorise 'any person' to carry out search|seizure.

19. The attention of the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) was invited to the recommendation of the Committee on Subordinate Legislation contained in paragraph 15 of their Fifth Report (3rd Lok Sabha), wherein they had urged Government to specifically state in the relevant Order that a Government servant not below a specified rank or equivalent officer might be authorised to conduct searches and seizures etc. 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 relevant Order.

20. The Committee have considered the following reply of the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food):

"The expression 'any other person' used in clause 5 of the Northern Rice Zone (Movement Control) Order, 1968 does not mean that persons other than officers of the Government can also be authorised to enter and search premises and seize rice and other articles specified in clause 5(iii) of the Order. In fact, the Governments of the States and Union Territories comprising the Northern Rice Zone have issued separate notifications, in exercise of the powers conferred on them by clause 5 of the Order, in which the officers who may exercise the powers conferred by clause 5, have clearly been specified. Two such *notifications, one issued by the Government of Haryana and the other by the Delhi Administration, are enclosed. It will be seen therefrom that there is no arbitrariness in the exercise of the powers conferred by clause 5 of the Order. These notifications have been published in the respective official gazettes for the knowledge of the public. The concerned State Governments who are exercising these powers will no doubt take care to see that only responsible officers who are associated with the implementation of the provisions of the Order, exercise these powers. and that notifications specifying such officers are published in the official gazettes.

It will be seen, therefore, that in practice there is no arbitrariness in the exercise of the powers of entry, search and seizure conferred by the Order. It may also be pointed out that an amendment to the Order as suggested by the Committee will present some practical difficulties. As regards police officers the rank is given in the authorisation clause itself. As regards non-police officers, their designation, nomenclature and rank differ from State to State. It will also be difficult to equate the ranks of such different enforcement personnel functioning in the different States to arrive at the minimum rank of such personnel for the purposes of the clause. If the Committee is of the view that the minimum rank of the enforcement personnel should be indicated in spite of these practical difficulties, particulars will be collected from the different States and further action by way of amendment will be taken."

21. The Committee on Subordinate Legislation have repeatedly stressed the need for indication of the minimum rank of the per-

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*Notifications not attached.

sions to be authorised by the Government to conduct searches| seizures. The underlying idea is that each and every Government| officer may not be authorised to exercise the power of searches| seizures. The fact that any of the State Governments|Union Territories have vested this power only in responsible officers does not take away the need for a built-in safeguard repeatedly recommended by the Committee.

22. The Committee also note that under the 'Order', as worded, not only the Head Constable and the persons authorised by the Central|State Governments have been empowered to carry out searches|seizures but they have been further empowered to authorise 'any person' to exercise these powers. The Committee are of the view that the provision for such further authorisation is as much against the spirit of the aforesaid recommendation of the Committee as non-indication of the minimum ranks of the persons initially authorised to exercise these powers. The Committee, therefore, desire that not only the minimum ranks of officers to be authorised by Central/State Governments to conduct searches| seizures should be specifically given in the Rules but the provision for further authorisation omitted therefrom.

V

CENTRAL EXCISE (NINTH AMENDMENT) RULES, 1969 (G.S.R. 1615 of 1969)

23. Sub-rule (2) of Rule 40A of the Central Excise Rules, 1944, as inserted by the Central Excise (Ninth Amendment) Rules, 1969 provided that any person who contravened sub-rule (1) of that Rule "shall, in respect of every such offence, be liable to pay the differential duty calculated in accordance with sub-rule (1) and to a penalty which may extend to two thousand rupees."

The Committee noticed that there was no indication in the above Rule that an opportunity of being heard would be given to an assessee before penalty was imposed on him under sub-rule (2) of rule 40A, *ibid.*

24. The Ministry of Finance (Department of Revenue and Insurance) who were requested to clarify the position on the above point stated as under:—

> ".....Rule 30A of the Central Excise Rules, 1944 is worded in the same manner as several other rules such as

Central Excise Rules 32, 40, 52A, 226, etc. It can be seen therefrom that none of these rules mention that any opportunity of being heard will be given to a party before any penalty is imposed or any confiscation is adjudged. But this does not imply that such an opportunity will be denied and an *ex-parte* order imposing a penalty or adjudging confiscation will be issued. Before a penalty is imposed or confiscation of the goods is ordered it has to be established through a quasi-judicial process of adjudication that a contravention of the rule(s) has occurred. Principles of natural justice have to be conformed to. This requires that the person concerned must know the allegations against him and the evidence on which they are based and an adequate opportunity to meet those allegations should be given to him. To serve this purpose, it has been stipulated through departmental instructions in force that Show-Cause Notices should be issued to the parties and they should be given reasonable opportunity to controvert the evidence on which the proposed action rests. Further there is also provision for testing such adjudication orders passed by an authority through appeals and revision applications to the higher authority and the Central Government respectively *vide* sections 35 and 36 of the Central Excise Act.

In view of the foregoing, it may be appreciated that the question of amending rule 40A (2) of the Central Excise Rules, 1944 does not arise."

25. One of the basic requirements of natural justice is that before the penal provisions of a law are invoked against a person, he should be given a reasonable opportunity of being heard. In their reply, the Ministry of Finance have conceded this, but have averred that even though there is no provision in the Rules for affording such an opportunity, the purpose is served by departmental instructions. The Committee are not satisfied with the explanation. They would like to point out that departmental instructions can hardly be a proper substitute for a build-in legal safeguard. The Committee, therefore, desire that the Central Excise Rules should be suitably amended to provide for giving an opportunity of being heard to assessees before any penalty under the Rules is imposed on them.

VI

RULES AND REGULATIONS UNDER THE INDIAN RAILWAYS ACT, 1890

26. It was brought to the notice of the Committee that:—

(i) Rules and regulations framed under the various provisions of the Indian Railways Act, 1890 (9 of 1890), pertaining to booking of goods, levy of fee and charges and other matters were not published in the Gazette; and

(ii) in the absence of the 'laying provision' in the said Act, the rules and regulations framed thereunder were not laid before Parliament.

27. The Ministry of Railways (Railway Board), who were requested to furnish their comments on the above points, have stated as follows:—

"........Sections 27, 29 and 42 of the Indian Railways Act deal with the booking of goods and the levy of fee and charges and other allied matters. While Section 27 of the Act defines the duty of Railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality, section 29 thereof empowers the Central Government to fix maximum and minimum rates of freight or any other charges for the whole or any part of the Railway and prescribe the conditions in which such rates of charges shall apply. Similarly, Section 42 lays down the powers of the Central Government to classify or reclassify any commodity and to increase or reduce the level of class rates and other charges.

There is no specific stipulation under these sections of the Act, which require the rules and regulations issued thereinder to be published in the Official Gazette, or laid on the Table of the Sabha. These rules are, however, brought to the notice of the public through the Rates Circulars, Advices and Press Notifications, issued by the Railway Administrations from time to time. As required under Section 60 of Indian Railways Act, Rates governing traffic other than passengers and their luggage are made available to the public for reference, free of charge at stations dealing with such traffic.

The proposal to make a suitable provision in the Indian Railways Act for the publication of the rules and regulations in the Official Gazette and requiring placement of the same on the Table of the Sabha is not considered necessary or essential, as, besides presenting administrative difficulties, such action will not, in any way, make it easier for the public to get a wider access to them."

28. The Committee note that, apart from the rules and regulations framed under Sections 27, 29 and 42 of the Indian Railways Act, rule-making power has also been vested in Government under Sections 22, 47, 71E, 82J and 84 of the Indian Railways Act. Only one of these Sections, viz., Section 82J provides for both publication of the rules in the Gazette and their laying before Parliament. Section 47 provides for publication of the Rules in the Gazette but not for their laying before Parliament. The other Sections provide neither for publication nor for their laying.

29. The Committee are unable to accept the arguments of the Ministry of Railways for not publishing the Rules and Regulations framed under the Indian Railways Act in the Gazette of India. The Committee would in this connection like to draw the attention of the Ministry to para 10 of their Seventh Report (Fourth Lok Sabha) wherein they desired that all Rules framed by Government, pursuant to Constitutional or statutory provisions, should invariably be published in the Gazette for the information of the General public.

30. The Committee would also like to emphasise that, besides publicity, the publication of the Rules in the Gazette has another important purpose to serve—viz., Parliamentary control over subordinate legislation. Unless a rule is published in the Gazette, it does not ordinarily come to the notice of the Committee, and they are, therefore, unable to examine whether the rule-making power conferred by Parliament on the Executive has been properly exercised.

31. Likewise, one of the important ways, the Parliament exercise control over delegated legislation is through the Rules laid on the Table. According to the rule-laying formula, approved by the Committee in paragraph 45 of their Seventh Report (Second Lok Sabha), rules framed under an Act should be laid on the Table for a period of 30 days which may be comprised in one or two successive sessions and should be subject to modification before the expiry of the session in which these are laid or the session following. As pointed out by the Committee in an earlier paragraph, this

formula has been made applicable to the Rules framed under only one of the Sections of the Indian Railways Act, 1890, viz. Section 82J.

32. Thus, after considering the matter in all its aspects, the Committee feel that, both in the interest of wider publicity and Parliamentary control over subordinate legislation, it is imperative that the rules and regulations framed by Government under the provisions of the Indian Railways Act should not only be published in the Gazette but also laid before Parliament. The Committee, therefore, recommend that Government should suitably amend the Act to this end.

VII

CENTRAL RESERVE POLICE FORCE (FOURTH AMENDMENT) RULES, 1968 (G.S.R. 373 of 1968)

33. Rules 36C of the Central Reserve Police Force Rules, 1955, as inserted by the aforesaid G.S.R., provides that notwithstanding the provisions of Chapter XV of the Code of Criminal Procedure, 1898, the Commandant or the Assistant Commandant may try an offence *in any place whatever* with due regard to the convenience of parties.

Rules 36G and 36I, *ibid,* empower the Central Government to determine the court before which proceedings in respect of an accused should be instituted or continued in cases where there is a difference of opinion between a Magistrate and a Commandant or Assistant Commandant in this regard. Under the former Rules, the Central Government can direct the Magistrate to deliver the accused to the Commandant or Assistant Commandant and the Magistrate shall accordingly deliver the accused to such Commandant or Assistant Commandant.

34. It was noticed that in Rule 36C, the words "Notwithstanding the provisions of Chapter XV of the Code of Criminal Procedure, 1898" were pre-fixed, which lent to it the character of an over-riding provision. Also, the powers conferred on the Central Government under Rules 36G and 36I could be so exercised as to over-ride the provisions of the Code of Criminal Procedure.

35. The matter was taken up with the Ministry of Home Affairs and it was suggested to them that the provsions contained in the above Rules should either form part of the parent Act or have an express authorisation therein. It was pointed out in this regard that for similar matters, there were express provisions in the Border Security Force Act (*vide* Sections 79 and 81).

36. In their reply, the Ministry of Home Affairs have *inter alia* stated as follows:—

"It is of the utmost importance that an Act which governs a Force which is armed with highly lethal weapons and which may often have to act under grave stress and strain in places far away from where the ordinary avenues of maintenance of law and order and suppressing disorder are not available should have an inbuilt provision of dealing drastically with any serious offences of indiscipline, lest mutiny and more serious offences may take place. The legislature realised the wisdom of conferring powers on the Commandants to act independently and swiftly against erring members of the Force so as to nip the mischief in the bud............

........So far as rule-making powers are concerned not only section 16(2) but the sweeping provision of section 18(1) as amplified in section 18(2) may be referred to........ Awarding of punishment for offences pertaining to indiscipline committed by the members of the Force is clearly one of the provisions of the Act by which the duty cast on the Central Government of superintendence and control over the Force is to be discharged. Section 18(2) of the Act makes it further clear that rules can be made for "(b) regulating the powers and duties of the officers authorised to exercise any function by or under this Act", and (f) for the disposal of criminal cases arising under this Act and for specifying the prison in which a person convicted in any such case may be confined."

Rules 36C, 36G and 36I clearly fall within the ambit of clause (f) of Section 18(2) in so far as these are for the purposes of disposal of criminal cases arising under this Act...... In case, reference is made to the opening words of Sub-Section (2) of Section 16 *i.e.* "notwithstanding anything contained in the Code of Criminal Procedure, 1898", there is nothing objectionable in this rule. Indeed if such a provision were absent, it would make impossible in several cases to deal with delinquents of the Force because as is well known, the Force is highly mobile and there are instances when in the course of a week or 10 days, a whole battalion may have traversed across the whole length and breadth of the country-movements taking place by air as well.

If insistence on provisions of section 177 of the Code of Criminal Procedure were to be made, then it might encourage members of the Force to defy authority and indulge in indiscipline in the knowledge that most often it would not be possible for Commandants and Assistant Commandants to hold trials in terms of section 177 of the Code of Criminal Procedure. The duty cast on the Central Government of maintaining discipline in a Force armed and equipped with such highly lethal weapons as the CRPF is, would thus be jeopardised. The need for retaining rule 36C is, therefore, patent. So far as the legality of this provision is concerned, it flows directly from the amplified authority of rule making given in sections 8(1), 18(1) and 18(2) (b) and (f) of the Act. No issue can be joined that rule 36C is actually meant for disposal of criminal cases arising under this Act as is specifically provided for in section 18(2) (f) of the Act. The rule is thus founded on more than ample statutory authority.

For appreciating the provision of rules 36G and 36I, it has to be seen that there are two tribunals of equal competence which can take cognizance of offences committed by members of the Force under the Act. One is the normal criminal tribunal that is the prescribed judicial Magistrate having jurisdiction under Section 190(1) of the Code of Criminal Procedure and the other is the Commandant or an Assistant Commandant as Magistrate, as provided for in Section 16(2) of the Act and the Rules.

........Because of the duality of the jurisdiction, conflict is likely to arise between the two tribunals deriving authority from two different statutes and hence the disposal of the criminal case may reach a stalemate. This would be highly deleterious to discipline among members of the Force and any controversy between the Force and the Magistracy on the question of jurisdiction would be unbecoming between the two organs of the State. It is, therefore, in keeping with the provisions of this Act, *i.e.* to carry out the purpose of maintaining the Force and to maintain the control of the Central Government over the Force that provision of the type as given in rules 36G and 36I had to be made in the rules. Since the ultimate authority which can exercise superintendence and control over the Force is the Central Government the discretion is given also to the highest authority, namely, the Central

Government itself to decide—in cases of difference of opinion between Commandant, Assistant Commandant and a Magistrate—whether the trial of an offence under the Act should take place in the Court of the Magistrate appointed under the Code of Criminal Procedure or in the Court of Commandant or Assistant Commandant who is appointed as a Magistrate under Section 16 (2) of the Act.

........It is doubtful if we can say that these provisions are of a substantive character. In our view provisions of substantive character are the provisions which vest in the Central Government responsibility of maintenance and control over the Force and its administration in accordance with the provisions of the Act and Rules through such officers as the Central Government may from time to time appoint in this behalf. Again substantive legislation are definition of various offences and provisions of punishment therefor; the conferment of magisterial powers on Commandants; and the rule-making power contained in section 18 (1) and 18 (2) (f) for disposal of criminal cases arising under this Act. Lastly the substantive part of legislation would be the mode of trial. This does not change when an offence is tried by a Commandant and he has to follow the same procedure as a judicial Magistrate would in trial conducted by him. The locality of a trial is not its important part when the trial is entrusted to a domestic tribunal ....

Similarly there is nothing substantial in rules 36G and 36I as these only confer powers on Assistant Commandants and Magistrates to require the holding up of an inquiry or trial till orders as to the appropriate forum in which the same should be held is decided by the Central Government. These rules again flow expressly if not from any other rule than at least from the language of Section 18 (1) and 18 (2) (f)..........

It is true that there are provisions in the Rules similar to provisions in the BSF Act and for that matter in the Army, Navy and Air Force Acts as well but the existence of such provisions in the other Acts is not decisive of the question under consideration. What is decisive is the provisions in section 18 (2) (f) and the scheme of Act *i.e.* the responsibility of the Central Government "to maintain the CRPF

and carry out supervision and control over it through such officers as it may appoint in accordance with the Act and Rules and the clear enunciation that the powers to be exercised by the Commandants as Magistrates are 'notwithstanding anything contained in the Code of Criminal Procedure' as given in Section 16(2) of the Act.

The BSF Act and the Army Act are very different from the CRPF Act in that under the former two Acts even civil offences *i.e.* any offence which is triable by any criminal court is triable under the Security Force Courts or by Courts Martial and the jurisdiction of ordinary courts in regard to civil offences can also be ousted. This is very different from the provisions of the CRPF Act under which only offences committed under the Act by members of the Force or offences committed against person or property of another member can be tried by Commandants or Assistant Commandants as Magistrates. A Commandant cannot take cognizance of other civil offences committed by members of the Force."

In conclusion, the Ministry of Home Affairs have stated that for the reasons mentioned above, the Rules in question—36C, 36G and 36I—do not need modification.

37. The Committee observe that the pre-fixation of the words "Notwithstanding the provisions of Chapter XV of the Code of Criminal Procedure, 1898" in Rule 36C seeks to make the provisions of this Rule of an over-riding nature. Similarly, the powers conferred on the Central Government under Rules 36G and 36I may be so exercised as to over-ride the provisions of the Code of Criminal Procedure, should a conflict between the provisions of the said Code and Rules in question arise. The Committee, therefore, find it difficult to appreciate the Ministry's contention that there is nothing substantial in the provisions of Rules 36C, 36G, and 36I.

38. The Committee do not question the necessity or desirability of the provisions of Rules 36C, 36G and 36I; nor do they want any modification therein. The question is only limited to the point whether because of their over-riding nature, these provisions should more appropriately form part of the Act or of the Rules. The Committee feel that while the provisions of an Act may over-ride the provisions of an earlier Act, the Executive, in exercise of their rule-making power, cannot over-ride the same unless the latter statute expressly authorises them to do so. The Committee are, therefore,

of the view that the aforesaid provisions should form part of the Act, or in the alternative, there should be specific authorisation therefor in the Act. The fact that similar provisions form part of four other Acts—Border Security Force Act, Army, Navy and Air Force Acts—reinforces this view.

VIII

INDIAN FOREST SERVICE (RECRUITMENT) AMENDMENT RULES, 1969 (G.S.R. 976 of 1969)

39. Clause (a) of sub-rule (2) of Rule 6A of the Indian Forest Service (Recruitment) Rules, 1966, as substituted by the Indian Forest Service (Recruitment) Amendment Rules, 1969, empowers State Governments to postpone the appointment of an Officer in the junior time-scale of pay to a post in the senior time-scale of pay till he passes the prescribed departmental examination or examinations and '*promote his juniors to such a post*'.

40. As there is no stipulation in the above clause that only those juniors would be promoted under this clause who have passed the departmental examination or examinations, the Cabinet Secretariat (Department of Personnel) were requested to clarify the intention of the clause.

41. The Committee considered the following reply of the Cabinet Secretariat (Department of Personnel):

> "........Rule 6A of the Indian Forest Service (Recruitment) Rules, 1966, has since been substituted by the Indian Forest Service (Recruitment) Second Amendment Rules, 1971, *vide* this Department's Notification No. 3|15|70-AIS-(IV), dated 26-4-1971. It would be seen that even the revised rule 6A of the said Rules provides for the postponement of the promotion of a direct recruit to the senior scale till he passes the departmental examination(s) and for the promotion of his juniors to such a post. The intention in having such a provision is that an officer who is junior and who has passed the prescribed departmental examination(s) can be given the promotion even prior to his senior who has not cleared such examinations. This provision has been included with a view to enabling the State Governments to postpone the promotion of an officer who has not passed the departmental examinations but promote his juniors who have already qualified in such

examinations. However, the amended rule will not enable a State Government to postpone the promotion of senior officer but promote his junior who has also not qualified in the departmental examination, in view of the fact that amongst officers similarly placed, the senior officer has a right of promotion to the senior scale *vis-a-vis* his junior. Further, promoting a junior officer who has not qualified in the departmental examination while such promotion of the senior officer is postponed for the reason that he has not qualified in the examinations, will amount to discrimination from amongst officers similarly placed and is against the provisions of Articles 14 & 16 of the Constitution.

In view of the fact that the revised rule 6A makes the position very clear, it is not considered necessary to amend this rule further."

42. The Committee are not satisfied with the above explanation. They observe that even though the intention of Government is that only those junior officers should be promoted in supersession of their seniors who have passed the prescribed departmental examination or examinations, no stipulation to this effect has been made even in the revised rule. The Committee desire that, to avoid any scope for doubt, the rule should be amended to specifically provide that only those junior officers would be promoted in supersession of their seniors who have passed the prescribed departmental examination or examinations.

IX

BORDER SECURITY FORCE RULES, 1969 (S.O. 2336 of 1969)

43. Rule 170 of the Border Security Force Rules, 1969 provides that a court of inquiry shall consist of an officer as presiding officer and at least two members who may be either officers or subordinate officers or both.

44. The Ministry of Home Affairs were requested to clarify whether under this rule, an officer of the same rank or a rank lower than that of the officer being proceeded against could also be appointed as a member of the court of inquiry. They have stated as follows:—

"RULE 170: A court of inquiry shall consist of an officer as presiding officer and at least two members who may be either officers or subordinate officers or both. Although

legally there is no bar under the aforesaid Rule for the appointment of an officer of the same rank or a rank lower than that of the officer being proceeded against as a member of the court of inquiry, it is not our intention to appoint any officer junior to the one being proceeded against as a member of the court of inquiry."

45. The Committee note that under the Rule in question, there is no bar to the appointment of an officer of the same rank or a rank lower than that of the officer being proceeded against as a member of the court of inquiry. In the opinion of the Committee, it is wrong in principle to appoint a junior officer to go into the conduct of a senior officer, for, apart from the fact that such an inquiry cannot command the confidence it deserves, it is apt to put both the inquiry officer and the officer being proceeded against in an embarrassing position. The Committee, therefore, reiterate their earlier recommendation made in para 22 of their Sixth Report (Fourth Lok Sabha) that inquiries should be conducted by an officer who is sufficiently senior to the officer being proceeded against. The Committee desire that Government should amend the rule in question accordingly.

VIKRAM MAHAJAN,
Chairman,
Committee on Subordinate Legislation.

NEW DELHI;
The 5th August, 1971.

APPENDIX I

(*vide* para 4 of the Report)

Summary of Main Recommendations|Observations made by the Committee

S. No.	Para Number	Summary
(1)	(2)	(3)
1.	11	The Committee are glad to note that the Ministry of Railways (Railway Board) have decided to impose the penalty of 'withholding of privilege of Passes or Privilege Ticket Orders or both' on the gazetted officers also, which would eliminate the differentiation between the Gazetted and non-gazetted railway staff in this regard.
	12	As regards the penalty of fine, the Committee see no justification for a differentiation between the gazetted staff and non-gazetted staff or between the staff governed by the Payment of Wages Act and the staff not governed by that Act. They feel that such distinctions in the matter of penalty of fine should not be allowed, and the rules amended to this end.
2.	17	The Committee note that while rule 414 of the Indian Telegraph Rules, 1951, authorises the Telegraph Authority to introduce a new application form for telephone connections, it does not confer on that authority any power to levy a charge therefor. The Committee are of the opinion that for charging the amount of Rs. 10|- per application form, there should have been an *express* provision in the Rules, backed by an *express* authorisation in the parent law. The P. & T. Board have not indicated any provision in the Act from which the power to make the above charge flows. The Committee feel that if

(1)	(2)	(3)
		the Department of P. & T. want to continue to levy the above charge, the proper course for them is not only to amend the Rules to the necessary effect but also to ensure that an express authorisation for its levy is available in the parent law.
3.	21	The Committee have repeatedly stressed the need for indication of the minimum rank of the persons to be authorised by the Government to conduct searches/seizures. The underlying idea is that each and every Government officer may not be authorised to exercise the power of searches/seizures. The fact that any of the State Governments/Union Territories have vested this power only in responsible officers does not take away the need for a built-in safeguard repeatedly recommended by the Committee.
	22	The Committee also note that under the Northern Rice Zone (Movement Control) Order, 1968, as worded, not only the Head Constable and the persons authorised by the Central/State Governments have been empowered to carry out searches/seizures but they have been further empowered to authorise 'any person' to exercise these powers. The Committee are of the view that the provision for such further authorisation is as much against the spirit of the aforesaid recommendation of the Committee as non-indication of the minimum ranks of the persons initially authorised to exercise these powers. The Committee, therefore, desire that not only the minimum ranks of officers to be authorised by Central/State Governments to conduct searches/seizures should be specifically given in the Rules but the provision for further authorisation omitted therefrom.
4.	25	One of the basic requirements of natural justice is that before the penal provisions of a law

(1)	(2)	(3)
		are invoked against a person he should be given a reasonable opportunity of being heard. In their reply, the Ministry of Finance have conceded this, but have averred that even though there is no provision in Rules 32, 40, 40A, 52A, 226, etc. of the Central Excise Rules, 1944 for affording such an opportunity, the purpose is served by departmental instructions. The Committee are not satisfied with the explanation. They would like to point out that departmental instructions can hardly be a proper substitute for a built-in legal safeguard. The Committee, therefore, desire that the Central Excise Rules should be suitably amended to provide for giving an opportunity of being heard to assessees before any penalty under the Rules is imposed on them.
5.	28	The Committee note that, apart from the rules and regulations framed under Sections 27, 29 and 42 of the Indian Railways Act, 1890, rule-making power has also been vested in Government under Sections 22, 47, 71E, 82J and 84, *ibid.* Only one of these Sections, *viz.,* Section 82J provides for both publication of the rules in the Gazette and their laying before Parliament. Section 47 provides for publication of the Rules in the Gazette but not for their laying before Parliament. The other Sections provide neither for publication nor for their laying.
	29	The Committee are unable to accept the arguments of the Ministry of Railways for not publishing the Rules and Regulations framed under the Indian Railways Act in the Gazette of India. The Committee would in this connection like to draw the attention of the Ministry to para 10 of their Seventh Report (Fourth Lok Sabha) wherein they desired that all Rules framed by Government, pursuant to Constitutional or statutory provisions, should invariably be published in the Gazette for the information of the general public.

(1)	(2)	(3)
	30	The Committee would also like to emphasise that, besides publicity, the publication of the Rules in the Gazette has another important purpose to serve *viz.,* Parliamentary control over subordinate legislation. Unless a rule is published in the Gazette, it does not ordinarily come to the notice of the Committee, and they are, therefore, unable to examine whether the rule-making power conferred by Parliament on the Executive has been properly exercised.
	31	One of the important ways, the Parliament exercise control over delegated legislation is through the Rules laid on the Table. According to the rule-laying formula, approved by the Committee in paragraph 45 of their Seventh Report (Second Lok Sabha), rules framed under an Act should be laid on the Table for a period of 30 days which may be comprised in one or two successive sessions and should be subject to modification before the expiry of the session in which these are laid or the session following. As pointed out by the Committee in paragraph 28 above, this formula has been made applicable to the Rules framed under only one of the Sections of the Indian Railways Act, 1890, *viz.,* Section 82J.
	32	After considering the matter in all its aspects, the Committee feel that, both in the interest of wider publicity and Parliamentary control over subordinate legislation, it is imperative that the rules and regulations framed by Government under the provisions of the Indian Railways Act should not only be published in the Gazette but also laid before Parliament. The Committee, therefore, recommend that Government should suitably amend the Act to achieve this end.
6.	37	The Committee observe that the prefixation of the words "Notwithstanding the provisions of Chapter XV of the Code of Criminal Procedure,

(1)	(2)	(3)
		1898" in Rule 36C of the Central Reserve Pclice Force Rules, 1955, seeks to make the provisions of this Rule of an over-riding nature. Similarly, the powers conferred on the Central Government under Rules 36G and 36I, *ibid.* may be so exercised as to override the provisions of the Code of Criminal Procedure, should a conflict between the provisions of the said Code and Rules in question arise. The Committee, therefore, find it difficult to appreciate the Ministry's contention that there is nothing substantial in the provisions of Rules 36C, 36G and 36I.
	38	The Committee do not question the necess'ty or desirability of the provisions of Rules, 36C, 36G and 36I; nor do they want any modification therein. The question is only limited to the point whether because of their over-riding nature, these provisions should more appropriately form part of the Act or of the Rules. The Committee feel that while the provisions of an Act may over-ride the provisions of an earlier Act, the Executive, in exercise of their rule-making power, cannot over-ride the same unless the latter statute expressly authorises them to do so. The Committee are, therefore, of the view that the aforesaid provisions should form part of the parent Act, or in the alternative, there should be a specific authorisation therefor in the Act. The fact that similar provisions form part of four other Acts—Border Security Force Act, Army, Navy and Air Force Acts—reinforces this view.
7.	42	The Committee are not satisfied with the Government's explanation contained in para 41. They observe that even though the intention of Government is that only those junior officers should be promoted in supersession of their seniors who have passed the prescribed departmental examination or examinations, no stipulation to this effect has been made even in the revised rule.

(1)	(2)	(3)
		The Committee desire that, to avoid any scope for doubt, the rule should be amended to specifically provide that only those junior officers would be promoted in supersession of their seniors who have passed the prescribed departmental examination or examinations.
8.	45	The Committee note that under rule 170 of the Border Security Force Rules, 1969, there is no bar to the appointment of an officer of the same rank or a rank lower than that of the officer being proceeded against as a member of the court of inquiry. In the opinion of the Committee, it is wrong in principle to appoint a junior officer to go into the conduct of a senior officer; for, apart from the fact that such an inquiry cannot command the confidence it deserves, it is apt to put both the inquiry officer and the officer being proceeded against in an embarrassing position. The Committee, therefore, reiterate their earlier recommendation made in para 22 of their Sixth Report (Fourth Lok Sabha) that inquiries should be conducted by an officer who is sufficiently senior to the officer being proceeded against. The Committee desire that Government should amend the rule in question accordingly.

MINUTES.

APPENDIX II

(*vide* paras 2 and 3 of the Report)

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. REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (*RAILWAY BOARD*)

1. Shri K. V. Kasturi Rangan, *Additional Member, Staff.*
2. Shri C. S. Parameswaran, *Secretary.*
3. Shri L. D. Panke, *Director, Traffic (Commercial).*

1936 LS—3.

II. * * * *

2. * * * *

The representatives of the Ministry of Railways (Railway Board) were then called in and examined on the following subjects:

(i)-(ii) * * * *

(iii) The Railway Servants (Discipline and Appeal) Rules, 1968 (S.O. 3181 of 1968).

3-7. * * * *

8. The Committee then took up the next item regarding the Railway Servants (Discipline and Appeal) Rules, 1968. The Secretary, Ministry of Railways (Railway Board) stated that the withholding of privilege passes or privilege ticket orders, or both were prescribed as penalties only in respect of non-gazetted staff but not in respect of gazetted officers. This rule was in force since 1935, but there was no specific reason for excluding the gazetted officers from these penalties being imposed on them. He, however, stated that the probable reason might have been that fine by its very nature, perhaps was a quick and effective method of disciplining workers of the industrial type as that was something where action could be taken quickly within the framework of certain rules. But it was only a guess and he could not find any thing as such on the record. The Committee were not satisfied with the reply of the representative of the Ministry of Railways and were of the view that at the time when the rules were framed in 1934-35, there was an alien rule in the Country, but now under the Constitution some reasonable justification for continuance of this differentiation between the Gazetted and non-gazetted railway servants for the purpose of imposing penalties was necessary or, otherwise, these rules should be suitably amended so as to do away with such differentiation.

9. * * * *

[*The representatives of the Ministry of Railways (Railway Board) then withdrew.*]

10-19. * * * *

The Committee then adjourned.

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* Omitted portions of the Minutes are not covered by the First Report. The relevant portions of the Minutes of the Twenty-fourth sitting were appended to the Fourth and Fifth Reports of the Committee (Fourth Lok Sabha).

MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION, FIFTH LOK SABHA (1971-72)

The Committee met on Wednesday, the 9th June, 1971 from 15.30 to 16.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri H. K. L. Bhagat
3. Shri M. C. Daga
4. Shri Dharnidhar Das
5. Shri T. H. Gavit
6. Shri Subodh Hansda
7. Shri M. Muhammad Ismail
8. Shri D. K. Panda
9. Shri R. R. Sharma

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Chairman welcomed the members of the Committee and explained to them broadly the scope and functions of the Committee (Annexure).

3. The Committee then adjourned to meet again at 15·30 hours on Wednesday, the 30th June, 1971.

ANNEXURE

(*vide* para 2 of the Minutes)

ADDRESS BY THE CHAIRMAN TO THE MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1971-72)

(9-6-1971)

Friends,

It gives me great pleasure to welcome you to this first meeting of the Committee on Subordinate Legislation of the Fifth Lok Sabha.

2. In a welfare State like ours, legislation that has to be undertaken by Parliament is so vast and varied that it is practically impossible for Parliament to lay down all the details. Apart from 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 leave details to be worked out by the Government.

3. As has been aptly observed, rules and regulations framed by the Executive provide, as it were, flesh and blood to the statutes. There is, however, a danger that the Executive might assume powers and exercise jurisdiction which might not have even been conferred on it. Therefore, the need for Parliament to provide safeguards against the risks inherent in subordinate legislation.

4. 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 Act 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 keeps a watch over such legislation through a scrutiny committee which reports 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 the privilege to work.

5. We shall have to see whether the authority delegated by Parliament in the statutes has been properly exercised to the extent

permissible and in the manner envisaged. We shall be making our reports to Lok Sabha from time to time.

6. The broad principles which are to govern the work of the Committee are enshrined in Rule 320. In addition, the Committee have over the years evolved some further guiding principles. To mention some of these:

(i) The Committee not only see that the subordinate legislation does not transgress the limits laid down in the parent law but that it also conforms to the principles of natural justice.

(ii) Sometimes, in pursuance of a public policy, wide discretionary powers have to be vested in the Executive. It is in such cases that the Committee have to be particularly on the guard against, what Sir Cecil Carr termed as, the "germ of arbitrary administration." The Committee have insisted upon providing for, to the extent possible, built-in safeguards in rules.

(iii) Sometimes, for ensuring compliance with the provisions of the law, the power of search and seizure has to be vested in the Executive. The Committee have desired that in all such cases, not only the minimum rank of the Government Officer empowered to exercise the power should be specified but that such safeguards as presence of witnesses, preparation of inventories and giving a copy thereof to the persons concerned should be provided for in the Rules.

(iv) It is a well-known maxim that no fee can be levied under a rule unless the parent Act expressly authorises such a levy. However, the Committee have from time to time come across cases where fees had been levied under the rules without an express authorisation in the parent law. I am glad to inform that in all these cases, on an objection from the Committee, necessary corrective action was taken by Government.

(v) There is another well known maxim that a delegate cannot sub-delegate his legislative power unless there is an express authorisation to that effect in the parent law.

As we come across new problems, new solutions are to be found and new guide-lines evolved; and this is a continuous process.

7. Our objective is implementation of the will of Parliament and our efforts would be complementary. Sometimes in their eagerness to discharge their duties more expeditiously and effectively, the Executive may commit mistakes. This Committee act as a watchdog over the exercise of rule-making powers by the Executive.

Thank you.

MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION, FIFTH LOK SABHA (1971-72)

The Committee met on Wednesday, the 30th June, 1971 from 15.30 to 16.30 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri H. K. L. Bhagat
3. Shri M. C. Daga
4. Shri T. H. Gavit
5. Shri Subodh Hansda
6. Shri M. Muhammad Ismail
7. Shri D. K. Panda
8. Shri P. V. Reddy
9. Shri R. R. Sharma

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary*

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered Memoranda Nos. 1 to 5 on the following subjects and 'Orders':—

Memo. No.	*Subject*
1.	The Railway Servants (Discipline and Appeal) Rules, 1968 (S.O. 3181 of 1968).
2.	New Application form for telephone connections.
3.	Northern Rice Zone (Movement Control) Order, 1968 (G.S.R. 623 of 1968).

4. Central Excise (Ninth Amendment). Rules, 1969 (G.S.R. 1615 of 1969).

5. Making of provisions in the Indian Railways Act, 1890 for publication of Rules and regulations framed thereunder in the Gazette and laying them before Parliament.

(i) *The Railway Servants (Discipline and Appeal) Rules, 1968 (S.O 3181 of 1968)*

3. It was noticed that sub-rule (2) of rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 (S.O. 3181 of 1968) provided for imposition of certain penalties, *viz.*, (i) withholding of the privilege of Passes or Privilege Ticket Orders or both; and (ii) fine, on the non-gazetted railway servants only.

4. The matter was taken up with the Ministry of Railways (Railway Board) who in their reply dated the 15th January, 1971, *inter alia*, stated as follows:

> "......so far as the minor penalty of 'withholding of privilege of Passes or Privilege Ticket Order or both' is concerned, the Railway Ministry have decided that this penalty, which is at present applicable only to non-gazetted staff, should be made applicable to gazetted officers also."

As regards the penalty of 'fine', the Ministry stated:

> "......It was understood that this penalty is being imposed only on non-gazetted staff in some other organisations, such as in P. & T. Department and the Ministry of Defence ....the only difference being that, according to the railway rules 'fine' can be imposed on *all* non-gazetted staff (including those who are not governed by Payment of Wages Act but excluding those who are utilised on clerical job), whereas in the P. & T. Department and in the Ministry of Defence, 'fine' can be imposed only on certain non-gazetted staff governed by the Payment of Wages Act."

The Ministry further stated:

> "Under the Payment of Wages Act, a fine not exceeding 1|32 portion of the wages due in a wage period can be imposed on an employee for committing any of the acts and ommis-

sions, mentioned below, within a period of 60 days and after giving him a show-cause notice:—

(i) Disregard or disobedience of orders.

(ii) Insubordination and breaches of discipline.

(iii) Late or irregular attendance.

(iv) Improper behaviour such as drunkenness, quarrelling or sleeping on duty.

(v) Incivility or causing inconvenience to the public.

(vi) making false or misleading statements.

(vii) Inefficient, dilatory, careless, wasteful, dangerous or obstructive working.

(viii) Malingering.

(ix) Failures to observe rules and regulations and not involving more severe disciplinary action.

(x) Causing loss of or damage to Railway property where the full or partial loss is not recovered under Section 7(2)(c) of the Payment of Wages Act, 1936.

The above acts and omissions are of such a nature as are generally committed by the employees in the lower cadres and even the senior non-gazetted staff normally do not commit them. These acts and omissions also generally do not merit more severe disciplinary action and the imposition of a mere fine would meet the ends of justice. In view of these considerations and also the fact that this punishment exists in some other Government organisations in the case of non-gazetted staff only, the Railway Ministry consider that the differentiation between the gazetted and non-gazetted staff in the matter of imposition of penalty of fine existing on the Railways may continue.

The Railway Ministry have, however, decided that the penalty of fine should be imposed only on such non-gazetted railway servants as are governed by the Payment of Wages Act and for such acts and omissions as are notified under the said Act, but not on those railway servants who are exclusively employed on clerical work. When this is done, the position on the Railways in the matter of imposition of fines will, more or less, be on par with that obtaining in the P. & T. Department and the Ministry of Defence."

5. The Committee noted with satisfaction that the Ministry of Railways (Railway Board) had decided to impose the penalty of 'withholding of privilege of Passes or Privilege Ticket Order or both' on the gazetted officers also, which would eliminate the diffe-

rentiation between the Gazetted and non-gazetted railway staff in this regard

6. As regards the penalty of 'fine', the Committee considered the matter at some length and arrived at the view that such distinction between the gazetted and non-gazetted in the matter of penalty of fine should not be allowed.

(ii) *New Application Form for Telephone Connections*

7. Prior to 1970, there was no prescribed form for making application for a telephone connection. Any letter on plain paper asking for a telephone connection was taken as an application for registration on the waiting list. A declaration giving essential detailed particulars of the subscriber was taken subsequently from the applicant at the time of giving the connection to the effect that the applicant will abide by the Indian Telegraph Rules.

8. In 1970, the Department of Communications introduced a new application form for telephone connections which could be obtained on a payment of Rs. 10/-. The new application form was required to be filled in not only by new applicants but also by the existing applicants on the waiting list. The latter category of applicants were given a period of three months for filling in new application form, failing which, their applications were to be treated as fresh applications. The aforesaid amount of Rs. 10/- was neither refundable nor adjustable.

9. The P&T Board, with whom the matter was taken up, gave the following background for the introduction of the new application form:

> "A Committee known as 'Telephone Committee' was set up by the Government in April, 1966 for making a sample survey of the Commercial work of the Telephone Department and to examine the existing procedures for suggesting changes for giving telephone connections in order to minimize the scope for corruption or mal-practices. Besides three Government officers, three Members of Parliament were also associated with this Committee.

It was observed by this Committee that the waiting list for telephone connections was somewhat unrealistic as:

(a) There were persons who got themselves registered but did not care to take telephones.

This not only entailed unnecessary work but made future planning of telephone systems rather unrealistic.

(b) Some manipulations were noticed concerning the dates of priorities.

The Committee was, therefore, of the view that as the Department was not in a position to meet the full demands from the public for new telephone connections in the foreseeable future, the Department might consider the desirability of prescribing a deposit at the time of registration of an application for a telephone connection to ensure that persons apply for telephones only if in genuine need of the same. It was recommended by the Committee that an applicant for a new telephone connection should be required to register the demand for the telephone in a standard prescribed form, machine numbered and issued on payment of Rs. 25/-. The P. & T. Board on considering this recommendation, decided to introduce a standard application form as suggested by the Committee throughout the country. It was decided that the form will be machine numbered and will be supplied on payment of Rs. 10/- which will not be refundable or adjustable. It was also decided in accordance with the recommendations of the Committee that all the existing applicants on the waiting list will also be required to fill the new application form within a period of three months, in which case their original dates of registration will remain unchanged for the purpose of priority."

10. As regards the statutory or executive power under which the aforesaid amount of Rs. 10/- per application form was being charged by the Department, the P. & T. Board had stated as follows:—

> "Indian Telegraph Rule 414 provides that the application for provision of telephone and other similar service or for alteration to any existing service shall be made in writing and in such form and manner as may, from time to time, be prescribed by the Telegraph Authority. The introduction of the standard application form prescribed above has been made under the above-mentioned statutory power vested in the Telegraph Authority *i.e.,* Director-General Posts and Telegraphs."

11. The Committee noted that while rule 414 of the Indian Telegraph Rules, 1951, authorised the Telegraph Authority to introduce a new application form, it did not confer on that authority any power to levy a charge therefor. The Committee felt that for charging the amount of Rs. 10|- per application form, there should have been an *express* provision in the Rules, backed by an *express* authorisation in the parent law. The P. & T. Board had also not indicated any provision in the Act from which the power to make the above

charge flowed. The Committee felt that if the Department wanted to continue the above charge, the proper course for them was not only to amend the Rules to the necessary effect but also to ensure that an express authorisation for its levy was provided for in the parent law.

(iii) *Northern Rice Zone (Movement Control) Order,* 1968 (*G.S.R.* 623 *of* 1968)

12. Clause 5(1) of the Northern Rice Zone (Movement Control) Order, 1968, provided that any Police Officer not below the rank of Head Constable and *'any other person'* authorised by the State Government concerned or the Central Government "may", with a view to securing compliance with the Order, carry out search/seizure or authorise 'any person' to carry out search|seizure.

13. The attention of the Ministry of Food and Agriculture, Community Development and Cooperation (Department of Food) was invited to the recommendation of the Committee on Subordinate Legislation contained in paragraph 15 of their Fifth Report (3rd Lok Sabha), wherein they had urged Government to specifically state in the relevant Order that a Government servant not below a specified rank or equivalent officer might be authorised to conduct searches and seizures etc.

14. The Committee considered the following reply of the Ministry of Food and Agriculture, Community Development and Cooperation (Department of Food):

> "The expression 'any other person' used in clause 5 of the Northern Rice Zone (Movement Control) Order, 1968 does not mean that persons other than officers of the Government can also be authorised to enter and search premises and seize rice and other articles specified in clause 5(iii) of the Order. In fact, the Governments of the States and Union Territories comprising the Northern Rice Zone have issued separate notifications, in exercise of the powers conferred on them by clause 5 of the Order, in which the officers who may exercise the powers conferred by clause 5, have clearly been specified. Two such *notifications, one issued by the Government of Haryana and the other by the Delhi Administration, are enclosed. It will be seen therefrom that there is no arbitrariness in the exercise of the powers conferred by clause 5 of the Order. These notifications have been pub-

*Notifications not printed.

lished in the respective official gazettes for the knowledge of the public. The concerned State Governments who are exercising these powers will no doubt take care to see that only responsible officers who are associated with the implementation of the provisions of the Order, exercise these powers, and that notifications specifying such officers are published in the official gazettes.

It will be seen, therefore, that in practice there is no arbitrariness in the exercise of the powers of entry, search and seizure conferred by the Order. It may also be pointed out that an amendment to the Order as suggested by the Committee will present some practical difficulties. As regards police officers the rank is given in the authorisation clause itself. As regards non-police officers, their designation, nomenclature and rank differ from State to State. It will also be difficult to equate the ranks of different enforcement personnel functioning in the different States to arrive at the minimum rank of such personnel for the purposes of the clause. If the Committee is of the view that the minimum rank of the enforcement personnel should be indicated in spite of these practical difficulties, particulars will be collected from the different States and further action by way of amendment will be taken."

15. The Committee felt that the fact that any of the State Governments/Union Territories had vested this power only in responsible officers did not take away the need for a built-in safeguard repeatedly recommended by them.

16. The Committee also noted that under the 'Order', as worded, not only the Head Constable and the persons authorised by the Central/State Governments had been empowered to carry out searches|seizures but they had been further empowered to authorise 'any person' to exercise these powers. In their view, such further authorisation was as much against the spirit of the recommendation of the Committee as non-indication of the minimum ranks of the persons initially authorised to exercise these powers. The Committee desired that not only the minimum ranks of officers to be authorised by Central|State Governments to conduct searches|seizures should be specifically given in the Rules but the provision for further authorisation be omitted therefrom.

(iv) *Central Excise (Ninth Amendment) Rules, 1969* (*G.S.R.* 1615 *of* 1969)

17. Sub-rule (2) of Rule 40A of the Central Excise Rules, 1944, as inserted by the Central Excise (Ninth Amendment) Rules, 1969, provided that any person who contravened sub-rule (1) of that Rule "shall, in respect of every such offence, be liable to pay the differential duty calculated in accordance with sub-rule (1) and to a penalty which may extend to two thousand rupees."

There was no indication in the above rule that an opportunity of being heard would be given to an assessee before penalty was imposed on him under sub-rule (2) of rule 40A, *ibid.*

18. The Ministry of Finance (Department of Revenue and Insurance) who were requested to clarify the position on the above point stated as under:—

> "....Rule 40A of the Central Excise Rules, 1944 is worded in the same manner as several other rules such as Central Excise Rules 32, 40, 52A, 226 etc. It can be seen therefrom that none of these rules mention that any opportunity of being heard will be given to a party before any penalty is imposed or any confiscation is adjudged. But this does not imply that such an opportunity will be denied and an *ex-parte* order imposing a penalty or adjudging confiscation will be issued. Before a penalty is imposed or confiscation of the goods is ordered, it has to be established through a quasi-judicial process of adjudication that a contravention of the rule(s) has occurred. Principles of natural justice have to be conformed to. This requires that the person concerned must know the allegations against him and the evidence on which they are based and an adequate opportunity to meet those allegations should be given to him. To serve this purpose, it has been stipulated through departmental instructions in force that Show-Cause Notices should be issued to the parties and they should be given reasonable opportunity to controvert the evidence on which the proposed action rests. Further there is also provision for testing such adjudication orders passed by an authority through appeals and revision applications to the higher authority and the Central Government respectively *vide* sections 35 and 36 of the Central Excise Act.

In view of the foregoing, it may be appreciated that the question of amending rule 40A (2) of the Central Excise Rules, 1944 does not arise."

19. The Committee were not satisfied with the argument advanced by Government that although there was no provision in the Rules for affording an opportunity of being heard, the purpose was served by departmental instructions. The Committee felt that departmental instructions could hardly be a proper substitute for a built-in legal safeguard. They also noted that departmental instructions were not published in the Gazette for the information of the general public as Rules were.

(v) *Making of provisions in the Indian Railways Act,* 1890 *for publication of Rules and regulations framed thereunder in the Gazette and laying them before Parliament.*

20. In a representation, dated the 23rd March, 1970 from Shri Chandra Prakash Agrawal forwarded to the Committee on Subordinate Legislation by Shri Mohan Swarup, M.P., it was *inter alia* pointed out that:—

(i) Rules and regulations framed under the various provisions of the Indian Railways Act, 1890 (9 of 1890), pertaining to booking of goods, levy of fee and charges and other matters were not published in the Gazette; and

(ii) in the absence of the 'laying provision' in the said Act, the rules and regulations framed thereunder were not laid before Parliament.

21. The Committee perused the following reply of the Ministry of Railways (Railway Board) on the above points:—

"......Sections 27, 29 and 42 of the Indian Railways Act deal with the booking of goods and the levy of fee and charges and other allied matters. While Section 27 of the Act defines the duty of Railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality, section 29 thereof empowers the Central Government to fix maximum and minimum rates of freight or any other charges for the whole or any part of the Railway and prescribe the conditions in which such rates or charges shall apply. Similarly, Section 42

lays down the powers of the Central Government to classify or re-classify any commodity and to increase or reduce the level of class rates and other charges.

'There is no specific stipulation under these sections of the Act, which require the rules and regulations issued thereunder to be published in the Official Gazette, or laid on the Table of the Sabha. These rules are, however, brought to the notice of the public through the Rates Circulars, Advices and Press Notifications, issued by the Railway Administrations from time to time. As required under Section 60 of Indian Railways Act, rates governing traffic other than passengers and their luggage are made available to the public for reference, free of charge at stations dealing with such traffic.

'The proposal to make a suitable provision in the Indian Railways Act for the publication of the rules and regulations in the Official Gazette and requiring placement of the same on the Table of the Sabha is not considered necessary or essential, as, besides presenting administrative difficulties, such action will not, in any way, make it easier for the public to get a wider access to them."

22. The Committee noted that apart from the rules and regulations framed under Sections 27, 29 and 42 of the Indian Railways Act, the rule-making power had also been vested in Government under Sections 22, 47, 71E, 82J and 84 of the said Act. Only one of these Sections, *viz.*, Section 82J provided for both publication of the rules in the Gazette and their laying before Parliament. Section 47 provided for publication of the Rules in the Gazette but not for their laying before Parliament. The other Sections provided neither for publication nor for their laying.

23. After discussing the matter at some length, the Committee felt that, with a view to enabling Parliament to exercise control over subordinate legislation, it was essential that the Rules framed under the provisions of the Indian Railways Act should not only be published in the Gazette but also laid on the Table of the House. They, therefore, decided to urge Government to amend the Indian Railways Act, 1890 to this end.

The Committee then adjourned to meet again at 15.30 hours on Thursday, the 22nd July, 1971.

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION, FIFTH LOK SABHA (1971-72)

The Committee met on Thursday, the 22nd July, 1971 from 15.30 to 16.30 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri H. K. L. Bhagat
3. Shri M. C. Daga
4. Shri Samar Guha
5. Shri Subodh Hansda
6. Shri M. Muhammad Ismail
7. Shri D. K. Panda
8. Shri R. R. Sharma
9. Shri Tulmohan Ram.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered Memoranda Nos. 6 to 8 on the following subjects and 'Orders':—

S. No.	Memo No.	Subject
(i)	6	Central Reserve Police Force (Fourth Amendment) Rules, 1968 (G. S. R. 373 of 1968).
(ii)	7	Indian Forest Service (Recruitment) Amendment Rules, 1969 (G. S. R. 976 of 1969).
(iii)	8	Border Security Force Rules, 1969 (S. O. 2336 of 1969).

(i) *Central Reserve Police Force (Fourth Amendment) Rules, 1968 (G.S.R. 373 of 1968) (Memorandum No. 6)*

3. (i) Rule 36C of the Central Reserve Police Force Rules, 1955, as inserted by the aforesaid G.S.R., provides that notwithstanding the provisions of Chapter XV of the Code of Criminal Procedure, 1898, the Commandant or the Assistant

Commandant may try an offence *in any place whatever* with due regard to the convenience of parties.

(ii) Rules 36G and 36I, *ibid.* empower the Central Government to determine the court before which proceedings in respect of an accused should be instituted or continued in cases where there is a difference of opinion between a Magistrate and a Commandant or Assistant Commandant in this regard. Under the former Rule, the Central Government can direct the Magistrate to deliver the accused to the Commandant or Assistant Commandant and the Magistrate shall accordingly deliver the accused to such Commandant or Assistant Commandant.

4. It was suggested to the Ministry of Home Affairs that the provisions contained in the above Rules should either form part of the parent Act or have an express authorisation therein. It was pointed out to the Ministry in this regard that for similar matters, there were express provisions in the Border Security Force Act (*vide* Sections 79 and 81).

5. In their reply, the Ministry of Home Affairs *inter alia*, stated as follows:—

"It is of the utmost importance that an Act which governs a force which is armed with highly lethal weapons and which may often have to act under grave stress and strain in places far away from where the ordinary avenues of maintenance of law and order and suppressing disorder are not available should have an inbuilt provision of dealing drastically with any serious offences of indiscipline, lest mutiny and more serious offences may take place. The legislature realised the wisdom of conferring powers on the Commandants to act ......independently and swiftly against erring members of the Force so as to nip the mischief in the bud......

......So far as rule-making powers are concerned, not only section 16(2) but the sweeping provision of section 18(1) as amplified in section 18(2) may be referred to........ Awarding of punishment for offences pertaining to indiscipline committed by the members of the Force is clearly one of the provisions of the Act by which the duty cast on the Central Government of superintendence and control over the Force is to be discharged. Section 18(2) of the Act makes it further clear that rules can be made for '(b) regulating the powers and duties of the officers authorised

to exercise any function by or under this Act, and (f) for the disposal of criminal cases arising under this Act and for specifying the prison in which a person convicted in any such case may be confined'.

Rules 36C, 36G and 36I clearly fall within the ambit of clause (f) of section 18(2) in so far as these are for the purposes of disposal of criminal cases arising under this Act...... In case, reference is made to the opening words of sub-section (2) of section 16 *i.e.* 'notwithstanding anything contained in the Code of Criminal Procedure, 1898', there is nothing objectionable in this rule. Indeed if such a provision were absent, it would make impossible in several cases to deal with delinquents of the Force because as is well known, the Force is highly mobile and there are instances when in the course of a week or 10 days, a whole battalion may have traversed across the whole length and breadth of the country-movements taking place by air as well.

If insistence on provisions of section 177 of the Code of Criminal Procedure were to be made, then it might encourage members of the Force to defy authority and indulge in indiscipline in the knowledge that most often it would not be possible for Commandants and Assistant Commandants to hold the trial in terms of section 177 of the Code of Criminal Procedure. The duty cast on the Central Government of maintaining discipline in a Force armed and equipped with such highly lethal weapons as the CRPF is, would thus be jeopardised. The need for retaining rule 36C is, therefore, patent. So far as the legality of this provision is concerned, it flows directly from the amplified authority of rule making given in section 8(1), 18(1), and 18(2) (b) and (f) of the Act. No issue can be joined that rule 36C is actually meant for disposal of criminal cases arising under this Act as is specifically provided for in section 18(2) (f) of the Act. The rule is thus founded on more than ample statutory authority.

For appreciating the provisions of rules 36G and 36I, it has to be seen that there are two tribunals of equal competence which can take cognizance of offences committed by members of the Force under the Act. One is the normal criminal tribunal that is the prescribed judicial Magistrate having jurisdiction under Section 190(1) of the Code of Crimi-

nal Procedure and the other is the Commandant or an Assistant Commandant as Magistrate, as provided for in section 16(2) of the Act and the Rules.

......Because of the duality of the jurisdiction, conflict is likely to arise between the two tribunals deriving authority from two different statutes and hence the disposal of the criminal case may reach a stalemate. This would be highly deleterious to discipline among members of the Force and any controversy between the Force and the Magistracy on the question of jurisdiction would be unbecoming between the two organs of the State. It is, therefore, in keeping with the provisions of this Act *i.e.* to carry out the purpose of maintaining the Force and to maintain the control of the Central Government over the Force that provision of the type as given in rules 36G and 36I had to be made in the rules. Since the ultimate authority which can exercise superintendence and control over the Force is the Central Government, the discretion is given also to the highest authority namely the Central Government itself to decide—in cases of difference of opinion between Commandant, Assistant Commandant and a Magistrate—whether the trial of an offence under the Act should take place in the Court of the Magistrate appointed under the Code of Criminal Procedure or in the Court of Commandant or Assistant Commandant who is appointed as a Magistrate under Section 16(2) of the Act.

......It is doubtful if we can say that these provisions are of a substantive character. In our view provisions of substantive character are the provisions which vest in the Central Government responsibility of maintenance and control over the Force and its administration in accordance with the provisions of the Act and Rules through such officers as the Central Government may from time to time appoint in this behalf. Again substantive legislation are definition of various offences and provisions of punishment therefore; the conferment of magisterial powers on commandants; and the rule-making power contained in sections 18(1) and 18(2) (f) for disposal of criminal cases arising under this Act. Lastly the substantive part of legislation would be the mode of trial. This does not change when an offence is tried by a Commandant and he has to follow the same procedure as a judicial Magistrate would in trial conducted by him. The locality of a trial is not its important part when the trial is entrusted to a domestic tribunal......

Similarly there is nothing substantial in rules 36G and 36I as these only confer powers on Assistant Commandants and Magistrates to require the holding up of an inquiry or trial till orders as to the appropriate forum in which the same should be held is decided by the Central Government. These rules again flow expressly if not from any other rule than at least from the language of Sections 18(1) and 18(2) (f)......

It is true that there are provisions in the Rules similar to provisions in the BSF Act and for that matter in the Army, Navy and Air Force Acts as well but the existence of such provisions in the other Acts is not decisive of the question under consideration. What is decisive is the provisions in section 18(2) (f) and the scheme of Act *i.e.* the responsibility of the Central Government 'to maintain the CRPF and carry out supervision and control over it through such officers as it may appoint in accordance with the Act and Rules' and the clear enunciation that the powers to be exercised by the Commandants as Magistrates are 'notwithstanding anything contained in the Code of Criminal Procedure' as given in Section 16(2) of the Act.

The BSF Act and the Army Act are very different from the CRPF Act in that under the former two Acts even civil offences *i.e.* any offence which is triable by any criminal court is triable under the Security Force Courts or by Courts Martial and the jurisdiction of ordinary courts in regard to civil offences can also be ousted. This is very different from the provisions of the CRPF Act under which only offences committed under the Act by members of the Force or offences committed against person or property of another member can be tried by Commandants or Assistant Commandants as Magistrates. A commandant cannot take cognizance of other civil offences committed by members of the Force."

In conclusion, the Ministry of Home Affairs stated that for the reasons mentioned above, the Rules in question 36C, 36G and 36I—did not need modification.

6. The Committee observed that the pre-fixation of the words "Notwithstanding the provisions of Chapter XV of the Code of Criminal Procedure, 1898" in Rule 36C sought to make the provisions of this Rule of an over-riding nature. Similarly, the powers conferred on the Central Government under Rules 36G and 36I could be

so exercised as to over-ride the provisions of the Code of Criminal Procedure. They, therefore, found it difficult to agree with the Ministry's view that there was nothing substantial in the provisions of Rules 36C, 36G and 36I.

The Committee felt that while the provisions of an Act might over-ride the provisions of an earlier Act, the Executive, in exercise of their rule-making power, could not over-ride the same unless the latter statute expressly authorised them to do so. The Committee were, therefore, of the view that the aforesaid provisions should form part of the parent Act, or in the alternative, there should be a specific authorisation therefor in the Act. The Committee noted in this regard that similar provisions formed part of four other Acts— Border Security Force Act, Army, Navy and Air Force Acts.

(ii) *Indian Forest Service (Recruitment) Amendment Rules,* 1969 (*G.S.R.* 976 *of* 1969) (*Memorandum No.* 7)

7. Clause (a) of sub-rule (2) of Rule 6A of the Indian Forest Service (Recruitment) Rules, 1966, as substituted by the Indian Forest Service (Recruitment) Amendment Rules, 1969, empowered State Governments to postpone the appointment of an Officer in the junior time-scale of pay to a post in the senior time-scale of pay till he passed the prescribed departmental examination or examinations and '*promote his juniors to such a post*'.

8. There was no stipulation in the above clause that only those juniors would be promoted under this clause who had passed the departmental examination or examinations. The Cabinet Secretariat (Department of Personnel) who were requested to clarify the intention of the clause, stated as follows:—

> "......Rule 6A of the Indian Forest Service (Recruitment) Rules, 1966, has since been substituted by the Indian Forest Service (Recruitment) Second Amendment Rules, 1971, *vide* this Department's Notification No. 3|15|70AIS(IV), dated 26th April, 1971. It would be seen that even the revised rule 6A of the said Rules provides for the postponement of the promotion of a direct recruit to the senior scale till he passes the departmental examination(s) and for the promotion of his juniors to such a post. The intention in having such a provision is that an officer who is junior and who has passed the prescribed departmental examination(s) can be given the promotion even prior to his senior who has not cleared such examinations. This provision has been included with a view to enabling the State Governments to postpone the promotion of an officer

who has not passed the departmental examinations but promote his juniors who have already qualified in such examinations. However, the amended rule will not enable a State Government to postpone the promotion of senior officer but promote his junior who has also not qualified in the departmental examination, in view of the fact that amongst officers similarly placed, the senior officer has a right of promotion to the senior scale *vis-a-vis* his junior. Further, promoting a junior officer who has not qualified in the departmental examination while such promotion of the senior officer is postponed for the reason that he has not qualified in the examinations, will amount to discrimination from amongst officers similarly placed and is against the provisions of Articles 14 & 16 of the Constitution.

In view of the fact that the revised rule 6A makes the position very clear, it is not considered necessary to amend this rule further."

9. The Committee noted that even though the intention of Government was that only those junior officers should be promoted in supersession of their seniors who had passed the prescribed departmental examination or examinations, no stipulation to this effect had been made even in the revised rule. The Committee desired that the rule in question should be amended so as to spell out its intention in clear and unmistakable terms, leaving no margin for doubt.

(iii) *Border Security Force Rules*, 1969 (*S.O.* 2336 *of* 1969) (*Memorandum No.* 8)

(*A*)

10. Rule 6 of the Border Security Force Rules, 1969 reads as follows:—

"In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as may be just and proper in the circumstances of the case."

11. It was felt that even though Section 141(2)(O) of the Border Security Force Act, 1968 empowered the Government to make rules in regard to any matter in respect of which no provision had been made in the Act, or insufficient provision had been made in the Act, it did not seem to confer power on Government to make an omnibus provision like that contained in Rule 6.

12. The Ministry of Home Affairs to whom the matter was referred for elucidation stated as under:—

"Rule 6—The rule has been made in pursuance of section 141(2) (O) of the Border Security Force Act, 1968 which specifically provides that rules may be made for matters unprovided for in the Act. This Ministry have tried to make provisions in regard to all matters that we could think of but in the case of an armed Force of the nature of the Border Security Force which has been given very wide responsibility for the protection of borders of India, all contingencies cannot possibly be contemplated. Therefore, the necessity for making Rule 6 in terms of powers conferred by section 141(2) (O) of the Act arises. In making this rule we have not enlarged the powers of any existing authority. All that we have provided is that such authority, while exercising the powers which it already possesses should act in a just and proper manner if no procedure has been laid down for the exercise of those powers. As such in our opinion it confers no new power much less a power of an over-riding nature; it only deals with unforeseen contingencies and provides that the authority concerned should exercise the power it already possesses in a fair and proper manner."

13. The Committee were not satisfied with the Ministry's reply and felt that the provisions of Rule 6 were of too sweeping a nature. After considering the matter at some length, they decided to hear the views of the representatives of the Ministry of Home Affairs in the matter.

(B)

14. Rule 170 of the Border Security Force Rules, 1969 states that a court of inquiry shall consist of an officer as presiding officer and at least two members who may be either officers or subordinate officers or both.

15. The Ministry of Home Affairs who were requested to clarify whether under this rule, an officer of the same rank or a rank lower than that of the officer being proceeded against could also be appointed as a member of the court of inquiry stated as follows:—

"RULE 170: A court of inquiry shall consist of an officer as presiding officer and at least two members who may be either officers or subordinate officers or both. Although

> legally there is no bar under the aforesaid Rule for the appointment of an officer of the same rank or a rank lower than that of the officer being proceeded against as a member of the court of inquiry, it is not our intention to appoint any officer junior to the one being proceeded against as a member of the court of inquiry."

16. The Committee noted that under the Rule in question, there was no bar to the appointment of an officer of the same rank or a rank lower than that of the officer being proceeded against as a member of the court of inquiry. In the opinion of the Committee, it was wrong in principle to appoint a junior officer to go into the conduct of a senior officer; for, apart from the fact that such an inquiry could not command the confidence it deserved, it was apt to put both the inquiry officer and the officer being proceeded against in an embarrassing position. The Committee, therefore, felt that, in the interest of both justice and propriety, officers who were sufficiently senior to the officer being proceeded against should be appointed to the court of inquiry. The Committee decided to urge Government to amend the rule in question in the light of the above views of the Committee.

The Committee then adjourned to meet again at 15.30 *hours on Thursday, the* 5th *August,* 1971.

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION, FIFTH LOK SABHA (1971-72)

The Committee met on Thursday, the 5th August, 1971 from 15.30 to 16.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri Dharnidhar Das
4. Shri Samar Guha
5. Shri M. Muhammad Ismail
6. Shri V. Mayavan
7. Shri D. K. Panda
8. Shri P. V. Reddy
9. Shri R. R. Sharma.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered their draft First Report and adopted it.

3. The Committee authorised the Chairman and, in his absence, Shri Salehbhoy Abdul Kadar to present the Report to the House on their behalf on the 10th August, 1971.

The Committee then adjourned to meet again on the 3rd September, 1971.

MGIPND—LSII—1936 LS—21-9-71—850.