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COMMITTEE
ON
SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

FIFTEENTH REPORT

(Presented on the 15th April, 1975)

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Corrigenda to Fifteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha)

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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 Fifteenth Report.

2. The Committee have held four sittings on the 27th and 28th January, 21st February and 10th April, 1975. At their sitting held on the 27th January, 1975, the Committee took evidence of the representatives of the following Ministries/Departments on the subjects mentioned against them:—

S. No.	Ministry/Department	Subject
1	Finance (Department of Revenue and Insurance).	The Wealth-tax (Second Amendment) Rules, 1973.
2	Health and Family Planning (Department of Health)	Delay in final publicaiion of various amendments to the Drugs and Cosmetics Rules, 1945.
3	Agriculture and Irrigation (Department of Agriculture).	The Fertiliser (Control) Third Amendme Order, 1972.

3. The Committee considered and adopted this Report at their sitting held on the 10th April, 1975. The Minutes of the sittings, which form part of the Report, are appended to it.

4. A Statement showing the summary of recommendations/ observations of the Committee is also appended to the Report (Appendix I).

II

(i) THE DRUGS AND COSMETICS (AMENDMENT) RULES, 1972 (S.O. 2139 OF 1972);

(ii) THE DRUGS AND COSMETICS (THIRD AMENDMENT) RULES, 1972 (S.O. 289 OF 1973); AND

(iii) THE DRUGS AND COSMETICS (AMENDMENT) RULES, 1973 (G.S.R. 444 OF 1973).

5. It was noticed from S.O. 2139 of 1972 that 48 amendments to the Drugs and Cosmetics Rules, 1945, were published in *draft form* in the years 1968, 1969 and 1970, on different dates for inviting objections/suggestions from persons likely to be affected by the proposed amendments, but the amendment Rules were finally published in the Gazette on the 12th August, 1972, i.e., after a gap of two to four years.

6. Similarly, it was noticed from S.O. 289 of 1973 that four amendments to the principal rules of 1945, were published in the draft form on 9th March, 1968, and the last date for receipt of objections/suggestions was fixed to be 20th May, 1968, but the amendment Rules were finally published on 3rd February, 1973, i.e., after a gap of more than four years and nine months.

7. The Ministry of Health and Family Planning (Department of Health), who were asked to state the reasons for inordinate delay in finally publishing the above amendments have replied as under:

"(i) *The Drugs and Cosmetics (Amendment) Rules*, 1972 (*S.O.* 2139 *of* 1972)

(a) The drug industry and the drug trade had requested that instead of frequent piece-meal amendments being made in the Drugs and Cosmetics Rules, these should be made once or twice a year in a consolidated form. In 1970 when the Committee on Subordinate Legislation of Fourth Lok Sabha in its first report at para 28 had recommended that some details like the date and page number of the Gazette Notification in which the draft amendment was published etc. should be incorporated in the finalised Notification, the Ministry of Law had advised that the finalised amendments should be published piece-meal to fulfil this requirement. It was, however, considered more appropriate to follow the old practice of publishing the finalised amendments to the Drugs and Cosmetics Rules in a consolidated manner. Therefore, it took some time to devise the proforma which will give all the particulars required to be given, as recommended by the Committee on Subordinate Legislation of the Fourth Lok Sabha.

(b) It was also necessary to publish the Hindi version of the finalised amendment to the Drugs and Cosmetics Rules simultaneously in the Gazette. For this purpose the making of the Hindi version of the Notification by the

Translation Section of the Ministry of Law took some time.

(c) Some of the copies of the Gazette Notification in which the draft amendments were published were not readily available and a search had to be made in the different libraries to get the correct page numbers of the Notification so that these could be appended in the Schedule to the finalised notification.

(ii) *The Drugs and Cosmetics (Third Amendment) Rules, 1972 (S.O. 289 of 1973)*

(a) The amendments which have been finally published under this notification were earlier published for comments under this Ministry's notification No. F. 1-39/64-D, dated the 29th February, 1968. The draft amendments to the Drugs and Cosmetics Rules published under the Notification of 1968 contained some draft amendments which related to the recognition of Pharmacopoeias. Under the Second Schedule to the Drugs and Cosmetics Act, there is a provision laying down the Pharmacopoeias that should be recognised under the Drugs and Cosmetics Act and Rules. This entry in the Second Schedule was proposed to be amended at this time and a draft amendment to the Second Schedule was published for comments. The amendments regarding recognition of Pharmacopoeias in the Drugs and Cosmetics Rules published under this Ministry's Notification mentioned above, as a result, got linked up with the amendment that was published in the Second Schedule to the Drugs and Cosmetics Act. In the circumstances the draft amendment published under Notification No. F. 1-39/64-D, dated the 29th February 1968, could not be finalised and published until and unless the draft amendment to the Second Schedule was first finalised and published.

(b) On the publication of the draft amendment to the Second Schedule to the Drugs and Cosmetics Act, comments were received that the legal formalities for making amendments to the Second Schedule have not been completed and the Notification should be published again for completing these formalities. In consultation with the Ministry of Law, the notification had to be published again for eliciting comments and this took some time. The draft amendments to the Drugs and Cosmetics Rules

published for comments, the Notification dated the 29th February, 1968, could not be finalised till these amendments to the Second Schedule were published in final form.

(c) As the consolidated list of draft amendments were being held up due to the delay in finalising the draft amendment to the Second Schedule a decision was taken to separate those amendments from the consolidated list which were not related to the draft amendment to the Second Schedule and publish them finally. This process of separating the amendments from the consolidated list which was done in consultation with the Ministry of Law also took some time.

These facts may kindly be brought to the notice of the Committee on Subordinate Legislation."

8. In another case, it was noticed that 18 draft amendments to the Drugs and Cosmetics Rules were published in 1969, 1970 and 1971, on different dates for inviting objections/suggestions, but these amendments were finally published on 26th April, 1974, under the Drugs and Cosmetics (Amendment) Rules, 1973 (G.S.R. 444 of 1973), after a gap of over two to four years.

9. At their sitting held on the 27th January, 1975, the Committee heard oral evidence of the representatives of the Ministry of Health and Family Planning (Department of Health) in the matter.

10. During evidence, the representative of the Ministry admitted that the procedure followed by the Ministry in this regard was faulty and there was a lot of avoidable delay. He apologised for inordinate delay in the final publication of amendments to the original rules. He assured the Committee that to avoid such delays in future, the whole procedure would be streamlined. A check register would be kept in the Drug Controller's Office, in which the date on which the notification was published in the Gazette, the date on which the time of three months expired and the date of final publication, etc., would be entered. It would also be ensured by the Drug Controller personally that before the Drug Advisory Committee met next, most of its recommendations were given effect to.

11. When asked whether he was aware of large scale adulteration in drugs and cosmetics and whether amendment of the rules in question was being considered to prevent these mal-practices, the representative of the Ministry stated that Government were not only aware of the fact that spurious, adulterated, sub-standard and

mis-branded drugs were being sold on a large scale, but they were also concerned about it. Tracing the reasons behind this, he stated that it was partly due to fall in moral standards, partly to high prices, to the greed for high profits and also due largely to the ineffective implementation of the Drugs Act and the rules at the State level. In some of the States, the drug control administration was good; but in most of them it was ineffective and poor. The Inspectors were paid meagre salaries, with the result that they accepted illegal gratification. Some States did not have a whole-time Drug Controller The Centre had advised the States that there should be a separate man who should hold that post. There should be separate drug inspectors with revised scales of pay. Laboratories should also be provided for the purpose. These suggestions were not being implemented because of paucity of funds. As regards revision of rules, he stated that Government had decided to amend the law and increase the penalty to life imprisonment A Bill to amend the Prevention of Food Adulteration Act had already been introduced in Parliament and Government proposed to introduce shortly another Bill on the same lines to amend the Drugs and Cosmetics Act, which would contain very strict provisions for dealing with adulteration. In the meantime, the representative of the Ministry stated that the rules would be examined to see what could be done to make them practical and stringent.

12. In a written note dated the 3rd March, 1975, the Ministry of Health and Family Planning (Department of Health) have stated that the procedure will be streamlined in order to ensure that there are no delays in the final publication of amendments to the Drugs and Cosmetics Rules. It is proposed to publish draft amendments in a consolidated form in future and whenever such draft amendments are published in the Gazette, the number of the Gazette, the date of its publication and the date on which it was made available to the public would be ascertained at the earliest. The draft amendments would also be finalised immediately after the last date for receipt of comments is over, i.e., without waiting for further comments. The draft amendments published in each notification would be finalised without consolidating these draft amendments with other draft amendments proposed subsequently. A check register would also be maintained to keep a constant watch over the draft amendments that are published and also to review the progress made in their finalisation. The Ministry have further assured that efforts will be made to finalise the amendments within a period of one year from the date of its publication for comments in the Gazette.

13. The Committee are unhappy to find the instances of inordinate delay in final publication of amendments to the Drugs and

Cosmetics Rules, as revealed in the preceding paragraphs. They note that while in some cases the gap between the publication of draft rules and final rules was between two and four years, in some other cases, it was as much as four years and nine months. In the opinion of the Committee, there was no justification for these delays. The Committee need hardly point out that if the Ministry feel the need for a change in the rules, they should effect the change as early as possible after consulting the interests concerned, and not sit over the amendments for years together.

14. The Committee note the assurance given by the Ministry of Health and Family Planning (Department of Health) that the existing procedure regarding final publication of amendments would be streamlined and that efforts would be made to finalise an amendment within, at the most, a period of one year from the date of its publication for comments in the Gazette. The Committee would like to watch the working of the new procedure. They would also like the Ministry of Health and Family Planning to consider whether the time-lag between the publication of draft rules and publication of the final rules cannot be further reduced.

15. As regards steps for preventing mass-scale adulteration in drugs and cosmetics, the Committee note that Government have decided to amend the law and increase the penalty to life imprisonment. The Committee are glad to note that a Bill to amend the Prevention of Food Adulteration Act has already been introduced in Parliament and Government propose to introduce shortly another Bill on the same lines to amend the Drugs and Cosmetics Act, which would contain very strict provisions for dealing with adulteration of drugs and cosmetics. The Committee desire that early action should be taken in this direction. They further desire the Ministry to conduct an early review of the existing rules to see whether they contain any loopholes which can be taken advantage of by unscrupulous elements, and, if so, to plug them.

III

THE FERTILIZER (CONTROL) THIRD AMENDMENT ORDER, 1972 (G.S.R. 417-E OF 1972)

16. Clause 13B of the Fertilizer Control Order, 1957 as amended by the above-mentioned amendment Order provides as under:

"13B. Disposal of non-standard fertilizer:—

Notwithstanding anything contained in the Order, a person may sell, offer for sale, stock, or exhibit for sale or distribute, any fertiliser not conforming to the prescribed

standard (hereinafter in this Order referred to as non-standard fertiliser) subject to the conditions that:—

(a) the container of such non-standard fertiliser is conspicuously superscribed with the words "non-standard" and also with the sign "X' both in red colour; and

(b) an application for the disposal of non-standard fertilisers in Form 'F' is submitted to the registering authority to grant certificate of registration for sale of such fertilisers and a certificate of authorisation with regard to their disposal and price is obtained in Form 'G';

Provided that the price per unit of the non-standard fertiliser shall be fixed by such registering authority after satisfying itself that the sample taken is a representative one, and after considering the nutrient content in the sample determined on the basis of a chemical analysis of the non-standard fertiliser:

*Provided further that the Central Government may by notification in the official Gazette exempt such agencies as distribute fertilisers on behalf of the Central Government, from complying with the conditions laid down in sub-clauses (a) and (b) of this clause."

17. The erstwhile Ministry of Agriculture (Department of Agriculture) were requested to state (a) whether any criteria had been laid down for exercise of the power of exemption available to Government under the second proviso for exempting certain agencies from the conditions laid down in sub-clauses (a) and (b) of Clause 13B; (b) whether they had any objection to incorporating those criteria in the Order; and (c) whether reasons were recorded in writing before an agency was exempted under the second proviso.

18. In their reply, the Ministry of Agriculture stated as under:

". . . no criteria have been specifically laid down because the restrictions imposed by the amendment in question on the freedom to grant exemption were considered sufficient and because the present policy of the Government to entrust distribution/handling of pool (imported) fertilisers through public agencies like the Food Corporation of India, Central Warehousing Corporation and State Warehousing Corporations, etc. is not likely to be changed. Moreover, according to the present policy the

*Inserted by the Fertiliser (Control) Third Amendment Order, 1972.

sub-standard fertilisers are to be issued only to the Co-operative/Government granulating or mixing units. The undersigned is further directed to say that since no criteria have been laid down, the question of incorporating them in the Order will not arise. . . no notification of exemption under the amended clause has been issued so far. However, reasons will be recorded in writing before any agency is granted exemption."

19. In a further communication, the Ministry have elucidated their above reply as under:

"The power given to the Central Government for exempting an agency from complying with the conditions laid down under Clause 13B of the Fertiliser (Control) Order is restricted by the proviso itself. The proviso lays down that the power of exemption is confined to 'such agencies as distribute fertilisers on behalf of the Central Government'. Therefore, once an agency satisfied this essential requirement contained in the proviso i.e. that it is an organisation which distributes fertilisers on behalf of the Central Government, it will be competent for the Government to grant exemption to that organisation. No further reason appears to be necessary for considering whether such organisation is to be exempted or not.

The provision has been inserted in this clause in the context that the Central Government deals with all the imported fertilisers in the country. These fertilisers are purchased in bulk and are then bagged in Indian ports. Bagged fertilisers also are bound to have some wastes and sweepings through spillage etc. which are to be sold and disposed of. To take care of such a situation which is inherent in the functioning, such a proviso is very necessary. Moreover, as pointed out earlier a restriction has been placed on the FCI, CWC and SWCs that the sub-standard fertilisers are to be issued only to cooperative/ Government granulating or mixing units who will granulate these again before passing them on to the cultivator. These mixtures are in turn required to fulfil certain prescribed standards.

It is hoped that this elucidation meets the purpose."

20. At their sitting held on the 27th January, 1975, the Committee heard oral evidence of the representatives of the Ministry of Agriculture and Irrigation (Department of Agriculture).

21. Explaining the reasons for empowering the Central Government to grant exemption to certain agencies from the conditions laid down in sub-clauses (a) and (b) of clause 13B of the above-mentioned Order, the representative of the Ministry of Agriculture and Irrigation stated that the Central Government was mainly concerned with the import of fertilisers, which were unloaded at 17 major and minor ports by the Food Corporation of India as an agent of the Central Government; and at the receiving end in different States and, at different places, these fertilisers were handled by the Central Warehousing Corporation or by the State Warehousing Corporations as agents to the Government of India. The fertilisers were received either in bulk in which case they had to be put into bags at the port, or they were received in bags which were unloaded with the help of hooks which made holes in the bags. A certain quantity of fertilisers got thrown about at the port. It had to be collected, cleaned and removed before the next ship was unloaded. The same thing happened at the receiving and both at the railway stations and in the godowns. The movement was so rapid and continuous that it was not possible to comply with the rigid conditions which were prescribed for sale in extraordinary circumstances of non-standard fertilisers to farmers. The representative of the Ministry further added that these three Central agencies did not make sale of non-standard fertilisers to farmers. They made sale of non-standard fertilisers under the directions of the Central Government only to cooperative granulating units or cooperative mixing units which were not given this exemption at all. They had to conform to these standards.

22. While clarifying the position further, the representative of the Ministry stated that these were not bad fertilisers, but only dust got mixed up. No doubt, it became sub-standard, but it would still be possible to give it to granulating agencies, who added some other fertiliser material for making out the 'grade'. Again, these grades were subject to the specifications laid down in the Fertiliser Control Order and then only they were sold to farmers. The granulating units did not get any exemption from the conditions prescribed in the Fertiliser Control Order.

23. In reply to a question, the witness stated that the sale of spilled-over fertilisers by the F.C.I. to private traders had been completely stopped in 1972, after some complaints were received. Thereafter, such sales were confined to only those granulating and mixing units, which were in the Cooperative sector. The witness assured the Committee that very severe action would be taken against any official of the F.C.I. selling such fertilisers to private traders.

24. In a written reply, the Department of Agriculture have stated that this exemption will not affect the interest of the cultivators because as per policy of the Government, these non-standard pool fertilisers are allotted only to cooperatives/Government granulation and mixing units for preparation of fertiliser mixtures which have to conform to the prescribed standard. They have further stated that no exemption has so far been granted to any agency. However, when such an exemption is granted, this will cover all the three agencies, *viz.*, the Food Corporation of India, the Central Warehousing Corporation and the State Warehousing Corporations.

25. The Committee note from the wording of the second proviso to clause 13B of the Fertiliser (Control) Order, 1957, inserted in 1972, that it gives a wide power to the Central Government to exempt such agencies as distribute fertilisers on their behalf from complying with the conditions laid down in sub-clauses (a) and (b) thereof. The Committee are surprised to note that although the proviso was inserted in 1972, no notification of exemption has so far been issued, which means that, either the necessity for invoking this proviso has not been felt during the last 2½ years or that the non-standard fertilisers are being distributed by the above-mentioned three agencies to the mixing and granulation units without complying with the conditions laid down in sub-clauses (a) and (b) of clause 13B, ibid.

26. The Ministry of Agriculture and Irrigation (Department of Agriculture) have assured the Committee that the exemption will not affect the interest of cultivators because as per policy of Government, these non-standard pool fertilizers are allotted only to cooperative/Government granuation and mixing units for preparation of fertiliser mixtures which have to conform to the prescribed standard. The Committee take note of the assurance given by the Ministry, but to guard against any possibility of the abuse of the power of exemption conferred by the second proviso, the Committee recommend that the proviso in question should be amended specifically to provide that the non-standard pool fertilisers to be exempted thereunder will be allotted only to farmers' cooperative/Government granulation and mixing units whose end-products shall invariably conform to the prescribed standards.

27. The Committee also feel that exemption may be granted from the operation of sub-clause (b) only and not from sub-clause (a) thereof, which simply requires conspicuous superscription of the words 'non-standard' and sign 'X' in red colour. The Committee desire that necessary amendments to the Fertiliser (Control) Order, 1957, on the above lines, should be made at an early date.

IV

THE WEALTH-TAX (SECOND AMENDMENT) RULES, 1973 (S.O. 187-E of 1973)

28. Rules 2H and 2I as inserted by the above-mentioned amendment Rules provide that for the purposes of clauses (xxxi) and (xxxii) of sub-section (1) of Section 5 of the Wealth-tax Act, 1957, the value of each asset forming part of industrial undertaking other than cash shall be estimated to be the price which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

29. The Committee which examined the above Rules at their sitting held on the 2nd July, 1973 felt that the assets should be estimated either according to the book value thereof or as assessed by Government approved valuers and not at the price which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

30. The Ministry of Finance (Central Board of Direct Taxes) who were requested to send their comments on the above matter replied as under:—

> "Section 7(1) of the Wealth-tax Act, 1957 lays down the manner in which the value of the assets is to be determined for the purposes of that Act. Under this section, the of any asset, other than cash, is estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. This provision is, however, subject to any rules that may be made by the Central Board of Direct Taxes.
>
> The provisions of rules 2H and rule 2I of the Wealth-tax Rules, 1957 inserted by the Wealth-tax (Second Amendment) Rules, 1973 (S.O. 187-E of 1973) are based on aforesaid provisions of the Wealth-tax Act. Under Section 16A of the Wealth-tax Act, the Wealth-tax Officer may, in the circumstances specified in clauses (a) and (b) of sub-section (1) of that section, refer the valuation of any asset to a Valuation Officer. Sub-Section (6) of the said section 16A provides that in cases where the valuation of an asset is referred by the Wealth-tax Officer to a Valuation Officer, the Wealth-tax Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate

of the Valuation Officer. In such a case the provisions of section 7(3) of the Wealth-tax act will apply and the value of the asset will be estimated to be the price which in the opinion of the Valuation Officer the assets will fetch if sold in the open market on the Valuation date.

It will thus be seen that the provisions in the new rules 2H and 2I of the Wealth-tax Rules are in line with the general scheme of valuation of assets under the Wealth-tax Act.

No amendment to these rules seems to be necessary."

31. At their sitting held on the 27th January, 1975, the Committee heard oral evidence of the representatives of the Ministry of Finance (Department of Revenue and Insurance)

32. Asked to state whether there were any guidelines for the Wealth-tax Officer for forming his opinion about the price which the asset would fetch in the open market, the representative of the Ministry stated that subject to the specific rules made under the Wealth-tax Act, they went by the criteria laid down in Section 7(1) and the rules thereunder, i.e., the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market. That was the main criterion, because the Wealth-tax Officer had to see how much a bonafid purchaser would like to pay for that property. However, so far as shares were concerned, the Department had detailed rules which served as guidelines.

33. In reply to a query how prices would be fixed in cases where there was a difference of opinion between an assessee and the Wealth-tax Officer, the representative of the Ministry stated that this aspect of the problem had been taken into consideration by Government. He referred, in this connection, to Section 16A of the Wealth-tax Act, which provided that for the purposes of making an assessment under the Act, the Wealth-tax Officer might, in the circumstances specified in clauses (a) and (b) of sub-section (1) of that Section, refer the valuation of any asset to the Valuation Officer. The witness added that if there was a difference, it was binding on the Wealth-tax Officer to refer the matter to the Valuation Officer. Sub-section (6) of this Section provided that in cases where the valuation of an asset was referred by the Wealth-tax Officer to a Valuation Officer, the Wealth-tax Officer would, so far as the valuation of the asset in question was concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer. This, according to the representative of the Ministry, was good enough a security and the

assessee would not be put to any difficulty. He further elaborated that rules 2H and 2I were connected with the valuation of assets forming part of an industrial undertaking, which were exempted under clauses (xxxi) and (xxxii) of sub-section (1) of Section 5 of the Wealth-tax Act. The value had to be estimated in the prescribed manner for the purpose of determining the amount up to which exemption was to be given and the procedure laid down in sub-sections (1) and (2)(a) of Section 7 was followed. He also explained that rules 2H and 2I were exactly the copy of Section 7(1) and (2) (a), which prescribed nothing more than what was stated in the Act.

34. Pointing out that there was no mention of Valuation Officer in Section 7, the Committee enquired whether Section 7 was to be read with Section 16A of the Act. The representative of the Ministry stated that the rules in question dealt with certain exempted assets. The scheme had to be consistent with the main provisions of the Act. Section 7(1) dealt with the valuation of included assets. When an asset was included, it was subjected to all the provisions of Section 16A, where there was a reference to a Valuation Officer. Once the value of assets had been determined for purposes of inclusion and references, if necessary, had been made to the Valuation Officer and that valuation was accepted, there was very little that the Wealth-tax Officer could do thereafter with regard to re-valuation of those assets for the purpose of exemption.

35. Asked whether the rules needed to be amended in this regard, the representative of the Ministry of Finance replied that no amendment was necessary as Section 16A was applicable to valuation of all the properties under the Wealth-tax Act, whether these were exempted or not.

36. In reply to another question, the witness stated that if the book value of an asset was far below its value in the open market, the Department would completely ignore the book value.

37. In reply to a question whether there was not an element of subjectivity in determination of value of assets under rules 2H and 2I, the witness stated that if properties were at different places, sometimes the element of subjectivity came. But by and large, it was possible to avoid this subjectivity.

38. The Committee agree that rules 2H and 2I of the Wealth Tax Rules are to be read with section 16A of the Wealth Tax Act, 1957, under which the Wealth Tax Officer may refer the valuation of any

asset to a Valuation Officer. But the Committee would like to point out that under the said section 16A, it is not obligatory on the Wealth Tax Officer to refer the valuation of each and every asset to the Valuation Officer. He may make such a reference, if he is of the opinion that the value of an asset as returned by an assessee is less than its market value. But, in the absence of any guidelines, the possibility of different Wealth Tax Officers forming different opinions about similar assets cannot be ruled out. The Committee note in this connection that, according to the Ministry's own admission, if the assets to be valued under rules 2H and 2I are at different places, the element of subjectivity could come in. With a view to reducing such element to the barest minimum, the Committee need hardly emphasise the imperative need for issue of guidelines. The Committee urge the Ministry of Finance to consider the question of amending the Wealth Tax Rules, so as to incorporate therein suitable guidelines as to valuation.

V

REVISION OF THE OLD LAYING FORMULA THROUGH AMENDING BILLS

(A)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1973 (AS INTRODUCED IN LOK SABHA).

39. The Representation of the People (Amendment) Bill, 1973, was introduced in Lok Sabha on the 20th December, 1973*. The Bill, which sought further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951, was examined under Direction 103(2) of the Directions by the Speaker and the attention of the Ministry of Law, Justice and Company Affairs (Legislative Department) was invited to Section 28(3) of the former Act and Section 169(3) of the latter Act, which still contained the old laying formula that had been revised by the Committee on Subordinate Legislation, *vide* paras 33-34 of their Second Report (Fifth Lok Sabha), presented to the House on 10th December, 1971.

40. The above-mentioned amending Bill did not include any amendment to bring the old laying formula as contained in the principal Acts of 1950 and 1951, in conformity with the latest one as approved

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* The Bill has not yet been taken up for consideration by the House.

by the Committee. The matter was taken up with the Ministry and they were asked to state—

(i) the reasons for not revising the laying formula in the two Acts of 1950 and 1951 through the abovementioned amending Bill; and

(ii) whether they had any objection to do the needful at this stage.

41. Replying to the above points, the Ministry of Law, Justice and Company Affairs (Legislative Department) stated as follows:—

> ".....while the above Bill was being finalised on the basis of the recommendations contained in the Report of the Joint Committee on amendments to Election Law, the relevant amendment to revise the formula for laying of rules before Parliament in the principal Acts of 1950 and 1951 were unfortunately failed to be included in the Bill through oversight. Necessary amendments to section 28 of the Representation of the People Act, 1950 and section 169 of the Representation of the People Act, 1951 will, however, be moved when the Bill comes up for consideration in the Lok Sabha."

42. The Committee are glad to note that the Ministry of Law, Justice and Company Affairs (Legislative Department) have promised to move the necessary amendments to bring the laying provisions contained in the Representation of the People Act, 1950 and the Representation of the People Act, 1951, in conformity with the revised laying formula approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha), when the Representation of the People (Amendment) Bill, 1973, comes up for consideration in the Lok Sabha.

(B)

THE PAYMENT OF BONUS (AMENDMENT) BILL, 1974 (AS PASSED BY RAJYA SABHA)

43. Similarly, on examination of the Payment of Bonus (Amendment) Bill, 1974, as passed by the Rajya Sabha on the 27th August, 1974 and laid on the Table of Lok Sabha on the 30th August, 1974, it was noticed that while the Payment of Bonus Act, 1965, was amended thrice, once in 1972 and twice in 1973, no action had been taken to revise the old laying formula. Even the above amending Bill did not

seek to bring the laying formula in conformity with the one approved by the Committee.

44. The Ministries of Law, Justice and Company Affairs (Legislative Department) and Labour, with whom the matter was taken up, stated as under:

(i) *Reply from Law Ministry*

"Sub-section (3) of section 38 of the Payment of Bonus Act, 1965 was not amended, so as to be in accordance with the recommendation of the Committee on Subordinate Legislation made in paras 33 and 34 of their Second Report (Fifth Lok Sabha), through an oversight. However, the earliest opportunity will be taken to amend that sub-section so as to bring it in conformity with the aforesaid recommendation."

(ii) *Reply from Labour Ministry*

".....the position has already been explained in Office Memorandum No. F.1(65)/74-L.1 dated the 5th September, 1974 from the Ministry of Law, Justice and Company Affairs (Legislative Department) [*See* (i) above]. Necessary further action will be taken as stated therein."

45. The Committee note with satisfaction that both the Ministries of Law, Justice and Company Affairs (Legislative Department) and Labour have promised to amend, at the earliest opportunity, the rule-laying clause contained in the Payment of Bonus Act, 1968, so as to bring it in conformity with the formula approved by the Committee, in paras 33-34 of their Second Report (Fifth Lok Sabha).

VI

THE COIR BOARD SERVICES (CLASSIFICATION, CONTROL AND APPEAL) BYE-LAWS, 1969 (S.O. 200 OF 1969).

(A)

46. Bye-law 3 of above-mentioned Bye-laws read as follows:—

"Application—(1) These bye-laws shall apply to every employee of the Board, but shall not apply to—

(a) any person in casual employment;

(b) any person on daily wages;

(c) any person subject to discharge from service on less than one month's notice:

(2) Notwithstanding anything contained in clause (1), the Central Government may by order exclude from the operation of all or any of these bye-laws any employee or class of employees of the Board.

(3) If any doubt arises as to whether these bye-laws or any of them apply to any person, the matter shall be referred to the Central Government who shall decide the same."

47. Clause 3(2) provided that the Central Government may by order exclude from the operation of all or any of the bye-laws any employee or class of employees of the Board. It was felt that exclusion of "any employee" from the operation of the bye-laws as contra-distinguished from "any class of employees" might lead to discriminatory treatment. The Ministry of Industry and Civil Supplies (Department of Industrial Development) were asked whether they had any objection to omitting the words "employee or" from bye-law 3(2) of the above Bye-laws.

48. The Committee note with satisfaction that on being pointed out, the Ministry of Industry and Civil Supplies (Department of Industrial Development) have agreed to amend bye-law 3(2) of the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, on the lines suggested by the Committee. They desire the Ministry to take early action in the matter.

(B)

49. Bye-law 16(ii) of the above-mentioned bye-laws provides that notwithstanding anything contained in bye-laws 11—15 relating to the normal disciplinary procedure, where the disciplinary authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold an enquiry in the manner provided in the bye-laws, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it may deem fit.

50. Principles of natural justice demanded that before a penalty was imposed upon a person, an inquiry into the charges against him should be held and he should be given a reasonable opportunity of

being heard. In case, it was considered necessary to dispense with the requirements in certain circumstances, it was felt that there should be a specific authorisation therefor in the parent law.

51. The erstwhile Ministry of Industrial Development, to whom the matter was referred, stated as follows:—

> "Bye-law 16(ii) of the CBS(CCA) Bye-laws, 1969 is based on rule 19(ii) of the CCS(CCA) Rules, 1965, which in turn is based on the proviso (b) to article 311(2) of the Constitution. This Bye-law [No. 16(ii)] is not invalid and does not offend the principles of natural justice. The reasons being that it deals with an extra-ordinary situation and allows the dispensing with of the usual procedure of inquiry only when the disciplinary authority is satisfied that the adherence to the normal procedure is not reasonably practicable. Precaution has been taken to lay down that the disciplinary authority will have to record its reasons in writing before dispensing with the usual procedure. These reasons can be tested in a Court of Law. It is, therefore, not necessary that there should be any specific provision in the parent Act on the lines of proviso (b) of Clause 2 of Article 311 of the Constitution for the purpose of framing this bye-law."

52. The Committee are not satisfied with the argument advanced by the Ministry that bye-law 16(ii) of the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, is based on rule 19(ii) of the Central Civil Services (Classification, Control and Appeal) Rules. They would, in this connection, like to point out that in the case of the Central Civil Services, the authority to dispense with the normal disciplinary procedure flows from part (b) of the proviso to Article 311(2) of the Constitution. The Coir Industry Act, 1953, under which these bye-laws have been framed, does not authorise dispensing with the normal procedure in the case of the Coir Board Services. The Committee, therefore, desire that the Ministry of Industry and Civil Supplies (Department of Industrial Development) should take early action either to delete bye-law 16(ii) of the above Bye-laws, or in the alternative, they should come before Parliament for the amendment of the Coir Industry Act, so as to make a specific provision therein on the lines of part (b) of the proviso to Article 311(2) of the Constitution.

(C)

53. Bye-law 19 of the above-mentioned bye-laws reads as under:—

"Orders against which an appeal lies.—Notwithstanding anything contained in this Part, no appeal shall lie against—

(i) any order made by the Central Government;

(ii) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceedings, other than an order of suspension;

(iii) any other passed by an inquiry authority in the course of an inquiry under bye-law 11."

54. The bye-law, as worded, gives an impression that it seeks to oust the jurisdiction of courts in the aforesaid cases.

55. The erstwhile Ministry of Industrial Development, to whom the matter was referred, stated as under:—

"Bye-law 19 of the CBS(CCA) Bye-laws is modelled on rule 22 of the CCS(CCA) Rules, 1965. In this connection it may be stated that this Bye-law does not take away the jurisdiction of the Courts because the term 'appeal' mentioned therein does not refer to any appeal to a Court of Law but only to appeals within the ambit of bye-laws to the authorities specified under the Bye-laws."

56. The Committee are not satisfied with the above reply of the Ministry. The Committee reiterate their earlier recommendation made in para 18 of their Fourth Report (Third Lok Sabha) that rules should not be worded in a manner which may give an impression that the jurisdiction of courts of law is being ousted. They desire the Department of Industrial Development to amend bye-law 19 of the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, in the light of their above recommendation at an early date.

(D)

57. Bys-law 7(4) of the above-mentioned bye-laws reads as follows:

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Board's employee is set aside or declared or rendered void in consequences of or by

a decision of a Court of law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegation on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Board's employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension under further orders."

58. The erstwhile Ministry of Industrial Development, who were requested to state the considerations for framing the above provision, stated in their reply as under:

"Bye-law 7(4) of the CBS(CCA) Bye-laws, 1969 is based on the lines of rule 10(4) of the CCS(CCA) Rules, 1965. This provision is designed to meet a situation where the Court may pass orders on purely technical grounds without going into the merits at all. In such a case, it is but necessary that the appropriate disciplinary authority should have an opportunity to make good the technical defect or defects pointed out by the Court. Where a Court of Law gives its findings after going into merits of the case, there is no question of the disciplinary authority holding a further inquiry on the allegations on which the penalty of dismissal removal or compulsory retirement was originally imposed. It is, therefore, considered necessary from the administrative point of view to retain this provision in the bye-laws."

59. The Committee note that according to the Department of Industrial Development, the idea underlying bye-law 7(4) is to meet a situation where a court may pass orders on purely technical grounds without going into the merits at all and that where a court gives its findings after going into the merits of the case, there is no question of the disciplinary authority holding a further inquiry. In the opinion of the Committee, the above intention of Government is not clear from the present wording of bye-law 7(4). The Committee desire that the Ministry of Industry and Civil Supplies (Department of Industrial Development) should amend bye-law 7(4) of the Coir Board Services (Classification, Control and Appeal) Bye-laws 1969, suitably, so as to make it clear that it is designed to meet a situation where the court may pass orders on purely technical grounds without going into the merits at all.

VII

THE EXPORT OF CUMIN SEEDS (INSPECTION) RULES, 1973 (S.O. 3099 OF 1973)

60. Rule 3 of the Export of Cumin Seeds (Inspection) Rules, 1973, made under section 7 of the Export (Quality Control and Inspection) Act, 1963, provides as follows:

> "3. Procedure of Inspection of Cumin seed prior to export.— (1) The provisions of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937), the General Grading and Marking Rules, 1937, and the Cumin Seeds Grading and Marking Rules, 1969, shall, so far as may be, apply to the inspection of cumin seeds prior to export.
>
> (2) If on inspection of consignment of such cumin seeds, the Agricultural Marketing Adviser to the Government of India, Directorate of Marketing and Inspection or any other officer of that Directorate, authorised by him in this behalf, is satisfied that the same complies with the standard specifications and has been labelled and packed according to these rules, he shall issue a certificate of Grading in token of its export-worthiness."

61. Sub-rule (1) of rule 3 above refers to one Act and two separate sets of rules framed thereunder for the purpose of inspection of cumin seeds prior to export, whereas the Export of Cumin Seeds (Inspection) Rules, 1973, have been framed under a different Act, *viz.*, the Export (Quality Control and Inspection) Act, 1963. Uuder this Act, various sets of rules relating to several other commodities for export have been framed, which are self-contained. It was not clear why the Ministry of Commerce had considered it necessary to make a departure in this particular case.

62. Sub-rule (2) of rule 3 above does not mention the procedure to be followed in case the cumin seeds are found to be unworthy of export and whether the party will be intimated of this; if so, the period within which this will be done. It also does not contain the provision for filing an appeal against the decision of the Agricultural Marketing Adviser or the Directorate of Marketing and Inspection before the Appellate panel.

63. The matter was taken up with the Ministry of Commerce and their attention was invited to para 13 of First Report of Committee on Subordinate Legislation (Fourth Lok Sabha), wherein the

Committee had objected to 'legislation by reference' and observed that rules should, as far as possible, be self-contained and drafted in a manner that no difficulty was caused to the public in locating and referencing them.

64. The Ministry were further asked to state—

(i) the reasons for not adhering in this particular case, to the usual practice and pattern being followed in making rules for inspection of other commodities meant for export; and whether they had any objection to making these rules self-contained in pursuance of the aforesaid recommendation of the Committee; and

(ii) the reasons for doing away with all the provisions, which have been provided for in other similar rules dealing with export commodities; and whether they have any objection to amending the above rules and bringing them in conformity with the provisions contained in other similar rules.

65. In reply, the Ministry stated as under:

"..... the two rules *viz.*, General Grading and Marking Rules, 1937 and the Cumin Seeds Grading and Marking Rules, 1969 referred to in rule 3(1) of the Export of Cumin Seeds (Inspection) Rules, 1973 have been framed separately by the Ministry of Agriculture under the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937). Under these rules the Agricultural Marketing Adviser to the Government of India has framed instructions for the Grading of Spices under Agmark and all the details in regard to the procedure and Inspection of Cumin Seeds prior to export are included therein. The exporters of cumin seeds are also fully aware of this procedure which is being followed by them without any confusion or difficulty. Hence the rules are self-contained.

As the Export of cumin seeds (Inspection) Rules, 1973 were framed in consultation with the Ministry of Agriculture and the Agricultural Marketing Adviser to the Government of India the point concerning two rules under one Act is being referred to them for clarification and determining the feasibility of clubbing them into one rule. The comments on this point will follow shortly.

In the light of the clarification given in paragraph 1 above and the rules being self-contained causing no confusion or

difficulty to the trade the question of framing the Rules for cumin seeds under the Export (Quality Control and Inspection) Act, 1963 on the pattern of such Inspection rules for other commodities was not considered necessary.

However, if the committee on Subordinate Legislation of the Lok Sabha desires that these rules may be amended so as to make them more self-contained on the lines of the pattern being followed i ncase of such inspection rules for other commodities framed under the Export (Quality Control and Inspection) Act, 1963 this Ministry has no objection.

Necessary action has also been initiated to amend the rules accordingly."

66. In a further communication, dated the 30th September, 1974 while forwarding the comments of the Agricultural Marketing Adviser on clubbing of the General Grading of Marketing Rules, 1937, and the Cumin Seeds Grading and Marking Rules, 1969, made under the Agricultural Produce (Grading and Marking) Act, 1937, the Ministry stated as under:

".....the Agricultural Marketing Adviser to the Government of India with whom this matter was taken up have clarified the position in regard to the two rules mentioned in the notification, as under:

'The General Grading and Marking Rules, 1937, prescribe the procedure for grant of certificate of authorisation to the parties who intend to make any article with a grade designation mark under provision of Agricultural Produce (Grading and Marking) Act, 1937 and lay conditions of every certificate of authorisation. These rules are applicable not only to cumin seeds but also to all commodities graded under Agmark.

The Cumin Seeds Grading and Marking Rules, 1969, on the other hand, refer to the grade standards and definition of quality, method of packing, marking etc. in respect of cumin seeds graded under Agmark. These rules are specific to cumin seeds and not in derogation of the General Grading and Marking Rules, 1937. Similarly General Grading and Marking Rules, 1937 have been issued in respect of each individual commodity graded under Agmark.

It may thus be seen that there is no anomaly in issuing two sets of the rules applicable for commodity under the same Act.'

The above facts/explanation may kindly be brought to the notice of the Committee for their information and consideration."

67. The Committee note that the Ministry of Commerce have no objection in making the Export of Cumin Seeds (Inspection) Rules, 1973, self-contained, in accordance with the recommendation of the Committee made in para 13 of their First Report (Fourth Lok Sabha). The Committee desire that the Ministry should take early steps to amend the rules in question so as to incorporate therein the procedure to be followed in case the cumin seeds are found to be unworthy of export and the period within which the party concerned shall be informed of this. It should also contain a provision for filing an appeal against the decision of the Agricultural Marketing Adviser or the Directorate of Marketing and Inspection, as the case may be, before the Appellate Panel of Experts, as is provided for in various other sets of rules framed under the Export (Quality Control and Inspection) Act, 1963.

VIII

(i) THE COAL MINES (AMENDMENT) REGULATIONS, 1971 (G. S. R. 568 OF 1971)

(ii) THE DRAFT COAL MINES (AMENDMENT) REGULATIONS, 1972 (G. S. R. 1148 OF 1972)

68. Regulation 35(3)(b) of the Coal Mines Regulations, 1957, as amended by the Coal Mines (Amendment) Regulations, 1971, provides that the Regional Inspector may by an order in writing and subject to such conditions as he may specify therein, permit or require the appointment of surveyors in variation of the provisions contained in regulation 35. A similar provision has also been made in the Draft Coal Mines (Amendment) Regulations, 1972.

69. It was felt that the provision of empowering the Regional Inspector to appoint surveyors in variation of the provisions contained in regulation 35 was too wide a power. The Ministry of Labour to whom the matter was referred, stated as follows:

"....It is considered that there is a necessity for the introduction of some flexibility of appointment of surveyors on either way of the fixed statutory requirements since in highly mechanised open-cast mines where the mining

activity is concentrated in much smaller area, the number of surveyors required may be lesser than the scale prescribed in the regulation 35(3)(a) of the Coal Mines Regulations, 1972. As against this, mines that have scattered or extensive workings, in which there may be dangers arising from inundation, fire, etc. may require the appointment of surveyors in large numbers than prescribed in the regulation. It is however proposed that the powers to permit variations in scales of appointment of surveyors should be given to the Chief Inspector of Mines instead of the Regional Inspector of Mines. The Chief Inspector of Mines would, after seeing all these factors permits variation, from the prescribed scale only in cases where it is absolutely required. It is pointed out that this provision does not render the provision of regulation 35(3)(a) regarding compulsory employment of surveyors to nullity, since in almost every legislation there is provision which empowers the Government or some appropriate authority to exempt establishments or undertakings from any or all the provisions of the legislation subject to conditions that may be considered fit. Even under the Mines Act, Section 83(2) empowers the Central Government to authorise the Chief Inspector of Mines to exempt any Mine from any of the provisions of regulations or rules."

70. The Committee agree with the views of the Ministry of Labour that the powers to permit variations in scales of appointment of surveyors should vest in the 'Chief Inspector of Mines' instead of in the 'Regional Inspector of Mines'. The Committee recommend that early action should be taken to amend regulation 35(3)(b) of the Coal Mines Regulations, 1957, accordingly.

IX

THE RAILWAY BOARD SECRETARIAT STENOGRAPHERS SERVICE GRADE III (COMPETITIVE EXAMINATION) REGULATIONS, 1971 (G.S.R. 716 OF 1971)

71. Regulation 4 of the above-mentioned regulations provided that any permanent or temporary regularly appointed officer to the Lower Division Grade or the Upper Division Grade of the Railway Board Secretariat Clerical Service, who satisfied the prescribed conditions shall be eligible to appear at the examination. Regulation 7 further provided that no candidate to whom a certificate of admission had not been issued shall be admitted to the examination.

72. From the wording of regulation 7, it appeared that the Ministry of Railways (Railway Board) could refuse admission to candidates even though they fulfilled the conditions of eligibility laid down in regulation 4.

73. The Ministry of Railways (Railway Board), to whom the matter was referred for clarification, stated as under:

> "....It is a well settled rule of construction that a statute has to be read as a whole. Accordingly, regulation 7 of the 1971 regulations is not to be read in isolation.
>
> An analysis of regulations 4 and 7 will reveal that they deal with the following matters:—
>
> (i) conditions of eligibility (regulation 4);
>
> (ii) certificate to be produced for the purposes of admission to the examination [*vide* regulation 7(1)]; and
>
> (iii) authority empowered to decide questions as to eligibility or otherwise of candidates for admission to the examination [regulation 7(2)].
>
> Regulation 4 which provides only for the conditions of eligibility is not workable from a practical and administrative point of view unless some machinery is provided for and power is given to that machinery to determine whether the conditions of eligibility are complied with or not complied with in a given case. This is precisely what regulation 7(2) does. It vests this power of determination in the Central Governemnt and makes the decision of the Central Government final. In other words, regulation 7(2) provides for the necessary machinery for the administration and application of regulation 4 and is thus supplementary to the later regulation. So far as regulation 7(1) is concerned, it only provides for a positive proof as to whether a candidate is eligible to be admitted to the examination or not. This positive proof consists of a certificate issued by the Central Government. Such a certificate is necessary for the guidance of persons who are in charge of conducting examinations and the certificate is more or less in the nature of a hall ticket for admission to an examination.
>
> According to regulation 7(2), the decision of the Central Government in the Ministry of Railway as to the eligibility or otherwise of a candidate for admission to the examinations shall be final. This does not mean

that the Central Government can act in an arbitrary manner. It has necessarily to take the provisions of regulation 4 into account in determining the question of eligibility of a candidate. No express words for the purpose are necessary."

74. The Ministry of Railways (Railway Board) were further requested to state whether they had any objection to amending above regulations by putting together the provisions of regulations 4 and 7 under the same regulation.

75. The Committee note with satisfaction that on being pointed out the Ministry of Railways (Railway Board) have omitted regulation 7 of the Railway Board Secretariat Stenographers Service Grade III (Competitive Examination) Regulations, 1971, and the provisions contained therein have been inserted in regulation 4 as sub-regulation (4) thereof, vide **G.S.R. 223 of 1974, dated the 23rd February, 1974.**

THE CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 1971 (G.S.R. 1219 OF 1971)

76. Rule 3(2)(f) of the above-mentioned rules provided that in determining the amount or rate of drawback, the Central Government shall have regard to the average amount of duties of excise paid on the goods specified in Schedule I of the rules. Schedule I appended to the rules was blank and did not specify any goods.

77. The Ministry of Finance (Department of Revenue and Insurance), who were requested to state whether they had any objection to amending Schedule I of the above rules suitably, stated as under:—

"It appears that the suggestion here is that, since Schedule I does not specify any goods, it should be suitably amended to include the relevant goods. It would be seen from the definition under Rule 2(a)(ii) that provision has now been made to grant also as drawback, the rebate of excise duty on the finished goods. At present this rebate is being granted under Rule 12 of the Central Excise Rules, and the drawback is limited to the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods. That is why Schedule I is blank at present. As and when it is considered expedient to include also in the drawback rate/amount, the rebate

of central excise duty on any commodity exported out of India; the said commodity will be included in Schedule I. In the circumstances, the question of amendment of Schedule I to include goods does not arise at present"

78. In view of the position explained above by the Ministry of Finance (Department of Revenue and Insurance) they were further requested to state whether they had any objection to amending rule 2(a)(ii) on the following lines:

"the rebate of duty of excise chargeable under Central Excise and Salt Act 1944 (1 of 1944), on the goods as may be specified from time to time."

79. The Committee note with satisfaction that the Ministry of Finance (Department of Revenue and Insurance) have since omitted clause (f) of sub-rule (2) of rule 3 and Schedule I of the Customs and Central Excise Duties Drawback Rules, 1971 vide G.S.R. 264-E of 1974, dated the 11th June, 1974.

XI

THE FERTILISER (MOVEMENT CONTROL) ORDER, 1973 (S.O. 249-E OF 1973).

80. Para 4(1) of the Fertiliser (Movement Control) Order, 1973, empowers any Inspector of fertilisers or any police officer not below the rank of a head constable or *'any other person'* authorised by the Central Government or the State Government concerned to enter, search, seize, etc., with a view to securing compliance with this 'Order' to satisfy himself that the 'Order' has been complied with.

Under sub-paragraphs (a), (b) and (c) of paragraph 4, *ibid.*, the authorised person has further been empowered to authorise *'any other person'* to stop, search, enter, seize, etc.

81. The matter was taken up with the erstwhile Ministry of Agriculture (Department of Agriculture) and their attention was invited to the recommendation of the Committee on Subordinate Legislation made in paras 21 and 22 of their First Report (Fifth Lok Sabha), wherein, while commenting upon a similar provision contained in paragraph 5(1) of the Northern Rice Zone (Movement Control) Order, 1968 they had observed as follows:

"21. The Committee on Subordinate Legislation have repeatedly stressed the need for indication of the minimum rank of the persons to be authorised by the Government

to conduct searches|seizures. The underlying idea is that each and every Government officer may not be authorised to exercise the power of searches|seizures.....

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

82. The Ministry were asked to state whether they had any objection to modifying paragraph 4(1) of the said 'Order', so as to bring it in conformity with the above recommendation of the Committee.

83. The Committee note with satisfaction that on being pointed out, the Ministry of Agriculture and Irrigation have agreed to amend clause 4(1) of the Fertiliser (Movement Control) Order, 1973, so as to indicate therein the minimum rank of 'any person' who may be authorised by the Central and State Governments to conduct searches and seizures and also to omit therefrom the provision for further authorisation of persons of unspecified ranks to conduct searches and seizures. The Committee desire that the Order in question shoud be amended suitably at an early date.

XII

THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) RULES, 1971 (G.S.R. 1883 OF 1971)

84. Rules 8(c) of the above rules provides that in assessing damages for unauthorised use and occupation of any public premises, the Estate Officer shall take into consideration the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person.

85. The Ministry of Works and Housing, who were asked to state whether any guidelines for determining the market rent have been laid down in the rules, stated as under:

"....since Rules 8(c) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 involves the concept of market rent, which will depend upon the market at any given point of time, no guidelines have been or could possibly be laid down for determining the 'damages' for unauthorised use and occupation of public premises as these are bound to vary not only from place to place, but also from building to building in the same place.

However, so far as the general pool accommodation under the control of this Ministry is concerned, demand for damages is made on the basis of the undermentioned formulae which reflect the revision of market rate of rent from time to time:—

(i) *For residential premies*:—Double the standard rent under FR 45-B, or double the pooled standard rent under F.R. 45-A, whichever is higher plus single departmental charges plus double the additional rent for additions and alterations if any, plus single other charges (*e.g.*, service charges; garden charges; charges for scale furniture, extra furniture and electrical appliances) under F.R. 45-B including departmental charges.

(ii) *For office accommodation*:—For all permanent buildings in Delhi and New Delhi, market rate of licence fee for office accommodation is 100 per 100 sft of carpet area per month and for office accommodation available in hutments, the rate is Rs. 50/- per 100 sft. of carpet area per month.

This is also in accordance with SR 317-B-22, which provides that the unauthorised occupant shall be liable to pay damages for use and occupation of the residences, services, furniture and garden charges equal to the market rent as may be determined by Government from time to time.

In any case where the damages so assessed are challenged by the unauthorised occupant before the Estate Officer appointed under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or before the Civil Court, the Department has to put forward material/evidence having regard to the principles of assessment of damages prescribed under Rule 8 of the

Public Premises (Eviction of Unauthorised Occupants) Rules, 1971; in support of its claim; and the Estate Officer (or the Civil Court, as the case may) has to give a decision in the matter after taking into account all the circumstances of the case. It is accordingly considered that the existing practice may be allowed to continue, specially as no difficulty appears to have been experienced in the operation of the rule as it stands at present."

86 The Committee do not agree with the views of the Ministry of Works and Housing that the existing practice may be allowed to continue, since they have not experienced any difficulty in the operation of rule 8(c) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, as it stands at present. The Committee feel that it is necessary to lay down some guidelines to obviate the scope of discriminatory treatment. The Committee, therefore, recommend that the Ministry of Works and Housing should provide suitable guidelines in the aforesaid rules for determining the market rent rather than leaving it to the discretion of the Estate Officer.

XIII

THE POSTS AND TELEGRAPHS TELECOM FACTORIES ORGANISATION (CLASS I POSTS) RECRUITMENT RULES, 1971 (G.S.R. 277 OF 1972).

87. Rules 5 and 13 of the above mentioned rules read as follows:—

"5. *Special representation*:—Appointment to the post of Assistant Manager (Factories) by direct recruitment shall be made subject to orders regarding special representation for candidates belonging to the Scheduled Castes, the Scheduled Tribes and such other categories of persons as may from time to time be notified in this behalf.

13. *Saving*:—Nothing in these rules shall effect reservation and other concession required to be provided for the Scheduled Castes and the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard."

88. There appeared to be no difference in substance between the above two rules. The Ministry of Communications (P.&T Board), who were asked to state the distinction between these two rules,

stated that practically there was no difference between rule 5 and rule 13 and action was being taken to delete one of these rules.

89. The Committee are glad to note that the Ministry of Communications (P&T Board) have since deleted rule 5 of the Posts and Telegraphs Telecom Factories Organisation (Class I Posts) Recruitment Rules, 1971, vide G.S.R. 716 of 1974, dated the 6th July, 1974. The Committee would like to add that unnecessary repetition of the same provision in different words in the body of the same set of rules hardly serves any purpose. On the other hand, it tends to create a confusion in the mind of the reader.

XIV

THE CIVIL AVIATION DEPARTMENT (CO-PILOT) RECRUITMENT RULES, 1970 (G.S.R. 575 OF 1971).

(A)

90. Column 10 of the Schedule appended to the above-mentioned rules provided the following three methods of recruitment for the post of co-pilot:

(a) By transfer on deputation.

(b) By short term contract.

(c) By direct recruitment.

91. It was not clearly indicattd in the above column as to which of three methods, *viz.*, (a), (b) and (c) would have priority over others and, failing it, which other method would be next applied; and so on.

Normally the recruitment rules contain a precise *inter se* order of priority of methods of recruitment in the following manner:

> "By promotion, failing which by transfer on deputation and failing both by direct recruitment."

92. The Committet are glad to note that on being pointed out, the Ministry of Tourism and Civil Aviation have since amended the Civil Aviation Department (Co-pilot) Recruitment Rules, 1970, to provide therein the precise inter se order of priority of methods of recruitment, vide G.S.R. 561 of 1974, dated the 8th June, 1974.

(B)

93. Normally, all recruitment rules contain the following saving clause regarding candidates belonging to the Scheduled Castes/ Tribes:—

> "Nothing in these rules shall affect reservations and other concessions required to be provided for scheduled castes/

scheduled tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.".

It was noticed that the above provision was missing from the Civil Aviation Department (Co-pilot) Recruitment Rules, 1970.

94. The Committee are glad to note that the Ministry of Tourism and Civil Aviation to whom the omission was pointed out have since inserted the saving clause regarding candidates belonging to the Scheduled Castes/Tribes vide G.S.R. 561 of 1974, dated the 8th June, 1974.

XV

THE INSTITUTE OF SECRETARIAT TRAINING AND MANAGEMENT (CLASS IV POSTS) RECRUITMENT RULES, 1973 [NOTIFICATION NO. 35/55/72-ESTT(B) TRG. DATED 30-4-1973]

95. The Institute of Secretariat Training and Management (Class IV posts) Recruitment Rules, 1973 had been published in the Gazette of India, Part I, Section 2, dated 19-5-73 under Notification No. 35/55/72-Estt.(B) Trg., dated 30-4-1973. Recruitment Rules for the various posts under the Ministries/Departments are generally published in the Gazette of India, Part II, Section 3(i) or (ii).

96. The Department of Personnel and Administrative Reforms, which had published the above Rules, were requested to state the reasons for publication of the above Rules in Part I, Section 2 and whether they had any objection to republish them in Part II, Section 3(i) of the Gazette for the sake of uniformity.

97. In their reply, the Department of Personnel and Administrative Reforms stated as under:—

> "The Institute of Secretariat Training and Management (Class IV Posts) Recruitment Rules 1973, are being republished in Part II, Section 3(i) of the Gazette of India, as desired, and a copy thereof is being sent separately to you.

98. The Committee note with satisfaction that on being pointed out, the Department of Personnel and Administrative Reforms have agreed to re-publish the Institute of Secretariat Training and Management (Class IV Posts) Recruitment Rules, 1973, in the appropriate Part of the Gazette, namely, in Part II, Section 3 (i) of the Gazette of India. The Committee desire that a copy of the notification as republished in Part II, Section 3(i) of the Gazette of India should be furnished to them for their information.

99. The Committee also feel that as publication of 'Orders' in wrong Parts and Sections of the Gazette may cause unnecessary inconvenience to the public, Ministries/Departments should take care to publish the 'Orders' in appropriate Parts and Sections of the Gazette.

XVI

IMPLEMENTATION OF RECOMMENDATIONS

(i) THE EXPORT INSPECTION COUNCIL CONTRIBUTORY PROVIDENT FUND RULES, 1969 (S.O. 2413 OF 1969) (PARA 60 OF SEVENTH REPORT—FIFTH LOK SABHA)

100. The Export Inspection Council Contributory Provident Fund Rules, 1969, were published in the Gazette of India, Part II, Section 3(ii), dated the 21st June, 1969, but were deemed to have come into force from the 10th March, 1965.

101. The Export (Quality Control and Inspection) Act, 1963 under which the Rules had been framed did not empower the Government to give retrospective effect to the rules.

102. The Committee in para 60 of their Seventh Report (Fifth Lok Sabha) recommended as under:

> "60. The Export (Quality Control and Inspection) Act, 1963 does not provide for giving retrospective effect to the Rules made thereunder. In view of the opinion of the Attorney-General made in connection with exemption Notifications issued under the Central Excises and Salt Act, 1944, no subordinate legislation can have retrospective effect unless the parent Act under which it was framed empowered it to operate retrospectively. Retrospective effect to the above Rules, therefore, appears to have been given without any legal authority. The Committee desire the Ministry of Commerce to amend the Rules so as to give effect to them from the date of their publication."

103. In their action taken note on the above recommendation of the Committee, the Ministry of Commerce in their reply dated 2nd April, 1974, stated as follows:

> ".....the Committee had desired that the Export Inspection Council Contributory Provident Fund Rules, 1969 may

be amended so as to give effect to them from the date of their publication *i.e.* 21st June, 1969 i nthe official gazette.

As desired, a draft of the relevant notification was prepared and referred to the Ministry of Law and Justice for vetting before publication. The draft duly amended was returned by that Ministry with their following observations:

'Notification No. 2413 dated 24-5-1969 relating to the Export Inspection Council Contributory Provident Fund Rules, 1969 was actually published in the Gazette of India dated the 21st June, 1969. Hence the date of publication of the principal Rules should be taken as the 21st June, 1969, and not the 24th May, 1969. Accordingly, the proposed sub-rule (2) has been suitably modified so as to bring the principal Rules into force from the 21st June, 1969. Further in the present case, sub-rule (2) of rule 1 of the proposed draft amendment rules will not be in order and hence the same has also been omitted from the draft. It is presumed that the proposed amendment of the principal Rules relating to their commencement *w.e.f.* the 21st June, 1969 will not create any administrative difficulty. Subject to this the draft as amended in pencil, is formally in order.

Incidently, it appears that a similar amendment may have to be made in the Export Inspection Agency Contributory Provident Fund Rules, 1969 published as Notification No. S.O. 2414 dated the 24th May, 1969. The Administrative Ministry may kindly look into this matter also.'

The above observations of the Ministry of Law and Justice were examined by this Ministry in consultation with the Export Inspection Council who have pointed out the following administrative difficulties in giving effect from 21st June, 1969 to the Rules both of the Export Inspection Council and the Export Inspection Agencies Contributory Provident Funds:

'(i) The entire transaction of the C.P.F. including the payment of contribution by Export Inspection Council/ Agency under rule 10 of C.P.F. Rules made prior to 21st June, 1969, may be questioned;

(ii) The employees of the Export Inspection Council/ Agencies are entitled to have a rebate on income-tax because of their own subscription to the fund. Under the income-tax rules, such rebate is available only when the Cetral Government directs that the provisions of the Provident Fund Act, 1925 shall apply to the Provident Fund established for benefit of the employees of the public institutions. Keeping this in view the Central Government under Notification No. S.O. 2411 and S.O. 2412 dated 24-5-1969 added the Export Inspection Council and Export Inspection Agency, Bombay, Delhi, Calcutta, Madras and Cochin to the Schedule of said Act etc. If the C.P.F. Rules are now made effective from 21-6-1969 then the rebate which was enjoyed by employees of the Council/Agency prior to 21-6-1969 may also be questioned.'

The above comments/difficulties of the Council were referred by this Ministry to the Ministry of Law and Justice for their advice. In reply the Ministry of Law and Justice has opined as follows:

'The Committee on Subordinate Legislation in paragraph 60 of its Report has taken the view that the retrospective effect to the Provident Fund Rules has been given without legal authority and has recommended the amendment of the rules so as to give effect to them from the date of their publication in the official Gazette. Hence any amendment of the said rules so as to have effect from 24th May 1969 will also be open to the same objection. But if the Administration Ministry feel that giving of retrospective operation is necessary in view of the difficulties pointed out by them and if they are able to convince the Committee on Subordinate Legislation they may decide to amend the rules so as to have retrospective effect from 24th May, 1969. Ministry of Commerce may kindly see.'

In view of the legal opinion given by the Ministry of Law and Justice in paragraph.... above that any amendment to these rules from retrospective effect will have the same objection as contained in para 60 of the Committee's Report as also in view of the difficulties pointed out in paragraph....above it is requested that the papers may kindly be submitted to the Committee for their advice in regard to the action to be taken in the matter."

104. The Committee are of the opinion that retrospective effect given to the Export Inspection Council Contributory Provident Fund Rules, 1969, was without due legal authority. The Committee desire that the the Ministry of Commerce should either amend the rules so as to give effect to them from the date of their publication in the Gazette, viz., 21st June, 1969, or in the alternative, the Export (Quality Control and Inspection) Act, 1963, under which the said rules have been framed, should be amended to obtain an express authority from Parliament, in case it is considered necessary to give retrospective effect to these rules. The Committee desire that early action should be taken in the matter.

(ii) THE CENTRAL INDUSTRIAL SECURITY FORCE RULES, 1969 (S.O. 4632 OF 1969) (PARA 64 OF SEVENTH REPORT—FIFTH LOK SABHA

105. Rules 23 of the Central Industrial Security Force Rules, 1969, provided as under:—

> "*Powers of Isnpector General to frame Regulations*—The Inspector General may from time to time for the proper administration of the force frame and issue regulations with the approval of the Central Government, and the supervisory officers and the members of the Force shall as a condition of their service, be governed by such regulation in the discharge of their duties."

Above provision was tantamount to sub-delegation of legislative power for which there was no express authority in the Central Industrial Security Force Act.

106. The Committee in para 64 of their Seventh Report (Fifth Lok Sabha) recommended as under:—

> "The Committee are not convinced by the reply of the Ministry of Home Affairs that Rule 23 of the Central Industrial Security Force Rules, 1969, which empowers the Inspector-General to frame and issue regulations for the proper administration of the Force is based on Section 7(1) of the Central Industrial Security Force Act, 1968. Section 7(1) of the Central Industrial Security Force Act, 1968, states as under:—
>
> 'The superintendence of the Force shall vest in the Central Government and subject thereto the administration of the Force shall vest in the Inspector General and shall be carried on by him in accordance with the provisions of this Act and of any rules made thereunder.'

This section requires the Inspector General to carry on the administration of the Force in accordance with the provisions of the Act and the Rules made thereunder and does not empower him to frame regulations for that purpose. The Committee are, therefore, of the opinion that sub-delegation of the legislative power to the Inspector-General under Rule 23 is not authorised by the Parent Act. The Committee desire the Ministry to delete this Rule from the Central Industrial Security Force Rules."

107. In their action taken note on the above recommendation of the Committee, the Ministry of Home Affairs stated as under:—

".....this Ministry is in agreement with the views of the Committee on Subordinate Legislation in regard to Rule 23 of the CISF Rules, 1969. As such, this Ministry has substituted this rule with another rule similar to rule 4 of the CRPF Rules, 1955....."

The substituted rule 23 reads as under:—

"*Powers of the Central Government and certain officers of the Force.*—In all cases not specifically provided for in these rules, the instructions issued from time to time by the Central Government or the Inspector General or the Deputy Inspector-General shall regulate the working of the Force."

108. The Committee are surprised to note that the Ministry of Home Affairs, instead of deleting rule 23 of the Central Industrial Security Force Rules, 1969, as recommended by the Committee in para 64 of their Seventh Report (Fifth Lok Sabha), have substituted it by another rule on the lines of rule 4 of the Central Reserve Police Force Rules, 1955. Under the new Rule 23, the Central Government as well as the Inspector General or the Deputy Inspector General have been empowered to issue instructions for regulating the working of the Force. In the opinion of the Committee, the effect of the new rule, which again is not backed by an express authorisation in the parent Act, remains the same; only there has been a change in terminology. The new rule 23 is thus open to the same objection as the original rule 23.

109. The Committee, therefore, reiterate their earlier recommendation made in para 64 of their Seventh Report (Fifth Lok Sabha), in which they had desired the Ministry of Home Affairs to delete rule 23 from the Central Industrial Security Force Rules, 1969. In case, it is considered necessary to empower the Central Government or Inspec-

tor-General or Deputy Inspector-General to issue instructions for regulating the working of the Force, the Committee desire that the Ministry of Home Affairs should come before Parliament with a suitable amendment to the Central Industrial Security Force Act, 1968, to obtain this power.

110. The Committee further desire that rule 4 of the Central Reserve Police Force Rules, 1955, on the lines of which rule 23 of the Central Industrial Security Force Rules, 1969, has now been amended, should also be deleted, or, in the alternative, similar action should be initiated to amend the Central Reserve Police Force Act, 1949, on the lines suggested above.

(iii) (a) THE PUNJAB, STATE AGRICULTURAL MARKETING BOARD AND MARKET COMMITTEES (RECONSTITUTION AND REORGANISATION) ORDER, 1969 (S.O. 3021 OF 1969); AND

(b) THE PUNJAB ZILA PARISHADS, PANCHAYAT SAMITIS AND GRAM SABHAS (RECONSTITUTION AND REORGANISATION) ORDER, 1969 (S.O. 2933 OF 1969) (PARA 24 OF EIGHTH REPORT—FIFTH LOK SABHA)

111. Clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order, 1969, provides as under:—

> "Provisions relating to employees of Market Committees.—Every employee of an existing Market Committee holding office immediately before the appointed day shall be allotted to such successor Market Committee in whose jurisdiction the Headquarters of the existing Market Committee falls.
>
> Provided that the employees working in a principal yard or sub-yard shall be allotted to the successor Market Committee in whose jurisdiction such yard falls on the appointed day.
>
> Provided thot the condition of the service applicable immediately before the appointed day to the case of any such employee of the existing Market Committee, shall not be varied to his disadvantage except with the previous approval of the successor Government concerned."

A similar provision exists in clause 10 of the Punjab Zila Porishads, Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969.

112. The Inter-State Corporotions Act, 1957, under which the above-mentioned orders are issued does not specifically empower the Government to vary the conditions of service of an employee to his disadvantage.

113. The Committee, after considering the reply of the Ministry of Home Affairs, recommended in para 24 of their Eighth Report (Fifth Lok Sabha) as under:—

"The Committee are not convinced with the reply of the Ministry of Home Affoirs that the proviso to clause 14 of the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Reorganisation) Order, 1969 and clause 10 of the Punjab Zila Parishads Panchayat Samitis and Gram Sabhas (Reconstitution and Reorganisation) Order, 1969, under which the conditions of service of an employee can be varied to his disadvantage with the approval of the successor Government are within the provisions of Section 4(2)(f) of the Inter-State Corporations Act, 1957.

Section 4(2)(f) of the Inter-State Corporations Act, 1957, merely reads as follows:—

'4(2). An order made under sub-section (1) may provide for all or any of the following matters,

* * * * * *

(f) the transfer or re-employment of any employee of the Inter-State Corporation to, or by any such transferee and subject to the provisions of section 111 of the States Re-organisation Act, 1956, the terms and conditions of service applicable to such employees after such transfer or re-employment.'

Section 4(2)(f) of the Act as worded does not empower the successor Market Committee to vary the conditions of service of employees allotted to it. The Committee are, therefore, of the view that the existing conditions of service of an employee should not be varied to his disadvantage and desire the Ministry of Home Affairs to amend the Order suitably."

114. In their action taken note on the above recommendation of the Committee, the Ministry of Home Affairs stated as under:—

". . . . . the Gram Panchayats and Gram Samitis were originally constituted under the (composite) Punjab Gram Panchayat

Act, 1952 and Punjab Panchayat Samitis and Zila Parishads Act, 1961, while the State Agriculture Marketing Board and the Market Committees were constituted under the Punjab Agricultural Produce Markets Act, 1961. Sections 16, 17 and 18 of the 1952 Act and Section 33 and 34(1) read with Section 100 of the 1961 Act and the rules framed thereunder vest in the Punjab Panchayat Samitis and Zila Parishads the powers in matters of appointment, promotion, discipline and conduct of their employees. Similarly, Section 20 of the Punjab Agricultural Produce Markets Act, 1961, empowers the State Agricultural Board and Market Committees to fix the terms and conditions of service of their employees. The power to determine the conditions of service carries with it the power to deliberalise or liberalise the conditions of service to serving employees. ralise the conditions of service to serving employees. *It is true that Section 4(2) (f) of the Inter-State Corporations Act, 1957 does not specifically made any mention about the powers of the successor Corporation to vary the conditions of service of the employees allotted to them but in view of the specific provisions in the relevant Acts (and the rules framed thereunder), empowering the corporate bodies to fix the terms and conditions of service of their employees, the possibility of the successors authorities using those powers to deliberalise the conditions of service of the employees allotted to them could not be ruled out.* It was, therefore, with a view to providing a safeguard in favour of the employees transferred to the successor Panchayat bodies and Market Committees that a peovision was made in the two Re-organisation Orders issued by this Ministry to the effect that their conditions of service should not be varied to their disadvantage except with the previous approval of the successor Governments concerned."

115. The Committee note that the Ministry of Home Affairs have admitted in their reply that section 4(2)(f) of the Inter-State Corporations Act, 1957, under which the aforesaid 'Orders' have been issued, does not specifically empower the successor Corporation to vary the conditions of service to the disadvantage of the employees allotted to it. The Committee, therefore, reiterate their earlier recommendation made in para 24 of their Eighth Report (Fifth Lok Sabha) that the existing conditions of service of an employee should not be varied to his disadvantage. The Committee desire that the Ministry of Home Affairs should take early action to amend both the sets of 'Orders' accordingly.

(iv) (a) THE DELHI AND ANDAMAN AND NICOBAR ISLANDS CIVIL SERVICE (SECOND AMENDMENT) RULES, 1971 (G.S.R. 1627 OF 1971);

(b) THE DELHI AND ANDAMAN AND NICOBAR ISLANDS CIVIL SERVICE (THIRD AMENDMENT) RULES, 1971 (G.S.R. 1628 OF 1971); AND

(c) THE DELHI AND ANDAMAN AND NICOBAR ISLANDS POLICE SERVICE (SECOND AMENDMENT) RULES, 1971 (G.S.R. 1629 OF 1971).

(PARA 91 OF ELEVENTH REPORT—FIFTH LOK SABHA).

116. The above-mentioned rules were published in the Gazette of India, Part II, Section 3(i), dated the 30th October, 1971, but were deemed to have come into force from 10th June, 1970 and 26th February, 1971. The Committee, in para 91 of their Eleventh Report (Fifth Lok Sabha) observed as follows regarding giving of retrospective effect to the above-mentioned rules:—

> "The Committee are not satisfied with the reasons given by the Ministry of Home Affairs for not giving the reasons in the explanatory note regarding retrospective effect given to the above Rules. They feel that retrospective effect in the case of G.S.Rs. 1628 and 1629 may have affected some persons adversely as they provide for the increase of Selection Grade posts from 10 per cent to 20 per cent in the Civil Service and 6.4 per cent to 13 per cent in the Police Service and also reduced the minimum service from 12 years to 8 years for promotion to selection grade. The Committee, therefore, reiterate their earlier recommendation made in para 10 of their Second Report (Fourth Lok Sabha) in regard to giving explanatory note in all cases where retrospective effect is given to 'Orders'."

117. In their action taken note on the above recommendation of the Committee, the Ministry of Home Affairs stated as under:—

> ".....in accordance with the recommendation of the Committee on subordinate legislation made in para 10 of their Second Report (Fourth Lok Sabha), Explanatory Memoranda were given in the notifications Nos. G.S.Rs. 1627, 1628 and 1629 of 1971, to the effect that no officer was likely to be adversely affected by the said Rules.

The detailed reasons for giving retrospective effect to these amendments to the DANI Civil/Police Service Rules, 1971, are given below *seriatum*:—

(a) THE DELHI AND ANDAMAN AND NICOBAR ISLANDS CIVIL SERVICE (SECOND AMENDMENT) RULES, 1971 (G.S.R. 1627 OF 1971)

This amendment relates to the re-designation of the post of 'District Panchayat Officer' as "Assistant Commissioner, South Andaman" under the Andaman and Nicobar Administration. In May, 1971, the Andaman and Nicobar Administration proposed this change. Later on, the Administration desired that the re-designation may be made effective from 10th June, 1971, the date of issue of the orders by them and this was done. This change in the designation of the post made effective retrospectively, did not affect the interest of any officer adversely.

(b) & (c) THE DELHI AND ANDAMAN AND NICOBAR ISLANDS CIVIL SERVICE (THIRD AMENDMENT) RULES, 1971 (G.S.R. 1628 OF 1971), THE DELHI AND ANDAMAN AND NICOBAR ISLANDS POLICE SERVICE (SECOND AMENDMENT) RULES, 1971 (G.S.R. 1629 OF 1971)

Upto 30th June, 1968, the erstwhile Delhi, Himachal Pradesh and Andaman and Nicobar Islands (DHANI) Civil and Police Services had the same scales of pay as were prescribed for Punjab Civil and Police Services. From 1-7-1968, Central Scales were prescribed. While scales of pay in Punjab were revised up-ward subsequently, the scales of pay of the DHANI Civil & Police Services remained unchanged. The members of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil and Police Services, particularly those of Civil Service, had been representing to the Ministry for upward revision of the pay scales of the two services on the Punjab pattern. They had also represented for increasing the chances of their promotion to the Selection Grade in the two Services (with the grant of statehood status to Himachal Pradesh with effect from 25-1-1971), the two services were converted into Delhi and Andaman and Nicobar Islands (DANI) Civil and Police Services.

However, the revision of the pay scales etc. of all Central Services including the DANI Civil and Police Services was under consideration of the Third Pay Commission. Pending receipt of the recommendations of the Pay Commission and Government's decision thereon, it was decided, with the approval of the Ministry of Finance, to increase the percentage of the Selection Grade posts from 10 to 20

in the Civil Service and from 6.4 to 10 in the Police Service, and to reduce the period of eligibility for promotion to the Selection Grade in the two Services from 12 to 8 years. The two amendments in question, though issued in September, 1971, were made effective from 26-2-1971, the date on which the Ministry of Finance accorded their approval. By this retrospective application, some of the members were promoted to the Selection Grade from dates earlier than the dates on which they would have been promoted had the amendments not been made applicable retrospectively. As such only certain benefits accrued to officers appointed to Selection Grade and interests of none were adversely affected.

The above fact may kindly be brought to the notice of the Committee on Subordinate Legislation. The recommendations made in para 91 of the Eleventh Report have been noted for future compliance also.

118. The Committee note that no one has been adversely affected as a result of retrospective effect given to the above-mentioned three sets of rules. The Committee, however, observe that the Ministry of Home Affairs had failed to give an explanatory memorandum saying that no one would be affected adversely, as recommended by the Committee in para 10 of their Second Report (Fourth Lok Sabha). Had the Ministry done so earlier, there would have been no need for the Committee to express any objection. The Committee desire that the Ministry of Home Affairs should be careful in future and give the necessary explanatory memorandum, whenever retrospective effect is given to a set of rules.

DR. KAILAS,
Chairman,
Committee on Subordinate Legislation.

NEW DELHI;
the 10th April, 1975.

APPENDIX I

(*vide* para 4 of the Report)

Summary of main recommendations/observations made by the Committee

S. No.	Para No.	Summary
(1)	(2)	(3)
1	13	The Committee are unhappy to find the instances of inordinate delay in final publication of amendments to the Drugs and Cosmetics Rules They note that while in some cases the gap between the publication of draft rules and final rules was between two and four years, in some other cases, it was as much as four years and nine months. In the opinion of the Committee, there was no justification for these delays. The Committee need hardly point out that if the Ministry feel the need for a change in the rules, they should effect the change as early as possible after consulting the interests concerned, and not sit over the amendments for years together.
	14	The Committee note the assurance given by the Ministry of Health and Family Planning (Department of Health) that the existing procedure regarding final publication of amendments would be streamlined and that efforts would be made to finalise an amendment within at the most, a period of one year from the date of its publication for comments in the Gazette. The Committee would like to watch the working of the new procedure. They would also like the Ministry of Health and Family Planning to consider whether the time-lag between the publication of draft rules and publication of the final rules cannot be further reduced.

(1)	(2)	(3)
	15	As regards steps for preventing mass-scale adulteration in drugs and cosmetics, the Committee note that Government have decided to amend the law and increase the penalty to life imprisonment. The Committee are glad to note that a Bill to amend the Prevention of Food Adulteration Act has already been introduced in Parliament and Government propose to introduce shortly another Bill on the same lines to amend the Drugs and Cosmetics Act, which would contain very strict provisions for dealing with adulteration of drugs and cosmetics. The Committee desire that early action should be taken in this direction. They further desire the Ministry to conduct an early review of the existing rules to see whether they contain any loopholes which can be taken advantage of by unscrupulous elements, and if so, to plug them.
2	25	The Committee note from the wording of the second proviso to clause 13B of the Fertiliser (Control) Order, 1957, inserted in 1972, that it gives a wide power to the Central Government to exempt such agencies as distribute fertilisers on their behalf from complying with the conditions laid down in sub-clauses (a) and (b) thereof. The Committee are surprised to note that although the proviso was inserted in 1972, no notification of exemption has so far been issued, which means that, either the necessity for invoking this proviso has not been felt during the last 2½ years or that the non-standard fertilisers are being distributed by the three agencies, *viz.*, (i) the Food Corporation of India; (ii) the Central Warehousing Corporation; and (iii) the State Warehousing Corporations to the mixing and granulation units without complying with the conditions laid down in sub-clauses (a) and (b) of clause 13B, *ibid.*
	26	The Ministry of Agriculture and Irrigation (Department of Agriculture) have assured the

(1)	(2)	(3)
		Committee that the exemption will not affect the interest of cultivators because as per policy of Government, these non-standard pool fertilisers are allotted only to cooperative/Government granulation and mixing units for preparation of fertiliser mixtures *which have to conform to the prescribed standard.* The Committee take note of the assurance given by the Ministry, but to guard against any possibility of the abuse of the power of exemption conferred by the second proviso, the Committee recommend that the proviso in question should be amended specifically to provide that the non-standard pool fertilisers to be exempted thereunder will be allotted *only* to farmers' cooperative/Government granulation and mixing units whose end-products shall invariably conform to the prescribed standards.
	27	The Committee also feel that exemption may be granted from the operation of sub-clause (b) only and not from sub-clause (a) thereof, which simply requires conspicuous superscription of the words 'non-standard' and sign 'X' in red colour. The Committee desire that necessary amendments to the Fertiliser (Control) Order, 1957, on the above lines, should be made at an early date.
3	38	The Committee agree that rules 2H and 2I of the Wealth Tax Rules, 1957, are to be read with section 16A of the Wealth Tax Act, 1957, under which the Wealth Tax Officer may refer the valuation of any asset to a Valuation Officer. But the Committee would like to point out that under the said Section 16A, it is not obligatory on the Wealth Tax Officer to refer the valuation of each and every asset to the Valuation Officer. He may make such a reference, *if he is of the opinion* that the value of an asset as returned by an assessee is less than its market value. But, in the absence of any guidelines, the possibility of different Wealth Tax Officers forming different opinions about similar assets cannot be ruled out.

(1)	(2)	(3)
		The Committee note in this connection that, according to the Ministry's own admission, if the assets to be valued under rules 2H and 2I are at different places, the element of subjectivity could come in. With a view to reducing such element to the barest minimum, the Committee need hardly emphasise the imperative need for issue of guidelines. The Committee urge the Ministry of Finance to consider the question of amending the Wealth Tax Rules, so as to incorporate therein suitable guidelines as to valuation.
4	42	The Committee are glad to note that the Ministry of Law, Justice and Company Affairs (Legislative Department) have promised to move the necessary amendments to bring the laying provisions contained in the Representation of the People Act, 1950 and the Repersentation of the People Act, 1951, in conformity with the revised laying formula approved by the Committee in paras 33-34 of their Second Report (Fifth Lok Sabha), when the Representation of the People (Amendment) Bill, 1973, comes up for consideration in the Lok Sabha.
5	45	The Committee note with satisfaction that both the Ministries of Law, Justice and Company Affairs (Legislative Department) and Labour have promised to amend at the earliest opportunity the rule-laying clause contained in the Payment of Bonus Act, 1968, so as to bring it in conformity with the formula approved by the Committee, in paras 33-34 of their Second Report (Fifth Lok Sabha).
6	48	The Committee note with satisfaction that on being pointed out, the Ministry of Industry and Civil Supplies (Department of Industrial Development) have agreed to amend bye-law 3(2) of the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, on the lines suggested by the Committee. They desire the Ministry to take early action in the matter.

(1)	(2)	(3)
	52	The Committee are not satisfied with the argument advanced by the Ministry that bye-law 16(ii) of the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, is based on rule 19(ii) of the Central Civil Services (Classification, Control and Appeal) Rules. They would, in this connection, like to point out that in the case of the Central Civil Services, the authority to dispense with the normal disciplinary procedure flows from part (b) of the proviso to Article 311(2) of the Constitution. The Coir Industry Act, 1953, under which these bye-laws have been framed, does not authorise dispensing with the normal procedure in the case of the Coir Board Services. The Committee, therefore, desire that the Ministry of Industry and Civil Supplies (Department of Industrial Development) should take early action either to delete bye-law 16(ii) of the above Bye-laws, or in the alternative, they should come before Parliament for the amendment of the Coir Industry Act, so as to make a specific provision therein on the lines of part (b) of the proviso to Article 311(2) of the Constitution.
	56	The Committee are not satisfied with the reply of the Ministry. The Committee reiterate their earlier recommendation made in para 18 of their Fourth Report (Third Lok Sabha) that rules should not be worded in a manner which may give an impression that the jurisdiction of courts of law is being ousted. They desire the Department of Industrial Development to amend bye-law 19 of the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, in the light of their above recommendation at an early date.
	59	The Committee note that according to the Department of Industrial Development, the idea underlying bye-law 7(4) is to meet a situation where a court may pass orders on purely techni-

(1)	(2)	(3)
		cal grounds without going into the merits at all and that where a court gives its findings after going into the merits of the case, there is no question of the disciplinary authority holding a further inquiry. In the opinion of the Committee, the above intention of Government is not clear from the present wording of bye-law 7(4). The Committee desire that the Ministry of Industry and Civil Supplies (Department of Industrial Development) should amend bye-law 7(4) of the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, suitably, so as to make it clear that it is designed to meet a situation where the court may pass orders on purely technical grounds without going into the merits at all.
7	67	The Committee note that the Ministry of Commerce have no objection in making the Export of Cumin Seeds (Inspection) Rules, 1973, self-contained, in accordance with the recommendation of the Committee made in para 13 of their First Report (Fourth Lok Sabha). The Committee desire that the Ministry should take early steps to amend the rules in question so as to incorporate therein the procedure to be followed in case the cumin seeds are found to be unworthy of export and the period within which the party concerned shall be informed of this. It should also contain a provision for filing an appeal against the decision of the Agricultural Marketing Adviser or the Directorate of Marketing and Inspection, as the case may be, before the Appellate Panel of Experts, as is provided for in various other sets of rules framed under the Export (Quality Control and Inspection) Act, 1963.
8	70	The Committee agree with the views of the Ministry of Labour that the powers to permit variations in scales of appointment of surveyors should vest in the 'Chief Inspector of Mines' instead of in the 'Regional Inspector of Mines'.

(1)	(2)	(3)
		The Committee recommend that early action should be taken to amend regulation 35(3)(b) of the Coal Mines Regulations, 1957, accordingly.
9	75	The Committee note with satisfaction that on being pointed out, the Ministry of Railways (Railway Board) have omitted regulation 7 of the Railway Board Secretariat Stenographers Service Grade III (Competitive Examination) Regulations, 1971, and the provisions contained therein have been inserted in regulation 4 as sub-regulation (4) thereof, *vide* G.S.R. 223 of 1974, dated the 23rd February, 1974.
10	79	The Committee note with satisfaction that the Ministry of Finance (Department of Revenue and Insurance) have since omitted clause (f) of sub-rule (2) of rule 3 and Schedule I of the Customs and Central Excise Duties Drawback Rules, 1971 *vide* G. S. R. 264-E of 1974, dated the 11th June, 1974.
11	83	The Committee note with satisfaction that on being pointed out, the Ministry of Agriculture and Irrigation have agreed to amend clause 4(1) of the Fertiliser (Movement Control) Order, 1973, so as to indicate therein the minimum rank of 'any person' who may be authorised by the Central and State Governments to conduct searches and seizures and also to omit therefrom the provision for further authorisation of persons of unspecified ranks to conduct searches and seizures The Committee desire that the Order in question should be amended suitably at an early date.
12	86	The Committee do not agree with the views of the Ministry of Works and Housing that the existing practice may be allowed to continue, since they have not experienced any difficulty in the operation of rule 8(c) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, as it stands at present. The Committee feel that it is necessary to lay down some guidelines to

(1)	(2)	(3)
		obviate the scope of discriminatory treatment. The Committee, therefore, recommend that the Ministry of Works and Housing should provide suitable guidelines in the aforesaid rules for determining the market rent rather than leaving it to the discretion of the Estate Officer.
13	89	The Committee are glad to note that the Ministry of Communications (P&T Board) have since deleted rule 5 of the Posts and Telegraphs Telecom Factories Organisation (Class I Posts) Recruitment Rules, 1971, *vide* G.S.R. 716 of 1974, dated the 6th July, 1974. The Committee would like to add that unnecessary repetition of the same provision in different words in the body of the same set of rules hardly serves any purpose. On the other hand, it tends to create a confusion in the mind of the reader.
14	92	The Committee are glad to note that on being pointed out, the Ministry of Tourism and Civil Aviation have since amended the Civil Aviation Department (Co-pilot) Recruitment Rules, 1970, to provide therein the precise *inter se* order of priority of methods of recruitment, *vide* G.S.R. 561 of 1974, dated the 8th June, 1974.
	94	The Committee are glad to note that the Ministry of Tourism and Civil Aviation, to whom the omission was pointed out, have since inserted the saving clause regarding candidates belonging to the Scheduled Castes/Tribes, *vide* G.S.R. 561 of 1974, dated the 8th June, 1974.
15	96	The Committee note with satisfaction that on being pointed out, the Department of Personnel and Administrative Reforms have agreed to re-publish the Institute of Secretariat Training and Management (Class IV posts) Recruitment Rules, 1973, in appropriate Part of the Gazette, namely, in Part II, Section 3(i) of the Gazette of India. The Committee desire that a copy of the notification as republished in Part II, Section 3(i) of the Gazette of India should be furnished to them for their information.

(1)	(2)	(3)
	99	The Committee also feel that as publication of 'Orders' in wrong Parts and Sections of the Gazette may cause unnecessary inconvenience to the public, Ministries/Departments should take care to publish the 'Orders' in appropriate Parts and Sections of the Gazette.
16	104	The Committee are of the opinion that retrospective effect given to the Export Inspection Council Contributory Provident Fund Rules, 1969, was without due legal authority. The Committee desire that the Ministry of Commerce should either amend the rules so as to give effect to them from the date of their publication in the Gazette, *viz.*, 21st June, 1969, or in the alternative, the Export (Quality Control and Inspection) Act, 1963, under which the said rules have been framed, should be amended to obtain an express authority from Parliament, in case it is considered necessary to give retrospective effect to these rules. The Committee desire that early action should be taken in the matter.
17	108	The Committee are surprised to note that the Ministry of Home Affairs, instead of deleting rule 23 of the Central Industrial Security Force Rules, 1969, as recommended by the Committee in para 64 of their Seventh Report (Fifth Lok Sabha), have substituted it by another rule on the lines of rule 4 of the Central Reserve Police Force Rules, 1955. Under the new Rule 23, the Central Government as well as the Inspector-General or the Deputy Inspector-General have been empowered to issue instructions for regulating the working of the Force. In the opinion of the Committee, the effect of the new rule, which again is not backed by an express authorisation in the parent Act, remains the same; only there has been a change in terminology. The new rule 23 is thus open to the same objection as the original rule 23.
	109	The Committee, therefore, reiterate their earlier recommendation made in para 64 of their

(1)	(2)	(3)
		Seventh Report (Fifth Lok Sabha), in which they had desired the Ministry of Home Affairs to delete rule 23 from the Central Industrial Security Force Rules, 1969. In case, it is considered necessary to empower the Central Government or Inspector-General or Deputy Inspector-General to issue instructions for regulating the working of the Force, the Committee desire that the Ministry of Home Affairs should come before Parliament with a suitable amendment to the Central Industrial Security Force Act, 1968, to obtain this power.
	110	The Committee further desire that rule 4 of the Central Reserve Police Force Rules, 1955, on the lines of which rule 23 of the Central Industrial Security Force Rules, 1969, has now been amended, should also be deleted, or, in the alternative, similar action should be initiated to amend the Central Reserve Police Force Act, 1949, on the lines suggested above.
18	115	The Committee note that the Ministry of Home Affairs have admitted in their reply that section 4(2) (f) of the Inter-State Corporations Act, 1957, under which the aforesaid 'Orders' have been issued, does not specifically empower the successor Corporation to vary the conditions of service to the disadvantage of the employees allotted to it. The Committee, therefore, reiterate their earlier recommendation made in para 24 of their Eighth Report (Fifth Lok Sabha) that the existing conditions of service of an employee should not be varied to his disadvantage. The Committee desire that the Ministry of Home Affairs should take early action to amend both the sets of 'Orders' accordingly.
19	118	The Committee note that no one has been adversely affected as a result of retrospective effect given to the three sets of rules referred to in paras 116-117 of the Report. The Committee however, observe that the Ministry of Home

(1)	(2)	(3)
		Affairs had failed to give an explanatory memorandum saying that no one would be affected adversely, as recommended by the Committee in para 10 of their Second Report (Fourth Lok Sabha). Had the Ministry done so earlier, there would have been no need for the Committee to express any objection. The Committee desire that the Ministry of Home Affairs should be careful in future and give the necessary explanatory memorandum whenever retrospective effect is given to a set of rules.

MINUTES

APPENDIX II

(*vide* para 3 of the Report)

XXXV

MINUTES OF THE THIRTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74)

The Committee met on Monday, the 2nd July, 1973 from 11.00 to 12.15 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri S. A. Kadar
3. Shri K. Lakkappa
4. Shri Y. S. Mahajan
5. Shri S. N. Misra
6. Shri Tulmohan Ram

SECRETARIAT

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

2. The Committee examined the following 'Orders' laid on the Table during the Seventh Session (Fifth Lok Sabha) out of List No. 17 circulated:—

S.No.	Subject of the 'Order'	Date on which laid on the Table
	(i)-(v) * * * *	
(vi)	The Wealth-tax (Second Amendment) Rules, 1973 (S.O. 187-E of 1973).	27-4-73

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

3. In respect of 'Orders' at S. Nos. * . * * (vi) above, the Committee desired that comments of the Ministries|Departments concerned might be obtained on the following points arising out of their examination:—

(i)-(iii) * * *

(iv) the Wealth-tax (Second Amendment) Rules, 1973 (S.O. 187-E of 1973).

Rules 2H and 2I

The value of assets other than cash, for the purposes of clauses (xxxi) and (xxxii) of sub-section (1) of Section 5 of the Wealth tax Act, 1957 should be estimated either according to the book value of the assets or the opinion of government approved valuers and not the price which, in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

4. * * * *

The Committee then adjourned to meet again on Friday, the 20th July, 1973.

LXIII

MINUTES OF THE SIXTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75)

The Committee met on Saturday, the 28th September, 1974 from 11.00 to 12.30 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Smt. Premalabai Dajisaheb Chavan
3. Shri Khemchandbhai Chavda
4. Shri Md. Jamilurrahman
5. Shri Dinesh Joardar
6. Shri Kamala Prasad
7. Shri Mohan Swarup

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

8. Shri Paokai Haokip
9. Shri R. R. Sharma
10. Shri Tayyab Hussain

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 243 to 245 and 249 to 260.

S.No.	Memo No.	Subject
(1)	(2)	(3)
1—3	243—245	* * *
4.	249	The Wealth-tax (Second Amendment) Rules 1973 (S.O. 187-E of 1973).
5-6	250-251	* * *
7	225	Fertiliser (Control) Third Amendment order, 1972 (G.S.R. 417-E of 1972
8-15	253-260	* * *

3-6. * * *

(iv) The Wealth-tax (Second Amendment) Rules, 1973 (S.O. 187-E of 1973)—(*Memorandum No.* 249)

7. The Committee considered the above Memorandum for some time and decided to hear oral evidence of the representatives of the Ministry of Finance (Department of Revenue and Insurance) in the matter.

8-10 * * *

(vii) The Fertiliser (Control) 3rd Amendment Order, 1972 (G.S.R. 417-E of 1972)—(*Memorandum No.* 252).

11. The Committee considered the above Memorandum for some time and decided to hear oral evidence of the representatives of the Ministry of Agriculture (Department of Agriculture) in the matter.

12-20 * * *

The Committee then adjourned to meet again on 30th September, 1974, at 15.00 hours.

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

LXV

MINUTES OF THE SIXTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75)

The Committee met on Monday, the 14th October, 1974 from 15.00 to 16.00 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Smt. Pramalabai Dajisaheb Chavan
3. Shri Khemchandbhai Chavda
4. Shri Md. Jamilurrahman
5. Shri Dinesh Joardar
6. Shri Kamala Prasad
7. Shri Mohan Swarup
8. Shri Paokai Haokip
9. Shri M. S. Sanjeevi Rao
10. Shri R. R. Sharma
11. Shri Tayyab Hussain

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 261 to 270 on the following subjects:—

S.No.	Memo No.		Subject
(1)	(2)		(3)
1-3	261-263		* * *
4.	264	(i)	The Drugs and Cosmetics (Amendment) Rules, 1972 (S.O. 2139 of 1972);
		(ii)	The Drugs and Cosmetics (Third Amendment) Rules 1972 (S.O. 289 of 1973); and
		(iii)	The Drugs and Cosmetics (Amendment) Rules, 1973 (G.S.R. 444 of 1973).
5-10	265-270		* * *

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

3-7 * * *

(iv) (1) The Drugs and Cosmetics (Amendment) Rules, 1972 (S.O. 2139 of 1972).

(2) The Drugs and Cosmetics (Third Amendment) Rules, 1972 (S.O. 289 of 1973) and

(3) The Drugs and Cosmetics (Amendment) Rules, 1973 (G.S.R. 444 of 1973). (*Memorandum No. 264*).

8. The Committee considered the above Memorandum for sometime and decided to hear oral evidence of the representatives of the Ministry of Health and Family Planning (Department of Health) in the matter.

9-16 * * *

The Committee then adjourned to meet again on Tuesday, the 15th October, 1974 at 15.00 hours

LXVI

MINUTES OF THE SIXTY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75)

The Committee met on Tuesday, the 15th October, 1974 from 15.00 to 16.00 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Smt. Premalabai Dajisaheb Chavan
3. Shri Md. Jamilurrahman
4. Shri Kamala Prasad
5. Shri Paokai Haokip
6. Shri M. S. Sanjeevi Rao
7. Shri R. R. Sharma
8. Shri Tayyab Hussain

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

2. The Committee considered Memoranda Nos. 271 to 281 on the following subjects:

S.No.	Memorandum	Subject
(1)	(2)	(3)
1.6	271.276	* * *
	7.277	The Railway Board Secretariat Stenographers Service Grade III (Competitive Examination) Regulations, 1971 (G.S.R. 716 of 1971).
	8.278	The Customs and Central Excise Duties Drawback Rules, 1971 (G.S.R. 1219 of 1971)
	9.279	The Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969 (S.O. 200 of 1969).
	10.280	The Fertiliser (Movement Control) Order, 1973 (S.O. 249-E of 1973).
	11.281	Revision of the old laying formula through amendment Bills.
3-10	*	*

(vii) The Railway Board Secretariat Stenographers Service Grade III (Competitive Examination) Regulations, 1971 (G.S.R. 716 of 1971). (*Memorandum No.* 277).

11. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Railways had amended the above Regulations so as to put together the provisions of regulations 4 and 7 under the same Regulation.

(viii) The Customs and Central Excise Duties Drawback Rules, 1971 (G.S.R. 1219 of 1971)—(*Memorandum No.* 278).

12. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Finance (Department of Revenue and Insurance) had proposed to delete Rule 3(2)(f) and Schedule I of the above Rules after it was pointed out to them that Rule 3(2)(f) referred to goods specified in Schedule I while the Schedule was blank. The Committee desired the Ministry to amend the Rule at an early date.

(ix) The Coir Boards Services (Classification, Control and Appeal) Bye-laws, 1969 (S.O. 200 of 1969). (*Memorandum* No. 279).

(A)

13. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out the Ministry of Industrial

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

Development had agreed to the deletion of words "any employee" from Bye-law 3(2) of the above bye-laws. The Committee desired the Ministry to issue the amendment at an early date.

(B)

14. The Committee considered the Memorandum and were not satisfied with the reply of the Ministry of Industrial Development that bye-law 16(ii) of the Coir Board Services (Classification Control and Appeal) Bye-laws was based on Rule 19(ii) of the Central Civil Service (Classification, Control and Appeal) Rules, In the case of the Central Civil Services, the authority to dispense with the normal disciplinary procedure flowed from proviso (b) to Article 311(2) of the Constitution. The Coir Industry Act, 1953 did not authorise dispensing with the normal procedure in the Coir Board Services. The Committee desired the Ministry of Industrial Development either to delete Bye-law 16(ii) or to amend the Coir Industry Act so as to make specific provision therein on the lines of the proviso (b) to Article 311(2) of the Constitution.

(C)

15. The Committee considered the Memorandum and were not satisfied with the reply of the Ministry of Industrial Development that Bye-law 19 was modelled on rule 22 of the CCS (CCA) Rules, 1965. The Committee reiterated their recommendation made in para 18 of Fourth Report (Third Lok Sabha) that rules should not be worded in a manner which may give an impression on the mind of persons concerned that jurisdiction of Courts of Law was being ousted. They desired the Ministry to amend bye-law 19 in the light of the above said recommendation of the Committee.

(D)

16. The Committee considered the Memorandum and desired the Ministry of Industrial Development to amend by-law 7(4) to make it clear that it was designed to meet a situation where the Court may pass orders on purely technical grounds without going into the merits at all.

(x) The Fertiliser (Movement Control) Order, 1973 (S.O. 249-E of 1973). (*Memorandum No. 280*).

17. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Agriculture and Irrigation (Department of Agriculture) had agreed to amend

Clause 4(1) of the above Order so as to indicate the minimum rank of the person to be authorised to conduct search and seizure and to omit therefrom the provision for further authorisation. The Committee desired the Ministry to issue the amendment at an early date.

(xi) Revision of the old laying formula through amendment Bills. (*Memorandum No.* 281).

18. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out that the Bill further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951 introduced in Lok Sabha on 20.12.1973 did not include any amendment to bring the old laying formuda as contained in the principal Acts of 1950 and 1951 in conformity with the one approved by the Committee in paras 29-34 of their Second Report (5th Lok Sabha), the Ministry of Law, Justice and Company Affairs (Legislative Department) had agreed to make necessary amendments when the Bill came up for consideration in Lok Sabha.

19. The Committee further noted with satisfaction that the Ministry had agreed to amend at the earliest opportunity the laying formula contained in the Payment of Bonus Act, 1968 so as to bring it conformity with the one recommendation in paras 33-34 of their Second Report (Fifth Lok Sabha).

The Committee then adjourned to meet again on the 6th November, 1974.

LXVIII

MINUTES OF THE SIXTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75).

The Committee met on Thursday, the 5th December, 1974 from 10.00 to 10.45 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shrimati Premalabai Dajisaheb Chavan
3. Shri Md. Jamilurrahman
4. Shri Dinesh Joardar
5. Shri R. R. Sharma

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

2. The Committee considered Memoranda Nos. 282 to 287 and 294.

S.No.	Memo. No.	Subject
1	2	3
1	282	The Posts and Telegraphs Telecom Factories Organisation (Class I Posts) Recruitment Rules, 1971 (G.S.R. 277 of 1972).
2	283	(i) The Coal Mines (Amendment) Regulations, 1971 (G.S.R. 568 of 1971). (ii) The Draft Coal Mines (Amendment) Regulations, 1972 (G.S.R. 1148 of 1972).
3	284	The Civil Aviation Department (Co-pilot) Recruitment Rules, 1970 (G.S.R. 575 of 1971).
4	285	The Institute of Secretariat Training and Management (Class IV posts) Recruitment Rules, 1973 (Notification No. 35/55/72-Estt(B) Trg. dated 30-4-73).
5-7	286-287 and 294	* * * *

(i) The Posts and Telegraphs Telecom Factories Organisation (Class I Posts) Recruitment Rules, 1971 (G.S.R. 277 of 1972). (*Memorandum No.* 282).

3. The Committee considered above memorandum and noted with satisfaction that on being pointed out the Ministry of Communications (P&T Board) had agreed to delete rule 5 of above rules as it was superfluous.

(ii) (a) The Coal Mines (Amendment) Regulations, 1971 (G.S.R. 568 of 1971).

(b) The Draft Coal Mines (Amendment) Regulations, 1972 (G.S.R. 1148 of 1972). (*Memorandum No.* 283).

4. The Committee considered above memorandum and desired the Ministry of Labour to amend aforesaid regulations by substituting 'Chief Inspector of Mines' for 'Regional Inspector of Mines' for the exercise of powers regarding appointment of surveyors in variation of provisions contained in regulation 35 of above regulations.

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

(iii) The Civil Aviation Department (Co-pilot) Recruitment Rules, 1970 (G.S.R. 575 of 1971). (*Memorandum No.* 284).

(A)

5. The Committee considered above memorandum and noted with satisfaction that on being pointed out, the Ministry of Tourism and Civil Aviation had amended the rules in question to provide therein the precise *inter se* order of priority of methods of recruitment.

(B)

6. The Committee further noted with satisfaction that on being pointed out, the Ministry of Tourism and Civil Aviation had amended above rules to provide therein a saving clause regarding candidates belonging to the Scheduled Castes|Tribes.

(iv) The Institute of Secretariat Training and Management (Class IV Posts) Recruitment Rules, 1973 (Notification No. 35|55|72-Estt(B) Trg. dated 30-4-73). (*Memorandum No.* 285).

7. The Committee considered above memorandum and noted that on being pointed out, the Department of Personnel and Administrative Reforms had agreed to re-publish above rules in Part II, Section 3 (i) of the Gazette of India as those were wrongly published in Part I, Section 2 earlier.

8 to15. * * *

16. *The Committee then adjourned to meet again on the 17th December, 1974, at 15.30 hours to consider their Draft Fourteenth Report.*

LXX

MINUTES OF THE SEVENTIETH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75)

The Committee met on Monday, the 27th January, 1975, from 15.00 to 16.15 hours.

PRESENT

Dr. Kailas—*Chairman*

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

MEMBERS

2. Shri T. Balakrishnaiah
3. Shri K. Chikkalingaiah
4. Shri Khemchandbhai Chavda
5. Shri Md. Jamilurrahman
6. Shri Kamala Prasad
7. Shri Mohan Swarup
8. Shri Paokai Haokip
9. Shri M. S. Sanjeevi Rao
10. Shri R. R. Sharma

WITNESSES

I. *Representatives of the Ministry of Finance (Department of Revenue and Insurance)*

1. Shri H. N. Ray—*Secretary.*
2. Shri S. R. Mehta—*Chairman, Central Board of Direct Taxes.*
3. Shri B. K. Bagchi—*Member, Central Board of Direct Taxes.*

II. *Representatives of the Ministry of Health and Family Planning (Department of Health)*

1. Shri Gian Prakash—*Secretary.*
2. Shri Shravan Kumar—*Joint Secretary.*
3. Dr. S. S. Gothoskar—*Drug Controller.*
4. Shri P. K. Dutta—*Asstt. Drug Controller.*

III. *Representatives of the Ministry of Agriculture and Irrigation (Department of Agriculture).*

1. Shri T. P. Singh—*Secretary.*
2. Shri A. Das Gupta—*Joint Secretary and Legal Adviser, Ministry of Law.*
3. Miss Anna R. George—*Joint Secretary.*
4. Shri Parkash Narayan—*Joint Commissioner (Fertiliser Distribution).*

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

I

2. The Committee first heard the oral evidence of the representatives of the Ministry of Finance (Department of Revenue and

Insurance) on the provisions contained in rules 2H and 2I of the Wealth-tax Rules inserted by the Wealth-tax (Second Amendment) Rules, 1973. The Rules provide that the value of each asset forming part of an industrial undertaking other than cash shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

3. Asked to state whether there were any guidelines for the Wealth-tax Officer for forming his opinion about the price which the asset would fetch in the open market, the representative of the Ministry stated that subject to the specific rules made under the Wealth-tax Act, they went by the criteria laid down in Section 7(1), and the rules thereunder, *i.e.* the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market. That was the main criterion, because the Wealth-tax Officer had to see how much a *bona fide* purchaser would like to pay for that property. However, so far as shares were concerned, the Department had detailed rules which served as guidelines.

4. In reply to a query how prices would be fixed in cases where there was a difference of opinion between an assessee and the Wealth-tax Officer, the representative of the Ministry stated that this aspect of the problem had been taken into consideration by Government. He referred, in this connection, to Section 16A of the Wealth-tax Act, which provided that for the purposes of making an assessment under the Act, the Wealth-tax Officer might, in the circumstances specified in Clauses (a) and (b) of sub-section (1) of that Section, refer the valuation of any asset to the Valuation Officer. The witness added that if there was a difference, it was binding on the Wealth-tax Officer to refer the matter to the Valuation Officer. Sub-section (6) of this Section provided that in cases where the valuation of an asset was referred by the Wealth-tax Officer to a Valuation Officer, the Wealth-tax Officer would so far as the valuation of the asset in question was concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer. This, according to the representative of the Ministry, was good enough a security and the assessee would not be put to any difficulty. He further elaborated that rules 2H and 2I were connected with the valuation of assets forming part of an industrial undertaking, which were exempted under clauses (xxxi) and (xxxii) of sub-section (1) of Section 5 of the Wealth-tax Act. The value had to be estimated in the prescribed manner for the purpose of determining the amount up to which exemption was to be given and the procedure laid down in sub-sections (1) and (2) (a) of Section 7 was followed. He also explained that rules 2H and 2I were exactly the copy of Section 7(1) and (2)(a), which prescribed nothing more than what was stated in the Act.

5. Pointing out that there was no mention of Valuation Officer in Section 7, the Committee enquired whether Section 7 was to be read with Section 16A of the Act. The representative of the Ministry stated that the rules in question dealt with certain exempted assets. The scheme had to be consistent with the main provisions of the Act. Section 7(1) dealt with the valuation of included assets. When an asset was included, it was subjected to all the provisions of Section 16A, where there was a reference to a Valuation Officer. Once the value of assets had been determined for purposes of inclusion and references, if necessary, had been made to the Valuation Officer and that valuation was accepted, there was very little that the Wealth-tax Officer could do thereafter with regard to re-valuation of those assets for the purpose of exemption.

6. Asked whether the rules needed to be amended in this regard, the representative of the Ministry of Finance replied that no amendment was necessary as Section 16A was applicable to valuation of all the properties under the Wealth-tax Act, whether these were exempted or not.

7. In reply to another question, the witness stated that if the book value of an asset was far below its value in the open market, the Department would completely ignore the book value.

8. In reply to a question whether there was not an element of subjectivity in determination of value of assets under rules 2H and 2I, the witness stated that if properties were at different places, sometimes the element of subjectivity came. But by and large, it was possible to avoid this subjectivity.

9—16. * * *

(The witnesses withdrew)

II

17. The Committee then heard oral evidence of the representatives of the Ministry of Health and Family Planning (Department of Health) in regard to delay in final publication of various amendments to the Drugs and Cosmetics Rules, 1945.

18. At the outset, the representative of the Ministry confessed that the procedure followed by the Ministry in this regard was faulty and there was a lot of avoidable delay. He expressed his regrets and sincerely apologised for inordinate delay in the final publication

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

of amendments to the original rules. He assured the Committee that to avoid such delays in future, the whole procedure would be streamlined. A check register would be kept in the Drug Controller's Office, in which the date on which the notification was published in the Gazette, the date on which the time of three months expired and the date of final publication, etc. would be entered. It would also be ensured by the Drug Controller personally that before the Drug Advisory Committee met next, most of its recommendations were given effect to.

19. When asked whether he was aware of large scale adulteration in drugs and cosmetics and whether amendment of these rules was being considered to prevent these mal-practices, the representative of the Ministry stated that Government were not only aware of the fact that spurious, adulterated, sub-standard and mis-branded drugs were being sold on a large scale, but they were also concerned about it. Tracing the reasons behind this, he stated that it was partly due to fall in moral standards, partly to high prices, to the greed for high profits and also due largely to the ineffective implementation of the Drugs Act and the rules at the State level. In some of the States, the drug control administration was good; but in most of them it was ineffective and poor. The Inspectors were paid meagre salaries, with the result that they accepted illegal gratification. Some States did not have a whole-time Drug Controller. The Centre had advised the States that there should be a separate man who should hold that post. There should be separate drug inspectors with revised scales of pay. Laboratories should also be provided for the purpose. These suggestions were not being implemented because of paucity of funds. As regards revision of rules, he stated that Government had decided to amend the law and increase the penalty to life imprisonment. A Bill to amend the Prevention of Food Adulteration Act had already been introduced in Parliament and Government proposed to introduce shortly another Bill on the same lines to amend the Drugs and Cosmetics Act, which would contain very strict provisions for dealing with adulteration. In the meantime, the representative of the Ministry stated that the rules would be examined to see what could be done to make them practical and stringent.

20. The Committee desired the representative of the Ministry to furnish written replies to the questionnaire handed over to him at the time of evidence and a detailed reply to question No. 13 after studying the existing rules in about a month.

(The witnesses withdrew)

III

21. The Committee next heard the representatives of the Ministry of Agriculture and Irrigation (Department of Agriculture) in regard to the power of the Central Government to exempt certain agencies distributing fertilizers on behalf of the Central Government from the conditions prescribed for disposal of non-standard fertiliser in the Fertiliser (Control) Third Amendment Order, 1972.

22. Explaining the reasons for empowering the Central Government to grant exemption to certain agencies from the conditions laid down in sub-clauses (a) and (b) of clause 13B of the above Order, the representative of the Ministry of Agriculture and Irrigation stated that the Central Government was mainly concerned with the import of fertilisers, which were unloaded at 17 major and minor ports by the Food Corporation of India as an agent of the Central Government; and at the receiving end in different States and at different places, these fertilisers were handled by the Central Warehousing Corporation or by the State Warehousing Corporations as agents to the Government of India. The fertilisers were received either in bulk in which case they had to be put into bags at the port, or they were received in bags which were unloaded with the help of hooks which made holes in the bags. A certain quantity of fertilisers got thrown about at the port. It had to be collected, cleaned and removed before the next ship was unloaded. The same thing happened at the receiving end both at the railway stations and in the godowns. The movement was so rapid and continuous that it was not possible to comply with the rigid conditions which were prescribed for sale in extraordinary circumstances of non-standard fertilisers to farmers. The representative of the Ministry further added that these three Central agencies did not make sale of non-standard fertilisers to farmers. They made sale of non-standard fertilisers under the directions of the Central Government only to co-operative granulating units or co-operative mixing units, which were not given this exemption at all. They had to conform to these standards.

23. While clarifying the position further, the representative of the Ministry stated that these were not bad fertilisers, but only dust got mixed up. No doubt, it became sub-standard, but it would still be possible to give it to granulating agencies, who added some other fertiliser material for making out the 'grade'. Again, these grades were subject to the specifications laid down in the Fertiliser Control Order and then only they were sold to farmers. The granulating units did not get any exemption from the conditions prescribed in the Fertiliser Control Order.

24. In reply to a question, the witness stated that the sale of spilled-over fertilizers by the F.C.I. to private traders had been completely stopped in 1972, after some complaints were received. Thereafter, such sales were confined to only those granulating and mixing units, which were in the cooperative sector. The witness assured the Committee that very severe action would be taken against any official of the F.C.I. selling such fertilizers to private traders.

25. In reply to another question whether reasons were recorded in writing before granting exemption, the representative replied in affirmative.

(*The witnesses withdrew*)

26. The Committee then adjourned to meet again on Tuesday, the 28th January, 1975.

LXXII

MINUTES OF THE SEVENTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)

(1974-75)

The Committee met on Friday, the 21st February, 1975, from 10.15 to 11.00 hours.

PRESENT

Dr. Kailas—*Chairman*

Members

2. Shri T. Balakrishnaiah
3. Shri K. Chikkalingaiah
4. Shrimati Premalabai Dajisaheb Chavan
5. Shri Paokai Haokip

Secretariat

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

2. The Committee considered Memoranda Nos. 288 to 293 and 295 on the following subjects:—

S.No.	Memo No.	Subject
(1)	(2)	(3)
(i)	288	The Export of Cumin Seeds (Inspection) Rules, 1973 (S.O.3099 of 1973)—Rules should be self-contained and legislation by reference should be avoided.
(ii)	289	Implementation of recommendation contained in para 60 of the Seventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Export Inspection Council Contributory Provident Fund Rules, 1969 (S.O. 2413 of 1969).
(iii)	290	Implementation of recommendation contained in para 64 of Seventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Central Industrial Security Force Rules, 1969 (S.O. 4632 of 1969).
(iv)	291	Implementation of recommendations contained in para 24 of Eighth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) re. (i) the Punjab State Agricultural Marketing Board and Market Committees (Reconstitution and Re-organisation) Order, 1969 (S.O. 3021 of 1969); and (ii) the Punjab Zila Parishads, Panchayat Samities and Gram Sabha (Re-constitution and Re-organisation) Order, 1969 (S.O. 2933 of 1969).
(v)	292	The Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (G.S.R 1883 of 1971)— Guidelines for assessing of damages for unauthorised use and occupation of any public premises.
(vi)	293	Implementation of recommendations contained in para 91 of the Eleventh Report of the Committee on Subordinate Legislation (Fifth Lok Sahbha) regarding (i) Delhi and Andaman and Nicobar Islands Civil Service (2nd Amendment) Rules, 1971; (ii) the Delhi and Andaman and Nicobar Islands Civil Service (3rd Amendment) Rules, 1971; and (iii) the Delhi and Andaman and Nicobar Islands Police Service (2nd Amendment (Rules, 1971 (G.S.Rs. 1627, 1628 and 1629 of 1971).
(vii)	295	* * *

(i) *The Export of Cumin Seeds (Inspection) Rules, 1973 (S.O. 3099 of 1973)—Rules should be self-montained and legislation by reference should be avoided—(Memorandum No. 288).*

3. The Committee considered the above Memorandum and were not satisfied with the explanation given by the Ministry of Commerce for the clubbing of the General Grading and Marking Rules, 1937, and the Cumin Seeds Grading and Marking Rules, 1969, framed under the Agricultural Produce (Grading and Marking) Act, 1937.

4. Since the Ministry had no objection in making the Export of Cumin Seeds (Inspection) Rules, 1973, self-contained, in accordance with their earlier recommendation made in para 13 of First Report (Fourth Lok Sabha), the Committee, desired the Ministry to take early steps to amend the said rules suitably so as to incorporate therein the procedure to be followed in case the cumin seeds were found to be unworthy of export and the period within which the party concerned would be informed of this. It should also contain a provision for filing an appeal against the decision of the Agricultural Marketing Adviser or the Directorate of Marketing and Inspection before the Appellate Panel as was provided for in various other sets of rules relating to several other commodities for export framed under the Export (Quality Control and Inspection) Act, 1963.

(ii) *Implementation of recommendation contained in para 60 of the Seventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Export Inspection Council Contributory Provident Fund Rules, 1969 (S.O. 2413 of 1969)—(Memorandum No. 289).*

5. The Committee considered the above Memorandum and were of the view that retrospective effect given to the rules in question was without due legal authority. They desired the Ministry of Commerce to amend the rules so as to give effect to them from the date of their publication in the Gazette, *viz.* 21st June, 1969, or, in the alternative the parent Act should be amended to obtain an express authority from Parliament, if it was necessary to give retrospective effect to these rules.

(iii) *Implementation of recommendation contained in para 64 of Seventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Central Industrial Security Force Rules, 1969 (S.O. 4632 of 1969)—(Memorandum No. 290).*

6. The Committee considered the above Memorandum and decided to reiterate their earlier recommendation made in para 64 of their Seventh Report (Fifth Lok Sabha), in which they had desired the Ministry to delete rule 23 from the Central Industrial Security Force Rules, 1969. In case, it was considered necessary to empower

the Central Government or I.G. or D.I.G. to issue instructions for regulating the working of the Force, the Central Industrial Security Force Act, 1968, should be suitably amended to get this power from Parliament.

7. They further decided that rule 4 of the Central Reserve Police Force Rules, 1955, on the lines of which rule 23 of the Central Industrial Security Force Rules, 1969, was amended, should also be deleted, or in the alternative, action should be taken to amend the Central Reserve Police Force Act, 1949, on the lines suggested above.

(iv) *Implementation of recommendations contained in para 24 of Eighth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) re: (i) the Punjab State Agricultural Marketing Board and Market Committee (Reconstitution and Re-organisation) Order,* 1969 *(S.O. 3021 of 1969) and (ii) the Punjab Zila Parishads, Panchayat Samities and Gram Sabhas (Reconstitution and Reorganisation) Order,* 1969 *(S.O. 2933 of* 1969)—*(Memorandum No. 291).*

8. The Committee considered the above Memorandum and decided to reiterate their earlier recommendation made in para 24 of their Eighth Report (Fifth Lok Sabha) that the existing conditions of service of an employee should not be varied to his disadvantage. They noted in this connection that the Ministry of Home Affairs had admitted in their reply that Section 4(2)(f) of the Inter-State Corporations Act, 1957, under which the above 'Orders' were issued did not specifically empower the successor Corporation to vary the conditions of service to the disadvantage of the employees allotted to them. The Committee desired that the Ministry should take early action to amend both the sets of 'Orders' suitably.

(v) *The Public Premises (Eviction of Unauthorised Occupants) Rules,* 1971 *(G.S.R.* 1883 *of* 1971)—*Guidelines for assessing of damages for unauthorised use and occupation of any public premises—(Memorandum No.* 292).

9. The Committee considered the above Memorandum and were of the opinion that the provision of guidelines seemed to be necessary to obviate the scope of discriminatory treatment. They, therefore, decided to recommend that the Ministry of Works and Housing should provide guidelines in the above rules for determining the market rent rather than leaving it to the discretion of the Estate Officer.

(vi) *Implementation of recommendations contained in para 91 of the Eleventh Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding (i) Delhi and Andaman and Nicobar Islands Civil Service (2nd Amendment) Rules, 1971; (ii) the Delhi and Andaman and Nicobar Islands Civil Service (3rd Amendment) Rules, 1971; and (iii) the Delhi and Andaman and Nicobar Islands Police Service (2nd Amendment) Rules, 1971 (G.S.Rs. 1627, 1628 and 1629 of 1971),—(Memorandum No. 293).*

10. The Committee considered the above Memorandum and noted that no one had been adversely affected as a result of retrospective effect given to the above 3 sets of rules. They, however, observed that the Ministry of Home Affairs had failed to give explanatory memorandum saying that no one would be adversely affected. Had they done so earlier, there would have been no need for the Committee to express any objection. They desired that the Ministry should be careful in future and give explanatory memorandum, whenever retrospective effect was given to the rules.

11. * * *

The Committee then adjourned.

LXXIII

MINUTES OF THE SEVENTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75)

The Committee met on Thursday, the 10th April, 1975 from 10.15 to 11.00 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shri Khemchandbhai Chavda
3. Shri Md. Jamilurrahman
4. Shri Dinesh Joardar
5. Shri R. R. Sharma

SECRETARIAT

Shri J. R. Kapur—*Chief Financial Committee Officer.*

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

3. The Committee authorised the Chairman and in his absence Shri R. R. Sharma, to present the Fifteenth Report to the House on their behalf on the 15th April, 1975.

The Committee then adjourned.

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

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