C.B. II No. 255-Vol. III

COMMITTEE
ON
SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

THIRD REPORT

(Presented on the 17th May, 1972)

LOK SABHA SECRETARIAT
NEW DELHI

May, 1972/Vaisakha, 1894 (Saka)
Price : Re. 1.50 Paisa

LOK SABHA SECRETARIAT

Corrigenda to the Third Report of Committee on Subordinate Legislation (Fifth Lok Sabha).

Page	Para	Line	For	Read
(i)	item VII	3	Class	Class II
(iii)	Sl.No.7	-	Shri T.R. Gavit	Shri T.H. Gavit
2	6	5 from bottom	has	had
2	footnote	1	ou Legisative	on Legislation
4	12	7	circums-tancs	circumstances
4	-	10 from bottom	Prefix '13' word 'In'	before the
8	23	5	Eub-Commi-ttee	Sub-Committee
10	30	9	Provident	Provided
12	39	5	simlutae-ously	simultaneously
13	42	14	legilsation	legislation
13	42	2 from bottom	earler	earlier
17	footnote	2	- Personal	Personnel
18	-	17	proceedings	proceedings
20	64	8	serviced	served
22	-	last line	person	persons
23	Col.3	4	seizers	seizures
23	Sl.No.2	1	22	14
24	Sl.No.4	1	note that	note with

Page	Para	Line	for	Read
24	Sl.No.4	4	Rule,	Rules,
25	Sl.No.10	2	Regulation	to Regulation
25	Sl.No.11(i)	2	56(J)	56(j)
26	Sl.No.11(ii)	2	under the	under this
26	Sl.No.11(ii)	16	56(J)	56(j)
27	-	3	ascertain	assertion
27	Sl.No.11(iv)	6	inffective	ineffective
27	-	9	persued	perused
35	Sl.No.1	Col.4	S.S.3521	S.O.3521
51	9	25	punishmen	punishment
52	11	7	Justice.Law stated	Justice stated
53	15	2	ayears	years
53	15	13	retiring hm	retiring him
54	-	18	Manday	Monday
54	footnote	2	protiens	portions
55	2	4	Boarder	Border
55	4	12- 13	conducting	conducting
57	7	3	Governments and	Governments had
59	16	3	1968	1966
67	22	6	reasions	reasons

CONTENTS

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

Shri Vikram Mahajan—*Chairman.*

2. Shri Salehbhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri G. Bhuvarahan
5. Shri M. C. Daga
6. Shri Dharnidhar Das
7. Shri T. R. Gavit
8. Shri Samar Guha
9. Shri Subodh Hansda
10. Shri M. Muhammad Ismail*
11. Shri V. Mayavan
12. Shri D. K. Panda
13. Shri P. V. Reddy
14. Shri R. R. Sharma
15. Shri Tulmohan Ram

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

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

* Died on the 4th April, 1972

REPORT

I

INTRODUCTION

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

2. The Committee have held seven sittings—on the 1st October, 1st November, 1971, 3rd and 28th January, 22nd March, 6th and 20th April, 1972 and considered 521 'Orders'. The Committee also took evidence of the representatives of the Department of Personnel (Cabinet Secretariat) and the Ministry of Law and Justice (Department of Legal Affairs) regarding the provisions contained in Fundamental Rule 56(j) at their sitting held on the 1st November, 1971. The Committee considered and adopted this Report at their sitting held on the 20th April, 1972. The Minutes of the sittings which form part of the Report are appended to it.

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

II

THE RAJASTHAN FOODGRAINS (RESTRICTIONS ON BORDER MOVEMENT) ORDER, 1959

(G.S.R. 432 of 1959)

4. Clause 6 of the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 provided that any Police Officer not below the rank of the Head Constable and *'any other person'* authorised by the State Government "may", with a view to securing compliance with the Order, carry out search|seizure or authorise *'any person'* to carry out search|seizure.

5. The attention of the Ministry of Agriculture (Department of Food) was invited to the following recommendation of the Committee on Subordinate Legislation, contained in para 15 of their Fifth Report (3rd Lok Sabha):—

> "The Committee, after having considered the matter at some length, are of the view that it should specifically be stated

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

6. In their reply, the Ministry of Agriculture (Department of Food) stated as follows:—

"...the matter has been carefully examined. The words "any other person" and "any person" used in clause 6 of the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 do not mean that any and every employee of the State Government may exercise the power conferred by clause 6 of the Order. The Government of Rajasthan have issued notifications in pursuance of clause 6 of the Order in which the Officers who are competent to exercise the power of conducting searches and making seizures have been clearly specified. As far as the police Officers are concerned clause 6 of the Order itself specified the rank. In practice, therefore, there is no arbitrariness in the exercise of the power conferred by clause 6 of the Order.

An amendment to the Order as suggested by the Committee will present some practical difficulties. It may not be possible for the State Government to specify the same officers at all times to exercise the power conferred by clause 6 of the Order. For the sake of administrative convenience it may be necessary to change the officers at times. For the same reason, it will be difficult to lay down in the Order itself that only officers who are not below a certain specified rank shall exercise the power conferred by clause 6.

Some time back, the Committee on Subordinate Legislation has suggested a similar amendment to the Northern Rice Zone (Movement Control) Order, 1968. The practical difficulties in the way of carrying out such an amendment were pointed out in this Department's *O.M. No. 204(Gen)(1)|71-PY.II, dated the 24th April, 1971.

---

* *Vide* Para 2o of the first Report of the Committee ou Subordinate Legisative, (Fifth Lok Sabha).

If the Committee is still of the view that the Order should be amended as suggested by the Committee then necessary steps will be taken to amend the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 after consulting the Government of Rajasthan."

7. The Committee note that a similar reply had been received from the Ministry of Agriculture (Department of Food) in the case of the Northern Rice Zone (Movement Control) Order, 1968. The Committee were not satisfied with that reply and observed in para 21 of their First Report (Fifth Lok Sabha) that the fact that any of the State Governments|Union Territories had vested the power to carry out searches|seizures only in responsible officers did not take away the need for a built-in safeguard repeatedly recommended by the Committee. The Committee, therefore, again urge that the minimum rank of the persons to be authorised to carry out searches|seizures should be indicated in the Order itself.

8. The Committee also observe that, as under the Northern Rice Zone (Movement Control) Order, 1968, not only the Head Constable and the persons authorised by the State Government have been empowered to carry out searches|seizures but they have been further empowered to authorise 'any person' to exercise these powers. The Committee reiterate their earlier view* that the provision for such further authorisation is 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, therefore, desire that not only the minimum rank of the officers to be authorised by the State Government to conduct searches|seizures should be specifically given in the Rules but the provision for further authorisation omitted therefrom.

III

THE ENGINEERING SUPERVISORS (RECRUITMENT AND TRAINING) AMENDMENT RULES, 1969

(G.S.R. 36 of 1970)

9. The above-mentioned Rules added the following new rule to the Engineering Supervisors (Recruitment and Training) Rules, 1966:

"26. Power to relax—Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing, relax

* Para 22 of the first Report (Fifth Lok Sabha).

any of the provisions of these rules in respect of any class or category of persons or posts."

10. It was, however, noticed that though the Rules were published in the Gazette of India, dated the 10th January, 1970, they were deemed to have come into force on the 13th August, 1966.

11. The explanatory Memorandum to the Rules read as follows:—

"The Engineering Supervisors (Recruitment and Training) Rules, 1966, which were published with the Notification of the Government of India in the Department of Communications, Posts and Telegraphs Board in the Gazette of India, dated the 13th August, 1966 *vide* G.S.R. 1264, dated the 29th July, 1966, did not contain the clause on 'Power to Relax' which is a common feature of all recruitment rules. It is found from experience that it is necessary to have such clause so that the rules do not affect adversely certain classes of persons who need relaxation owing to peculiar circumstances. The relaxation clause has to be given retrospective operation from the date the original rules were gazetted.

2. It is hereby certified that giving retrospective effect to the aforementioned rule would not prejudicially affect the right of any person already in service."

12. The attention of the Ministry of Communications (Posts and Telegraphs Board) was invited to para 10 of the Second Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) which envisaged that retrospective effect to the Rules should be given only in unavoidable circumstances. The Ministry of Communications were, therefore, requested to state whether there were any such circumstancs in the present case.

In their reply, the Ministry of Communications (P & T Board) stated as follows:—

".....this retrospective effect to the new rule was given effect to on the specific advice of the Ministry of Law (Department of Legal Affairs—Advice (A) Section) in one of the cases wherein in the recruitment of 1967 a Scheduled caste candidate who did not fulfil the prescribed educational qualification, was erroneously selected and deputed for training. As per recruitment rules, a candidate must have Physics or Mathematics or both in his B.Sc. degree

examination. During the course of training it was detected that he had none of these subjects in his B.Sc. examination. When the case was referred to the Ministry of Law, for advice, they suggested that the proposed amendment be given retrospective operation and thereafter a relaxation may be issued in favour of the candidate regularising his selection in 1967 recruitment. As per their advice an order dated 6th March, 1970 was issued regularising selection of the candidate."

14. The Committee are not happy over the manner in which the authorities had acted in this case. They note that the authorities had appointed to the post of Engineering Supervisors a person who did not have the prescribed educational qualifications and later on, to regularise the irregularity, introduced the relaxation rule with retrospective effect. They are strongly of the view that the relaxation rule should not be used as an instrument of favouring individuals. They need hardly point out that under the Rule, as worded, the relaxation to be made by Government is to relate to classes or categories of persons as contradistinguished from individuals. The Committee feel the need for safeguards to ensure that the powers of relaxation vested in Government are not abused.

IV

THE PUBLIC PROVIDENT FUND SCHEME, 1968 (G.S.R. 1136 of 1968)

15. Paragraph 11(4) of the Public Provident Fund Scheme, 1968 provided that the interest on loans from the Public Provident Fund recoverable from the subscribers "shall accrue to the Central Government".

16. The Ministry of Finance were asked to state their views whether, having regard to the fact that the loans under the Public Provident Fund Scheme were paid out of the amounts standing to the credit of the subscribers, the interest thereon should not be credited to the subscribers' account on the analogy of the provisions contained in Rule 11 of the General Provident Fund (Central Services) Rules, 1960.

17. In their reply, the Ministry of Finance (Department of Economic Affairs) stated as follows:—

"We have carefully examined the suggestion made by the

Committee on Subordinate Legislation that as loans to PPF subscribers are paid only out of the amounts outstanding to their credit, the interest recovered thereon should not be retained by Government as provided in paragraph 11(4) of the Public Provident Fund Scheme, 1968 (G.S.R. 1136) and that an amendment should be made in the Scheme to provide for the credit of the interest so recovered to the subscriber's account on the analogy of the provisions contained in Rule 11 of the General Provident Fund (Central Services) Rules, 1960. It may be stated at the outset that the Public Provident Fund Scheme and the General Provident Fund Scheme are not identical. In the case of General Provident Fund, advances are sanctioned to Government servants only for certain—*specified purposes* whereas under the Public Provident Fund Scheme, loans can be given for —*any purpose*. Again, while, in the case of subscribers to the Public Provident Fund, some nominal payments ought to be recovered by Government from the loanees on account of extra labour involved in granting loans to them and keeping their accounts, the same may not be justified in the case of Government servants where it may be assumed that this service is rendered to them free of charge as a part of their service condition. It may also be stated here that even in the case of commercial banks if a person takes loans from a Bank he is charged interest normally at 1 per cent higher than the interest he gets on his fixed deposits. Even in the case of 15 Year Tax Free Post Office Cumulative Time Deposit Scheme, which is a near parallel, interest on withdrawals (advances) permitted to a holder and repaid during the currency of his account or adjusted on maturity of the account against the maturity value, the account holder is charged by Government at 6 per cent p.a. (simple) which is about 1 per cent above the rate of interest accruing on the account.

For reasons explained above, the retention of interest recovered on loans from the Public Provident Fund by Government is considered to be appropriate and justified. But it is agreed that there is need to review the quantum of the interest charges in comparison with similar provisions in other investments and other institutions. In view of this and having regard to the views of the Committee on Subordinate Legislation and in order to make

the Scheme attractive the rate of interest chargeable on loans under paragraph 11(2) of the Scheme is being reduced from two percent to one per cent. Necessary amendment to the Rules is being initiated."

18. In view of the above explanation of the Ministry of Finance, the Committee do not want to pursue the suggestion that interest on laons under paragraph 11(2) of the Public Provident Fund Scheme should be credited to the subscriber's account on the analogy of the provisions contained in Rule 11 of the General Provident Fund (Central Services) Rules, 1960. They note with satisfaction the decision of the Ministry of Finance to reduce the rate of interest chargeable on loans under paragraph 11(2) of the Public Provident Fund Scheme from two per cent to one per cent. They desire that necessary amendment to the Scheme to this effect should be made at an early date.

V

THE MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTIES) SECOND AMENDMENT RULES, 1968 (G.S.R. 603 OF 1968)

19. Rule 137A of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, as inserted by above mentioned G.S.R., read as follows:—

—"*Duplicates of documents may be granted on payment of fees.*—The proper officer may, on application, grant a duplicate of any certificate, licence, transport permit or other document issued to any person on payment of a fee of rupee one, and subject to such other conditions as may be imposed by the proper officer, if he is satisfied that no fraud has been committed or is intended by the applicant."

20. It was pointed out to the Ministry of Finance (Department of Revenue and Insurance) that, apart from the fact that empowering the proper officer to impose other conditions for the grant of duplicates might tantamount to sub-delegation, for which an express authorisation of the parent law was necessary, different conditions might be imposed by different officers, resulting in differential treatment from area to area.

21. In their reply, the Ministry of Finance (Department of Revenue and Insurance) stated as follows:—

".....After careful consideration of the matter, it has been decided to amend Rule 137A and delete the words' and

subject to such other conditions as may be imposed by the proper officer'. Necessary action to issue a notification in this connection is being taken."

The Ministry of Finance subsequently issued a Notification amending the Rule in question on the above lines (*vide* G.S.R. 1164 of 1971, published in the Gazette of India, Part II, Section 3(i) dated the 14th August, 1971.)

22. The Committee note with satisfaction that the Ministry of Finance have amended the Rule in question omitting the provision empowering the proper officer to impose other conditions for the grant of duplicates of documents.

VI

THE EMPLOYEES' PROVIDENT FUND (GRANT OF ADVANCE TO OFFICERS AND STAFF, OTHER THAN COMMISSIONERS FOR BUILDING/PURCHASING OF HOUSES) (SECOND AMENDMENT) RULES, 1968 (G.S.R. 143 of 1969).

23. There was no provision in the above rules for the grant of an advance from the Employees' Provident Fund for the purchase of a plot of land, whereas a provision was made therein for the grant of an advance for the purchase of a house, which included a flat. The Sub-Committee of the Committee on Subordinate Legislation which considered the matter at their sitting held on the 19th September, 1970, desired to know the reasons for not providing for the grant of an advance from the Fund for the purchase of a plot of land in the said Rules.

24. The Ministry of Labour and Rehabilitation (Department of Labour and Employment) to whom the matter was referred stated as follows in their reply:—

".....the rules in question are patterned on the corresponding Central Government Rules. These rules which were initially framed in 1965, contained a provision for the grant of advance for, *inter alia*, the purchase of a plot of land. Later on this provision was deleted on the basis of the then Central Government Rules. The Central Government have now lifted the embargo on the grant of advance to their employees for purchasing of sites for constructing houses. Action has been initiated to amend the Rules of the Employees' Provident Fund Organisation also suitably to bring them on a par with the Central Government Rules."

The Rules in question were subsequently amended on the above lines (*vide* G.S.R. 1043 of 1971, published in the Gazette of India, Part II, Section 3(i) dated the 17th July, 1971).

25. The Committee note with satisfaction that the Rules of the Employees' Provident Fund Organisation have been amended and brought on a par with the Central Government Rules as regards the grant of advance for the purchase of a plot of land.

VII

Rules regulating direct recruitment to (i) the Central Engineering Service Class I, (ii) the Central Engineering Service Class II, (iii) the Central Electrical Engineering Service, Class II (G.S.Rs. 233, 234 and 235 of 1961 respectively(and (iv) the Central Electrical Engineering Service, Class I (G.S.R. 36 of 1959).

26. Clause 5 of Appendix II to the above mentioned Rules provided as follows:—

> "the Commission will summon at their discretion only such candidates as they consider suitable for interview for a Personality Test."

27. The attention of Department of Works and Housing was invited to paras 30-32 of the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) wherein, dealing with similar clauses in the Central Water Engineering (Class I) Service Rules, 1965 and the Central Power Engineering (Class I) Service Rules, 1965, the Committee had pointed out as follows:—

> ".....the clauses, as worded, gave an impression that a candidate could be ignored for interview even if he had done very well in the written test. It was reasonable that all candidates, who secured prescribed quota for minimum marks, should invariably be called for interview for the Personality Test unless they were found to have violated or failed to have fulfilled some prescribed condition or conditions, which might be prescribed by the Union Public Service Commission in their discretion."

28. In their reply, the Ministry of Works and Housing stated that they had amended the clauses in question to read as follows:—

> "Candidates who obtain such minimum qualifying marks in the written examination as may be fixed by the Commission at their discretion *shall be summoned* by them for an interview for a Personality Test."

29. The Committee note that the Ministry of Works and Housing have amended the clauses in question to provide that all candidates who obtain the minimum qualifying marks in the written examination, fixed by the Commission, shall be summoned for an interview in the personality test. They however, feel that the expression 'at their discretion' used in the revised clauses is redundant in that such discretion is implied in the words 'as may be fixed by the Commission'. The Committee, therefore, desire that this expression should be omitted from the revised clauses.

VIII

THE POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH, CHANDIGARH REGULATIONS, 1967 (G.S.R. 571 OF 1967)

30. Regulation 6(2) of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 read as follows:—

"* * * **

(2) If within half an hour from the time appointed for holding a meeting the quorum is not present, the meeting shall stand adjourned to a time, date and place to be determined by the President;

Provident that the meeting so adjourned shall be held within seven days of the date on which it was originally proposed to be held."

31. Regulation 16(2) contained a similar provision.

32. There was no specific provision in the above Regulations for intimating the absentee members about the fact of adjournment of a meeting for want of quorum, and about the time, date and place of the next meeting.

33. The matter was taken up with the Ministry of Health and Family Planning on the 5th June, 1967. Their attention was invited to para 9 of the Sixth Report of the Committee on Subordinate Legislation (Third Lok Sabha) where, dealing with a similar lacuna in the Food Corporation Regulations, 1965, the Committee had recommended as follows:—

"The Commitee recommend that a specific provision should be made in the regulations for intimating the absentee directors|members of the fact of adjournment on the same

day by post or telegram or by special messenger, as the needs of the case may require."

34. In April, 1970, the Department of Health forwarded to this Secretariat a copy of the Post Graduate Institute of Medical Education and Research Chandigrah (Amendment) Regulations, 1970. These Regulations amended the original Regulations 6(2) and 16(2) to read as follows:—

"If within half an hour from the time appointed for holding a meeting, the quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place and notice of such adjourned meeting shall be given to each member who is not present at the meeting on the same day by post or telegram or special messenger, as the case may require."

35. While the Committee note that Regulations 6(2) and 16(2) of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 have been amended on the lines suggested by the Committee, they cannot help observing that the time taken by the authorities in making the amendments (a period of nearly 3 years) was too long. The Committee trust that the authorities concerned will take care to avoid such delays in future.

IX

NUMBERING OF AMENDMENT TO 'ORDERS'

36. The Committee on Subordinate Legislation in paragraph 13 of their 12th Report (Second Lok Sabha) had exhorted that amendments to the same Rules should be published in the Gazette bearing the 'Order' numbers in the same sequence as assigned to the amendments.

37. However, cases have from time to time come to notice where the above recommendation of the Committee on Subordinate Legislation was not followed by the Ministries. For instance G.S.R. 775 of 1970 had been referred to as the 'Sixth Amendment' to the Indian Telegraph Rules, 1885 and published in the Gazette on the 11th May, 1970 but G.S.R. 774 had been described as the 'Seventh Amendment' to the said Rules, and published in the Gazette on 8th May, 1970. Like-wise, G.S.R. 1085, published in the Gazette on the 25th July, 1970, had been referred to as the 'Second Amendment' to the Central Secretariat Stenographers Service Rules, 1969, but G.S.R. 1087—a subsequent G.S.R. published in the same Gazette had been referred to as '(Amdment)', meaning thereby the First Amendment to the

Rules made in 1970. The relevant Ministries|Departments were asked to state the reasons for not following the above-mentioned recommendation of the Committee on Subordinate Legislation in these cases.

38. In regard to the numbering of the afore-said Amendments to the Indian Telegraph Rules, 1969, the Indian Posts and Telegraphs Department stated as follows:—

> ".....the Gazettee Notifications containing the Indian Telegraph (Sixth and Seventh Amendments) Rules, 1970, were actually intended to be issued simultaneously and brought into effect on the same date *i.e.* 15-5-1970. But the Notification containing the Sixth Amendment could not be issued on the same date on which the one containing Seventh Amendment was issued, as a certain addition was proposed at the last stage. They were, however, brought into force on the same date, *viz.*, 15-5-70. Steps will, however, be taken to maintain the sequence to the amendments in future. The lapse on part of the Department is very much regretted."

39. In regard to the incorrect numbering of the Amendments to the Central Stenographers Service Rules, 1969, the Cabinet Secretariat (Department of Personnel) stated as follows:—

> ".....the two notifications in question were being processed and finalised more or less simlutaeously but in the process of issue, the notification referred to as the 'Second Amendment' happened to have been issued a day earlier than the one referred to as 'Amendment' thus leading to the anomaly pointed out by the Lok Sabha Secretariat. However, since both the amendments have been published in the same Gazette and in terms of rule 1(2) of the notifications, have come into force on the same date, there has not been any legal irregularity, and it would be appreciated that no action is called for at present.
>
> The recommendation of the Committee on Subordinate Legislation that the amendments to the same Rules should be published in the Gazette bearing 'Order' numbers in the same sequence as assigned to the Amendments would, however, be kept in view for strict compliance, in future."

40. In para 13 of their 12th Report (Second Lok Sabha), the Committee had exhorted that amendments to the same Rules should be published in the Gazette bearing the Order Nos. in the same sequence as assigned to the amendments. Unfortunately the Indian

Posts & Telegraphs Department and the Cabinet Secretariat (Department of Personnel) had failed to comply with this exhortation in the cases under report. The Committee note that both the Departments have now promised to strictly comply with the above exhortation in future. They trust that necessary steps will be taken by the Departments to ensure this.

X

GIVING OF RETROSPECTIVE EFFECT TO 'ORDER' — FIRST AMENMENT OF 1970 TO INDIAN POLICE SERVICE (PAY) RULES, 1954 (G.S.R. 409 OF 1970).

41. The First Amendment of 1970 to the Indian Police Service (Pay) Rules, 1954 sought to raise the pay-scale of the Inspector General of Police, Jammu and Kashmir State from Rs. 2250|- to Rs 2500-125/2—Rs. 2750. The Amendment was published in the Gazette of India, dated the 7th March, 1970 but was deemed to have come into force from the Ist july, 1969.

42. In a note explaining the circumstances in which retrospective effect had been given to the rules, the Cabinet Secretariat (Department of Personnel) have, *inter alia*, stated as follows:—

> "Attention may.....be drawn to the observations of the Attorney General made in connection with Exemption Notifications issued under the Central Excise and Salt Act, 1944 and the rules framed thereunder (which was quoted in paragraph 49 of the Seventh Report of the Committee on Subordinate Legislation — Fourth Lok Sabha):
>
> "The Legislature may make a law with retrospective effect. A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may itself further empower subordinate legilsation to operate retrospectively. Without such a law no subordinate legislation can have any retrospective effect'.
>
> "The Committee in paragraph 51 of this Report desired that the Ministry of Home Affairs should examine in consultation with the Ministry of Law, whether retrospective effect to the Orders listed in paragraph 48 of the Report had been given under due legal authority. This Department have examined the matter in consultation with the Ministry of Law and have come to the conclusion that in the light of the advice of the Attorney General cited earler, the Central Government do not have the powers to frame rules and regulations with retrospective

effect in exercise of the powers conferred on them by section 3 of the All India Services Act, 1951. The position has also been clarified to the State Governments and the various authorities concerned *vide* this Department's letter No. 24|4|71-AIS (II), dated the 18th February, 1971. In the light of this position so long as the All India Services Act, 1951 stands as it does now, no retrospective subordinate legislation will be issued thereunder.

The circumstances in which retrospective effect was given to the rules published in the Gazette of the 17th March, 1970, as brought out in this Office Memorandum and the decision of the Central Government not to give retrospective effect to any subordinate legislation under the All India Services Act, 1951, so long as it stands as it does at present, may kindly be brought to the notice of the Committee on Subordinate Legislation and thereafter their comments/recommendations, if any, may be brought to the notice of this Department for consideration."

43. The Committee note that, according to the opinion of the Department of Personnel and Ministry of Law and Justice, the Central Government do not have the powers to frame rules and regulations with retrospective effect in exercise of the powers conferred on them by Section 3 of the All India Services Act, 1951, and, consequently, Government have decided not to give retrospective effect to any subordinate legislation under the All India Services Act, 1951, so long as it stands as at present.

XI

THE CENTRAL SECRETARIAT STENOGRAPHERS SERVICE (COMPETITIVE EXAMINATION) REGULATIONS 1969 (G.S.R. 2678 OF 1969)

44. Regulation 8(5) of the Central Secretariat Stenographers Service (Competitive Examination) Regulations, 1969 read as follows:—

"(5) Candidates belonging to any of the Scheduled Castes or the Scheduled Tribes who are considered by the Commission to be suitable for selection on the results of the examination, *with due regard to the maintenance of the efficiency of* administration shall be eligible to be selected for the vacancies reserved for them irrespective of their ranks in the order of merit at the examination."

45. The Sub-Committee of the Committee on Subordinate Legislation which examined the above Regulation at their sitting held on

the 21st September, 1970, desired to know whether the provision 'with due regard to the maintenance of the efficiency of administration' appearing in the above regulation would not adversely affect the relaxation made in the case of candidates belonging to Scheduled Castes and Scheduled Tribes in filling up the quota of posts reserved for them.

46. In their reply, the Cabinet Secretariat (Department of Personnel) have stated that the matter had been considered, in consultation with the Union Public Service Commission, and the Regulation in question had been amended to read as follows:—

> "Candidates belonging to any of the Scheduled Castes or the Scheduled Tribes may, to the extent the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes cannot be filled on the basis of the general standard, be recommended by the Commission by a *relaxed standard to make up the deficiency in the reserved quota*, subject to the fitness of these candidates for selection to the Service, irrespective of their ranks in the order of merit at the examination."

47. The Committee note with satisfaction the amendment to Regulation 8(5) made by Government. They desire that, in cases where Government consider it necessary to insert a rule providing for relaxation of standard for candidates belonging to Scheduled Castes and Scheduled Tribes to make up the deficiency in the reserved quota, the rule should, as far as possible, be on the lines of the Regulation, as now amended, instead of the original one.

XII

FUNDAMENTAL (THIRD AMENDMENT) RULES, 1969 (S.O. 2121 OF 1969)

48. Clause (a) of Rules 56 of the Fundamental Rules, as amended by S.O. 2350 of 1965, reads as follows:—

> "Except as otherwise provided in this Rule, every Government servant shall retire on the day he attains the age of fifty eight years."

The exceptions to clause (a) are enumerated in clauses (b) to (k) of the Rule. Clause (j)—one of the excepting clauses inserted by the Fundamental (Third Amendment) Rules, 1969 (S.O. 2121 of 1969—*inter alia* provides as follows:

> "Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in

the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) if he is in Class I or Class II service or post the age limit for the purpose of direct recruitment to which is below thirty-five years, after he has attained the age of fifty years, and

(ii) in any other case after he has attained the age of fifty-five years."

49. The Sub-Committee of the Committee on Subordinate Legislation (1970-71) at their sitting held on the 26th October, 1970, *inter alia*, desired to know whether F.R. 56(j), as inserted by the Fundamental (Third Amendment) Rules, 1969 was legally valid in view of the provisions of Article 311(2) of the Constitution.

50. In their reply, the Department of Personnel stated as follows:—

"The legal validity of F.R. 56(j) has been upheld by the Supreme Court in their judgment in Col. Sinha's case, as well as in their subsequent judgment in the case of Sh R. Butail vs. the Union of India."

51. At their sitting held on the 1st November, 1971, the Committee examined the representatives of the Department of Personnel and the Ministry of Law and Justice in regard to the provisions contained in the Rule.

52. As to the genesis of Rule 56(j), the representative of the Department of Personnel stated that a paper on measures for strengthening of administration was laid on the Table of Lok Sabha by the Prime Minister on the 10th August, 1961. It was *inter alia* stated in that paper: "It is proposed to appoint a small Committee in each Ministry to locate officials who are ineffective or against whom suspicions exist regarding their integrity amounting to moral conviction. Measures will be taken to develop the ineffective persons by necessary counselling and training. In case persons are not capable of improvement and are in the age group of 45 to 50, they would be retired either on completion of 25 years of service or at the age of 50 which ever is earlier." The Santhanam Committee Report on prevention of corruption had also made a similar recommendation. These two documents formed the basis of this rule.

53. As to the checks exercised by Government against the arbitrary use of power under this Rule, the witness stated that it had

been decided that the Rule should be invoked only on the recommendation of committees consisting of senior officers. In the case of Class III officers, the committee was presided over by the Head of the Department or the appointing authority, whichever was higher. In the case of Secretariat Officers, the committee was at a very high level, consisting of the Cabinet Secretary and one or two more Secretaries. In the case of high officers, the committee's report went to the level of the Appointments Sub-Committee of the Cabinet. The committees looked into the character rolls of all officers who were about to reach the age of 50 years or complete 30 years of service and then came to the conclusion whether the man was fit for retention or not. In doing so, the committees weighed the entire service record of an officer and did not rely upon isolated instances. A clearance was also obtained from the Vigilance Department.

54. The witness added that even though Government had the power to compulsorily retire any Government servant after he had reached the age of 50, they had been 'very cautious' in the application of this rule. This would be apparent from the fact that out of so many *lakhs of employees, action had been taken against only 42 persons under this rule during the last one year.

55. Asked whether any instance had come to notice where the powers vested by this rule were found to have been exercised arbitrarily, the witness stated that "in one case the court came to the conclusion that the Rule had been used arbitrarily." But he added, "the unfortunate position in that case was that the affidavit which had been filed by the Ministry concerned did not contain any reply to the points which the other side had raised." Further asked whether the rule could not be used arbitrarily, the witness stated. "In human institutions, we cannot be very perfect. But the point is, for this very reason we have provided for the committees."

56. Asked whether it would not be feasible to provide for the existing procedural safeguards such as review of cases by committees of senior officers in the rule itself, the representative of the Ministry of Law and Justice stated, "Practically it is getting statutory recognition."

57. The Committee enquired whether the grounds for passing an order under this Rule were communicated to the Government servant concerned. The representative of the Department of Personnel stated that the grounds were not communicated. Asked whe-

* According to the written information subsequently furnished by the Department of Personal, the number of class I and class II officers in 18 Ministries/Departments (out of a total of 32 Ministries / Departments whose cases were reviewed at the age) of 50 and 55 years for the purpose of taking action under F. R. 56 (j) was 3737.

ther an opportunity to show cause against an order to be passed under F.R. 56(j) was given to the persons concerned, he stated that no such opportunity was given. Drawing the attention of the witness to the fact that a show cause notice was issued to the persons concerned even in relatively smaller matters, such as temporary stoppage of increment, the Committee enquired why, in cases coming under the purview of Rule 56(j) where the service-length of a person could be cut short by as many as 8 years, such an opportunity was not given. The witness stated that if this were done, it would amount to initiation of disciplinary proceedings. As the Santhanam Committee had observed there might be cases where there might not be adequate proof for the conviction of a Government servant, but there may be circumstances leading to a moral conviction that he is corrupt. It was to deal with such cases and cases of ineffectiveness that this rule had been brought into being. If the reasons were given, these would be contested and there would then be hardly any difference between the procedings under this rule and disciplinary proceedings.

58. The representative of the Ministry of Law and Justice stated that they could not give a show-cause notice unless they treated the proposed action as a punishment. According to him, pre-mature retirement of a Government servant because of ineffectiveness or moral conviction that he was corrupt after he had rendered a particular length of service would not amount to punishment. According to the Supreme Court also, action under this rule did not amount to punishment.

59. The Secretary, Department of Personnel stated that the matter had also come up in the Joint Consultative Committee. The staff side, which had taken up mainly cases of Class III employees, had stated that the decisions concerning the employees were being taken arbitrarily. They were also against inefficiency and corruption, but they insisted that the orders passed under the rule should not be arbitrary. As to the Government view-point in the matter, he stated, "Our difficulty was that according to the existing rules and regulations, if an opportunity is given to show cause then it will attract some provisions of a disciplinary case and this will take three or four years. We have to consider whether we can give an opportunity to show cause, without attracting the provisions of a disciplinary case."

60. Asked whether a Government servant had any remedy against an order passed under Rule 56(j), except going to a court of Law, the representatives of the Department of Personnel stated that the employees could represent to the authority concerned. The representations were considered, and wherever permissible, the order

was set aside. Asked whether Government had any objection to placing the right of representation on a statutory footing, the representative of the Ministry of Law stated that the Government did not want to dilute the power under the rule which was absolute. But at the same time Government considered every representation.

61. The Committee enquired whether the Department of Personnel had taken any steps to ensure that Rule 56(j) was not used as a short cut to disciplinary proceedings. The representative of the Department of Personnel stated that they had issued guidelines to this effect. They had advised the Ministries/Departments that Rule 56(j) should not be used to retire a Government servant (i) for any specific act of misconduct or as a short-cut formula; or (ii) for reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retrenchment; or (iii) on the ground that the Government servant may not be suitable to continue in his officiating post or for promotion to a higher post for which he may be eligible after reaching the age of 50/55 years.

62. To examine the matter further, the Committee desired to be furnished with further information, *inter alia*, on the following points.

(i) level at which representations against orders under F.R. 56(j) are reviewed; and whether the reviewing authority is the same as is competent to pass orders under F.R. 56(j) or some higher authority;

(ii) number of cases in which representations were received by the competent authority from the officers compulsorily retired under F.R. 56(j); and the number of cases in which the orders passed under the Rule were subsequently withdrawn as a result of such representations;

(iii) whether provisions similar to those contained in F.R. 56(j) exist in any other democratic country;

(iv) (a) copies of three selective representations in cases where the orders passed under F.R. 56(j) were subsequently withdrawn; and

(b) copies of three selective representations in cases where the orders passed under F.R. 56(j) were not withdrawn by the competent authority.

63. A statement containing the requisite information in respect of 18 Ministries/Departments (out of a total of 32 Ministries/Departments) has since been received from the Department of Personnel and is at Appendix II. From its perusal, the Committee observe

that out of a total of 36 cases in which representations against the orders pased under F.R. 56(j) were received in the Ministries/Departments, in as many as 14 cases, notices were subsequently withdrawn as a result of review by higher authorities.

64. The Committee have also gone into the six selective representations furnished by the Department of Personnel. In one of these, the aggrieved officer has contended that no adverse entry from his confidential reports, not even fall in standard of performance, had ever been communicated to him. On the other hand, he had been twice awarded special* increments by the Departmental Promotion Committee—one of these only 4 years before he was serviced with a notice of premature compulsory retirement under this Rule. In another representation, the officer concerned has contended that entries from confidential reports for two years were communicated to him only days before the notice of compulsory retirement was served on him.

65. The Committee observe that Rule 56(j) vests very wide powers in the appropriate authority. Under this Rule, it has the absolute right to retire a Government servant after he attains the age of fifty years i.e., eight years before his normal age of retirement—if it is of the opinion that it is in the public interest to do so. So absolute is this right that, in the words of the Supreme Court, "If that authority (the appropriate authority) bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts." The Committee feel that, while in the interest of efficiency of administration, the appropriate authority should have some such power, there should be suitable safeguards to ensure that this power is not used arbitrarily.

66. As to the checks exercised by Government against the arbitrary use of power under this Rule, the Committee were informed during evidence that this Rule was invoked only on the recommendation of committees of senior officers which looked into the character rolls of all officers who were about to reach the age of 50 years or complete 30 years of service. While coming to the conclusion whether an officer was fit for retention or not, the committees weighed his entire service record and did not rely on isolated instances. The Committee were also informed that, although there was no provision in the rules, the aggrieved persons were allowed to represent against the orders passed under F.R.56(j). Their representations were considered by higher officers, and wherever permissible, the orders were revoked. The Committee desire that both these safeguards should be placed on a statutory footing. They**

---

* These increments are generally granted to those officers whose character rolls are graded by the Departmental Promotion Committee as 'very good' and above.
** *Vide* para 53 ante.

feel that there should be no difficulty in doing this, as these safeguards are already stated to be in existence.

67. The Committee would also like to stress that this Rule, which clothes the Administration with very wide powers, has been brought in with a specific purpose—i.e., to deal with cases of ineffectiveness or lack of integrity amounting to moral conviction where normal proceedings are not possible. It should, therefore, never be allowed to be used as a short cut to disciplinary proceedings or an easy method of assertion of authority. The Committee note that guidelines to this effect have already been issued by the Department of Personnel. The Committee trust that the Ministries/Departments will see to it that these guidelines are observed both in letter and spirit.

68. Another aspect to which the Committee would like to draw attention is this. The paper on measures for strengthening of administration, which formed the basis of this Rule, envisaged that measures would be taken to develop the ineffective persons, and action to retire them pre-maturely initiated only if they are not capable of improvement. Some of the representations perused by the Committee give an impression that due stress has not been given to development of ineffective persons through prior warnings. The Committee would in this connection like Government to examine the feasibility of providing for the system of prior warnings indicating the need for improvement in performance as prevalent in the U.K.

XIII

ACTION TAKEN OR PROPOSED TO BE TAKEN BY GOVERNMENT ON VARIOUS RECOMMENDATIONS OF, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBRODINATE LEGISLATION

69. The Committee note with satisfaction the action taken by Government on their earlier recommendations, as indicated in Appendix III.

NEW DELHI;
The 20th April, 1972.

VIKRAM MAHAJAN,
Chairman,
Committee on Subordinate Legislation.

APPENDIX I

(*vide* para 3 of the Report)

Summary of main Recommendations|Observations made by the Committee

Sl. No.	Para No.	Summary
1	2	3
1(i)	7	The Committee note that a reply similar to that contained in para 6 had been received from the Ministry of Agriculture (Deptt. of Food) in the case of the Northern Rice Zone (Movement Control) Order, 1968. The Committee were not satisfied with that reply and observed in para 21 of their First Report (Fifth Lok Sabha) that the fact that any of the State Governments|Union. Territories had vested the power to carry out searches|seizures only in responsible officers did not take away the need for a built-in safeguard repeatedly recommended by the Committee. The Committee, therefore, again urge that the minimum rank of the persons to be authorised to carry out searches|seizures should be indicated in the Order itself.
1(ii)	8	The Committee also observe that, as under the Northern Rice Zone (Movement Control) Order, 1968, not only the Head Constable and the persons authorised by the State Government have been empowered to carry out searches/seizures but they have been further empowered to authorise 'any person' to exercise these powers. The Committee reiterate their earlier view contained in para 22 of their First Report (Fifth Lok Sabha) that the provision for such further authorisation is as much against the spirit of the recommendation of the Committee as non-indication of the minimum ranks of the person initially authorised

1	2	3
		to exercise these powers. The Committee, therefore, desire that not only the minimum rank of the Officers to be authorised by the State Government to conduct searches|seizers should be specifically given in the Rules but the provision for further authorisation omitted therefrom.
2	22	The Committee are not happy over the manner in which the authorities had acted in this case. They note that the authorities had appointed to the post of Engineering Supervisors a person who did not have the prescribed educational qualifications and, later on, to regularise the irregularity, introduced the relaxation rule with retrospective effect. They are strongly of the view that the relaxation rule should not be used as an instrument of favouring individuals. They need hardly point out that under the Rule, as worded, the relaxation to be made by Government is to relate to classes or categories of persons as contradistinguished from individuals. The Committee feel the need for safeguards to ensure that the powers of relaxation vested in Government are not abused.
3	18	In view of the explanation of the Ministry of Finance contained in para 17, the Committee do not want to pursue the suggestion that interest on loans under paragraph 11(2) of the Public Provident Fund Scheme should be credited to the subscriber's account on the analogy of the provisions contained in Rule 11 of the General Provident Fund (Central Services) Rules, 1960. They note with satisfaction the decision of the Ministry of Finance to reduce the rate of interest chargeable on loans under paragraph 11(2) of the Public Provident Fund Scheme from two per cent to one per cent. They desire that necessary amendment to the Scheme to this effect should be made at an early date.

1	2	3
4	22	The Committee note that satisfaction that the Ministry of Finance have amended Rule 137A of the Medicinal & Toilet Preparations (Excise Duties) Rule, 1956, omitting the provision empowering the proper officer to impose other conditions for the grant of duplicates of documents.
5	25	The Committee note with satisfaction that the Rules of the Employees' Provident Fund Organisation have been amended and brought on a par with the Central Government Rules as regards the grant of advance for the purchase of a plot of land.
6	29	The Committee note that the Ministry of Works and Housing have amended clause 5 of Appendix II to the Rules regulating direct recruitment to (i) the Central Engineering Service, Class I, (ii) the Central Engineering Service, Class II, (iii) the Central Electrical Engineering Service, Class I, and (IV) the Central Electrical Engineering Service, Class II, to provide that all candidates who obtain the minimum qualifying marks in the written examination fixed by the Commission, shall be summoned for an interview in the personality test. They, however, feel that the expression 'at their discretion' used in the revised clauses is redundant in that such discretion is implied in the words 'as may be fixed by the Commission'. The Committee, therefore, desire that this expression should be omitted from the revised clauses.
7	35	While the Committee note that Regulations 6(2) and 16(2) of the Post Graduate Institute of Medical Education and Research, Chandigrah Regulations, 1967 have been amended on the lines suggested by the Committee, they cannot help observing that the time taken by the authorities in making the amendments (a period of nearly 3 years) was too long. The Committee trust that the authorities concerned will take care to avoid such delays in future.

1	2	3
8	40	In para 13 of their 12th Report (Second Lok Sabha), the Committee had exhorted that amendments to the same Rules should be published in the Gazette bearing the Order Nos. in the same sequence as assigned to the amendments. Unfortunately the Indian Posts & Telegraphs Department and the Cabinet Secretariat (Department of Personnel) had failed to comply with this exhortation in the cases under report. The Committee note that both the Departments have now promised to strictly comply with the above exhortation in future. They trust that necessary steps will be taken by the Departments to ensure this.
9	43	The Committee note that, according to the opinion of the Department of Personnel and Ministry of Law and Justice, the Central Government do not have the powers to frame rules and regulations with retrospective effect in exercise of the powers conferred on them by Section 3 of the All India Services Act, 1951, and, consequently, Government have decided not to give retrospective effect to any subordinate legislation under the All India Services Act, 1951, so long as it stands as at present.
10	47	The Committee note with satisfaction the amendment made by Government Regulation 8 (5) of the Central Secretariat Stenographers Service (Competitive Examination) Regulations, 1969. They desire that, in cases where Government consider it necessary to insert a rule providing for relaxation of standard for candidates belonging to Scheduled Castes and Scheduled Tribes to make up the deficiency in the reserved quota, the rule should, as far as possible, be on the lines of the Regulation, as now amended, instead of the original one.
11 (i)	65	The Committee observe that Fundamental Rule 56 (J) vests very wide powers in the appropriate authority. Under this Rule, it has the *absolute right* to retire a Government servant after

1	2	3
		he attains the age of fifty years, *i.e.* eight years before his normal age of retirement—if it is of the opinion that it is in the public interest to do so. So absolute is this right that, in the words of the Supreme Court, "if that authority (the appropriate authority) *bona fide* forms that opinion, the correctness of that opinion cannot be challenged before Courts." The Committee feel that, while in the interest of efficiency of administration, the appropriate authority should have some such power, there should be suitable safeguards to ensure that this power is not used arbitrarily.
11 (ii)	66	As to the checks exercised by Government against the arbitrary use of power under the Rule, the Committee were informed during evidence that this Rule was invoked only on the recommendation of committees of senior officers which looked into the character rolls of all officers who were about to reach the age of 50 years or complete 30 years of service. While coming to the conclusion whether an officer was fit for retention or not, the committees weighed his entire service record and did not rely on isolated instances. The Committee were also informed that, although there was no provision in the rules, the aggrieved persons were allowed to represent against the orders passed under F.R. 56(J). Their representations were considered by higher officers, and, wherever permissible, the orders were revoked. The Committee desire that both these safeguards should be placed on a statutory footing. They feel that there should be no difficulty in doing this, as these safeguards are already stated to be in existence.
11 (iii)	67	The Committee would also like to stress that this Rule, which clothes the Administration with very wide powers, has been brought in with a specific purpose—i.e., to deal wih cases of ineffectiveness or lack of integrity amounting to moral conviction where normal proceedings are

1	2	3
		not possible. It should, therefore, never be allowed to be used as a short cut to disciplinary proceedings or an easy method of ascertain of authority. The Committee note that guidelines to this effect have already been issued by the Department of Personnel. The Committee trust that the Ministries/Departments will see to it that these guidelines are observed both in letter and spirit.
11 (iv)	68	Another aspect to which the Committee would like to draw attention is this. The paper on measures for strengthening of administration, which formed the basis of this Rule, envisaged that measures would be taken to develop the inffective persons, and action to retire them pre-maturely initiated only if they are not capable of improvement. Some of the representations persued by the Committee give an impression that due stress has not been given to development of ineffective persons through prior warnings. The Committee would in this connection like Government to examine the feasibility of providing for the system of prior warnings indicating the need for improvement in performance as prevalent in the U.K.

APPENDIX II

(*Vide* para 63 of the Report)

*Statement *giving information in regard to the points arising out of evidence of the representatives of the Department of Personnel on F.R. 56(J) at the sitting of the Committee on Subordinate Legislation held on the 1st November, 1971.*

		Class I	Class II
1.	Number of (a) Class I and (b) Class II Officers whose cases have been reviewed at the age of 50 and 55 years for the purpose of taking action under FR 56(J) .	1600	2137
	Number of cases in which representations were received by the Competent Authority from the officers compulsorily retired under FR 56(J) and the action taken thereon. . . .	17 [These representations were considered].	19
3.	Nmber of cases in which orders uassed under FR 56(j) were subpequently withdrawn as a result sof Representations from the officers concerned. . .	7	7
4.	(*a*) At what level the representations are reviewed.	The representations were reviewed at the level of Minister, Secretary to the Government of India, Joint Secretary to the Government of India, etc. depending on the post held by the officer concerned.	
	(*b*) Is the reviewing authority the same as is competent to pass order under FR 56(J), or some higher authority—	The authorities reviewing the representations were higher than the authorities which took action under FR 56(J).	

*The information contained in the statement pertains to 18 Ministries/Departments of Government of India.

5. Please state whether provisions similar to those contained in FR 56(J) exist in any other democratic country.	Information in respect of practice obtaining in U.S.A., U.K., Canada and Australia has been obtained and is indicated in the enclosed note. (Annexure A).
6. A copy of the guidelines issued by the Department of Personnel for the exercise of powers under FR 56(j)	Copy of the guidelines is enclosed. (Annexure B).
7. Copies of	
(*a*) three selected representations in cases where the orders passed under FR 56(j) were subsequently withdrawn; and	Copies of three representations are *enclosed.
(*b*) three selective representations in cases where the orders passed under FR 56(j) were *not* withdrawn by the competent authority.	Copies of three representations are *enclosed.

ANNEXURE A

(*Vide* item 5 of the statement)

Note on retirement in public interest in democratic countries like U.S.A., U.K. Canada and Austraila

United States of America

The United States Civil Service Commission, a statutory body of the United States Government, has set the retirement age of Federal employees, with immediate annuity benefits, at 50 years with 20 years service or any age with 25 years of service, where the separation is involuntary. Annuity is reduced if involuntary separation occurs under the age of 55. "Involuntary separation" means any separation against the will and without the consent of the employee. Other than separation for cause on charge of misconduct or delinquency. Such involuntary separation can be *inter alia* on grounds of inefficiency unless due to the employee's misconduct.

United Kingdom:

There are provisions for retirement in the public interest which covers retirement on redundancy, retirement to ease a structural

*Not printed.

problem or retirement on grounds of limited efficiency. In the case of limited efficiency prior warnings are given indicating the need for improvement in performance. Six months' notice is given if retirement is ordered in public interest in the case of all "established staff" and "unestablished staff" with 5 years' service or more. This notice is extended to 12 months for staff over 60 with under 10 years' service and nine months for those with 10 to 25 years' service. However, the extended notice will not run beyond 65th birth day. "Unestablished staff" with 2 years' service but less than 5 years' service will be given not less than 3 months' notice if retired in the public interest. "Unestablished staff" with less than 2 years' service who are retired in the public interst will be given the notice required by legislation relating to Contract of Employment.

Canada

According to the Canadian Public Service Superannuation Regulations, a "Deputy Head" may at any time, for reason only of age, terminate the employment of a "contributor" who has attained 60 years of age but who has not attained 64 years and 6 months of age, if the Deputy Head gives to the contributor at least 6 months' notice of termination of employment.

Australia:

The compulsory retiring age in the Australian Commonwealth Public Service is 65. However, every officer having attained the age of sixty years is entitled to retire from the Commonwealth Service if he desires to do so. If an officer continues in service after he has attained the age of sixty years, he may, at any time before he attains the age of sixty-five, be retired from the service by the appropriate authority i.e., the Public Service Board.

If an officer appears to the Chief Officer of a Department to be inefficient, incompetent, unfit to discharge or incapable of discharging the duties of his office efficiently, the Chief Officer may furnish a report concerning the efficiency of the officer to the Public Service Board. If the Chief Officer considers that the officer should be transferred to another office or retired, he shall state accordingly concerning the efficiency of the officer and set out his reasons.

Before a recommendation is submitted to the Board for retirement on grounds of inefficiency, or incompetency, the officer concerned is afforded the opportunity of showing cause why the proposed action should not proceed.

The Chief Officer must advise the officer of his intended recommendation and the reasons for it in detail. The Chief Officer must also inform the officer that he may, if he so desires, submit, within a time to be specified, a written statement setting forth the reasons which, in the officer's opinion, could be advanced against the course proposed by the officer.

In the case of a recommendation for retirement on the grounds of inefficiency, etc., the Chief Officer's recommendation together with the officer's statement (if any) must be forwarded to the Board.

The procedures which have been outlined above are prescribed in the Australian Public Service Act.

ANNEXURE B

(*Vide* item 6 of the statement)

Guidelines issued by the Department of Personnel for the Exercise of Powers Under F.R. 56(J).

No. F. 21|2|70-Ests. (A)

GOVERNMENT OF INDIA

CABINET SECRETARIAT

DEPARTMENT OF PERSONNEL

New Delhi-1, *the 25th August* 1971.

OFFICE MEMORANDUM

SUBJECT:—*F. R. 56(j), F. R. 56(1) and Rule 2(2) of the Liberalised Pension Rules.*

The undersigned is directed to say that in the meeting of the National Council, set up under the Joint Consultative Machinery Scheme, held on the 27th and 28th January, 1971 the Staff side represented that the rules mentioned above had been used either vindictively or for retrenching surplus staff. The matter has been considered further in the light of the discussions and the position as set out in the following paragraphs is brought to the notice of all the Ministries, Departments of the Government of India for guidance.

2. In the Department of Personnel O.M. No. 33/11/69-Ests(A) dated 23rd October 1970 it was clarified, in the light of the judgment of the Supreme Court in the case of Union of India *vs.* Col. J. N.

Sinha and another, that the "appropriate authority" defined in Note 1 below F. R. 56 should *bona fide* form an opinion that it is in the public interest to retire a Government servant in exercise of the powers conferred by F. R. 56(j) and that this decision should not be an arbitrary decision and should not be based on collateral grounds. It was also indicated in that O.M. that in every case where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the appropriate authority should record on the file its opinion that it is necessary in the public interest to retire the Government servant in pursuance of the aforesaid rule. What is stated above would apply equally in cases where para 2(2) of the Ministry of Finance O.M. No. F. 3(1)-E(Spl)|47 dated 17th January, 1950 (commonly known as the Liberalised Pension Rules) are proposed to be invoked for the retirement of a Government servant after completion of 30 years' service qualifying for pension or in cases where F. R. 56(1) is invoked to retire a Government servant in a Class III service|post who is not governed by any pension rules, after he has completed 30 years' service.

3. In amplification of the instructions referred to above, it is hereby clarified that the aforesaid rules should not be used:

(i) to retire a Government servant on grounds of specific acts of misconduct, as a short-cut to initiating formal disciplinary proceedings; or

(ii) for reduction of surplus staff or as a measure of effecting general economy, without following the rules and instructions relating to retrenchment; or

(iii) on the ground that the Government servant may not be suitable to continue in his officiating post or for promotion to a higher post for which he might be eligible after his attaining the age of 50/55 years, or completing 30 years' service, as the cases may be.

Any specific representations received from employees, who might have been retired under the amended F. R. 56(j) (I) or para 2(2) of the Liberalised Pension Rules on or after 17th May, 1969 (the date of amendment of F.R .56), may be reviewed in the light of these instructions.

4. In regard to review of cases under F. R. 56(j) (i), F. R. 56(j) (ii), F. R. 56(1) and Rules 2(2) of the Liberalised Pension Rules and

in retiring Government servants in pursuance of the aforesaid provisions, the following factors should also be borne in mind by the appropriate authorities:—

(1) The review should be made on an assessment of the entire service record.

(2) Under note 2 below F. R. 56 the three months' notice referred to in F. R. 56(j) and F. R. 56(1) may be given before the Government servant attains the specified age or has completed 30 years of service but the retirement should take place after the Government servant has attained the relevant age or has completed 30 years of service, as the case may be. Accordingly, a notice even longer than three months, or before the Government servant attains the age of 50|55 years|complete 30 years' service could be given; but the date from which he is required to retire as specified in the notice should not be before he attains 50|55 years, or completes 30 years' service as the case may be. Similarly in cases of retirement under Rule 2(2) of the Liberalised Pension Rules while the notice of such retirement could be given before the Government servant actually completes 30 years of service qualifying for pension, the date of expiry of the notice on which the Government servant's retirement would be effective should be one falling on or after the date of his completing 30 years service qualifying for pension. In this connection attention is also invited to the Ministry of Finance O.M. No. F. 12(8)|E. V. (A)|60 dated 6th July, 1960, in which it has been stated *inter alia* that Orders requiring a Government servant to retire after completing 30 years qualifying service should as a rule not be issued until after the fact that the Government servant has indeed completed, or would be completing, on the date of retirement qualifying service for 30 years has been verified in consultation with the audit officer concerned.

(3) Rule 2(2) of the Liberalised Pension Rules is not applicable to pensionable employees who have not opted for the Liberalised Pension Rules. Such employers would, therefore, be covered only by F. R. 56(j) (i) or F. R. 56(j) (ii), as the case may be. Government servants in Class III services|post who are not governed by any pension rules would be covered by F. R. 56(1) or F. R. 56(j) (ii).

5. Ministry of Finance, etc. are requested to bring this O.M. to the notice of all administrative authorities concerned for information and guidance.

Sd|- P. S. VENKATESWARAN,
Under Secretary to the Government of India.

To

All Ministries/Departments of the Government of India, etc. (with usual number of spare copies).

No. F. 21|2|70-Ests(A) *dated the 25th August,* 1971.

Copy forwarded for information to:—

1. All Union Territories.
2. Union Public Service Commission, New Delhi.
3. Comptroller and Auditor General of India, New Delhi. (with usual number of spare copies).
4. Central Vigilance Commission, New Delhi.
5. All attached and Subordinate offices of the Department of Personnel, New Delhi.
6. Department of Personnel (JC|Section—with 150 spare copies).

Sd|- P. S. VENKATESWARAN
Under Secretary to the Government of India.

APPENDIX III

(*Vide* para 69 of the Report)

Statement showing the progress of action taken or proposed to be taken on the recommendations made by, and assurances given by Ministries, to the Committee on Subordinate Legislation.

S. No.	Reference to para No. of Report	Summary of recommendations/assurances	Gist of the Government's reply
(1)	(2)	(3)	(4)
1.	First Report (4LS) 13	The Committee feel that, in order to make the location and referencing of the Schedules easy and convenient, the contents of rule 33 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 published under S.O. 3703 of 1965, should have, at least, been reproduced in the form of a schedule at the end of these rules. This course would have been in consonance with the definition of the schedule as given in Rule 2(k) thereof. The Committee have emphasised time and again that the rules should, as far as possible, be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing the rules. In the present case, it is not only the Administrative authorities but also the service personnel as well as the Advocates and	The Scheduled to the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has since been published. (*See* S.*S*. 3521 of 1971, dt. 25-9-71).

(1)	(2)	(3)	(4)
		Courts, who are concerned with the rules, as cases arise under the rules in the form of writ petitions etc. The Committee reiterate that the rules should be self-contained and 'legislation by reference' should be avoided as far as possible. The Committee recommend that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 should be reprinted, along with the necessary schedules.	
2.	Second Report (4LS) 21	The Committee feel that there should be no difficulty in giving short titles to the Rules which were made earlier without any short titles, at the time of amending those rules. The amending rules can contain as the first rule adding a short title to the principal rules. When the principal rules are thus given a short title all amending rules can similarly be given appropriate short titles and numbers. The Committee would like to emphasise that giving of short titles to all rules, whether principal or amending is very essential for facility of reference and tracing by all concerned. [*See* also para 47 of Seventh Report (4LS)]	The Department of Parliamentary Affairs have circulated the recommendation of the Committee to all Ministries/Departments of Govt. of India for their guidance and necessary action [*Vide* D.P.A.O.M. No. SR-II(20-21) LS/68-CB, dated 7-3-1969]
3.	Fourth Report (4LS) 43	The Committee notes from the proposed amendment to Commissioners' bye-	This has since been done. [*Vide* Ministry of Shipping &

1	2	3	
		law No. 55A for regulating the transaction of shipping, clearing or forwarding business within the port area by the clearing agents that the recommendation of the Committee made in para 26 of its First Report (Fourth Lok Sabha) has not been followed by the Calcutta Port Commissioners. The Committee desires that the relevent bye-laws should be specifically amended in the light of the aforesaid recommendations of the Committee rather than being left to the Department "That all aspects will be taken into account before cancelling a clearing agency licence".	Transport (Transport Wing) O.M. No. 9-PG(67)/68, dt. 21-2-70]
4	Fourth Report (4LS) 55	The Committee agrees with the views of the Ministry of Education and notes with satisfaction that the Ministry has taken action regarding strengthening the security arrangements in the National Museum, New Delhi. The Committee is also glad to note that Govt. has set up a Committee to review the working of the three Central Museums to suggest improvements. The Committee hopes that the said Committee of Museum Experts will soon submit its report and Government will give due consideration to its recommendations.	The Central Museums Review Committee has submitted its Report which *inter alia*, includes recommendations on the security arrangements in the National Museums New Delhi. The recommendations made by the Committee regarding security arrangements in the Museum have already been implemented in some cases and in others they are in the process of being implemented.[Ministry of Education

(1)	(2)	(3)	(4)
			and Social Welfare (Department of Culture) O.M.No F.3-65/70.Dt. 510-71]
5	Sixth Report (4LS) 22	The Committee agrees that it may not be possible to entrust always inquiries against delinquent officers to Gazetted Officers under the Central Civil Services (Classification, Control and Appeal)Rules, 1965, as the Department of Communications has under its employment a large number of persons spread over the entire country. But the Committee strongly feels that the enquiries should be conducted by an Officer who is sufficiently senior to the officer whose conduct is being inquired into. Inquiry by a junior officer, the Committee feels, cannot command confidence which it deserves.	Necessary instructions have since been issued to all Ministries/ Depts. [*Vide* Cabinet Secretariat (Deptt. of Personnel) O.M.No. 7/12/70-EST. (A), dt. 6-1-1971] .
6.	Sixth Report (4LS) 65	The Committee takes a serious view of such a long delay in the framing of recruitment rules under the Tea Act of 1953. The Committee deplores this sad state of affairs. In	This has since been done. [*See* G. S.R. 1023 of 1971., dt. 10-7-1971].

(1)	(2)	(3)	(4)
		spite of an assurance given by the representatives of the erstwhile Ministry of Commerce as far back as in Junuary, 1968 that the rules will be finalised by February, 1968, Government has not yet seen its way in pushing through the rules. The Committee trusts that the rectuitment rules in question will be finalised and published in the Gazette without any further delay.	
7.	Seventh Report (4LS) 13-14	(i) The Committee observes that, as a result of certain modifications in the Engineering Supervisors (Recruitment and Training) Rules 1959, made by the P. & T. Department, some employees of that Department who were initially eligible to appear as Departmental candidates in the competitive examination for appointment to the cadre of Engineering Supervisors, had been rendered ineligible. The reasons adduced by the P&T Department for making these modifications are hardly convincing. The Committee feels that amendments to Rules, which are likely to have the effect of denying or curtailing the exi sting opportunities available to employees, should not be brought forward, save for compelling reasons.	Noted and circulated to all concerned. [*Vide* D.G.P.&.T.O. M.No. 41-13/66—NGG, dt. 7-6-1971].
		(ii) The Committee regrets to note that amendments	

(1)	(2)	(3)	(4)
		to the Engineering Supervisors (Recruitment and Training) Rules, 1966 made in October, 1966 and in November, 1968, were not published in the Gazette till January, 1970 and that too, only after the matter had been taken up by the Committee with the Department. The Committee need hardly point out that unconscionable delays in publication, as in the present case, defeat the very object of publication. The Committee trusts that the P & T Department will take care to avoid such delays in future.	
8.	Seventh Report (4LS) 47	The Committee would like to restress upon all the Ministries / Departments and their attached and subordinate offices the need for giving short titles to all 'Orders', whether principal or amending for facility of reference. [*See* also para 21 of Second Report (4 L.S.)].	(1) The Department of Parliamentary Affairs have circulated the recommendation of the Committee to all Ministries/Departments of Government of India for their guidance and necessary action. [*Vide* D.P.A.O.M. No. F. 32-10 (vii)-LS-IV/71-R&C. dt. 23-3-1971]. (2) Noted for guidance and compliance. [*Vide* Ministry of Foreign Trade O.M. No. H-11018/1/71-Parl., dt. 19-3-1971]
9.	Second Report (5LS) 34	The Committee approve the revised draft Model Clause, forwarded by the Ministry of Law and Justice (Legislative Depart-	The Ministry of Law and Justice (Legislative Department) have circulated the revised Model

(1)	(2)	(3)	(4)
		ment) for incorporation in Bills, providing for laying of statutory rules before both Houses of Parliament.	Clause to all the Ministries Departments of Government of India for incorporation in the Acts of Parliament providing for delegation of legislative power [*Vide* their O.M. No. 4(7)/71-LI, dt. 4-2-1972]

MINUTES

APPENDIX IV

MINUTES OF THE COMMITTEE

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

The Committee met on Friday, the 1st October, 1971 from 11.00 to 12.40 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri Salebhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri G. Bhuvarahan
5. Shri M. C. Daga
6. Shri Dharnidhar Das
7. Shri T. H. Gavit
8. Shri Subodh Hansda
9. Shri M. Muhammad Ismail
10. Shri V. Mayavan
11. Shri D. K. Panda
12. Shri P. V. Reddy
13. Shri Tulmohan Ram

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 12 and 13 regarding the Civil Service (Sixth Amendment) Regulations, 1969 (S.O. 2860 of 1969) and the Fundamental (Third Amendment) Rules, 1969 (S.O. 2121 of 1969), respectively.

3—5. * * * *

---

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

The Fundamental (Third Amendment) Rules, 1969 (S.O. 2121 of 1969) (Memorandum No. 13)

6. Clause (a) of Rule 56 of the Fundamental Rules, as amended by S. O. 2350 of 1965, read as follows:—

> "Except as otherwise provided in this Rule, every Government servant shall retire on the day he attains the age of *fifty eight years.*"

Clause (j)—one of the excepting clauses inserted by the Fundamental (Third Amendment) Rules, 1969 (S.O. 2121 of 1969)—*inter alia* provided as follows:

> "Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:
>
> (i) if he is in Class I or Class II service or post the age limit for the purpose of direct recruitment to which is below thirty-five years, after he has attained the age of fifty years.
>
> (ii) in any other case after he has attained the age of fifty-five years."

7. The Sub-Committee of the Committee on Subordinate Legislation (1970-71), which examined the matter at their Sixth Sitting held on the 26th October, 1970, desired to know the genesis of Rule 56(j), as inserted by the Fundamental (Third Amendment) Rules, 1969 and whether it was legally valid in view of the provisions of Article 311(2) of the Constitution.

8. As regards the genesis of the above amendment, the Department of Personnel, in their reply, *inter alia* stated that "the Paper on 'Measures for strengthening of Administration' which was laid on the Table of the Lok Sabha on the 10th August, 1961, contained various recommendations with a view to strengthening the administrative machinery by developing responsible and efficient workers at all levels and to introduce efficiency, economy and speed in the disposal of Government business. One of the recommendations contained in the Paper was that Government should take powers to retire a Government servant after he has attained the age of 50 years or has completed 25 years service, if it is necessary to do so in

the public interest. The Committee on Prevention of Corruption (also known as the Santhanam Committee) had also made similar recommendations in their report."

9. As regards the legal validity of F.R. 56(j) as amended, the Department of Personnel stated as follows:—

> "The legal validity of F.R. 56 (j) has been upheld by the Supreme Court in their judgement in Col. Sinha's case, as well as in their subsequent judgement in the case of Shri R. Butail *vs.* the Union of India."

10. The Committee considered the matter at considerable length, in the light of Delhi High Court and Supreme Court Judgments in Col. Sinha's case. They decided to hear the representatives of the Department of Personnel, before coming to a final decision in the matter. They also desired to have particulars of cases of Class I & II Officers in which the aforesaid F.R. 56(j), had so far been applied.

11. * * * *

The Committee then adjourned to meet again at 15.00 *hours on the* 1*st November,* 1971 *to hear oral evidence of the representatives of the Department of Personnel on the Fundamental (Third Amendment) Rules,* 1969.

---

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

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

The Committee met on Monday, the 1st November, 1971 from 15.00 to 17.15 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri M. C. Daga
5. Shri Dharnidhar Das
6. Shri T. H. Gavit
7. Shri Subodh Hansda
8. Shri M. Muhammad Ismail
9. Shri V. Mayavan
10. Shri D. K. Panda
11. Shri P. V. Reddy
12. Shri R. R. Sharma
13. Shri Tulmohan Ram

REPRESENTATIVES OF THE CABINET SECRETARIAT (DEPARTMENE OF PERSONNEL)

1. Shri P. K. J. Menon, *Secretary.*
2. Shri Uma Shankar, *Joint Secretary.*

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)

Shri S. S. Shetty, *Joint Secretary.*

SECRETARIAT

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

2. The Committee examined the representatives of the Department of Personnel and the Ministry of Law & Justice in regard to the provisions contained in Fundametal Rule 56(j).

3. Givig the background of Rule 56(j), the representative of the Department of Personnel stated that a paper on measures for strengthening of administration was laid on the Table of Lok Sabha by the Prime Minister on the 10th August, 1961. It was *inter alia* stated in that paper: "It is proposed to appoint a small Committee in each Ministry to locate officials who are ineffective or against whom suspicions exist regarding their integrity amounting to moral conviction. Measures will be taken to develop the ineffective persons by necessary counselling and training. In case persons are not capable of improvement and are in the age group of 45 to 50, they would be retired either on completion of 25 years of service or at the age of 50 whichever is earlier." The Santhanam Committee Report on prevention of corruption had also made a similar recommendation. These two documents formed the basis of this Rule.

In 1962 when the decision to increase the age of retirement from 55 to 58 years was taken, power was taken by Government to retire a Government servant who had reached the age of 55 years by giving him three months' notice. The matter was further examined in the light of the decision contained in the paper on measures for strengthening of administration and the recommendations of the Santhanam Committee and it was decided that the age at which Government should have the power to compulsorily retire a Government servant should be brought down from 55 years to 50 years.

The witness further stated that as the idea was to cover the entire body of Government servants the matter was also discussed in the National Council of the Joint Consultative Machinery mainly in relation to Class III and IV employees. A series of discussions were held. The staff side contended that generally the recruitment age of Class III employees was 19—21 years which meant that they would be completing 30 years of service when they were about 50 years og age. As such, the rule need not be amended in relation to them. It was accordingly decided not to extend the proposed amendment to Class III employees. However, as regards Class I and Class II employees, the age at which pre-mature retirement could be ordered in the public interest was reduced from 55 to 50 years.

4. In view of the apprehension of the staff side that the powers under this Rule might be used arbitrarily, it was decided that as a safeguard, the rule should be invoked only on the recommendation of Committees consisting of senior officers. In the case of Class III

Officers, the committee was presided over by the Head of the Department or the appointing auhority, whichever was higher. In the case of Secretariat Officers, the committee was at a very high level, consisting of the Cabinet Secretary and one or two more Secretaries. In the case of high officers, the committee's report went to the level of the Appointment Sub-Committee of the Cabinet. The committees looked into the character rolls of all officers who were about to reach the age of 50 years or complete 30 years of service and then came to the conclusion whether the man was fit for retention or not. In doing so, the committees weighed the entire service record of an officer and did not rely upon isolated instances. A clearance was also obtained from the Vigilance Department.

5. The witness also stated that the validity of this rule had been upheld by the Supreme Court. In this connection, he referred to the Supreme Court's Judgments in the case of Col. J. N. Sinha and Shri Sham Lal.

6. The witness added that even though Government had the power to compulsorily retire any Government servant after he had reached the age of 50, they had been 'very cautious' in the application of this rule. This would be apparent from the fact that out of so many lakhs of employees, action had been taken against only 42 persons under this rule during the last one year.

7. Asked whether any instance had come to notice where the powers vested by this rule were found to have been exercised arbitrarily, the witness stated that "in one case the court came to the conclusion that the rule had been used arbitrarily." But he added, "the unfortunate position in that case was that the affidavit which had been filed by the Ministry concerned did not contain any reply to the points which the other side had raised." Further asked whether the rule could not be used arbitrarily, the witness stated, "In human institutions, we cannot be very perfect. But the point is, for this very reason we have provided for the committees."

8. The Committee then enquired whether Government had any objection to providing for a safeguard that before passing an order under this rule, Government should consult the Union Public Service Commission. The representative of the Department of Personnel felt that the present safeguards were enough.

Asked whether it would not be feasible to provide for the existing procedural safeguards such as review of cases by committees of senior officers in the rule itself, the representative of the Ministry of Law and Justice stated, "Practically it is getting statutory recognition."

9. The Committee enquired whether the grounds for passing an order under this Rule were communicated to the Government servant concerned. The representative of the Department of Personnel stated that the grounds were not communicated. Asked whether an opportunity to show cause against an order to be passed under F.R. 56(j) was given to the persons concerned, he stated that no such opportunity was given. Drawing the attention of the witness to the fact that a show cause notice was issued to the persons concerned even in relatively smaller matters, such as temporary stoppage of increment, the Committee enquired why, in cases coming under the purview of Rule 56(j) where the service-length of a person could be cut short by as many as 8 years, such an opportunity was not given. The witness stated that if this were done, it would amount to initiation of disciplinary proceedings. As the Santhanam Committee had observed there might be cases where there might not be adequate proof for the conviction of a Government servant, but there may be circumstances leading to a moral conviction that he is corrupt. It was to deal with such cases and cases of ineffectiveness that this rule had been brought into being. If the reasons were given, these would be contested and there would then be hardly any difference between the proceedings under this rule and disciplinary proceedings.

The representative of the Ministry of Law and Justice stated that they could not give a show-cause notice unless they treated the proposed action as a punishmen. According to him, pre-mature retirement of a Government servant because of ineffectiveness of moral conviction that he was corrupt after he had rendered a particular length of service would not amount to punishment. According to the Supreme Court also, action under this rule did not amount to punishment.

10. The Secretary, Department of Personnel stated that the matter had also come up in the Joint Consultative Committee. The staff side, which had taken up mainly cases of Class III employees, had stated that the decisions concerning the employees were being taken arbitrarily. They were also against inefficiency and corruption, but they insisted that the orders passed under the rule should not be arbitrary. As to the Government view-point in the matter, he stated, "Our difficulty was that according to the existing rules and regulations, if an opportunity is given to show cause then it will attract some provisions of a disciplinary case and this will take three or four years. We have to consider whether we can give an opportunity to show cause, without attracting the provisions of a disciplinary case."

11. Referring to the view expressed by the representative of the Ministry of Law and Justice that action under this rule did not amount to punishment, the Committee pointed out that as a result of action under this rule, the service-length of a Government servant could be cut short by as many as eight years. This was in effect nothing but punishment. The representatives of the Department of Personnel and Ministry of Law & Justice, Law stated that if a Government servant was retired in public interest after he had reached a particular age or after he had rendered a given length of service and no grounds were mentioned in the order, it would not amount to punishment, for Government could reduce the age of retirement. Also, inasmuch as no grounds were mentioned in the order, no stigma was cast.

Drawing a distinction between disciplinary proceedings and action under this Rule, the representative of the Department of Personnel stated that while disciplinary proceedings could be initiated against a Government servant at any time during the course of his service, no action under Rule 56(j) could be taken unless the Government servant had reached the age of 50 years or rendered at last 30 years' service. Further, whereas disciplinary proceedings could be initiated for specific acts of misconduct or irregularity, action under rule 56(j) could be taken for general ineffectiveness or suspicion of lack of integrity amounting to moral conviction.

12. Asked whether a Government servant had any remedy against an order passed under Rule 56(j), except going to a Court of Law, the representatives of the Department of Personnel stated that the employees could represent to the authority concerned. The representations were considerd, and wherever permissible, the order was set aside. Asked whether Government had any objection to placing the right of representation on a statutory footing, the representative of the Ministry of Law stated that the Government did not want to dilute the power under the rule which was absolute. But at the same time Government considered every representation.

13. In reply to a question whether the age limit of 50 years for compulsory retirement under the rule could not be further reduced in the public interest, the witness stated that according to the court judgements, the absolute power of the Government in this regard could be exercised only when the Government servant had put in a sufficient length of service. If the age limit was reduced further, there might be an objection that the Government servant had not been allowed to put in a sufficient length of service. After taking advice at various levels, Government had come to the conclusion that if the age limit was reduced below 50, it would be difficult to sustain it in a court of law.

14. The Committee enquired whether the Department of Personnel had taken any steps to ensure that Rule 56(j) was not used as a short cut to disciplinary proceedings. The representative of the Department of Personnel stated that they had issued guidelines to this effect. They had advised the Ministries|Departments that Rule 56(j) should not be used to retire a Government servant (i) for any specific act of misconduct or as a short-cut formula; or (ii) for reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retrenchment; or (iii) on the ground that the Government servant may not be suitable to continue in his officiating post or for promotion to a higher post for which he may be eligible after reaching the age of 50|55 years.

15. The Committee then enquired whether the cases of Government servants were reviewd only nearabout the age of 50 ayears or subsequently also. The representative of the Department of Personnel stated that in the case of Class I and Class II employees, the first review was done at the age of 50 years and a second review at the age of 55 years. In the case of Class III employees, there was a review either on completion of 30 years of service or at the age of 55 years. There was no review in respect of Class IV employees. In reply to a question, the witness stated that the cases of all persons who reached the age of 50 or 55 could not be reviewed every year. But the fact that the case of a person had been reviewed did not stand in the way of Government initiating disciplinary proceedings or compulsorily retiring hm under Rule 56(j) at any time after the review had taken place if they considered such a course necessary.

16. When enquired whether any other independent democratic country had also considered the question of pre-mature retirement to deal with the problem of corruption and inefficiency in Government Offices, the representative of the Department of Personnel stated that in the U.K. there was a system of retiring persons prematurely for inefficiency or on other considerations. They were now considering the question of giving monetary compensation to such persons in certain circumstances.

17. To examine the matter further, the Committee desired to be furnished with further information on the following points:

(i) level at which representations against orders under F.R. 56(j) are reviewed; and whether the reviewing authority

is the same as is competent to pass orders under F.R. 56(j) or some higher authority;

(ii) number of cases in which representations were received by the competent authority from the officers compulsorily retired under F.R. 56(j); and the number of cases in which the orders passed under the Rule were subsequently withdrawn as a result of such representations;

(iii) (a) copies of three selective representations in cases where the orders passed under F.R. 56(j) were subsequently withdrawn; and (b) copies of three selective representations in cases where the orders passed under F.R. 56(j) were not withdrawn by the competent authority.

The Committee then adjourned to meet again at 15.30 hours on Wednesday, the 17th November, 1971

---

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

The Committee met on Manday, the 3rd January, 1972 from 15.30 to 16.30 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri H. K. L. Bhagat
4. Shri M. C. Daga
5. Shri Dharnidhar Dass
6. Shri Subodh Hansda
7. Shri D. K. Panda
8. Shri Tulmohan Ram.

SECRETARIAT

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

---

*Minutes of the Ninth and Tenth sittings are not covered by this Report. The relevant portions of these Minutes were appended to the Second Report of the Committee.

2. The Committee considered Memoranda Nos. 18-19 and 21-22 on the following subjects:—

S.No.	Memo No.	Subject
(i)	18	The Rajasthan Foodgrains (Restrictions on Boarder Movement) Order, 1959 (G.S.R 432 of 1959).
(ii)	19	The Medicinal and Toilet Preparations (Excise Duties) Second Amendment Rules, 1968 (G.S.R. 603 of 1968).
(iii)	21	The Employees' Provident Fund (Grant of Advances to Officers and Staff, other than Commissioners for Building/Purchasing of Houses) (Second Amendement) Rules, 1968 (G.R.S. 143 of 1969).
(iv)	22	The Engineering Supervisors (Recruitment and Training) Amendment Rules, 1969 (G.S.R 36 of 1970).

(i) *The Rajasthan Foodgrains (Restrictions on Border Movement) Order,* 1959 (*G.S.R. 432 of* 1959) (*Memorandum No.* 18)

3. Clause 6 of the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 provided that any Police Officer not below the rank of the Head Constable and *'any other person'* authorised by the State Government "may", with a view to securing compliance with the Order, carry out search|seizure or authorise *'any person'* to carry out search|seizure.

4. The attention of the Ministry of Agriculture (Department of Food) was invited to the following recommendation of the Committee on Subordinate Legislation, contained in para 15 of the Fifth Report (Third Lok Sabha):—

> "The Committee after having considered the matter at some length, are of the view that it should specifically be stated in the Order that a Government servant not below a specified rank or equivalent officer might be authorised to conduct searches and seizures etc., under the aforesaid Order. It should not be left worded in a manner which would give the executive the power to authorise any and every Government servant to exercise the power of conducting searches and seizures under the aforesaid Order."

5. In their reply, the Ministry of Agriculture (Department of Food) stated as follows:—

> ".....the matter has been carefully examined. The words "any other person" and "any person" used in clause 6 of the Rajasthan Foodgrains (Restrictions on Border

Movement) Order, 1959 do not mean that any and every employee of the State Government may exercise the power conferred by clause 6 of the Order. The Government of Rajasthan have issued notifications in pursuance of clause 6 of the Order in which the Officers who are competent to exercise the power of conducting searches and making seizures have been clearly specified. As far as the police officers are concerned clause 6 of the Order itself specified the rank. In practice, therefore, there is no arbitrariness in the exercise of the power conferred by clause 6 of the Order.

An amendment to the Order as suggested by the Committee will present some practical difficulties. It may not be possible for the State Government to specify the same officers at all times to exercise the power conferred by clause 6 of the Order. For the sake of administrative convenience it may be necessary to change the officers at times. For the same reason, it will be difficult to lay down in the Order itself that only officers who are not below a certain specified rank shall exercise the power conferred by clause 6.

Some time back, the Committee on Subordinate Legislation had suggested a similar amendment to the Northern Rice Zone (Movement Control) Order, 1968. The practical difficulties in the way of carrying out such an amendment were pointed out in this Departments *O.M. No. 204(Gen.) (1) 71-PY.II, dated 24th April, 1971.

If the Committee is still of the view that the Order should be amended as suggested by the Committee then necessary steps will be taken to amend the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 after consulting the Government of Rajasthan."

6. The Committee noted that a similar reply had been received from the Ministry of Agriculture (Department of Food) in the case of the Northern Rice Zone (Movement Control) Order, 1968. The Committee had not been satisfied with that reply and observed in para 21 of their First Report (Fifth Lok Sabha) that the fact that any of the State Governments/Union Territories had vested the power to carry out searches|seizures only in responsible officers did not take away the need for a built-in safeguard repeatedly recommended by the Committee (*viz.*, the minimum rank of the persons to be authorised to carry out searches|seizures should be indicated in the Order itself).

*See Para 20 of the first Report of the Committee on Subordinate Legislation Fifth Lok Sabha).

7. The Committee also noted that, as under the Northern Rice Zone (Movement Control) Order, 1968, not only the Head Constable and the persons authorised by the Central/State Governments and been empowered to carry out searches/seizures but they had been further empowered to authorise 'any person' to exercise these powers. In para 22, *ibid.*, the Committee had expressed the view that the provision for 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.

8. The Committee decided to reiterate the above recommendations.

(ii) *The Medicinal and Toilet Preparations (Excise Duties) Second Amendment Rules* 1968 (*G.S.R.* 603 *of* 1968) (*Memorandum No.* 19)

9. Rule 137A of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, as inserted by above mentioned G.S.R. read as follows:—

> "*Duplicates of documents may be granted on payment of fees.*—The proper officer may, on application, grant a duplicate of any certificate, licence, transport permit or other document issued to any person on payment of a fee of rupee one, and subject to such other conditions as may be imposed by the proper officer, if he is satisfied that no fraud has been committed or is intended by the applicant."

10. It was pointed out to the Ministry of Finance (Department of Revenue and Insurance) that, apart from the fact that empowering the proper officer to impose other conditions for the grant of duplicates might tantamount to sub-delegation, for which an express authorisation of the parent law was necessary, different conditions might be imposed by different officers resulting in differential treatment from area to area.

11. In their reply, the Ministry of Finance (Department of Revenue and Insurance) stated as follows:—

> ".....After careful consideration of the matter, it has been decided to amend Rule 137A and delete the words 'and subject to such other conditions as may be imposed by the proper officer'. Necessary action to issue a notification in this connection is being taken."

12. The Committee noted that the rule in question had been amended on the above lines (*vide* G.S.R. 1164 of 1971, published in the Gazette of India, Part II, Section 3(i), dated the 14th August, 1971).

(iii) *The Employees' Provident Fund (Grant of Advances to Officers and Staff, other than Commissioners for Building/Purchasing of Houses) (Second Amendment) Rules, 1968 (G.S.R. 143 of 1969) (Memorandum No. 21).*

13. There was no provision in the above rules for the grant of an advance from the Employees' Provident Fund for the purchase of a plot of land, whereas a provision was made therein for the grant of an advance for the purchase of a house, which included a flat. The Sub-Committee of the Committee on Subordinate Legislation which considered the matter at their sitting held on the 19th September, 1970, desired to know the reasons for not providing for the grant of an advance from the Fund for the purchase of a plot of land in the said Rules.

14. The Ministry of Labour and Rehabilitation (Department of Labour and Employment) to whom the matter was referred stated as follows in their reply:—

> ".....the Rules in question are patterned on the corresponding Central Government Rules. These rules which were initially framed in 1965, contained a provision for the grant of advance for, *inter alia*, the purchase of a plot of land. Latern on this provision was deleted on the basis of the then Central Government Rules. The Central Government have now lifted the embargo on the grant of advances to their employees for purchasing of sites for constructing houses. Action has been initiated to amend the Rules of the Employees' Provident Fund Organisation also suitably to bring them on par with the Central Government Rules."

15. The Committee noted that the rules of the Employees' Provident Fund Organisation had been amended and brought on par with the Central Government rules as regards the grant of advance for the purchase of a plot of land (*vide* G.S.R. 1043 of 1971 published in the Gazette of India, Part II, Section 3(i), dated the 17th July, 1971).

(iv) *The Engineering Supervisors (Recruitment and Training) Amendment Rules*, 1969 (*G.S.R. 36 of 1970*) (*Memorandum No. 22*).

16. The above mentioned Rules added the following new rule to the Engineering Supervisors (Recruitment and Training) Rules, 1968 :—

> "26. *Power to relax.*—Where the Central Government is of a opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing, relax any of the provisions of these rules in respect of any class or category of persons or posts."

17. It was, however, noticed that though the Rules were published in the Gazette of India, dated the 10th January, 1970, they were deemed to have come into force on the 13th August, 1966.

18. The Explanatory Memorandum to the Rules read as follows:—

> "The Engineering Supervisors (Recruitment and Training) Rules, 1966, which were published with the Notification of the Government of India in the Department of Communications, Posts and Telegraphs Board in the Gazette of India, dated the 13th August, 1966 *vide* G.S.R. 1264, dated the 29th July, 1966, did not contain the clause on 'Power to Relax' which is a common feature of all recruitment rules. It is found from experience that it is necessary to have such clause so that the rules do not affect adversely certain classes of persons who need relaxation owing to peculiar circumstances. The relaxation clause has to be given retrospective operation from the date the original rules were gazetted.
>
> 2. It is hereby certified that giving retrospective effect to the aforementioned rule would not prejudicially affect the right of any person already in service."

19. The attention of the Ministry of Communications (Posts & Telegraphs Board) was invited to para 10 of the Second Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) which envisaged that retrospective effect to the Rules should be given only in unavoidable circumstances. The Ministry of Communications were, therefore, requested to state whether there were any such circumstances in the present case.

20. In their reply, the Ministry of Communications (P & T Board) stated as follows:—

> "....this retrospective effect to the new rule was given effect to on the specific advice of the Ministry of Law (Department of Legal Affairs—Advice (A) Section) in one of the cases wherein in the recruitment of 1967 a Scheduled Caste candidate who did not fulfil the prescribed educational qualification, was erroneously selected and deputed for training. As per recruitment rules, a candidate must have Physics or Mathematics or both in his B.Sc. degree examination. During the course of training it was detected that he had none of these subjects in his B.Sc. examination. When the case was referred to the Ministry of Law, for advice, they suggested that the proposed amendment be given retrospective operation and thereafter a relaxation may be issued in favour of the candidate regularising his selection in 1967 recruitment. As per their advice an order dated 6th March, 1970 was issued regularising selection of the candidate."

21. The Committee were not happy over the manner in which the authorities had acted in this case. They noted that the authorities had appointed to the post of Engineering Supervisor a person who did not have prescribed educational qualifications, and later on, to regularise the irregularity introduced the relaxation rule with retrospective effect. They were strongly of the view that the relaxation rule should not be used as an instrument of favouring individuals. While desiring that nothing should at this stage be done which may have an adverse effect on the individual concerned, the Committee felt the need for safeguards to ensure that the powers of relaxation vested in Government were not abused.

22. To see whether the similar relaxation power in other recruitment rules had been properly exercised by Government, the Committee desired to be furnished with a statement setting forth the particulars of all cases in which the power to relax rules had been used by the Ministries/Departments of the Government of India during the last two years.

The Committee then adjourned to meet again on the 28th and 29th January, 1972 to consider certain Memoranda and to take oral evidence of the representatives of the Ministries/Departments in regard to delays of 'Orders' on the Table of the House.

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

The Committee met on Friday, the 28th January, 1972 from 16.00 to 16.45 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri Salehbhoy Abdul Kadar
3. Shri G. Bhuvarahan
4. Shri M. C. Daga
5. Shri Dharnidhar Das
6. Shri T. H. Gavit
7. Shri Samar Guha
8. Shri Subodh Hansda
9. Shri P. V. Reddy
10. Shri R. R. Sharma

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 23 to 27 on the following subjects:—

S.No.	Memo No.	Subject
(i)	23	The Public Provident Fund Scheme, 1968 (G.S.R. 1136 of 1968)
(ii)	24	Rules regulating direct recruitment to (i) the Central Engineering Service Class I, (ii) the Central Engineering Service Class II, (iii) the Central Electrical Engineering Service Class II (G.S.Rs 233, 234 and 235 of 1961) and (iv) the Central Electrical Engineering Service Class I (G.S.R. 36 of the 1959).
(iii)	25	The Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 (G.S.R. 571 of 1967).
(iv)	26	Numbering of Amendments to 'Orders'.
(v)	27	Giving of Retrospective effect to 'Orders'—First Amendment of 1970 to Indian Police Service (Pay) Rules, 1956 (G.S.R. 409 of 1970).

(i) *The Public Provident Fund Scheme, 1968*
(G.S.R. 1136 of 1968)

3. Paragraph 11(4) of the Public Provident Fund Scheme, 1968 provided that the interest on loans from the Public Provident Fund recoverable from the subscribers "shall accrue to the Central Government".

4. The Ministry of Finance were asked to state their views whether, having regard to the fact that the loans under the Public Provident Fund Scheme were paid out of the amounts standing to the credit of the subscribers, the interest thereon should not be credited to the subscribers' account on the analogy of the provisions contained in Rule 11 of the General Provident Fund (Central Services) Rules, 1960.

5, In their reply, the Ministry of Finance (Department of Economic Affairs) stated as follows:—

"We have carefully examined the suggestion made by the Committee on Subordinate Legislation that as loans to PPF subscribers are paid only out of the amounts outstanding to their credit, the interest recovered thereon should not be retained by Government as provided in paragraph 11(4) of the Public Provident Fund Scheme, 1968 (G.S.R. 1136) and that an amendment should be made in the Scheme to provide for the credit of the interest so recovered to the subscriber's account on the analogy of the provisions contained in Rule 11 of the General Provident Fund (Central Services) Rules, 1960. It may be stated at the outset that the Public Provident Fund Scheme and the General Provident Fund Scheme are not identical. In the case of General Provident Fund, advances are sanctioned to Government servants only for certain *specified purposes* whereas under the Public Provident Fund Scheme, loans can be given for *any purpose*. Again, while, in the case of subscribers to the Public Provident Fund, some nominal payments ought to be recovered by Government from the loanees on account of extra labour involved in granting loans to them and keeping their accounts, the same may not be justified in the case of Government servants where it may be assumed that this service is rendered to them free of charge as a part of their service condition. It may also be stated here that even in the case of commercial banks if a person takes loans from a Bank he is charged interest normally at 1

percent higher than the interest he gets on his fixed deposits. Even in the case of 15-Year Tax Free Post Office Cumulative Time Deposit Scheme, which is a near parallel, interest on withdrawals (advances) permitted to a holder and repaid during the currency of his account or adjusted on maturity of the account against the maturity value, the account holder is charged by Government at 6 per cent per annum (simple) which is about 1 per cent above the rate of interest accruing on the aecount.

For reasons explained above, the retention of interest recovered on loans from the Public Provident Fund by Government is considered to be appropriate and justified. But it is agreed that there is need to review the quantum of the interest charges in comparison with similar provisions in other investments and other institutions. In view of this and having regard to the views of the Committee on Subordinate Legislation and in order to make the Scheme attractive the rate of interest chargeable on loans under paragraph 11(2) of the Scheme is being reduced from two per cent to one per cent. Necessary amendment to the Rules is being initiated."

6. In view of the explanation given by the Ministry, the Committee did not pursue the suggestion that interest on loans under paragraph 11(2) of the Public Provident Fund Scheme should be credited to the subscriber's account on the analogy of the provisions contained in Rule 11 of the General Provident Fund (Central Services) Rules, 1960. The Committee also noted with satisfaction the decision of the Ministry of Finance to reduce the rate of interest chargeable on loans under paragraph 11(2) of the Public Provident Fund Scheme from two per cent to one per cent.

(ii) *Rules regulating direct recruitment to (i) the Central Engineering Service Class I, (ii) the Central Engineering Service Class II, (iii) the Central Electrical Engineering Service Class II (G.S.Rs. 233, 234, and 235 of 1961 respectively) and (iv) the Central Electrical Engineering Service, Class I (G.S.R. 36 of 1959).*

7. Clause 5 of Appendix II to the above mentioned Rules provided as follows:—

"the Commission will summon at their discretion only such candidates as they consider suitable for interview for a Personality Test."

8. The attention of Department of Works and Housing was invited to paras 30-32 of the Seventh Report of the Committee on

Subordinate Legislation (Fourth Lok Sabha) wherein, dealing with similar clauses in the Central Water Engineering (Class I) Service Rules, 1965 and the Central Power Engineering (Class I) Rules, 1965, the Committee had pointed out as follows:—

> ".....the clauses, as worded, gave an impression that a candidate could be ignored for interview even if he had done very well in the written test. It was reasonable that all candidates, who secured prescribed quota for minimum marks, should invariably be called for interview for the Personality Test unless they were found to have violated or failed to have fulfilled some prescribed condition or conditions, which might be prescribed by the Union Public Service Commission in their discretion."

9. The Committee noted that the Ministry of Works and Housing had amended the clauses in question to read as follows:—

> "Candidates who obtain such minimum qualifying marks in the written examination as may be fixed by the Commission at their discretion *shall be summoned* by them for an interview for a personality Test."

While approving the revised clauses in substance, the Committee felt that the expression 'at their discretion' used therein was redundant in that such discretion was implied in the words 'as may be fixed by the Commission'. This expression should, therefore, be omitted from the revised clauses.

(iii) *The Post Graduate Institute of Medical Education and Research, Chandigarh Regulations*, 1967 (*G.S.R. 571 of 1967*).

10. Regulation 6(2) of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 read as follows:—

> " * * * *
>
> (2) If within half an hour from the time appointed for holding a meeting the quorum is not present, the meeting shall stand adjourned to a time, date and place to be determined by the President;
>
> Provided that the meeting so adjourned shall be held within seven days of the date on which it was originally proposed to be held."

11. Regulation 16(2) contained a similar provision.

12. There was no specific provision in the above Regulations for intimating the absentee members about the fact of adjournment of a meeting for want of quorum, and about the time, date and place of the next meeting.

13. The matter was taken up with the Ministry of Health and Family Planning on the 5th June, 1967. Their attention was invited to para 9 of the Sixth Report of the Committee on Subordinate Legislation (Third Lok Sabha) where, dealing with a similar lacuna in the Food Corporation Regulations, 1965, the Committee had recommended as follows:—

> "The Committee recommend that a specific provision should be made in the regulations for intimating the absentee directors|members of the fact of adjournment on the same day by post or telegram or by special messenger, as the needs of the case may require."

14. In April, 1970, the Department of Health forwarded to this Secretariat a copy of the Post Graduate Institute of Medical Education and Research Chandigarh (Amendment) Regulations, 1970. These Regulations amended the original Regulations 6(2) and 16(2) to read as follows:—

> "If within half an hour from the time appointed for holding a meeting, the quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place and notice of such adjourned meeting shall be given to each member who is not present at the meeting on the same day by post or telegram or special messenger, as the case may require."

15. While the Committee noted that Regulations 6(2) and 16(2) of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 had been amended on the lines suggested by the Committee, they felt that the time taken by the authorities in making the amendments (a period of nearly three years) was too long.

(iv) Numbering of Amendments to 'Orders'

16. The Committee on Subordinate Legislation in paragraph 13 of their 12th Report (Second Lok Sabha) had exhorted that amendments to the same Rules should be published in the Gazette bearing the 'Order' numbers in the same sequence as assigned to the amendments.

17. However, cases have from time to time come to notice where the above recommendation of the Committee on Subordinate Legislation was not followed by the Ministries. For instance G.S.R. 775 of 1970 had been referred to as the 'Sixth Amendment' to the Indian Telegraph Rules,1885 and published in the Gazette on the 11th May, 1970 but G.S.R. 774 had been described as the 'Seventh Amendment'

to the said Rules, and published in the Gazette on the 8th May, 1970. Like-wise, G.S.R. 1085, published in the Gazette on the 25th July, 1970, had been referred to as the 'Second Amendment' to the Central Secretariat Stenographers Service Rules, 1969, but G.S.R. 1087-a subsequent G.S.R. published in the same Gazette had been referred to as '(Amendment)', meaning thereby the First Amendment to the Rules made in 1970. The relevant Ministries|Departments were asked to state the reasons for not following the above-mentioned recommendation of the Committee on Subordinate Legislation in these cases.

18. In regard to the numbering of the afore-said Amendments to the Indian Telegraph Rules, 1969, the Indian Posts and Telegraphs Department stated as follows:—

> ".....The Gazette Notifications containing the Indian Telegraph (Sixth and Sevnth Amendments) Rules, 1970, were actually intended to be issued simultaneously and brought into effect on the same date *i.e.* 15.5.1970. But the Notification containing the Sixth Amendment could not be issued on the same date on which the one containing Seventh Amendment was issued, as a certain addition was proposed at the last stage. They were, however, brought into force on the same date, *viz.*, 15-5-1970. Steps will, however, be taken to maintain the sequence to the amendments in future. The lapse on part of the Department is very much regretted."

19. In regard to the incorrect numbering of the Amendments to the Central Stenographers Service Rules, 1969, the Cabinet Secretariat (Department of Personnel) Stated as follows:—

> ".....the two notifications in question were being processed and finalised more or less simultaneously but in the process of issue, the notification referred to as the 'Second Amendment' happened to have been issued a day earlier than the one referred to as 'Amendment', thus leading to the anomaly pointed out by the Lok Sabha Secretariat. However, since both the amendments have been published in the same Gazette and in terms of rule 1(2) of the notifications, have come into force on the same date, there has not been any legal irregularity, and it would be appreciated that no action is called for at present.
>
> The recommendation of the Committee on Subordinate Legislation that the amendments to the same Rules should be published in the Gazette bearing the 'Order' numbers

in the same sequence as assigned to the amendments would, however, be kept in view for strict compliance, in future."

20. The Committee noted the circumstances in which the Indian Posts and Telegraphs Department and the Cabinet Secretariat (Department of Personnel) had failed to observe the exhortation of the Committee contained in para 13 of their 12th Report (Second Lok Sabha). They also noted that both the Departments had promised to comply with the above exhortation of the Committee in future.

(v) *Giving of Retrospective Effect to 'Order'—First Amendment of 1970 to Indian Police Service (Pay) Rules, 1954 (G.S.R. 409 of 1970).*

21. The First Amendment of 1970 to the Indian Police Service (Pay) Rules, 1954 sought to raise the pay-scale of the Inspector General of Police, Jammu and Kashmir State from Rs. 2250| to Rs. 2500-125|2-Rs. 2750. The Amendment was published in the Gazette of India, dated the 7th March, 1970 but was deemed to have come into force from the 1st July, 1969.

22. In this connection, the Cabinet Secretariat (Department of Personnel) were asked to furnish the following information:—

(i) the reasons for giving retrospective effect to the Rules in question, and whether such a course was considered necessary;

(ii) the reasions for a time-lag of over 8 months, between the date of effect of the 'Order' and the date of its publication in the Gazette; and

(iii) whether any one had been adversely affected by the retrospective effect of the 'Order' and, if not, the reasons for not publishing a clarification on the lines indicated in para 10 of the 2nd Report of the Committee on Subordinate Legislation (Fourth Lok Sabha).

23. In their reply, the Cabinet Secretariat (Department of Personnel), *inter alia* stated as follows:—

"Through notification* dated the 18th March, 1970 the scale of pay admissible to the members of the Indian Police Service appointed as Deputy Inspector General of Police was revised as Rs. 1600-100-2000, with effect from the 1st July, 1969.

*No. 1/27 68-AIS-(II)-vol. II (G. S. R. 496 Published in the Gazette on 28-3-70)

In the context of this upward revision of the scale of pay of the posts of Deputy Inspectors General of Police, the State Government proposed in August, 1969 that with effect from the 1st July, 1969 (the date on which the scale of pay of the posts of Deputy Inspectors General of Police was revised) the scale of pay of the post of Inspector General of Police, Jammu and Kashmir should be restored to Rs. 2500-125|2-2750. The proposal of the State Government for restoring the scale of Rs. 2500-125|2-Rs. 2750 to the post of Inspector General of Police was examined by the Ministry of Home Affairs in consultation with the Ministry of Finance and it was ultimately decided to accept the proposal. The relevant notification* was issued on the 19th January, 1970. In this notification, it was indicated (by oversight), that the amendment would come into force from the date of publication of the Notification in the Gazette. However, subsequently, this error was detected and this notification was substituted by another notification** in which it was indicated that the amendment would come into force from the 1st July, 1969.

It is certified that no person has been, or is 'likely to be adversely affected by the retrospective effect' given to the notification (in question)."

24. In their reply, the Cabinet Secretariat (Department of Personnel) further stated:—

"Attention may, in this connection, be drawn to the observations of the Attorney General made in connection with Exemption Notifications issued under the Central Excise and Salt Act, 1944 and the rules framed thereunder [which was quoted in paragraph 49 of the Seventh Report of the Committee on Subordinate Legislation—(Fourth Lok Sabha)]:

'The Legislature may make a law with retrospective effect. A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A Law made by the Legislature may itself further empower subordinate legislation to operate retrospectively. Without such a law no subordinate legislation can have any retrospective effect'.

---

*No. 1/102/69-AIS (II) (G. S. R. 162, Published in the Gazette on 31-1-1970)

**No. 1/102/69-AIS (II) (G. S. R. 409, Published in the Gazette on 7-3-70)

The Committee in paragraph 51 of this Report desired that the Ministry of Home Affairs should examine in consultation with the Ministry of Law, whether retrospective effect to the Orders listed in paragraph 48 of the Report had been given under due legal authority. This Department have examined the matter in consultation with the Ministry of Law and have come to the conclusion that in the light of the advice of the Attorney General cited earlier, the Central Government do not have the powers to frame rules and regulations with retrospective effect in exercise of the powers conferred on them by section 3 of the All India Services Act, 1951. The position has also been clarified to the State Governments and the various authorities concerned *vide* this Department's letter No. 24|4|71-AIS(II), dated the 18th February, 1971. In the light of this position, so long as the All India Services Act, 1951 stands as it does now, no retrospective subordinate legislation will be issued thereunder.

The circumstances in which retrospective effect was given to the rules published in the Gazette of the 17th March, 1970, as brought out in this Office Memorandum and the decision of the Central Government not to give retrospective effect to any subordinate legislation under the All India Services Act, 1951, so long as it stands as it does at present, may kindly be brought to the notice of the Committee on Subordinate Legislation and thereafter their comments|recommendations, if any, may be brought to the notice of this Department for consideration."

25. The Committee noted the decision of the Central Government not to give retrospective effect to any subordinate legislation under the All India Services Act, 1951, so long as it stands as at present.

The Committee were, however, not happy with the wording of the last sentence of the Department's reply wherein they had asked the Secretariat to bring the comments|recommendations of the Committee to the notice of the Department *'for consideration'*. In the opinion of the Committee, the sentence, as worded, by implying that the Department of Personnel could sit in judgment over the recommendations of the Committee, was apt to give an impression that the Department stood on a higher pedestal than the Committee—a Committee of Parliament. The Committee felt that in their communications, the Ministries|Departments should not belittle the dignity of the Parliamentary Committees.

The Committee then adjourned to meet again at 14.30 hours on Saturday, the 29th January, 1972.

*MINUTES OF THE FOURTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1971-72)

The Committee met on Wednesday, the 22nd March, 1972 from 15.00 to 15.30 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri H. K. L. Bhagat
3. Shri M. C. Daga
4. Shri Subodh Hansda
5. Shri V. Mayavan
6. Shri P. V. Reddy
7. Shri Tulmohan Ram.

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 28 to 30 on the following subjects and 'Orders':—

S.No.	Memorandum No.	Subject
(i)	28	* * * *
(ii)	29	Central Secretariat Stenographers Service (Competitive Examination) Regulations 1969 (GSR 2678 of 1969).
(iii)	30	Action taken or proposed to be taken by government on various recommendations of, and assurances given to, the Committee on Subordinate Legislation.

(i) * * * *

3—7 * * * *

(ii) Central Secretariat Stenographers Service (Competitive Examination) Regulations, 1969 (G.S.R. 2678 of 1969) (Memorandum No. 29)

8. Regulation 8(5) of the Central Secretariat Stenographers Service (Competitive Examination) Regulations, 1969 reads as follows:—

"(5) Candidates belonging to any of the Scheduled Castes or the Scheduled Tribes who are considered by the Commis-

*Minutes of the Thirteenth Sitting and omitted portions of the Minutes of the Fourteenth Sitting are not covered by this Report.

. Omitted portions of the Minutes are not covered by this Report.

sion to be suitable for selection on the results of the examination, *with due regard to the maintenance of the efficiency of administration* shall be eligible to be selected for the vacancies reserved for them irrespective of their ranks in the order of merit at the examination."

9. The Sub-Committee of the Committee on Subordinate Legislation which examined the above Regulation at their sitting held on the 21st September, 1970, desired to know whether the provision 'with due regard to the maintenance of the efficiency of administration' appearing in the above regulation would not adversely affect the relaxation made in the case of candidates belonging to Scheduled Castes and Scheduled Tribes in filling up the quota of posts reserved for them.

10. In their reply, the Cabinet Secretariat (Department of Personnel) stated that the matter had been considered, in consultation with the Union Public Service Commission, and the Regulation in question had been amended to read as follows:—

"Candidates belonging to any of the Scheduled Castes or the Scheduled Tribes may, to the extent the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes cannot be filled on the basis of the general standard, be recommended by the Commission by a relaxed standard to make up the deficiency in the reserved quota, subject to the fitness of these candidates for selection to the Service, irrespective of their ranks in the order of merit at the examination."

11. The Committee noted that the Regulation, as now amended, made a pointed reference to relaxation of standard for candidates belonging to Scheduled Castes and Scheduled Tribes *to make up the deficiency in the reserved quota.*

(iii) *Action taken or proposed to be taken by Government on various recommendations of, and assurances given to, the Committee on Subordinate Legislation* (*Memorandum No.* 30).

12. The Committee noted with satisfaction the action taken by Government on their earlier recommendations, as indicated in Appendix III to the Report.

The Committee then adjourned to meet again at 15.00 *hours on Thursday, the 6th April,* 1972.

*MINUTES OF THE SIXTEENTH SITTING OF THE COMMITTEE ON SUBORDINAE LEGISLATION FIFTH LOK SABHA (1971-72)

The Committee met on Thursday, the 20th April, 1972 from 15.00 to 15.45 hours.

PRESENT

Shri Salehbhoy Abdul Kadar—*In the Chair.*

MEMBERS

2. Shri G. Bhuvarahan
3. Shri M. C. Daga
4. Shri V. Mayavan
5. Shri D. K. Panda

SECRETARIAT

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

2. In the absence of the Chairman, Shri Salehbhoy Abdul Kadar was chosen to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered their draft Third Report and adopted it.

4. The Committee authorised the Chairman and, in his absence Shri Salehbhoy Abdul Kadar to present the Report to the House on their behalf sometime in May, 1972.

5. The Committee then adjourned.

---

*Minutes of the Fifteenth Sitting are not covered by this report.

GMGIPND—LS I—433 LS—10-5-72—800.