

**COMMITTEE  
ON  
SUBORDINATE LEGISLATION**

**(FIFTH LOK SABHA)**

**SIXTH REPORT**

*(Presented on the 7th May, 1973)*



**LOK SABHA SECRETARIAT  
NEW DELHI**

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LOK SABHA SECRETARIAT

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

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION

(1972-73)

Shri Vikram Mahajan—*Chairman*

2. Shri Frank Anthony
3. Shri M. C. Daga
4. Shri Dharnidhar Das
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6. Shri Samar Guha
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11. Shri S. N. Misra
12. Shri D. K. Panda
13. Shri K. Narayana Rao
- \*14. Shri P. Narasimha Reddy
15. Shri Tulmohan Ram

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

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

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\*Nominated by the Speaker on the 16th March, 1973, *vice* Shri Sutodh Hansda ceased to be a member of the Committee on his appointment as a Deputy Minister.

## 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 Sixth Report.

2. During the course of examination of various 'Orders', the Committee also scrutinised 49 Regulations which were made prior to 1-7-1967, under or in pursuance of the Rules framed under the All India Services Act, 1951, and had not been laid on the Table of the House so far, but were circulated to Members of Lok Sabha by the Department of Personnel (Cabinet Secretariat) after the debate in the House on the All India Services Regulations (Indemnity) Bill, 1972. Their comments on two Regulations, viz., (i) the Indian Administrative Services (Seniority of Special Recruits) Regulations, 1960 (G.S.R. 102 of 1960); and (ii) the Indian Police Service (Seniority of Special Recruits) Regulations, 1960 (G.S.R. 103 of 1960) are contained in paras 26—28 of the Report.

3. The Committee have held five sittings—on the 11th January, 9th February, 20th March, 16th April and 3rd May, 1973. At their sitting held on the 3rd May, 1973, the Committee considered and adopted this Report. The Minutes of the sittings which form part of the Report are appended to it.

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

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### II

#### THE COST ACCOUNTING RECORDS (ELECTRIC FANS) RULES, 1969 (G.S.R. 2298 of 1969)

4. Rule 4 of the Cost Accounting Records (Electric Fans) Rules, 1969 reads as follows:—

“4. Penalty.—If a company contravenes the provision of rule 3, the Company and every officer thereof, who is in default, including the persons referred to in sub-section (6) of section 209 of the Companies Act, 1956 (1 of 1956), shall be punishable with fine which may extend to five hundred rupees and where the contravention is a continuing one

with a further fine which may extend to fifty rupees for every day after the first during which such contravention continues."

The above Rule does not provide for giving a reasonable opportunity of being heard to an aggrieved Company officer, before a penalty is imposed on it/him.

6. The penalty provision contained in a few similar other rules (see Appendix II) framed under the same Act, viz., Companies Act, 1956—also does not provide for giving a reasonable opportunity of being heard to an aggrieved Company person, before a penalty is imposed on it/him.

7. The Department of Company Affairs, with whom the matter was taken up have in their reply stated as under:—

".....no specific provision was made by this Department in any of the Cost Accounting Record Rules issued so far for the various classes of companies to indicate that before a penalty is imposed upon a person/company a reasonable opportunity of being heard will be provided. The usual procedure followed by the Department before invoking the penal provisions of the rules is to give a reasonable opportunity to the concerned party through a show cause notice in order that the principles of natural justice are observed. In view of this procedure, the Department has not considered it necessary to make a specific provision in this regard in the various cost accounting record rules including Cost Accounting Records (Electric Fans) Rules, 1969 referred to above. Incidentally, it may be mentioned that these rules are seen in the draft stage by the Ministry of Law before they are finalised and issued. The Law Ministry has also not pointed out so far to this Department the necessity for incorporation of a specific provision in this regard in the rules."

8. One of the basic principles of natural justice is that before penal provisions of a law are invoked against any person, he should be given a reasonable opportunity of being heard. The Committee on Subordinate Legislation have been very particular about the observance of this principle and have, from time to time, recommended amendment of rules to incorporate a provision for affording an opportunity of being heard. In their reply, the Department of Company Affairs have stated that although there was no such provision in the Rules, the purpose was served by usual procedure of show cause notice. A similar reply was furnished by the Ministry of Finance

in the case of the Central Excise (Ninth Amendment) Rules, 1968. The Committee were not satisfied with the reply of the Ministry of Finance in that case and pointed out vide para 25 of their First Report (Fifth Lok Sabha) that Departmental instructions could hardly be a substitute for a built-in legal safeguard. The Committee, therefore, reiterate their earlier recommendation and desire that the Cost Accounting Records (Electric Fans) Rules, 1969, and all other similar Rules (a few of them listed at Appendix II) framed under the Companies Act, 1956, should be suitably amended at an early date to provide for giving an opportunity of being heard to an aggrieved Company officer before any penalty under the Rules is imposed on it/him.

9. In this connection, the Committee also desire the Ministry of Law and Justice (Legislative Department) to examine in consultation with all other Ministries/Departments whether there are any such Rules, which do not provide for giving a reasonable opportunity of being heard to an aggrieved party, before a penalty is imposed on him thereunder, and if so, early steps should be taken by the concerned Ministry/Department to amend them suitably in the light of the observations made by the Committee on Subordinate Legislation in this regard from time to time.

### III

#### THE INDIAN POSTS AND TELEGRAPHS (CLASS IV POSTS) RECRUITMENT RULES, 1970 (G.S.R. 1932 of 1970)

10. Notes 2 and 3 below the Schedule to the above rules provide that Extra-Departmental Staff and Casual Labourers may be considered for Class IV Posts against the vacancies for direct recruitment for Class IV Posts *subject to such conditions and in such manner as may be directed by the DGP & T from time to time.*

11. It was pointed out to the Department of Communications that the Rules should, as far as possible, be self-contained and the terms and conditions subject to which any category of persons may be considered for recruitment should be specified therein, rather than be left to be regulated separately.

12. In their reply, the Department of Communications have stated as follows:—

“...it may be mentioned that there are detailed instructions under which Extra Departmental Staff may be considered for recruitment to Class IV posts. The Casual Labour



are appointed to Class IV posts subject to general instructions issued by the Department of Personnel in this regard. There are detailed administrative instructions the inclusion of which will make the statutory Recruitment rules unnecessarily lengthy.

Further the Statutory rules have been promulgated in the form prescribed by the Department of Personnel. They are to be supplemented by Administrative Instructions. As has been observed by the Supreme Court in the Sant Ram Vs. State of Rajasthan (AIR 1967 SC 1910) the Government can supplement the rules and issue instructions on matters in respect of which the Rules are silent, though the Rules cannot be amended or superseded by Administrative instructions. It is, therefore, felt that the details ..... need not be included in the Statutory Recruitment Rules. ”

13. The Committee are not convinced by the arguments advanced by the P&T Department for not accepting the suggestion that the terms and conditions subject to which 'Extra Departmental Staff and Casual Labourers' may be considered for Class IV posts against the vacancies for direct recruitment should be specified in the Rules. They have time and again emphasised that the rules should, as far as possible, be self-contained.

14. Apart from this, there is another important aspect involved and that is empowering the DGP & T to lay down the conditions of recruitment outside the rules through Departmental instructions, which the Committee feel, is tantamount to sub-delegation of legislative power. Departmental instructions laying down the conditions of recruitment are not published in the Gazette, and, therefore, would not come to the notice of the Committee for their scrutiny. Moreover, the Committee feel that conditions of recruitment, being of basic importance, should be regulated through the rules, rather than be left to be regulated outside the rules.

15. The Committee also do not see much force in the Department's argument that the inclusion of the conditions of recruitment will make the rules unnecessarily lengthy. They are of the opinion that the conditions can be given briefly in the Schedule to the Rules. The Committee, therefore, urge the P & T Department to take early steps to include the Departmental instructions in the Rules.

## IV

**THE METALLIFEROUS MINES (SECOND AMENDMENT) REGULATIONS, 1970 (G.S.R. 949 OF 1970)**

16. Sub-regulation (7) of Regulation 11 of the Metalliferous Mines Regulations, 1961, as substituted by the Metalliferous Mines (Second Amendment) Regulations, 1970, reads as follows:—

“(7) No act or proceeding of the Board (Board of Mining Examinations) shall be invalidated merely by reason of any vacancy or other defect in its constitution.”

17. The attention of the Department of Labour and Employment was drawn to paragraph 7 of the Second Report of the Committee on Subordinate Legislation (First Lok Sabha) who, commenting upon a similar provision in the Cinematograph (Censorship) Rules, 1951, had observed as follows:—

“The Committee feel that this is a substantive provision of law pertaining to the jurisdiction of the Courts and should more appropriately be provided in the Act itself. Further, the wording of the rule is so wide that it may lead to abuse of exercise of power in the constitution of the Board. The Committee have given some considerable thought to this matter and have come to the conclusion that it is not in keeping with the structure of our Constitution to curtail or limit the powers of Courts by rules made by a subordinate authority. It is the fundamental duty of the courts to see that the law and the rules made thereunder are being followed by the competent authority in a proper manner. In case it is necessary to oust the jurisdiction of Courts with regard to some technical defects or routine matters there should be a clear authority from Parliament itself to that effect. It is, therefore, necessary that such proposals should be brought before the House and included in the appropriate Acts after full opportunities have been given to the House to discuss the matter and to arrive at a considered decision. It will be beyond the limits of authority of the rule-making powers to oust the jurisdiction of the Courts by inserting such provisions in the rules. If this were allowed, there would be transgression of limits of the rule-making power of the executive authority without any check by the Courts of law. The Committee would like that this is borne in mind by the rule-making authorities when making rules.”

18. In their reply, the Department of labour and Employment stated as follows:—

“Regarding insertion of sub-regulation (7) of regulation 11, according to which ‘no act or proceeding of the Board shall be invalidated merely by reason of any vacancy or other defect in its constitution’, it is pointed out that the Board of Mining Examination is not the creature of the Statute. Under section 57 of the Mines Act, the Central Government is empowered to frame regulations apart from the other matters enumerated in that section, for regulating the manner of ascertaining, by examination or otherwise the qualifications of managers of mines and persons acting under them and the grant and renewal of certificates of competency etc. As such for conducting those examinations and grant of certificates etc. some agency was to be arranged by regulations. To meet this requirement the Central Government had provided for a Board instead of an individual. Since the board was the creature of the regulations, all the provisions relating to the Board were to be provided for in the regulations. The attention..... is also drawn to the fact that the Board referred to in para 7 of the Second Report (First Lok Sabha) and paras 15—17 of the First Report (Second Lok Sabha) of the Committee on Subordinate Legislation was the creature of the statute. That is why it was suggested by the Committee that the provision to the effect that ‘no act or Proceedings of the Board shall be invalidated merely by reason of any vacancy or other defect in its constitution’ should form part of the Statute. Since the Board provided for in regulation 11 of the Metalliferous Mines Regulations is not a creature of the statute, the provision in Regulation 11(7) is not contrary to the recommendations of the Committee on Subordinate Legislation.”

19. It is true that under Section 57 of the Mines Act, 1952, the Central Government is empowered to frame regulations apart from the other matters enumerated in that Section, for regulating the manner of ascertaining, by examination or otherwise the qualifications of managers of mines and persons acting under them and the grant and renewal of certificates of competency, etc. It is further appreciated that there had to be some agency for conducting examinations. But, at the same time, it would not be proper to construe that the Act intended such an agency to oust the jurisdiction of the Courts. The Committee, therefore, desire that Regulation 11(7), as worded at present,

should either be omitted or the parent Act should be amended so as to provide for the setting up of the Board of Mining Examinations and other matters relating thereto.

20. The Committee also note that no provision has been made in the Regulations, in regard to quorum for meetings of the Board of Mining Examinations. They desire that this should be prescribed in the Regulations at an early date.

## V

### THE INDIAN POST OFFICE (TWENTY-FIRST AMENDMENT) RULES, 1971 (S.O. 857 OF 1972)

21. Sub-rule (2) of Rule 146 of the Indian Post Office Rules, 1933, as substituted by the above Rules, provides that in cases where a post office accepts a foreign currency money order exceeding the prescribed limit of £40 or its equivalent in any other foreign currency from a single remitter in one day, such money order as does not exceed that limit shall be advised to destination and the value of the remaining money order as actually paid in Indian currency at the time of the issue shall be repaid to the remitter. The remitter will not, however, be granted refund of the commission paid by him in respect of such money order.

22 The Posts and Telegraphs Department who were asked to state the reasons for not refunding to the remitter the commission paid by him on the value of the excess money order not remitted by the Post Office, replied as under:

“.....the rule regarding non-refund of excess portion of the Money Order Commission is not a new provision. This has been in existence since long but some other provisions of sub-rule (2) of Rule 146 required revision and hence the Gazette notification. The purpose of this provision has been to act as a deterrent to money orders being booked to foreign countries for an amount higher than permitted, either from one post office or more post offices.”

23. It was pointed out to the Department that Rule 146(2), as worded at present, did not seem to preclude the possibility of a post office accepting in a single transaction, a foreign currency money order exceeding the prescribed limit, from a remitter who was not aware of that limit. It was felt that the commission on the excess amount should be refunded in such cases.

24 In their further reply, the Department have stated as follows:

“...It is proposed to add the following to Rule 146(2) *ibid*:

‘In the event of a single foreign money order being accepted in excess of the prescribed limit, the money order would

be advised only for the prescribed limit, and the balance together with the excess—charged commission, would be refunded to the remitter’.”

**25. The Committee note with satisfaction the above reply of the Department of Posts and Telegraphs and desire that the Department should take early steps to amend the Rules to include the provisions indicated therein.**

## VI

- (i) THE I.A.S. (SENIORITY OF SPECIAL RECRUITS) REGULATIONS, 1960\* (G.S.R. 102 OF 1960).
- (ii) THE I.P.S. SENIORITY OF SPECIAL RECRUITS) REGULATIONS, 1960\* (G.S.R. 103 OF 1960).

**26. Regulation 5 of the I.A.S. (Seniority of Special Recruits) Regulations, 1960, reads as follows:—**

“Interpretation.—If any question arises relating to the interpretation of these regulations, it shall be referred to the Central Government whose decision thereon shall be final.”

Regulation 5 of the I.P.S. (Seniority of Special Recruits) Regulations, 1960 is identical.

**27. Attention of the Department of Personnel (Cabinet Secretariat) was invited to para 18 of Fourth Report of the Committee on Subordinate Legislation (Third Lok Sabha), wherein they had observed that interpretation clause should not be so worded as to give an impression that the right of interpretation of Rules which should normally vest in Courts had been taken away by the Executive in their reply, the Department have stated as follows:—**

“.....the interpretation clause in the Indian Administrative Service (Seniority of Special Recruits) Regulations, 1960 and the Indian Police Service (Seniority of Special Recruits) Regulations, 1960 was made in the form in which it was generally being given at the relevant time in the various rules and regulations.”

In the rules under the All India Services Act, 1951 made more recently, the interpretation clause is on the lines recommended in the Fourth Report of the Committee on Subordinate Legislation of the Third Lok Sabha. Reference, by way of illustration, may be made to the following rules, namely:—

**Rule 21 of the All India Services (Conduct) Rules, 1968.**

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\*Circulated to Members of Lok Sabha on 18-12-1972.

21. *Interpretation*—If any doubt arises as to the interpretation of these Rules, the Central Government shall decide the same.

*Rule 31 of the All India Services (Discipline and Appeal) Rules 1969.*

31. *Removal of difficulties*—Where a doubt arises as to the interpretation of any of the provisions of these Rules, the matter shall be referred to the Central Government for its decision.

In addition to the Indian Administrative Service (Seniority of Special Recruits) Regulations, 1960 and the Indian Police Service (Seniority of Special Recruits) Regulations, 1960, the interpretation clause in the old form, also occurs in some other rules, made under the All India Services Act, 1951, for example, Rule 33 of the All India Services (Leave) Rules, 1955, Rule 13 of the All India Services (Medical Attendance) Rules, 1954, etc. Action is being taken by this Department to review the interpretation clause contained in the various rules made under the All India Services Act, 1951 (including the regulations made in pursuance of such rules) and for revising it wherever necessary. Formal amendments will be issued, in due course, after consulting the State Governments and the Central Ministries concerned. Copies of such notifications will, as usual, be endorsed to the Lok Sabha Secretariat.

This Office Memorandum issues with the approval of the Minister of State in the Department of Personnel.”

28. **The Committee note with satisfaction the reply of the Department of Personnel and desire them to take early steps to amend the above Regulations and all other Rules and Regulations as stated by them in para 27 above, to bring them in line with the All India Services (Conduct) Rules, 1968, and the All India Services (Discipline and Appeal) Rules, 1969.**

## VII

THE NATIONAL LIBRARY, CALCUTTA READERS' HOSTEL  
RULES, 1970 (S.O. 2458 OF 1970)

### (A)

29. Under Rules 3 and 4 of the National Library, Calcutta Readers' Hostel Rules, 1970, scholars coming from outside Calcutta are eligible to get accommodation in the Hostel on such terms and

conditions as may be specified by the Central Government and at such rent as may be fixed by Government.

30. The Ministry of Education and Social Welfare were asked to state whether they had any objection to specifying the terms and conditions and the rate of rent in the Rules.

31. In reply, the Ministry have stated as under:—

“There is no objection to lay down the terms and conditions on which the scholars coming from outside Calcutta will be eligible to get accommodation in the Hostel. Necessary action is being taken to amend the rules in consultation with the Librarian, National Library, Calcutta.”

(B)

32. Under Rule 6, *ibid.*, infringement of any of the above rules shall render an occupant of the room liable for cancellation of allotment.

33. The Ministry of Education and Social Welfare were asked to state whether they had any objection to amending the Rule so as to provide an opportunity of being heard to the occupant before cancellation of allotment. In reply, the Ministry have stated as follows:—

“Infringement of any of the above rules shall render an occupant of the room liable for cancellation of allotment. The allottee will, however, be given an opportunity of being heard before the allotment is cancelled, if he so desires.”

(C)

34. Rule 7, *ibid.*, lays down that in case of any dispute, the decision of the Librarian, National Library, Calcutta, shall be binding on the allottee.

35. The Rule as worded gives an impression that it seeks to bar the jurisdiction of courts in matters of dispute between the allottee and the authorities.

36. The Ministry of Education and Social Welfare with whom the matter was taken up have stated as under in their reply:—

“The scholars stay in the Readers’ Hostel for a very short period in connection with their research work. There is hardly any need for them to go to a Court. However, there is no objection to amend this rule suitably.”

37. The Committee are glad to note that the Department of Culture have since amended the Rules on the lines indicated in (A), (B) and (C) above vide their notification No. F. 12-42/71-CAI(2), dt. 23-9-1972).

### VIII

#### THE ALLOTMENT OF HOSTEL ACCOMMODATION (MINISTRY OF EXTERNAL AFFAIRS) RULES, 1970 (G.S.R. 810 OF 1970).

38. Rule 20 of the Allotment of Hostel Accommodation (Ministry of External Affairs) Rules, 1970 reads as follows:—

“20. Interpretation and Relaxation:—If any question arises as to the interpretation of the rules the decision of the Ministry thereon shall be final. The Ministry can also relax any of the rules for reasons to be recorded.”

The above Rule contained two provisions—one relating to interpretation and other relating to relaxation.

39. As regards the interpretation clause, attention of the Ministry of External Affairs was invited to para 18 of the Fourth Report of the Committee on Subordinate Legislation (Third Lok Sabha) wherein commenting upon a similar provision contained in service Rules for Flying Crew, for Employees in Aircraft and Engineering Department etc. (G.S.R. 302 of 1960), the Committee had observed as follows:—

“The Committee are of the view that although it is true that the interpretation of the rules given by the Executive is not binding on the Courts, yet the rules should not be worded in a manner which may give an impression on the mind of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be worded on the lines of regulation 24 of the Kandla Port Employees (Allotment of Residence) Regulations, 1964, which reads as under:

‘Interpretation of regulations—if any question arises as to the interpretation of these regulations, the same shall be decided by the Board’.”

40. As regards the relaxation clause, the Ministry of External Affairs were asked to state whether they had any objection to the addition of the words ‘in respect of any class or category of persons’ therein. It was pointed out in this connection that the afore-suggested



phrase was invariably included in relaxation clause in the Recruitment Rules.

41. It was also pointed out to the Ministry that the interpretation clause and relaxation clause were quite distinct and might appropriately be separated.

42. The Ministry of External Affairs, with whom the matter was taken up, have amended the Rule in question on the lines suggested above. The amended provisions read as follows:

(i) "20. Interpretation:

If any question arises as to the interpretation of these rules, the same shall be decided by the Ministry.";

(ii) "21. Power to relax:

Where the Ministry is of opinion that it is necessary or expedient so to do, it may by order, and for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."

43. The Committee are glad to note that the Ministry of External Affairs have accepted the suggestion made by them and suitably amended the Rules by separating the interpretation and relaxation provisions (vide notification No. Q|SE|8601|55|71, dt. 6-5-1972).

## IX

### THE INDIAN FOREIGN SERVICE BRANCH 'B' (RECRUITMENT, CADRE, SENIORITY AND PROMOTION) RULES, 1964.

44. Rule 30 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 reads as follows:

"If any question arises relating to the interpretation of these rules, the decision of the Government thereon shall be final."

45. Attention of the Ministry of External Affairs was invited to para 18 of the Fourth Report of the Committee on Subordinate Legislation (Third Lok Sabha), wherein they had observed that interpretation clause should not be so worded as to give an impression that the right of interpretation of Rules which should normally vest in Courts had been taken away by the Executive.

46. The Committee note with satisfaction that the Ministry of External Affairs have amended rule 30 (vide their notification No. 141|GA|72 dt. 24-10-1972) to read as follows:

**“If any question arises as to the interpretation of these rules it shall be decided by the Central Government.”**

**X**

**THE TEA WASTE (CONTROL) AMENDMENT ORDER, 1972  
(G.S.R. 251 OF 1972)**

47. Under Clause 21 of the Tea Waste (Control) Order, 1959, as inserted by the above amendment Order, the Licensing Authority has been empowered to exempt any tea estate, research organisation or any other person from any of the provisions of the Order, if he is satisfied that it is necessary and desirable in the public interest to do so. There are, however, no guidelines which may be followed by the Authority in giving exemption under the Order. The Order does not also provide for reasons to be recorded in writing by the Authority before giving exemption.

48. The Ministry of Foreign Trade (now Commerce) who were asked to furnish their comments on the above points, have stated as under:

“.....this Ministry have no objection to providing in the Order that reasons for granting exemption under Clause 21 of the Tea Waste Control Order, 1959 from any of the provisions of the Order should be recorded in writing by the Licensing Authority.

No guidelines have been prescribed as yet. These will be examined in consultation with the Tea Board and included in the amendment Order when finalised.”

49. The Committee note the reply furnished by the Ministry of Commerce and desire that the Order should be amended within a period of three months on the lines indicated therein.

**XI**

**THE VICTORIA MEMORIAL HALL (GENERAL PROVIDENT  
FUND) RULES, 1972 (G.S.R. 410 OF 1972)**

**(A)**

50. Note below Rule 5(6) of the Victoria Memorial Hall (G.P.F.) Rules, 1972 reads as follows:—

**“In a case where no nomination exists in favour of the widow of a subscriber, the title of the widow to the claim against**

646 LS—2.

the General Provident Fund deposit of her former husband is not affected by her subsequent marriage."

51. The Department of Culture, who were requested to indicate the considerations for making the above provision, have stated in their reply as under:—

"The note was inserted on the basis of Government of India decision No. 1 below Rule 5(7) of the G.P.F. (Central Services) Rules, 1960. This appears to have been deleted subsequently. The Ministry of Finance have stated in this regard that the decision No. 1 below rule 5(7) of the G.P.F. Rules, as incorporated in Choudhury's compilation, which was the basis of the corresponding note under Rule 5(c) in the G.P.F. Rules for Victoria Memorial Hall, does not form part of the Rules and it was only an interpretation in an individual case. As such, this Department have no objection to the deletion of this note after hearing from Lok Sabha Secretariat."

52. The Committee note with satisfaction the above reply of the Department of Culture. They desire that note below rule 5(6) of the Rules in question should be deleted at an early date.

(B)

53. In terms of Note below Rule 14 of the Victoria Memorial Hall (G.P.F.) Rules, 1972, if a subscriber has availed himself of a House Building Advance under the scheme of the Department of Works, Housing and Urban Development or has been allowed any assistance in this regard from any other source, he *shall not* be eligible for the grant of final withdrawal from his Provident Fund for building| acquiring a house.

54. Attention of the Department of Culture was invited to the Note below corresponding provision in the G.P.F. (Central Services) Rules, 1960 under which even if a subscriber has availed himself of a house building advance under the scheme of the Department of Works, Housing and Urban Development or has been allowed assistance from any other source, he *shall be* eligible for the grant of final withdrawal from his provident fund for building|acquiring a house.

55. In their reply, the Department of Culture have stated as under:

"The note below rule 14 of the Victoria Memorial Hall (G.P.F.) Rules, 1972 is based on the note below rule 15(1)

of the G.P.F. (Central Services) Rules, 1960. This note was amended *vide* Ministry of Finance O.M. dated 24-7-1964. As such, this Department have no objection to amend the note to bring in line with the existing note in the G.P.F. (Central Services) Rules, 1960."

56. The Committee note with satisfaction the above reply of the Department of Culture and desire that they should take early steps to amend the Rules to bring them in line with the G.P.F. (Central Services) Rules, 1960.

## XII

### PUBLICATION OF RULES, REGULATIONS, ETC. FRAMED IN PURSUANCE OF THE PROVISIONS OF THE CONSTITUTION OR ACTS IN THE GAZETTE OF INDIA

57. The Committee on Subordinate Legislation (1970) while considering the Ministry of Law and Justice (Department of Legal Affairs) reply for non-publication of the Law Officers (Conditions of Service) Rules, 1967 in the Gazette; *inter alia*, observed as follows in para 10 of the Seventh Report (Fourth Lok Sabha):

"The Committee desires that all Rules framed by Government, pursuant to Constitutional or statutory provisions, should invariably be published in the Gazette for public information."

58. With a view to get exemption from the application of the above recommendation, the Department of Parliamentary Affairs forwarded the following note from the Ministry of Home Affairs for consideration of the Committee on Subordinate Legislation:

"In connection with the above recommendation the Ministry of Home Affairs have requested that for security reasons, rules of recruitment relating to Posts in the intelligence Bureau connected with the collection and assessment of intelligence, and in the Indo-Tibetan Border Police which is an organisation concerned with the defence of Countries' northern borders and organising the local population for such defence framed under the proviso to Article 309 of the Constitution should not be published in the Gazette."

59. Taking into account the security reasons, as explained by the Ministry of Home Affairs, the Committee agree to exempt them from

publishing in the Gazette recruitment rules for posts in the Intelligence Bureau connected with the collection and assessment of intelligence and in the Indo-Tibetan Border Police, framed under the proviso to Article 309 of the Constitution.

### XIII

#### THE CIVIL AVIATION DEPARTMENT (PILOT) RECRUITMENT RULES, 1970 (G.S.R. 1192 OF 1970).

60. In column 10 of the Schedule to the Civil Aviation Department (Pilot) Recruitment Rules, 1970, the method of recruitment was shown as under:

"Transfer on deputation or short term contract or direct recruitment."

61. In cases where different methods of recruitment are given, the rules normally clearly indicate as to which method would have priority over others, and failing that, which other method would be applied next, and so on.

62. The Committee note with satisfaction that the Ministry of Tourism and Civil Aviation with whom the matter was taken up, have amended the relevant entry in the Schedule to the Rules (vide their notification No. 14-VE (38)/65—Vol III, dt. 8-8-1972) to read as follows:—

"By transfer on deputation, failing which by short term contract and failing both by direct recruitment."

### XIV

#### THE RAILWAY PROTECTION FORCE (SUPERIOR OFFICERS) RECRUITMENT RULES, 1968 (G.S.R. 1095 of 1968)

63. The following four methods have been provided for recruitment to the posts of Assistant to the Inspector General and Security Officer in column (10) of the Schedule to the above Rules:

- (a) By promotion.
- (b) By transfer on deputation.
- (c) By re-employment.
- (d) By occasional admission of other qualified persons

appointed by Government on the recommendations of the Union Public Service Commission.

64. It was noticed that while in the case of (a) above, it had been laid down that not more than 50 per cent of the total vacancies will be filled by that method, no such percentage had been laid down in case of any of the other three methods [viz. (b), (c) and (d)]. Nor had it been clearly indicated which of these three methods [viz. (b) (c) and (d)] would have priority over others, and failing it, which other method would be next applied.

65. The Ministry of Railways (Railway Board), with whom the matter was taken up, have replied as under:—

“As regards the.....suggestion to indicate the proportion of posts to be filled by various methods of recruitment or to lay down precise *inter. se* order of priority for requirement to the posts of (i) Assistant to the Inspector General and (ii) Security Officer, Ministry of Railways, it is stated that the main method of recruitment is by transfer on deputation; recruitment by re-employment is done occasionally and recruitment of other qualified staff on the recommendations of the Union Public Service Commission is resorted to very rarely. If a proportion to these sources or any priority is fixed, it will put a restriction in the field of getting candidates. It will, therefore, not be feasible from the administrative point of view to fix any percentage or to give any priority to the different modes of recruitment other than by promotion for recruitment to the posts of (i) Assistant to Inspector General and (ii) Security officers in the Railway Protection Force.”

66. While the Committee appreciate the Ministry of Railways difficulty to lay down the proportion of posts to be filled by each method of recruitment, they find it difficult to understand why it should not be possible for the Ministry to lay down a precise *inter se* order of priority of the various modes of recruitment. The Committee do not see much force in the Ministry's argument that laying down a precise *inter se* Order of priority would not be feasible from the administrative point of view, as almost in every recruitment rule where more than one method of recruitment are prescribed, such an order of priority is given. The Committee, therefore, urge the Ministry of Railways (Railway Board) to amend the Rules suitably.

## XV

**THE ARMY MEDICAL CORPS (CIVILIAN) CLASS III POSTS RECRUITMENT RULES, 1968 (S.R.O. 400 OF 1968).**

67. The Army Medical Corps (Civilian) Class III Posts Recruitment Rules, 1968 were published in the Gazette of India, Part II, Section 4, dated the 28th December, 1968. Rules with the same short title but covering different Class III posts were earlier published in the Gazette, dated the 6th January, 1966, *vide* S.R.O. 9 of 1966.

68. The matter was taken up with the Ministry of Defence. They were asked to state the reasons for issuing fresh Rules in 1968 instead of adding the relevant entries at the appropriate places in the schedule to the earlier rules of 1966 by means of an amendment as issuing of rules twice under the same title were likely to cause confusion at the time of reference or tracing.

69. The Ministry of Defence in their reply, have stated as follows:

“There is no objection to consolidating the two sets of recruitment rules for Class III under the Army Medical Corps and necessary instructions have already been given to Medical Dte. Army Hq. They have been reminded to expedite the matter. Care will also be taken now to avoid similar situation arising in future.”

70. The Committee note with satisfaction that the Ministry of Defence have agreed to consolidate the two sets of Rules and also given an assurance to be careful so that such situations do not arise in future. The Committee desire the Ministry of Defence to do the needful at an early date.

## XVI

**IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 51 OF FOURTH REPORT (FIFTH LOK SABHA)—THE EXPLOSIVES (AMENDMENT) RULES, 1971 (G.S.R. 1077 OF 1971).**

71. Rule 83 of the Explosives Rules, 1940, as amended by the Explosives (Amendment) Rules, 1971 *inter alia* provides as follows:—

“.....before suspending or cancelling a licence, the licensing authority shall give to the licence-holder an opportuni-

ty of being heard. However, no such opportunity shall be given in cases.—

- (i) where the licence is being suspended for violation of any of the provisions of the Act or the rules, or of any condition contained in such licence and in the opinion of the licensing authority, such violation is likely to cause danger to the public; or
- (ii) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interests of the security of the State, such opportunity should not be given."

72. The Committee on Subordinate Legislation (1972-73), which considered the above rules, observed in para 51 of their Fourth Report (Fifth Lok Sabha) as follows:—

"...the Committee feel that while the authority concerned might not give an opportunity of being heard to a licence-holder... in cases of suspension, a reasonable opportunity of being heard *must* be given to a licence-holder before his licence is cancelled. They also feel that the maximum period for which a licence could be suspended by the competent authority should also be laid down in the Rules."

73. In their reply, the Ministry of Industrial Development have stated as follows:—

"These recommendations of the Committee have been carefully considered by this Ministry in consultation with the Chief Inspector of Explosives, Nagpur. According to Rule 93 of the Explosives Rules, 1940, as amended, a licence could be suspended:—

- (a) by the licensing authority for specific violations of a nature which is NOT likely to cause imminent danger to the public;
- (b) by the licensing authority for specific violations which are likely to cause imminent danger to the public; and
- (c) by the Central Government where continuance of the licence in the hands of the licensee is deemed objectionable.

In cases of type (a), the licensing authority has to give to the licensee an opportunity of being heard before he suspends a licence.



In this case the suspension if ordered will be substantive punishment.

In cases of type (b), the suspension will be merely an 'interim measure' to avert imminent danger to public. This Ministry agree that such a measure should be followed by a further order confirming suspension after giving the licensee an opportunity of being heard.

In the case of type (c), licence could be suspended by the Central Government (who is not a licensing authority) if continuance of the licence in the hands of the licensee is deemed objectionable. It will give the licensee an opportunity of being heard if the licence is suspended for reasons which could be disclosed. No such opportunity will be given before passing suspension order if the reasons cannot be disclosed in public interest/interest of the security of the State.

It may be noted that the Central Government need not exercise the power in cases involving specific violation of the rules, as, in such cases the licensing authorities will have the necessary powers. The Central Government may have to take action when suspension/cancellation is necessary for reasons other than specific violations of the Indian Explosives Act, 1884. A few typical cases which would necessitate exercise of the power of suspension/cancellation by the Central Government are given below:—

Case (i): A licensee surreptitiously exports explosives to an unfriendly foreign country. Offences relating to export of explosives do not come under the purview of the Indian Explosives Act, 1884. They are punishable under the Arms Act, 1959. Punishment under the latter Act cannot prevent the offender to hold a licence under the former Act and continue his anti-national activities.

Case (ii): A person holding a licence for possession and sale, supplies explosives to another person holding a licence for possession knowing that the latter person is using explosives for manufacturing bombs for unlawful activities. Though the first person is an abettor and could be punished under the Arms Act, 1959, no action could be taken against him under the Indian Explosives Act.

Case (iii): A habitual offender occupies a number of premises under different licences in his name with the object of continuing in business even if a few, but not all of his licences, are suspended/cancelled for gross violations culminating in serious loss of life. In a typical case of

**this type a High Court had ruled that a licence could not be suspended/cancelled for offences relating to another licence held by the same person.**

**The above do not cover all the contingencies in which the Central Government may have to suspend a licence on the ground that its continuance in the hands of the licensee is objectionable.**

**As the amended rule 93 now stands, the Central Government may exercise powers given thereunder to suspend a licence when it has good and sufficient reasons to suspect that continuance of the licence is objectionable. If it has conclusive evidence to the effect that continuance of any licence is objectionable, it will be a case of cancellation and not suspension and therefore the question of confirming the suspension order will not arise. Thus suspension of a licence by the Central Government will be an 'interim measure' (and not a confirmed order) to enable it to investigate the matter further and come to a positive decision regarding continuance/discontinuance of the licence. It should satisfy the Committee on Subordinate Legislation if Rule 93 is further amended to prescribe the maximum duration of a suspension order and to ensure that suspension does not deprive the licensee of his right to have the licence renewed. In the case of suspension by a licensing authority without giving the licensee an opportunity of being heard, the order of suspension should be confirmed after giving such an opportunity.**

**As regards cancellation of a licence, the Committee on Subordinate Legislation want that a reasonable opportunity of being heard must be given by the Central Government to a licence-holder before his licence is cancelled.**

**It will be seen from the remarks in the preceding paragraph that the Central Government will be required to cancel a licence only when it has conclusive evidence to the effect that continuance of the licence is objectionable in public interest or in the interest of the security of the State. In such circumstances, the offender will be able to continue his objectionable activities for some more time, if he is to be given an opportunity of being heard before his licence is cancelled. The Committee may be requested to please reconsider their recommendation in the light of the position stated above.**

**A draft amendment (See Appendix III) is also placed below. This will be issued in consultation with the Ministry of Law after obtaining concurrence of the Committee on Subordinate Legislation."**

**74. The Committee, after having considered the matter carefully, are not convinced by the argument advanced by the Ministry of**

**Industrial Development that the Central Government will be required to cancel a licence under the Explosives Rules, 1940, only when it has 'conclusive evidence' to the effect that continuance of the licence is objectionable in public interest or in the interest of the security of the State, and in such circumstances, the offender will be able to continue his objectionable activities for some more time, if he is to be given an opportunity of being heard before his licence is cancelled. The Committee are firmly of the view that if the Central Government have 'conclusive evidence' regarding the objectionable activities of the party concerned, they could suspend the licence, give an opportunity of being heard to the licence, and thereafter, if so considered appropriate, cancel the licence.**

75. The Committee, therefore, desire that the Ministry of Industrial Development should amend the Explosives Rules accordingly.

VIKRAM MAHAJAN,

*Chairman,*

*Committee on Subordinate*

*Legislation.*

NEW DELHI;

*The 3rd May, 1973*

*Vaisakha 13, 1895 (Saka).*

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**APPENDICES**

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## APPENDIX I

(Vide para 3 of the Report)

Summary of main recommendations|observations made by the  
Committee

S.No.	Para No.	Summary
1	2	3
1	8	One of the basic principles of natural justice is that before penal provisions of law are invoked against any person, he should be given a reasonable opportunity of being heard. The Committee on Subordinate Legislation have been very particular about the observance of this principle and have, from time to time, recommended amendment of rules to incorporate a provision for affording an opportunity of being heard. In their reply, the Department of Company Affairs have stated that although there was no such provision in the Cost Accounting Records (Electric Fans) Rules, 1969, the purpose was served by usual procedure of show cause notice. A similar reply was furnished by the Ministry of Finance in the case of the Central Excise (Ninth Amendment) Rules, 1968. The Committee were not satisfied with the reply of the Ministry of Finance in that case and pointed out ( <i>vide</i> para 25 of their First Report—Fifth Lok Sabha) that Departmental instructions could hardly be a substitute for a built-in legal safeguard. The Committee, therefore, reiterate their earlier recommendation and desire that the Cost Accounting (Electric Fans) Rules, 1969 and all other similar Rules (a few of them listed at Appendix II of the Report) framed under the Companies Act, 1956, should be suitably amended at an early date to provide for giving

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an opportunity of being heard to an aggrieved Company|officer before any penalty under the Rules is imposed on it|him.

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In this connection, the Committee also desire the Ministry of Law and Justice (Legislative Department) to examine in consultation with all other Ministries|Departments whether there are any such Rules, which do not provide for giving a reasonable opportunity of being heard to an aggrieved party, before a penalty is imposed on him thereunder and if so, early steps should be taken by the concerned Ministry|Department to amend them suitably in the light of the observations made by the Committee on Sub-ordinate Legislation in this regard from time to time.

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The Committee are not convinced by the arguments advanced by the P&T Department for not accepting the suggestion that the terms and conditions subject to which 'Extra Departmental Staff and Casual Labourers' may be considered for Class IV posts against the vacancies for direct recruitment should be specified in the Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules, 1970. They have time and again emphasised that the rules should, as far as possible, be self-contained.

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Apart from this, there is another important aspect involved, and that is empowering the D.G.P.&T. to lay down the conditions of recruitment outside the rules through Departmental instructions, which the Committee feel, is tantamount to sub-delegation of Legislative power. Departmental instructions laying down the conditions of recruitment are not published in the Gazette, and, therefore, would not come to the notice of the Committee for their scrutiny. Moreover, the Committee feel that conditions of

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recruitment, being of basic importance, should be regulated through the rules, rather than be left to be regulated outside the rules.

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The Committee also do not see much force in the Department's argument that the inclusion of the conditions of recruitment will make the rules unnecessarily lengthy. They are of the opinion that the conditions can be given briefly in the Schedule to the Rules. The Committee, therefore, urge the P&T Department to take early steps to include the Departmental instructions in the Rules.

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It is true that under Section 57 of the Mines Act, 1952, the Central Government is empowered to frame regulations apart from the other matters enumerated in that section, for regulating the manner of ascertaining, by examination or otherwise the qualifications of managers of mines and persons acting under them and the grant and renewal of certificates of competency, etc. It is further appreciated that there had to be some agency for conducting examinations. But, at the same time, it would not be proper to construe that the Act intended such an agency to oust the jurisdiction of the Courts. The Committee, therefore, desire that Regulation 11(7) of the Matalliferous Mines Regulations, 1961 as worded at present, should either be omitted or the parent Act should be amended so as to provide for the setting up of the Board of Mining Examinations and other matters relating thereto.

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The Committee also note that no provision has been made in the Regulations, in regard to quorum for meetings of the Board of Mining Examinations. They desire that this should be prescribed in the Regulations at an early date.

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1	2	3
4	25	<p>The Committee note with satisfaction the reply of the Department of Posts and Telegraphs and desire that the Department should take early steps to amend the Indian Post Office Rules, 1933 so as to provide for refund of the excess charged commission in cases where a foreign currency Money Order exceeding the prescribed limit is accepted by a Post Office.</p>
5	28	<p>The Committee note with satisfaction the reply of the Department of Personnel and desire them to take early steps to amend (i) The L.A.S. (Seniority of Special Recruits) Regulations, 1960 and (ii) The I.P.S. (Seniority of Special Recruits) Regulations, 1960 and all other Rules and Regulations as stated by them to bring them in line with the All India Services (Discipline and Appeal) Rules, 1969.</p>
6	37	<p>The Committee are glad to note that the Department of Culture have since amended the National Library, Calcutta Readers' Hostel Rules, 1972 (vide their notification No. F.12-42/71CAI(2), dated 23-9-1972 to provide for the following:</p> <ul style="list-style-type: none"> <li data-bbox="422 1057 973 1148">(i) terms and conditions and rate of rent for getting accommodation in the Hostel;</li> <li data-bbox="422 1172 973 1263">(ii) giving an opportunity of being heard to an occupant before cancellation of allotment; and</li> <li data-bbox="422 1286 973 1445">(iii) re-wording of rule 7 relating to matters of dispute between the allottee and the authorities so as not to give an impression that it seeks to oust the jurisdiction of Courts.</li> </ul>
7	43	<p>The Committee are glad to note that the Ministry of External Affairs have accepted the suggestion made by them and suitably amended the Allotment of Hostel Accommodation</p>



1	2	3
		(Ministry of External Affairs) Rules, 1970 by separating the interpretation and relaxation provisions and adding the words 'in respect of any class or category of persons' in the relaxation provision ( <i>vide</i> notification No. Q SE 8601 55 71 dt. 6-5-1972).
8	46	The Committee note with satisfaction that the Ministry of External Affairs have amended rule 30 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 ( <i>vide</i> their notification No.141 GA 72, dt. 24-10-1972 to read as follows:—  "If any question arises as to the interpretation of these rules, it shall be decided by the Central Government."
9	49	The Committee note the reply furnished by the Ministry of Commerce and desire that the Tea Waste (Control) Amendment Order, 1972 should be amended within a period of three months so as to provide therein (i) guidelines to be followed by the Licensing Authority in giving exemption under the Order; and (ii) that reasons for granting exemption under clause 21 from any of the provisions of the Order should be recorded in writing by the Licensing Authority.
10	52	The Committee note with satisfaction the reply of the Department of Culture. They desire that note below rule 5(6) of the Victoria Memorial Hall (General Provident Fund) Rules, 1972 should be deleted at an early date.
11	56	The Committee note with satisfaction the reply of the Department of Culture and desire that they should take early steps to amend the note below rule 14 of the Victoria Memorial Hall (G.P.F.) Rules, 1972, to bring them

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in line with the G.P.F. (Central Services) Rules, 1960.

12      59      Taking into account the security reasons, as explained by the Ministry of Home Affairs, the Committee agree to exempt them from publishing in the Gazette recruitment rules for posts in the Intelligence Bureau connected with the collection and assessment of intelligence and in the Indo-Tibetan Border Police framed under the proviso to Article 309 of the Constitution.

13      62      The Committee note with satisfaction that the Ministry of Tourism and Civil Aviation have amended the entry in column (10) of the Schedule to the Civil Aviation Department (Pilot) Recruitment Rules, 1970 [vide their notification No. 14—VE (38)|65-Vol. III, dt. 8-8-1972] to read as follows:

"By transfer on deputation, failing which by short term contract, and failing both by direct recruitment."

14      66      While the Committee appreciate the Ministry of Railways difficulty to lay down the proportion of posts to be filled by each method of recruitment under the Railway Protection Force (Superior Officers) Recruitment Rules, 1968, they find it difficult to understand why it should not be possible for the Ministry to lay down a precise inter se order of priority of the various modes of recruitment. The Committee do not see much force in the Ministry's argument that laying down precise inter se Order of priority would not be feasible from the administrative point of view, as almost in every recruitment rule where more than one method for recruitment are prescribed, such an order of priority is given. The Committee, therefore, urge the

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1	2	3
15	70	<p>Ministry of Railways (Railway Board) to amend the Rules suitably.</p>
16	74-75	<p>The Committee note with satisfaction that the Ministry of Defence have agreed to consolidate the two sets of Rules published under the same short title viz., the Army Medical Corps (Civilian) Class III Posts Recruitment Rules, 1968 and also given an assurance to be careful so that such situations do not arise in future. The Committee desire the Ministry of Defence to do the needful at an early date.</p> <p>The Committee, after having considered the matter carefully, are not convinced by the argument advanced by the Ministry of Industrial Development that the Central Government will be required to cancel a licence under the Explosives Rules, 1940, only when it has 'conclusive evidence' to the effect that continuance of the licence is objectionable in public interest or in the interest of the security of the State, and in such circumstances, the offender will be able to continue his objectionable activities for some more time, if he is to be given an opportunity of being heard before his licence is cancelled. The Committee are firmly of the view that if the Central Government have 'conclusive evidence' regarding the objectionable activities of the party concerned, they could suspend the licence, give an opportunity of being heard to the licensee, and thereafter, if so considered appropriate, cancel the licence. The Committee, therefore, desire that the Ministry of Industrial Development should amend the Explosives Rules accordingly.</p>

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## **APPENDIX II**

**(Vide para 6 of the Report)**

*List of some of the Rules framed under the Companies Act, the penalty provision in which does not provide for giving a reasonable opportunity of being heard*

1. **Cost Accounting Records (Cement) Rules, 1966;**
2. **Cost Accounting Records (Electric Lamps) Rules, 1967;**
3. **Cost Accounting Records (Refrigerators) Rules, 1967;**
4. **Cost Accounting Records (Cycles) Rules, 1967;**
5. **Cost Accounting Records (Room Air-conditioners) Rules, 1967;**
6. **Cost Accounting Records (Automobile Batteries) Rules, 1967;**
7. **Cost Accounting Records (Motor Vehicles) Rules, 1969;**
8. **Cost Accounting Records (Electric Motors) Rules, 1969.**

### **APPENDIX III**

(Vide para 73 of the Report)

#### **NOTIFICATION CONTAINING DRAFT EXPLOSIVES (AMENDMENT) RULES, 1972**

To be published in the Gazette of India, Part II, Section 3(i)

**GOVERNMENT OF INDIA**

**MINISTRY OF INDUSTRIAL DEVELOPMENT (AUDYOGIK  
VIKAS MANTRALAYA)**

*New Delhi, the* 1972

#### **NOTIFICATION**

No.—: The following draft of certain rules further to amend the Explosives Rules, 1940, which the Central Government proposes to make in exercise of the powers conferred by sub-section (2) of section 5 of the Indian Explosives Act, 1884 (4 of 1884) is hereby published, as required by section 18 of the said Act, for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after—1972.

Any objection or suggestion, which may be received from any person in respect of the said draft before the date so specified, will be considered by the Central Government.

#### **DRAFT RULES**

1. These rules may be called the Explosives (...Amendment) Rules, 1972.

2. The first proviso to sub-rule (1) of rule 93 shall be substituted by the following, namely:—

Provided that—

- (a) before suspending or cancelling a licence under this rule, the holder of the licence shall be given an opportunity of being heard;
- (b) the maximum period of suspension shall not exceed three months; and

- (c) the suspension of a licence shall not debar the holder of the licence from applying for its renewal in accordance with the provisions of rule 91.

3. The second proviso to sub-rule 93 shall be substituted by the following, namely:—

- (2) Notwithstanding anything in sub-rule (1), an opportunity of being heard may not be given to the holder of a licence before his licence is suspended or cancelled in cases—

- (a) where the licence is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules, or of any conditions contained in such licence and in his opinion such violation is likely to cause danger to the public:

Provided that where a licence is so suspended, the licensing authority shall give the holder of licence an opportunity of being heard before the order of suspension is confirmed; or

- (b) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State such opportunity should not be given.

4. Sub-rules (2) and (3) may be re-numbered sub-rules (3) and (4) respectively.

*Under Secretary to the Government of India.*

Copy forwarded to:—

- (1) The Chief Inspector of Explosives in India, Nagpur.  
 (2) All State Governments and Administrations and Union Territories.
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# MINUTES

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## APPENDIX IV

(Vide para 3 of the Report)

### XXIII

#### MINUTES OF THE TWENTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)

(1972-73)

The Committee met on Tuesday, the 7th November, 1972 from 15.00 to 16.15 hours.

#### PRESENT

Shri Vikram Mahajan—*Chairman*

#### MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavit
4. Shri Subodh Hansda
5. Shri Dinesh Joarder
6. Shri K. Narayana Rao

#### SECRETARIAT

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

2. The Committee considered Memoranda Nos. 57 to 65 on the following subjects and 'Orders':—

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Sl. No.	Memo. N.	Subject
(i) to (iii)	57-59	* * *
(iv)	60	The Metalliferous Mines (Second Amendment) Regulations, 1970 (G.S.R 949 of 1970)

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\*Omitted portions of the Minutes are not covered by the sixth Report. The relevant portions of the Minutes of the Twenty-third sitting were appended to the Fifth Report of the Committee (Fifth Lok Sabha).



Sl. No.	Memo. No.	Subject
(v) to (ix)	61-65 *	• • • •
3-6	•	• • • •

(iv) *The Metalliferous Mines (Second Amendment) Regulations, 1970 (G.S.R. 949 of 1970)*  
(Memorandum No. 60)

## PART I

7. • • • • •

## PART II

8. The Committee considered the reply of the Department of Labour and Employment that since the Board of Mining Examinations was the creature of the Metalliferous Mines Regulations, 1961 all the provisions relating thereto had to be provided for in the Regulations. The Committee postponed further consideration of the matter and desired that the Department of Labour and Employment might be asked to furnish information on the following points:—

- (i) Rule under which the Board of Mining Examination was created; and
- (ii) the Constitution of the Board and its functions.

9-15. • • • • •

16. The Committee then adjourned to meet again on Thursday, the 9th November, 1972.

## XXVI

\*MINUTES OF THE TWENTY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)  
(1972-73)

The Committee met on Thursday, the 11th January, 1973 from 15.00 to 16.30 hours.

## PRESENT

Shri Vikram Mahajan—*Chairman*

## MEMBERS

2. Shri M. C. Daga

\*Minutes of the Twenty-fourth and Twenty-fifth sittings were appended to the Fifth Report of the Committee (Fifth Lok Sabha). Omitted portions of the Minutes of Twenty-sixth sitting are not covered by the Sixth Report.

3. Shri Dharnidhar Das
4. Shri T. H. Gavitt
5. Shri Samar Guha
6. Shri Subodh Hansda
7. Shri Dinesh Joarder
8. Shri S. A. Kader
9. Shri Y. S. Mahajan
10. Shri D. K. Panda
11. Shri Tulmohan Ram

## SECRETARIAT

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

2. The Committee considered Memoranda Nos. 66 to 70, on the following subjects and 'Orders':—

S. No.	Memo. No.	Subject
(i) to (ii)	66-67	* * *
(iii)	68	The Metalliferous Mines (Second Amendment) Regulations, 1970 (G.S.R. 949 of 1970).
(iv)	69	Publication of rules, regulations, etc. framed in pursuance of the provisions of the Constitution or Acts in the Gazette of India.
(v)	70	* * * * *
	3-7.	* * * * *
(iii)		<i>The Metalliferous Mines (Second Amendment) Regulations, 1970 (G.S.R. 949 of 1970) (Memorandum No. 68).</i>

8. The Committee examined the provisions of the Mines Act, 1952 and the Metalliferous Mines Regulations, 1961 in regard to the constitution of the Board of Mining Examinations and its functions.

be advised only for the prescribed limit, and the balance together with the excess charged commission would be refunded to the remitter.

(ii) *The Allotment of Hostel Accommodation (Ministry of External Affairs) Rules, 1970 (G.S.R. 810 of 1970) (Memorandum No. 72).*

4. The Committee considered the above memorandum. They noted that the Ministry of External Affairs had amended the Allotment of Hostel Accommodation (Ministry of External Affairs) Rules, 1970, separating the interpretation and relaxation provision. The new interpretation provision did not contain the words 'the decision of the Ministry shall be final'. Also in the new relaxation provision, the words 'with respect to any class or category of persons' had been added, thereby lessening the scope for discrimination between similarly placed officers.

(iii) *The Tea Waste (Control) Amendment Order, 1972 (G.S.R. 251 of 1972) (Memorandum No. 73)*

5. The Committee considered the above memorandum and noted that the Ministry of Foreign Trade had no objection to amending the Tea Waste (Control) Order, 1959, so as to provide that reasons for granting exemption to any Tea Estate, research organisation or any other person from any of the Provisions of the Order under Clause 21 should be recorded in writing by the Licensing Authority.

The Committee also noted that no guidelines to be followed by the Licensing Authority for giving exemption had yet been prescribed. The Ministry had promised to examine the matter in consultation with the Tea Board and to include the guidelines in the amending Order when finalised. The Committee desired that this should be done within a period of three months.

6. . . . .

(v) *The Civil Aviation Department (Pilot) Recruitment Rules, 1970 (G.S.R. 1192 of 1970) (Memorandum No. 75)*

7. The Committee noted that the Ministry of Tourism and Civil Aviation had amended the entry regarding method of recruitment in column 10 of the schedule to the Civil Aviation Department (Pilot) Recruitment Rules, 1970 to clearly indicate as to which method would have priority over others and failing that, which method would be applied next, and so on.

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\*Omitted portions of the Minutes of Twenty-Seventh sitting are not covered by Sixth Report.

(vi) *The Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules, 1970 (G.S.R. 1932 of 1970) (Memorandum No. 76).*

8. The Committee considered the above memorandum. They were not convinced by the arguments advanced by the P&T Department for not accepting the suggestion that the terms and conditions subject to which 'Extra Departmental Staff and Casual Labourers' may be considered for Class IV posts against the vacancies for direct recruitment should be specified in the Rules. They pointed out that they had made the suggestion not because they questioned Government's competence to supplement the rules by administrative instructions but because they felt that conditions of recruitment, being of basic importance, should not be regulated outside the rules. Even otherwise, the Committee noted that they had time and again stressed that the rules should as far as possible, be self-contained.

The Committee also observed that empowering the D.G.P&T to lay down the conditions of recruitment was tantamount to sub-delegation of legislative power. If the sub-delegation was to be exercised through Departmental Orders, which were not published in the Gazette, the Committee on Subordinate Legislation were precluded from examining whether the delegated power had been properly exercised.

Nor did the Committee see much force in the Department's argument that the inclusion of the conditions of recruitment would make the rules lengthy.

(vii) *The Railways Protection Force (Superior Officers) Recruitment Rules, 1968 (G.S.R. 1095 of 1968) (Memorandum No. 77),*

PART II

9. . . . .

PART II

While the Committee appreciated the Ministry of Railways difficulty to lay down the proportion of posts to be filled by each method of recruitment, they find it difficult to understand why it should not be possible for the Ministry to lay down a precise *inter se* order of priority of the various modes of recruitment. The Committee did not see much force in the Ministry's argument that laying down a precise *inter se* Order of priority would not be feasible from the administrative point of view. They noted in this regard that almost in every recruitment rule where more than one method of recruitment were prescribed such an order of priority was given.

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\*Omitted portions of the Minutes of Twenty-Seventh sitting are not covered by Sixth Report.

(viii) *The Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (Memorandum No. 78).*

10. The Committee noted with satisfaction that the Ministry of External Affairs had amended the interpretation provision omitting the words 'the decision of the Government.....shall be final'.

The Committee then adjourned to meet again on Tuesday, the 20th March, 1973 to consider *inter alia*, (i) the Regulations framed by Government under the All India Services Act, 1951 before 1-7-67, which were circulated to the Members during the Sixth Session in connection with the discussion on the All India Services Regulations (Indemnity) Bill, 1972; and (ii) List No. 15 of 'Orders' to be laid on the Table of the House during the Seventh Session.

### XXVIII

#### MINUTES OF THE TWENTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1972-73)

The Committee met on Tuesday, the 20th March, 1973 from 15.00 to 16.00 hours.

#### PRESENT

Shri Vikram Mahajan—*Chairman*

#### MEMBERS

2. Shri T. H. Gavitt
3. Shri S. A. Kader
4. Shri D. K. Panda
5. Shri Tulmohan Ram

#### SECRETARIAT

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

The Committee considered Memorandum Nos. 79—81 and 84 on the following subjects and 'Orders':—

S. No.	Memo No.	Subject
(i)	79	The Victoria Memorial Hall (General Provident Fund) Rules, 1972 (G.S.R. 410 of 1972)
(ii)	80	The National Library, Calcutta Readers Hostel Rules, 1969 (S.O. 2458 of 1970).
(iii)	81	The Cost Accounting Records (Electric Fans) Rules, 1969. (G.S.R. 2298 of 1969).
(iv)	84	• • •

\*Omitted portions of the Minutes of Twenty-Eighth sitting are not covered by Sixth Report.

(i) *The Victoria Memorial Hall (General Provident Fund) Rules*, the following subjects and 'Orders':—

3. The Committee considered the above memorandum and noted that the Department of Culture had no objection to the deletion of the following note below Rule 5(6) of the *Victoria Memorial Hall (General Provident Fund Rules, 1972)*:—

“In a case where no nomination exists in favour of the widow of a subscriber, the title of the widow to the claim against the general Provident Fund deposit of her former husband is not affected by her subsequent marriage.”

4. Note below Rule 14 of the Rule *ibid* provided that a subscriber who had availed himself of a House Building Advance under the scheme of the Department of Works, Housing and Urban Development or had been allowed any assistance in this regard from any other source, *would not* be eligible for the grant of final withdrawal from his Provident Fund for building|acquiring a house where as there was no such bar under the *General Provident Fund (Civil Services) Rules, 1960*.

5. The Committee noted with satisfaction that the Department had not objection to amend the note to bring it in line with the existing note in the *G.P.F. (Civil Services) Rules, 1960*.

(ii) *National Library, Calcutta Readers Hostel Rules, 1970 (S.O. 2458 of 1970) (Memorandum No. 80)*

### I

5A. The Committee noted that the Ministry of Education and Social Welfare had no objection to lay down in the Rules *ibid* the terms and conditions on which the scholars coming from outside Calcutta would get accommodation in the Hostel.

### II

6. The Committee also noted with satisfaction that the Ministry of Education and Social Welfare had agreed to amend the Rules *ibid* so as to provide an opportunity of being heard to the occupant before his allotment was cancelled under Rule 6.

### III

7. Rule 7 *ibid* provided that in case of any dispute the decision of the Librarian would be binding on the allottee. The wording of this Rule gave an impression that it sought to bar the jurisdiction of Courts. The Committee noted that the Ministry had agreed to amend the rule suitably.

(iii) *The Cost Accounting Records (Electric Fans) Rules, 1960 (G.S.R. 2296 of 1960) (Memorandum No. 81).*

8. The Committee considered the above Memorandum and were not satisfied with the reply of the Department that a show cause notice was issued before penalty was imposed under Rule 4 of the Rules *ibid*. In their opinion, Departmental Instructions could hardly be a substitute for a built-in legal safeguard. The Committee desired the Department to amend the Rules so as to provide for an opportunity of being heard before penalty was imposed under Rule 4 *ibid*.

9-10. \* \* \* \* \*

*The Committee adjourned to meet again at 15.30 hours on Monday, the 16th April, 1973.*

### XXIX

#### MINUTES OF THE TWENTY-NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1972-73)

The Committee met on Monday, the 16th April, 1973 15.30 to 18.30 hours.

#### PRESENT

Shri Vikram Mahajan—*Chairman*

#### MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavit
4. Shri P. Narasimha Reddy
5. Shri Dinesh Joarder
6. Shri G. Y. Krishnan
7. Shri Y. S. Mahajan
8. Shri S. N. Misra

#### SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

The Committee considered Memoranda Nos. 82, 83 and 85, 86 on the following subjects and 'Orders':—

S. No.	Memo No.	Subject
1	2	3
(i)	82	* * * * *
(ii)	83	The L.A.S./I.P.S. (seniority of Special Recruits) Regulations, 1960 (G.S.R. 102/103 of 1960)

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

1	2	3
(iii)	85	Implementation of recommendations contained in Para 51 of Fourth Report of Committee on Subordinate Legislation (Fifth Lok Sabha). The Explosives Rules, 1940 as amended by the Explosives (Amendment) Rules, 1971 (G.S.R. 1077 of 1971).
(iv)	86	The Army Medical Corps (Civilian) Class III Posts Recruitment Rules, 1968 (S.R. 400 of 1968).

3.

(ii) *The I.A.S./I.P.S. (Seniority of Special Recruits) Regulations, 1960 (G.S.R. 102/103 of 1960) (Memorandum No. 83)*

4. The Committee considered the above Memorandum and noted that the Department of Personnel were taking action to revise the interpretation clause in the above Regulations on the lines recommended in Para 18 of the Fourth Report of the Committee on Subordinate Legislation (Third Lok Sabha).

(iii) *Implementation of recommendations contained in para 51 of Fourth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha)—The Explosives Rules, 1940, as amended by the Explosives (Amendment) Rules, 1971 (G.S.R. 1071 of 1971) (Memorandum No. 85).*

5. The Committee considered the above Memorandum and were not convinced by the argument of the Ministry of Industrial Development that the Central Government cancelled a licence under the Explosives Rules, 1940 only when it had conclusive evidence to the effect that continuance of the licence was objectionable in public interest or in the interest of the security of the State and the offender will be able to continue his objectionable activity for some more time, if he was to be given an opportunity of being heard before his licence was cancelled. The Committee were of the opinion that if the Central Government had conclusive evidence regarding the objectionable activities of the party concerned, they could suspend the licence, give an opportunity of being heard to the licensee and thereafter, if so considered appropriate, cancel the licence. The Committee, therefore, desired the Ministry of Industrial Development to amend the Explosives Rules accordingly.

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



(iv) *The Army Medical Corps (Civilian) Class III Posts Recruitment Rules, 1968 (S.R.O. 400 of 1968) (Memorandum No. 86)*

6. Recruitment Rules for Class III posts in the Army Medical corps were first issued in 1966 and again in 1968 in respect of different Class III posts. The Ministry of Defence were asked to state the reasons for issuing fresh Rules in 1968 instead of amending the earlier Rules by addition of new entries in the Schedule. The Committee noted that the Ministry of Defence had agreed to consolidate the two sets of Rules and take care to avoid similar situation arising in future.

7-8.       •           •           •           •           •

*The Committee adjourned to meet again at 15.30 hours on Thursday, the 3rd May, 1973.*

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**XXX**

**MINUTES OF THE THIRTIETH SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)  
(1972-73)**

The Committee met on Thursday, the 3rd May, 1973 from 15.30 to 16.00 hours.

**PRESENT**

Shri Vikram Mahajan—*Chairman*

**MEMBERS**

2. Shri M. C. Daga
3. Shri Dharnidhar Das
4. Shri T. H. Gavit
5. Shri Dinesh Joarder
6. Shri Y. S. Mahajan
7. Shri K. Narayana Rao.

**SECRETARIAT**

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

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

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<sup>a</sup>Omitted portions of the Minutes are not covered by the Sixth Report.

3. The Committee authorised the Chairman and, in his absence, Shri M. C. Daga, M.P. to present the Report to the House on their behalf on the 7th May, 1973.

4. \* \* \* \*

5. The Committee then adjourned to meet again on Monday, the 21st, Tuesday, 22nd and Wednesday, the 23rd May, 1973.

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