

COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)

FIFTH REPORT

(Presented on the 3rd March, 1978)



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1978 Phalguna, 1859 (Saka)

Price : Rs. 2.75

CORRIGENDA TO THE FIFTH REPORT OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA)
(PRESENTED ON THE 3RD MARCH, 1978)

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
1	5	Heading (11)	appeal	Appeal
4	-	10	evant	event
5	12	2	(S.O. 172)	(S.O. 172 of 1975)
7	14	23-24	pre-scribed	prescribed
	19	2	rules reads	reads
		15	<u>Delete the line</u>	'ship.....such'
	21	7	owners	owner
11	31	6	Rule II	Rule 11
13	38	4	type	they
		6	datet	date
14	40	8	honourary	honorary
		15	recommendations	recommendation
17	-	11	bearest	barest
18	51	5	has	had
23	61	3-4	contempleted	contemplated
24	63	1-2	Residence	Residences
26	74	3	and M.L.A.	an M.L.A.
27	78	3	member	members
30	92	1	India	Indian
		9	discharged	discharge
32	-	15	thsee	these
	97	1	have stated	stated
35	102	9	he	the
44	65	4	(6)	(c)

CONTENTS

	Para No.	Page No.
COMPOSITION OF THE COMMITTEE		(iii)
REPORT		i
I. Introduction	1-4	i
II. (i) The Department of Space Employees (Classification, Control & Appeal) Amendment Rules, 1977 (S.O. 785 of 1977); and	5-11	i
(ii) The All India Services (Discipline and Appeal) Second Amendment Rules, 1977 (G.S.R. 933 of 1977)		
III. (i) The Paper (Control of Production) Order, 1974 (S.O. 465-B of 1974); and	12-18	4
(ii) The Paper (Control of Production) Amendment Order, 1974 (S.O. 172 of 1975)		
IV. The Merchant Shipping (Levy of Seaman's Welfare Fee) Rules, 1974 (G.S.R. 807 of 1974)	19-31	7
V. (i) The Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 310 of 1976); and	32-37	11
(ii) The Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 309 of 1976).		
VI. (i) The Delhi Sales Tax (Fifth Amendment) Rules, 1974 [No. F. 4 (27)/03-Fin(Genl) dt. 19-6-74]; and	38-41	13
(ii) The Delhi Sales Tax (Sixth Amendment) Rules, 1974 [No. F. 3(182)/71-Fin(G) dt. 27-6-74].		
VII. The Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G.S.R. 2608 of 1975).	42-46	15
VIII. The Central Industrial Security Force (First Amendment) Rules, 1976 (G.S.R. 262 of 1976).	47-49	17
IX. (i) The Indian Administrative Service (Recruitment) Second Amendment Rules 1971 (G.S.R. 586 of 1971); and		
(ii) The Indian Police Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 587 of 1971)	50-54	18

3674 LS-1

PARLIAMENT LIBRARY
 Library & Reference Service
 Central Govt Publications, 328.371
 Acc. No. B. 50114(7)

CONTENTS

	Para No.	Page No.
COMPOSITION OF THE COMMITTEE		(iii)
REPORT		i
I. Introduction	1-4	i
II. (i) The Department of Space Employees (Classification, Control & Appeal) Amendment Rules, 1977 (S.O. 785 of 1977); and	5-11	i
(ii) The All India Services (Discipline and Appeal) Second Amendment Rules, 1977 (G.S.R. 933 of 1977)		
III. (i) The Paper (Control of Production) Order, 1974 (S.O. 465-B of 1974); and	12-18	4
(ii) The Paper (Control of Production) Amendment Order, 1974 (S.O. 172 of 1975)		
IV. The Merchant Shipping (Levy of Seaman's Welfare Fee) Rules, 1974 (G.S.R. 807 of 1974)	19-31	7
V. (i) The Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 310 of 1976); and	32-37	11
(ii) The Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 309 of 1976).		
VI. (i) The Delhi Sales Tax (Fifth Amendment) Rules, 1974 [No. F. 4 (27)/53-Fin(G) dt. 19-6-74]; and	38-41	13
(ii) The Delhi Sales Tax (Sixth Amendment) Rules, 1974 [No. F. 3(182)/71-Fin(G) dt. 27-6-74].		
VII. The Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G.S.R. 2608 of 1975).	42-46	15
VIII. The Central Industrial Security Force (First Amendment) Rules, 1976 (G.S.R. 262 of 1976).	47-49	17
IX. (i) The Indian Administrative Service (Recruitment) Second Amendment Rules 1971 (G.S.R. 586 of 1971); and		
(ii) The Indian Police Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 587 of 1971)	50-54	18

3674 LS-1

PARLIAMENT LIBRARY
 Library & Reference Service
 Central Govt Publications, 328.371
 Acc. No. B. 50114(7)

(ii)

	Para No.	Page No.
X. (i) The Additional Emoluments Compulsory Deposit (Employees other than employees of Government and local Authorities) (Amendment) Scheme, 1975 (G.S.R. 253-E of 1975) ; and	55—62	21
(ii) The Additional Emoluments Compulsory Deposit (Local Authority Employees) (Amendment) Scheme, 1975 (G.S.R. 254-E of 1975).		
XI. The Allotment of Government Residences in the Survey of India Estates Rules, 1974 (S.O. 2362 of 1974)	63—71	24
XII. The Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973 (G.S.R. 1273 of 1973).	72—87	25
XIII. The Besan (Gram Flour) Grading and Marking Rules, 1975 (S.O. 1618 of 1975).	88—91	29
XIV. Implementation of recommendation made in para 70 of Twelfth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the I.A.S. /I.P.S. (Probation) Amendment Rules, 1972 (G.S.R. 386/387 of 1972).	92—98	30
XV. Implementation of recommendation contained in para 31 of the Seventeenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) <i>vs.</i> the Railway Board Secretariat Clerical Service (Amendment) Rules, 1974 (G.S. R. 519 of 1974)	99—103	34

APPENDICES

I. Summary of main recommendations/observations made by the Committee		37
II. O.M. No. 35014/1/77-Estt(A) dated 24-8-77 from the Department of Personnel & Administrative Reforms <i>re:</i> permission to retired Government servants involved in disciplinary proceedings.		48
III. Minutes of the Seventh, Ninth and Thirteenth Sitzings of the Committee		55

COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1977-78)

1. Shri Somnath Chatterjee—*Chairman*
2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Tarun Gogoi
8. Shri Ram Sewak Hazari
9. Shri K. T. Kosalram
10. Shri P. Rajagopal Naidu
11. Shri N. Sreekantan Nair
12. Shri Trepan Singh Negi
13. Kumari Maniben Vallabhbhai Patel
14. Shri Saeed Murtaza
15. Shri Sachindralal Singha

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on the 29th November and 20th December, 1977.

3. The Committee considered and adopted this Report at their sitting held on the 1st March, 1978. 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.

II

(i) The Department of Space Employees (Classification, Control & Appeal) Amendment Rules, 1977 (S.O. 780 of 1977); and

(ii) The All India Services (Discipline and appeal) Second Amendment Rules, 1977 (G.S.R. 983 of 1977).

5. Sub-rule (8) of Rule 11 of the Department of Space Employees (Classification, Control and Appeal) Rules, 1976 reads as follows:—

“The employee may take the assistance of any other employee or a Government servant belonging to any other Central or State Government Department to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.”

6. The following Note to sub-rule (8) of Rule 11 of the Department of Space Employees (Classification, Control & Appeal) Rules, 1976 was added by the Department of Space Employees (Classifica-

tion, Control & Appeal) Amendment Rules, 1977 (S.O. 780 of 1977):—

“Note:—The employee shall not take the assistance of any other employee or a Government servant belonging to any other Central or State Government Department who has two pending disciplinary cases in hand in which he has to give assistance.”

7. A similar Note was inserted under sub-rule (a) of Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969.

8. The Department of Space who were requested to state the considerations for inserting the above note in the Rules, replied that this was done on the lines of the amendment of the CCS (CCA) Rules, 1965. The matter was then taken up with the Department of Personnel and Administrative Reforms who have stated as under:—

“.....the considerations for amending the CCS (CCA) Rules, 1965 so as to prevent an employee from taking the assistance of any other employee who has two pending disciplinary cases on hand are as under:—

- (i) It will not be in the interest of expeditious conduct of disciplinary proceedings if the assisting Government servant has too many cases on hand.
- (ii) It will not be in the interest of the accused Government servant himself if the assisting Government servant has too many cases on hand and is, therefore, not in a position to pay proper attention to the case of the particular Government servant concerned.
- (iii) The assisting Government servant has to take permission of his own controlling authority to remain away from duty so as to take part in disciplinary proceedings in assisting the accused Government servant. If the assisting Government servant has too many cases on hand, he will have to be away from his post for considerable periods and it will be difficult for the controlling authority to relieve him for the purpose, as it might be detrimental to the performance of official duties of the assisting Government servant.
- (iv) The practice of taking too many cases would lead to the creation of a professional class of assisting Government servants which is not desirable.

Incidentally, it is mentioned for the information of the Committee on Subordinate Legislation that at the instance of Staff side of the National Council in the JCM, instructions have been issued.....allowing Government servants involved in disciplinary proceedings to take the assistance of retired Government servants also. Thus Government servants now have a wider field of choice from which they can choose the persons to assist them."

9. From the instructions* issued by the Department of Personnel, it was seen that even a retired Government servant cannot take up more than two cases at a time. At the time of appearing before the inquiring officer, he is to certify that he has only two cases on hand.

10. When asked to state the considerations for imposing the restriction of not more than two cases at a time in the case of even retired Government servants, the Department of Personnel and Administrative Reforms replied as under:—

".....the considerations mentioned at items @ (i), (ii) and (iv) in para 1 of our Office Memorandum No. 3997/77-Estt. (A) dated the 28-9-1977 would equally apply to retired Government servants assisting the accused Government servant in a disciplinary proceeding. Particularly as the retired Government servants have all the time at their disposal the emergence of a professional class among them which will have a vested interest in the prolongation of disciplinary proceedings cannot altogether be ruled out.

A formal amendment to the CCS (CCA) Rules, 1965 is under issue separately."

11. The Committee note that in terms of the 'Note' inserted below sub-rule (a) of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, and the 'Note' inserted below sub-rule (8) of Rule 11 of the Department of Space Employees (Classification, Control and Appeal) Rules, 1976, an employee involved in disciplinary proceedings shall not take the assistance of any other employee or a Government servant belonging to any other Central or State Government Department who has two pending disciplinary cases in hand in which he has to give assistance. The Committee are not convinced by the arguments advanced by the Department of Personnel and Administrative Reforms for insertion of the above 'Notes'. In the opinion of the Committee, the matter has to be viewed in the context

*Appendix II.

@See para 8 of the Report.

that a Government servant involved in disciplinary proceedings is ordinarily precluded from taking the assistance of a legal practitioner; he can take the assistance of only a Government servant including a retired Government servant. The number of Government servants who have the ability or the capacity or the knowledge of defending a Government employee in disciplinary proceedings is very limited and as such the restriction placed by the said 'Notes' may result in virtual deprivation of many Government servants involved in disciplinary proceedings from getting any proper assistance whatsoever. In any event, the reasons given for putting the restriction of not more than two cases at a time imposed on retired Government servants are not at all convincing. The Committee, therefore, recommend that the above-mentioned 'Notes' should be omitted from the Rules in question. The Committee also desire that the provisions for enabling retired Government servants to render assistance in disciplinary cases should be incorporated in the rules at an early date.

III

- (i) The Paper (Control of Production) Order, 1974 (S.O. 465-E of 1974); and
- (ii) The Paper (Control of Production) Amendment Order, 1974 (S.O. 172 of 1975).

(A)

12. Clause 6 of the Paper (Control of Production) Order, 1974, as substituted by the above Amendment Order (S.O. 172), reads as under:—

“Power to exempt:—The Central Government may, having regard to the fact that the installed capacity of a manufacturer is for the manufacture of certain specialised varieties of paper or to the fact that a manufacturer cannot produce any of the varieties of paper referred to in clause 3 to the extent specified therein except at a heavy cost, exempt such manufacturer from the whole or part of any of the requirements of clause 3 for such period as may be specified in the Order.”

The Order was given retrospective effect from the 18th August, 1974.

13. The Committee on Subordinate Legislation (1974-75) which examined the above orders desired to know the reasons for giving retrospective effect without an express authorisation in the parent Act, namely, the Essential Commodities Act, 1955.

In this connection, the attention of the Ministry of Industry was invited to the following observations of the Attorney General made in connection with Exemption Notifications issued under the Central Excises & Salt Act, 1944:—

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

14. In their reply, the Ministry of Industry have stated as under:—

“.....the Paper (Control of Production) Order, 1974 as originally published envisaged that all the manufacturers concerned under the Order should manufacture certain fixed percentages (or more) of the following six varieties of paper:

- (a) White Printing Paper
- (b) Creamlaid or wove paper
- (c) Coloured printing Paper
- (d) Duplicating Paper
- (e) Offset and litho Paper, and
- (f) Typing Paper.

Even though the original Order embodies a provision for the grant of exemptions to certain manufacturers who were unable to honour the obligations imposed on them by the Production Control Order due to technical reasons, such exemption could be granted only in cases where the manufacturer was unable to produce white printing paper whereas the intention was that such exemption could be granted in cases where a manufacturer was unable to produce any (not necessarily) white printing paper or all of the six controlled varieties of paper. Since this inability to produce any or all the varieties of paper prescribed under the Production Control Order is related to the machinery installed, many manufacturers were unable to comply with some provisions of the Orders even on the date of publication—1-8-1974. Thus exemptions in their regard had perforce to be granted w.e.f. 1-8-1974. There-

fore, the Paper (Control of Production) Amendment Order, 1974 had to be given retrospective effect.

It may be stated that an explanatory memorandum setting out these reasons was also appended to the Paper (Control of Production) Amendment Order, 1974."

15. The Committee are not satisfied with the reply of the Ministry of Industry for giving retrospective effect to the Paper (Control of Production) Amendment Order, 1974, without an express authorisation to this effect in the parent Act, viz., the Essential Commodities Act, 1955. In this connection, the Committee note the opinion of the Attorney-General as also the ruling of the Supreme Court in *Hukam Chand vs. Union of India* (AIR, 1972 Supreme Court, 2427) that no Subordinate Legislation can be given retrospective effect unless the law under which it is made authorises Government to give such retrospective effect. As the Essential Commodities Act 1955, under which the Order has been issued, does not authorise Government to give retrospective effect to the Orders issued thereunder, the retrospective effect given to the Order in question was without due legal authority. The Committee, therefore, recommend that the Ministry should either give effect to the Order from the date of its publication in the Official Gazette or, alternatively, approach Parliament for incorporating a provision in the Essential Commodities Act empowering Government to give retrospective effect to the Orders issued thereunder.

(B)

16. The Committee on Subordinate Legislation, after examination of the above orders, also desired to know whether—

- (a) the exemption Orders issued under clause 6 were published in the Gazette to avoid the possibility of discrimination being made between one manufacturer and another; and
- (b) the Ministry had any objection to provide for recording of reasons in writing before granting exemption to a manufacturer under clause 6.

17. The Ministry of Industry in their reply have agreed to notify in future all orders issued under clause 6 of the above Order and also to amend the Order to provide for the recording of reasons in writing while granting exemption.

18. The Committee note with satisfaction that, on being pointed out, the Ministry of Industry have agreed to notify in future all

Orders issued under clause 6 of the Paper (Control of Production) Order, 1974, and also to amend the said Order to provide for recording of reasons in writing while granting exemption. The Committee desire the Ministry to issue the proposed amendment at an early date.

IV

The Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 (G.S.R. 807 of 1974).

(A)

19. Rule 5(1) of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 (G.S.R. 807 of 1974), rules reads as under:—

"Security for payment of annual fee in respect of Seamen engaged on ships other than Indian Ships: (1) The master, owner or agent of a ship other than an Indian ship shall give to the proper officer a bond with the security from an approved person resident in India for such amount as may be fixed by the proper officer and every such bond shall be conditioned for the full payment of the annual fee due from the master, owner or agent of the ship, with expenses, if any, incurred in the recovery of the annual fee:

Provided that the proper officer shall waive the requirement of this sub-rule in respect of owners of ships who employ ship is dependant upon the possible liability of such seamen from India and have a Company Roster of their own."

20. It was felt that the amount of security should either be specified in the Rules or some principle should be laid down in the Rules regarding charging of security so that ships similarly placed were not treated differently by different officers in the matter.

21. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up have replied as under:

"The amount of security to be called for has not been specified for the reason that the determination of amount of security to be obtained from owner, master or agent of any foreign ship is dependent-upon the possible liability of such owners, master or agent for the payment of fees. This amount will vary from company to company and from vessel to vessel. In view of this position it is considered desirable to leave the determination of the amount of security to the discretion of the proper officer. In fact under

the provision of sub-rule (2) of Rule 5, the Bonds taken under Section 114(3) of Merchant Shipping Act as security are acceptable for the purposes of this rule also and as such the cases involving fresh securities under the present rules would be few and far between. As such it is still considered necessary to allow the discretion to the proper officer in the rule itself. If, however, the Committee on Subordinate Legislation still feels that some guidelines should be provided in this respect in the rules themselves then the rule may be amended by adding the words "But not exceeding Rs. 500/- per ship" after "proper officer" and before the words "and every...."

22. The Committee concur with the suggestion of the Ministry of Shipping and Transport (Transport Wing) to amend Rule 5(1) of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 so as to put a ceiling of Rs. 500 as the amount of security to be charged from a ship. The Committee, therefore, desire the Ministry to give effect to the proposed amendment at an early date.

(B)

23. Rule 6 *ibid*, reads as under:

"Determination of disputes as to the liability for payment:—
If any dispute arises as to the amounts due for payment under these rules in respect of any ship or as to the liability for payment of such amounts, the dispute shall, on an application made by either of the disputing parties, be decided by the Director General after giving a hearing to the opposite party, and his decision shall be binding on both the parties."

It was felt that the wording of the above rules was such as gave the impression of ousting the jurisdiction of courts.

24. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up have replied as under:—

"Rule 6: The purpose of keeping the provision of referring the matter to Director General was to avoid litigation in cases where some party is not agreeable to the decision of the proper officer. It is not the intention to take away the jurisdiction of the court from this rule. In fact the amount of fees due from owners of any ship is not likely to exceed Rs. 500/- since it is depending on the seamen engaged in a ship which is normally below 60 in number. It was, therefore, considered that it would not

be economical either to the shipowner or to the proper officer to seek judicial intervention for settling the disputes involving such a small amount. It is, therefore, considered that ends of justice would be met in such matters of small magnitude if these could be decided by Arbitration by sufficiently senior officer like Director General. If this is acceptable, this rule can be amended to provide for arbitration subject to both parties agreeing to the reference of the dispute to the sole arbitration of the Director General."

25. The Committee concur with the suggestion of the Ministry of Shipping and Transport (Transport Wing) to amend Rule 6 of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 so as to provide for arbitration subject to both parties agreeing to the reference of the dispute to the sole arbitration of the Director-General. The Committee, therefore, desire the Ministry to issue the proposed amendment at an early date.

(C)

26. Rule 9(1) *ibid*, reads as under:—

"Refund of excess payments: (1) Where annual fee paid by the master, owner or agent of ship is in excess of the amount due from him under these rules, the excess amount shall be refunded if claim therefor is preferred before expiry of twenty-four months from the date of payment. No such claim shall be entertained if preferred after the expiry of twenty-four months from the date of payment."

It was felt that a time-limit should be prescribed in the Rules within which a claim for refund should be settled.

27. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up have replied as under:—

"Rule 9: It is not the intention to prolong the cases of refund if the claims are made within the prescribed time limit. Normally it is not the practice to specify any time limit for settlement of valid claims because any provision to this effect is likely to give rise to the question of payment of interest on amounts not refunded in time. In view of this position it may be against the public interest—particularly in view of the fact that scrutiny of relevant accounts scattered over various places and offices may

involve sometimes some delay. However, if the Committee on Subordinate Legislation have any strong views in the matter this Ministry have no objection to prescribing the period for the settlement of claim and it is suggested that a period of 24 months may be prescribed for this purpose."

28. The Committee note the suggestion of the Ministry of Shipping and Transport (Transport Wing) to prescribe a period of 24 months as the maximum time-limit for settlement of claims for refund under Rule 9(1) of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974. In the opinion of the Committee, the period of 24 months suggested by the Ministry is too long. The Committee desire that a maximum period of 12 months may be prescribed for the purpose, which may be extendible by the competent authority for another 12 months for reasons to be recorded in writing. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.

(D)

29. Rule 11 *ibid*, reads as under:—

"Penalties:—Any person who contravenes any provision of these rules or fails to comply with any provision thereof shall be guilty of an offence and shall be punishable with fine which may extend to one thousand rupees and when the breach is a continuing one with a further fine which may extend to fifty rupees for every day after the first during which the breach continues."

The amount of penalty provided in the above Rule exceeded the limit prescribed in section 436(1) of the Merchant Shipping Act, 1958.

30. The Ministry of Shipping & Transport (Transport Wing) with whom the matter was taken up have replied as under:—

"Rule 11: Rule 11 may be made consistent with the provisions contained in section 436(1) of the Merchant Shipping Act. Rule 11 may, therefore, be amended to read as under:—

Any person who contravenes any provision of these Rules or fails to comply with provision thereof will be guilty of an offence and shall be punishable with fine which may extend to two hundred rupees and when the breach is a continuing one with a further fine which may extend to rupees fifty per every day after the first breach during which the breach continues."

31. The Committee note that the amount of penalty provided for in Rule 11 of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974, exceeded the limit laid down in Section 436(1) of the Merchant Shipping Act. On being pointed out, the Ministry of Shipping and Transport (Transport Wing) have proposed to amend Rule II *ibid* to the effect that any person who contravenes any provisions thereof will be guilty of an offence and shall be punishable with fine which may extend to two hundred rupees and when the breach is a continuing one with a further fine which may extend to rupees fifty per day after the first breach during which the breach continues. The Committee observe that the penalty now suggested by the Ministry is within the limits laid down in the parent Act. The Committee desire the Ministry to amend the Rule in question to the above effect without any further delay.

V

- (i) The Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 310 of 1976); and
- (ii) The Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 309 of 1976).

(A)

32. Rule 20 of the Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 reads as under:—

"In special circumstances, direct recruitment by selection of suitable candidates with such qualifications and satisfying such other conditions as are considered necessary, at any time in the interest of Service, to the posts mentioned in Appendix shall be made through the Commission by open advertisement."

It was felt that the qualifications and other conditions for direct recruitment by selection should be mentioned in the rules in order to make them self-contained.

33. In their reply, the Ministry of Shipping and Transport (Roads Wing), with whom the matter was taken up, have stated as under:—

"This rule has been provided with a view to enable the Government to recruit persons possessing special qualifications and background whenever such contingency may arise

keeping in view the job requirement. Recently a decision has been taken to make lateral recruitment in the grade of Superintending Engineer possessing special qualifications in the field of soil mechanics. The requirement can vary from time to time and it may, therefore, be not possible to lay down the qualification in the rules."

34. The Committee are not satisfied with the explanation of the Ministry of Shipping and Transport (Roads Wing) that Rule 20 of the Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976, has been provided to enable the Government to meet special contingencies. In the opinion of the Committee, educational qualifications and other conditions of eligibility, being of basic nature, should be laid down in the Rules, rather than be left to be determined by the administration. The Committee need hardly point out that if at any time Government consider it necessary to relax a particular provision of rules to meet any special contingency, they can do so by invoking the relaxation provision contained in Rule 25 *ibid*. The Committee, therefore, desire that early action should be taken by the Ministry to omit Rule 20 *ibid*.

(B)

35. Rule 27 of the Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 and rule 15 of the Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 provide that in all matters not specially provided for in the above rules, officers appointed to the service shall be governed by such rules or orders as may be issued by the Government from time to time.

It was felt that all matters not specially provided for in the above rules should also be governed only by rules whether by way of an amendment to the present rules or by framing new rules and not by issue of administrative orders which unlike rules are not published in the Gazette.

36. The Ministry of Shipping and Transport (Roads Wing), with whom the matter was taken up, have stated that this is an enabling provision to deal with situations not specifically provided for in the rules and this may be continued.

37. The Committee are not satisfied with the explanation of the Ministry of Shipping and Transport in regard to the need for Rule 27 of the Central Engineering Service (Roads) Group 'A' of the

Ministry of Shipping and Transport (Roads Wing) Rules, 1976 and Rule 15 of the Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976. The Committee are of the view that all matters not specifically provided for in the rules for appointment of officers to the services should also be governed only by rules, whether by way of an amendment to the present rules or alternatively by framing new rules, rather than by issue of administrative orders. It is hardly necessary for the Committee to point out that, unlike rules, administrative orders are not published in the Official Gazette and thereby do not come to the notice of the Committee on Subordinate Legislation. As such, the Committee are unable to examine whether they contain any provision which is apt to be abused. The Committee will, therefore, like the Ministry of Shipping and Transport (Roads Wing) to omit the rules in question at an early date.

VI

- (i) **The Delhi Sales Tax (Fifth Amendment) Rules, 1974 [No. F. 4(27)/68-Fin(Gen) dt. 19-6-74] and**
- (ii) **The Delhi Sales Tax (Sixth Amendment) Rules, 1974 [No. F. 3(182)/71-Fin(G) dt. 27-6-1974].**

38. It was seen from the preamble to the Delhi Sales Tax (Fifth Amendment) Rules, 1974 [No. F. 4(27)/68-Fin(Gen) dt. 19-6-74] and the Delhi Sales Tax (Sixth Amendment) Rules, 1974 [No. F. 3(182)/71-Fin(G), dt. 27-6-1974] that type were issued after previous publication in draft form but the particulars of previous publication, viz., (i) the date of publication of Rules in draft form; (ii) the last date fixed for receipt of comments from the public thereon; and (iii) the date on which the Gazette copies containing the draft rules were made available to the public had not been indicated in the preamble.

39. In this connection, attention of the Ministry of Finance (Department of Revenue and Insurance) was invited the following recommendation of the Committee on Subordinate Legislation made in para 28 of their First Report (Fourth Lok Sabha):

“It appears that some Ministries are labouring under an apprehension that the condition requiring publication of draft rules for inviting comments/suggestions from the public thereon is merely a formality but it is not so. The Committee feel that it would defeat the very object underlying

ing the condition of publication of draft rules if adequate opportunities are not given to the public to go through the draft rules and offer their comments. It is imperative that the statutory requirements for previous publication of rules are strictly followed both in letter and spirit. The Committee, therefore, recommend that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this, Government may, perhaps, do well if they issue some standing instructions that the date of the Gazette in which the draft rules were published and the last date fixed for receipt of public comments thereon and also the date on which the Gazette copies containing the draft rules were made available to the public are specifically mentioned in the preamble to the final rules."

40. In their reply, the Ministry have stated as under:

The Delhi Sales Tax (Fifth Amendment) Rules, 1974

"The Delhi Administration has stated that the draft rules were published *vide* their notification No. 4(27)/68-Fin(G) dated the 30th March, 1974. The comments and objections were invited within 15 days from the publication of the notification. In response to the notice, objections from the honorary General Secretary, United Chamber of Trade Association as contained in his letter dated the 14th April, 1974 were received. No other comments/objections were received by that date. Thereafter, the final notification No. 4(27)/68-Fin-(G) dated the 19th June, 1974 was issued after considering the comments/objections received in response to previous notice. The recommendations for giving above particulars in the final notification has been noted for future guidance."

The Delhi Sales Tax (Sixth Amendment) Rules, 1974

"The Delhi Administration has stated that the preliminary notification for previous publication of the draft rules was issued *vide* their notification No. F. 3 (182)/71-Fin(G) dated the 26th September, 1973. Objections/comments were invited within 15 days of publication of the notification. Objections/comments from the Bar Association of the Sales Tax were also received. After considering these objections, the final notification was issued on the 27th June, 1974. The recommendation to publish above particulars in the final notification has been noted."

41. The Committee notes with concern that Government have failed to comply with the recommendation of the Committee made in para 28 of their First Report (Fourth Lok Sabha) that in cases where the rules are required to be published in draft form, the preamble to the final rules should give the particulars regarding previous publication, viz., (i) the date of publication of rules in draft form, (ii) the last date fixed for receipt of comments from the public thereon, and (iii) the date on which the Gazette copies containing the draft rules were made available to the public. The Committee also find that as against the minimum of 30 clear days to be allowed to the public for sending their comments/suggestions on the draft rules, in accordance with the oft-repeated recommendation of the Committee, the Delhi Administration had allowed only 15 days to the public for the purpose. The Committee, however, note the assurance of the Ministry of Finance/Delhi Administration for giving particulars about previous publication in final notifications in future. The Committee will like to re-stress upon the Ministry of Finance/Delhi Administration to allow not less than 30 clear days to the public for sending comments/suggestions on the draft rules in future.

VII

The Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G. S R. 2608 of 1975).

42. The Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G.S.R. 2608 of 1975) were given retrospective effect from 30th June, 1970 *vide* Rule 1(2) *ibid*. According to the Supplementary Memorandum published along with the Rules, the posts of Junior Field Officers were designated as those of Small Industry Promotion Officers with effect from the 30th June, 1970. Consequential amendment to the Rules was made in October, 1975, after a period of more than five years. Hence the retrospective effect to the Rules.

43. The Ministry of Industry (Department of Industrial Development) were requested to state the reasons for the delay in making the amendment.

44. In their reply, the Ministry of Industry have stated as under:—

“...The amendment rules referred to above giving effect to the decision communicated by the Government in their letter of 30th June, 1970 had to be referred to the Union Public Service Commission, Department of Personnel Ministry of Law and Justice and Ministry of Home,

Affairs before these could be forwarded to the Press for publication in the Official Gazette. While processing these amendment rules for publication, a writ petition filed by some of the Junior Field Officers in the High Court of Delhi for according them Seniority in the feeder list of Indian Economic Service and Indian Statistical Service was pending and it was considered that the amendment in the redesignation of the post of Junior Field Officers to that of Small Industry Promotion Officers may be taken up after a decision of the Court is obtained. After the decision of the Court became available, the matter was again taken up with the Department of Personnel and Ministry of Law. However, the delay in processing this amendment rule for publication in the Gazette is regretted and efforts will be taken to ensure that such delays do not recur."

45. In a further elucidation, the Ministry have stated that the judgement of the Delhi High Court on the writ petition was delivered on 29th March, 1972 while the Notification was issued on 18th October, 1975. They have also stated that the issue of redesignation of the posts of Small Industry Promotion Officers was not in issue before the Court in the writ petition directly. It was only in deference to the opinion of the Department of Personnel and Administrative Reforms that the redesignation of the post was kept in abeyance pending the decision of High Court on the writ petition.

46. The Committee note with concern that the Ministry of Industry (Department of Industrial Development) had taken more than five years in issuing an amendment to redesignate the posts of Junior Field Officers as those of Small Industry Promotion Officers, which had necessitated retrospective effect to the Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G.S.R. 2608 of 1975). One of the reasons given by the Ministry for delay in issuing the above amendment was that a writ petition filed by some of the Junior Field Officers in the Delhi High Court for according them seniority in the feeder list of the Indian Economic Service and the Indian Statistical Service was pending. The Committee, however, observe from the subsequent reply of the Ministry that the question of redesignation of the posts did not figure in the issue before the Delhi High Court directly and that a period of more than three and a half years had elapsed in issuing the notification even after the High Court had delivered their judgement. From the facts of the case before them, the Committee cannot help observing that the Ministry had not dealt with the matter with the expedition it deserved.

The Committee note the assurance given by the Ministry that all efforts will be made to ensure that delays in issuing amendments to rules do not recur in future. The Committee trust that care will be taken by the Ministry to keep their assurance to the Committee. The Committee will also like to re-stress upon all Ministries/Departments that retrospective effect to the rules should be avoided as far as possible. In cases where it is not possible for certain unavoidable reasons to amend the relevant statutory rules simultaneously with the enforcement of an executive decision, such rules should be amended at the earliest so that the period of retrospective effect is reduced to the bearest minimum.

VIII

The Central Industrial Security Force (First Amendment) Rules, 1976 (G.S.R. 262 of 1976).

47. Rule 18(1) of the Central Industrial Security Force Rules, 1969, as substituted by the Central Industrial Security Force (First Amendment) Rules, 1976 (G.S.R. 262 of 1976), read as under:—

“18. Promotion:—(1) Promotion from one rank to another or from one grade to another in the Force shall be made on the basis of selection made in accordance with the procedure laid down by the Inspector-General in this behalf.”

It was felt that instead of empowering the Inspector-General to lay down the procedure of selection for promotion, it should be laid down in the rules, as empowering the Inspector-General to lay down the procedure for selection might tantamount to sub-delegation of legislative power, for which there was no specific authority in the Central Industrial Security Force Act, 1968. Also, such a course was necessary for making the rules self-contained.

48. The Ministry of Home Affairs with whom the matter was taken up have deleted rule 18(1) *vide* G.S.R. 127 dated 29th January, 1977.

49. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have deleted Rule 18(1) of the Central Industrial Security Force Rules, 1969, which empowered the Inspector-General to lay down the procedure of selection from one rank to another or from one grade to another, as the parent Act did not empower the Central Government to sub-delegate their power to the Inspector-General in this behalf. The Committee will, however, like the Ministry of Home Affairs to take early action to

formulate and incorporate in the rules the requisite procedure for promotion in the Central Industrial Security Force.

IX

- (i) **The Indian Administrative Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 586 of 1971); and**
- (ii) **The Indian Police Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 587 of 1971).**

50. Clause (a) (ii) of sub-rule (3) of Rule 6-A of the Indian Administrative Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 586 of 1971) and the Indian Police Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 587 of 1971) empowers the State Governments to withhold the appointment of an officer to a post in the senior time-scale of pay till he passes the prescribed departmental examination or examinations, and appoint, to such a post, an officer junior to him.

51. The attention of the Department of Personnel and Administrative Reforms was invited to para 42 of the First Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) wherein commenting upon a similar provision contained in the Indian Forest Service (Recruitment) Amendment Rules, 1969, the Committee has desired that to avoid any scope for doubt, the rule should be amended to specifically provide that only those junior officers would be promoted in supersession of their seniors who have passed the prescribed departmental examination.

52. Final reply not having been received from the Department of Personnel and Administrative Reforms, the Committee in para 155 of their Eleventh Report (Fifth Lok Sabha) presented to the House on the 9th May, 1974 took a serious view of the delay on the part of the Department of Personnel and Administrative Reforms.

53. In their reply dated 3-7-1976, the Department of Personnel and Administrative Reforms have informed that the rules in question have been amended to the desired effect *vide* G.S.R. No. 304-E and 302-E of 1974 dated 8-7-74. Regarding delay in sending final reply they have stated as under:

“On receipt of the Lok Sabha Secretariat’s O.M.No. 38|5|CIL 73 dated the 19th April, 1973, that Secretariat were informed *vide* this Department’s O.M. No. 11/2/71-AIS(I) dated the 7th May, 1973, that the Government had accepted the recommendations of the Committee on Subordinate

Legislation and further action to amend the Rules was being taken in consultation with the State Governments. Thereafter on receipt of reminders from the Lok Sabha Secretariat, this Department had been writing to the Lok Sabha Secretariat indicating the development of the case from time to time. As the Lok Sabha Secretariat are aware amendment to the Rules, made under the All India Services Act, 1951 have to be carried out in consultation with the State Governments and the Union Public Service Commission. This process is a time consuming one and in spite of the best efforts made by this Department considerable delay sometimes takes place in the amendment of the Rules because the State Governments take their own time to send their comments. In this particular case, the State Governments and the Union Public Service Commission had to be consulted once again because the Department of Legal Affairs had changed the form of the amendment and advised this Department to refer the matter back to the State Governments as required under the provisions of the above said Act. After the comments of the State Governments were received, the Union Public Service Commission had to be consulted again. All this process naturally took considerable time and this Department was able to issue the amendment to the I.A.S./I.P.S. and I.F.S. (Recruitment) Rules only in the first week of July, 1974, to give effect to the recommendations made by the Committee on Subordinate Legislation of the Lok Sabha Secretariat.

The Lok Sabha Secretariat would kindly recall that the Committee on Subordinate Legislation had recommended in paragraph 42 of their First Report that Rule 6A of the I.F.S. (Recruitment) Rules, 1966, should be suitably amended to specifically provide that the State Governments would be empowered to promote only those junior officers in super-session of their seniors who had passed the prescribed departmental examination or examinations. While examining this recommendation, the Government had decided to amend not only the I.F.S. (Recruitment) Rules but also the I.A.S. and the I.P.S. (Recruitment) Rules. Action had, therefore, been initiated to consult the State Governments regarding the proposed amendment to the I.A.S. | I.P.S. | I.F.S. (Recruitment) Rules, even before the recommendations made by the Committee on Subordinate Legislation in paragraph 155 of their Eleventh Report were received in regard to the amendment of the

I.A.S./I.P.S. (Recruitment) Rules. While intimating the **Lok Sabha Secretariat** about the amendment to the Recruitment Rules of the three All India Services vide this Department's O.M. No. 11/5/73-AIS(I) dated the 30th July, 1974, a reference was not, unfortunately, made to the recommendations of the Committee on Subordinate Legislation contained in paragraph 155 of their Eleventh Report. This might have, perhaps, led the Lok Sabha Secretariat to conclude that reply from the Government of India in regard to the implementation of the recommendations of the Committee on Subordinate Legislation is still awaited. It would, however, be appreciated from the facts mentioned above that amendment to the Recruitment Rules of the three All-India Services have already been notified.

The Government have taken steps to ensure that no delay occurs in future in the implementation of the recommendations of the Committee on Subordinate Legislation. The steps taken in this behalf are that the State Governments are given a specified date by which they must communicate their comments on the proposed amendments to the various rules made under the All India Services Act. If the comments of some of the States do not reach the Government of India by that date, further action to process the amendment is taken."

54. The Committee note that, pursuant to their recommendation made in para 42 of their First Report (Fifth Lok Sabha) wherein they had desired the Government to amend the Indian Forest Service (Recruitment) Rules, 1966 to specifically provide that the State Governments would be empowered to promote only those junior officers in supersession of their seniors who had passed the prescribed departmental examinations, Government had decided not only to amend the Indian Forest Service (Recruitment) Rules but also the Indian Administrative Service (Recruitment) Rules and the Indian Police Service (Recruitment) Rules to this effect. Unfortunately, however, this fact was not brought to the notice of the Committee when a reference in this regard was made to them. The Committee in this connection note the assurance of the Department of Personnel and Administrative Reforms that steps have been taken by them to ensure that no delay occurs in future in the implementation of the recommendations of the Committee. The Committee trust that care will be taken by the Department to keep their assurance to the Committee.

(i) **The Additional Emoluments Compulsory Deposit (Employees other than employees of Government and Local Authorities) (Amendment) Scheme, 1975 (G.S.R. 253-E of 1975); and**

(ii) **The Additional Emoluments Compulsory Deposit (Local Authority Employees) (Amendment) Scheme, 1975 (G.S.R. 254-E of 1975).**

55. Sub-paragraph (3) of paragraph 17 of the Additional Emoluments Compulsory Deposit (Employees other than employees of Government and Local Authorities) Scheme, 1974, as inserted by G.S.R. 253-E of 1975, reads as under:—

“For the recovery of any sum as an arrear of land revenue under section 23 from a specified authority within his jurisdiction, the nominated authority may move the Collector of the district in which the establishment of the specified authority is situated to recover such sum as an arrear of land revenue under section 5 of the Revenue Recovery Act, 1890 (1 of 1890) or the corresponding provision of any other Act as may be applicable.”

56. Similar provision exists in sub-paragraph (3) of Paragraph 15 of the Additional Emoluments Compulsory Deposit (Local Authority Employees) Scheme, 1974, as inserted by G.S.R. 254-E of 1975.

57. As the recovery of dues as arrears of land revenue is an extreme step, the Ministry of Finance (Department of Economic Affairs) were asked to state whether a show-cause notice was required to be served by the nominated authority on the specified authority before it moved the Collector for recovery of the dues as arrears of land revenue.

58. The Ministry have stated in their reply as under:—

“Section 23 of the Additional Emoluments (Compulsory Deposit Act, 1974 provides that any amount which ought to have been credited under this Act to a Deposit Account or remitted to the nominated authority but has not been so credited or remitted, shall be recoverable as an arrear of land revenue, together with interest due thereon. Para 17(3) of the Additional Emoluments Compulsory Deposit (Employees other than employees of Government and Local Authorities) Scheme, 1974, inserted by the Amendment Scheme, 1975 (Notified on 12th May, 1975) provides

that for recovery of any sum as an arrear of land revenue, the nominated authority may move the Collector of the District. Before taking steps to move the Collector accordingly, the amount in respect of which such credit or remittance has not been made, has first to be determined. In this connection, provisions contained in Section 20 of the Act may please be referred to, which provide for inspection of the books of accounts of any employer (Specified authority under the Act) by the nominated authority or any officer authorised by the nominated authority. Section 20(4) of the Act provides that where on inspection, the nominated authority or the authorised officer finds that any additional wages or additional dearness allowance has not been credited to the Deposit Account or remitted to the nominated authority, he shall determine the amount in respect of which such credit or remittance has not been made. Proviso to Section 20(4) of the Act, however, stipulates that no such determination shall be made except after giving to the employer a reasonable opportunity of being heard. It is, therefore, clear that the specified authority under the Act (employer) is given reasonable opportunity to state his case before the amount is determined under Section 20(4) of the Act. After determining the amount under this Section, the nominated authority serves a notice on the employer to remit the amount so determined and it is only when the employer fails to remit the amount in spite of this notice that steps are taken by the nominated authority under the Act to move the Collector of the District for recovery of the amount as an arrear of land revenue under Section 23 of the Act read with para 17(3) of the Scheme.”

59. Similar reply has been sent by the Ministry in the case of the Additional Emoluments Compulsory Deposit (Local Authority Employees) (Amendment) Scheme, 1975.

60. The matter was further pursued with the Ministry and it was pointed out to them that it was, no doubt, clear that the specified authority under the Act was given a reasonable opportunity to represent his case *before the amount was determined* under section 20(4) of the parent Act. But, as stated by them, there did not appear to be any provision in the original Scheme that after determining the amount under section 20(4) of the Act, the nominated authority shall serve a notice on the specified authority to remit the amount so determined. The Ministry were, therefore, asked to state the specific para-

graph in the Schedule, which provided for giving a notice prior to writing to the Collector for recovery of the dues as arrear of land revenue; and in case this provision did not exist, whether they had any objection to amending the Scheme for making such a provision therein.

61. The Ministry have, in their reply, *inter alia* stated as under:—

“...Though there is no specific provision in the Scheme to this effect, it may be noted that determination contemplated by the Act carries with it the necessary implication that it will be communicated to the specified authority as, otherwise, such determination will not be effective. It is in this context that it was pointed out that after determining the amount, a communication is addressed to the specified authority by the nominated authority. Therefore, a further provision in the Scheme to the effect that a notice should be served on the specified authority by the nominated authority after determining the amount would be a duplication of the procedure. In this connection, it may also be noted that the action under sub-section (4) of section 20 is a sequel to invoking the powers under sub-sections (2) and (3) of the same section. In this connection, attention is also invited to the provisions contained in paragraph 17(2) of the scheme which provides that such an authority or a person shall require the specified authority in relation to which such an omission or delay has come to notice to make forthwith the necessary deductions or remittance, as the case may be, and deposit the amount in accordance with sub-paragraph (1). The Scheme also, therefore, provides a requirement for the nominated authority to serve a notice on the specified authority to remit the amount due.

It is, therefore, felt that it is not necessary to amend the Scheme so as to provide for a further notice to be served on the specified authority by the nominated authority after determining the amount under section 20(4) of the Act but before moving the Collector of the District for recovering the amount as an arrear of land revenue, as this is not necessary to meet the ends of natural justice. It is also felt that any such amendment would only add to the time-lag for recovery of the defaulted amount and this aspect needs to be appreciated in the context of the fact that this is an anti-inflationary measure....”

62. The Committee have given a careful thought to the whole matter. They desire the Ministry of Finance (Department of Econo-

mic Affairs) to amend the schemes in question so as to provide for the issue of a demand notice for payment within a specified period, as is being done in cases of income-tax, before the nominated authority moves the Collector to recover the dues from the specified authority as arrears of land revenue.

XI

The Allotment of Government Residences in the Survey of India Estates Rules, 1974 (S.O. 2362 of 1974).

(A)

63. S.R. 317-AH-6(1)(c) of the Allotment of Government Residence in the Survey of India Estate Rules, 1974 (S.O. 2362 of 1974) provided that Government servant will be required to stay at the residence himself. He may reside outside on leave or due to any other reasons for more than 2 months only with the prior permission of the Director concerned who may cancel the allotment and arrange to evict him if such permission is not taken.

It was felt that before cancelling the allotment under the above rule, a show cause notice should be issued to the person concerned.

64. The Department of Science and Technology with whom the matter was taken up have amended the rule by inserting the following proviso:—

“Provided that the allotment shall not be cancelled except after giving to the Government servant a reasonable opportunity of showing cause against the proposed action.”

65. The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended S.R. 317-AH-6(1)(c) of the Allotment of Government Residences in the Survey of India Estates Rules, 1974 to the effect that the allotment shall not be cancelled except after giving to the Government servant a reasonable opportunity of showing cause against the proposed action.

(B)

66. S.R. 317-AH-12 (6) of the above rules provided that when an officer is dismissed or removed from service or when his services have been terminated and the Head of the Department is satisfied that it is necessary or expedient in the public interest so to do, he may require the Director concerned to cancel the allotment of residence made to such officer either forthwith or w.e.f. such date prior to the expiry of 30 days.

It was felt that the Head of the Department should record reasons in writing in cases where he directs the Director to cancel the allotment before the expiry of 30 days under the above rule.

67. The Department of Science & Technology with whom the matter was taken up have amended the rules on the lines suggested by the Committee *vide* S.O. No. 781 of 1977.

68. The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended S.R. 317-AH-12(6) of the Allotment of Government Residences in the Survey of India Estate Rules, 1974, so as to provide for recording of reasons in writing in cases where the Head of Department directs the Director to cancel the allotment before the expiry of 30 days under the above Rules.

(C)

69. S.R. 317-AH-19 laid down cases of breach of rules and conditions of allotment which may lead to cancellation of allotment.

It was felt that an opportunity of being heard should be given to the person concerned before action was taken against him under the above rule.

70. The Department of Science & Technology with whom the matter was taken up have amended the rules by inserting the following proviso:

“Provided that the allotment of the residence shall not be cancelled except after giving to the officer a reasonable opportunity of being heard in person.”

71. The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended S.R. 317-AH-19 of the Allotment of Government Residences in the Survey of India Estates Rules, 1974, to the effect that the allotment of the residence shall not be cancelled except after giving to the officer concerned a reasonable opportunity of being heard in person.

XII

The Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973
(G.S.R. 1273 of 1973).

(A)

72. Rule 3(2) (a) (iv) of the Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973 (G.S.R. 1273 of 1973), framed

under the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 (62 of 1972), provides as under:—

“2(a) Each Advisory Committee constituted under section 6 shall consist of the following persons, to be appointed by the Central Government, namely:—

* * * * *

(iv) a member of the Legislative Assembly appointed in consultation with the Government of the State concerned;

* * * * *

Rule 4 regarding term of office of the members of the Advisory Committee does not indicate anything about the discontinuance of the membership of an M.L.A. in the event of his ceasing to be an M.L.A. earlier to the period of 3 years specified under this rule.

73. It was pointed out to the Ministry of Labour that in the case of Members of Parliament, it was always provided either in the principal Act or in the rules framed thereunder that a representative of the Lok Sabha|Rajya Sabha would cease to be a member of the Advisory Committee, Corporation, statutory body etc., when he ceased to be a Member of Parliament. The Ministry were, therefore, asked to state whether they had any objection to incorporating a similar provision in rule 4, so as to make the position clear.

74. The Ministry of Labour have accepted the above suggestion and stated in their reply that it is proposed to amend rule 4, *ibid.*, suitably so as to lay down that an M.L.A. on ceasing to be an M.L.A. shall also cease to be a Member of the Advisory Committee.

75. The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have agreed to amend Rule 4 of the Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973, so as to lay down that an M.L.A. on ceasing to be an M.L.A., shall also cease to be a Member of the Advisory Committee. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.

(B)

76. Rule 8(1), *ibid.*, provides as under:—

“Power to co-opt.—(1) An Advisory Committee or the Central Advisory Committee may, at any time and for such period as it thinks fit, co-opt any person or persons to the Advisory Committee.”

The principal Act does not appear to vest this power in the Advisory Committee or the Central Advisory Committee. The Minis-

try were asked to state the authority under which this power had been vested in the said Committees and whether they had any objection to amending the parent Act to obtain this power.

77. The Ministry have accepted the above suggestion and stated in their reply that it is proposed to amend the Act suitably with a view to take power to co-opt members to the Central Advisory Committee and the Regional Advisory Committee.

78. The Committee note that the Ministry of Labour propose to amend the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 suitably to take power to co-opt member to the Central Advisory Committee and the Regional Advisory Committee. The Committee desire the Ministry to take early action to amend the Act.

(C)

79. Rule 13(1), *ibid.*, provides as follows:—

*“Notice of meetings and list of business.—*Notice shall be given to every member present in India of the time and place fixed for each ordinary meeting at least fifteen days before such meeting and every member shall be furnished with a list of business to be considered at the meeting:

Provided that when an emergency meeting is called by the Chairman such notice shall not be necessary.”

Under the above proviso, in the case of an emergency meeting, notice of at least 15 days shall not be necessary but it does not give any indication as to what will be minimum period of notice of such a meeting. It also does not indicate the circumstances under which an emergency meeting would be held.

80. The Ministry were asked to state the reasons for not prescribing some minimum period in case of emergency meetings; and whether they had any objection to laying down some minimum period so that members were able to attend an emergency meeting at a short notice of say, one or two days. They were also asked to state what could possibly be included in the list of business to be considered at an emergency meeting; and whether they had any objection to laying down some guidelines to this effect so that the power of holding an emergency meeting was not misused.”

81. The Ministry have stated in their reply that it is proposed to amend rule 13(1) suitably so as to provide a minimum short period

of notice for emergency meetings and for furnishing the list of business in the agenda for such meetings.

82. The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have agreed to amend rule 13(1) of the Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973 so as to provide a minimum short period of notice for emergency meetings and for furnishing the list of business in the agenda for such meetings. The Committee desire the Ministry to amend the rule in question to this effect at an early date.

(D)

83. Sub-rule (1) of rule 20, *ibid.*, provides as under:

“Staff: Powers of the Commissioner.—(1) Subject to the provisions in the budget and the provision of rule 22 and also subject to such powers as may be delegated to him by the Central Government, the Commissioner may create and fill technical and other posts to assist him in carrying out his duties, may fix the scale of establishment and the salaries and allowances and determine the other conditions of service of officers and staff employed by him including the security to be taken from them:”

Provided that:

- (i) the salaries and allowances of the staff appointed by the Commissioner under this rule shall be in accordance with the scales sanctioned by the Central Government for similar posts; and
- (ii) The creation of a post with a maximum salary exceeding Rs. 500 per month shall require the previous sanction of the Central Government.”

84. It was felt that the above sub-rule conferred legislative power on the Commissioner, which did not appear to have been authorised by the parent Act. Section 16 of the principal Act empowered the Central Government to make rules for carrying out the purposes of the Act. Sub-section (2) (b) provided for the making of rules regarding recruitment, conditions of service and the duties of all persons appointed under section 8 thereof. It did not empower the Commissioner to fix the scale of establishment and the salaries and allowances and determine the other conditions of service of officers and staff employed by him, outside the rules.

85. The matter was taken up with the Ministry of Labour who were asked to state the authority in the parent Act for framing rule 20 which had the effect of sub-delegating legislative power in the Commissioner. The Ministry were also asked to state, whether they had any objection to providing for the scale of establishment and the salaries and allowances and conditions of service of officers and staff employed by him in the above rules, or in the alternative, issuing a separate set of rules for this purpose.

86. The Ministry of Labour have stated in their reply that it is proposed to amend rule 20 suitably for issuing a separate set of rules relating to the staff.

87. The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have proposed to amend Rule 20 of the Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973, so as to provide for issue of a separate set of rules relating to staff. The Committee desire the Ministry to do the needful at an early date.

XIII

The Besan (Gram Flour) Grading and Marking Rules, 1975 (S.O. 1618 of 1975).

88. Sub-rule (2) of Rule 6 of the Besan (Gram Flour) Grading and Marking Rules, 1975 (S.O. 1618 of 1975) reads as under:—

“6. Method of marking—

* * * *

(2) Each container shall also be clearly marked with such particulars and in such manner as may, from time to time, be specified by the Agricultural Marketing Adviser.

* * * *

89. It was felt that the particulars and the manner of marking should be incorporated in the Rules instead of being specified by the Agricultural Marketing Adviser.

90. The Ministry of Agriculture and Irrigation (Department of Rural Development) with whom the above matter was taken up have replied as under:—

“...the suggestions of the Committee on subordinate Legislation of Lok Sabha in regard to Besan Grading and Marking Rules, 1975 have been examined in consultation

with the Agricultural Marketing Adviser. The suggestion of the Committee on Subordinate Legislation to incorporate the particulars and the manner of marking in the rules itself has been accepted and accordingly the Besan Grading and Marking Rules, 1975 are being amended."

91. The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Rural Development) have agreed to amend Rule 6(2) of the Besan (Gram Flour) Grading and Marking Rules, 1975, for incorporating the particulars and manner of marking in the Rules, instead of their being specified by the Agricultural Marketing Adviser. The Committee desire the Ministry to do the needful at an early date.

XIV

Implementation of recommendation made in para 70 of Twelfth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the I.A.S./I.P.S. (Probation) Amendment Rules, 1972 (G.S. Rs. 386/387 of 1972).

92. Rule 9 of the India Administrative Service (Probation) Rules, 1954, as amended by G.S.R. 386 of 1972, reads as under:--

"Failure to pass the final examination.—Where a probationer fails to obtain the minimum number of marks prescribed for any subject, group of subjects or part of the final examination, under the regulations framed under rule 7, the Central Government may permit him to sit for re-examination in subject or subjects in which he failed, or discharged him from the service, or pass such other order as it may think fit:

Provided that the marks awarded to a probationer on such re-examination shall not be taken into account in determining his seniority:

Provided further that the provisions of this rule shall not apply to probationers appointed to the Service in accordance with the Indian Administrative Service (Special Recruitment) Regulations, 1956:

Provided that the Central Government may exempt a probationer, appointed to the service on the results of the competitive examination held in 1970 or earlier, from re-appearing in the subject or subjects in which he failed to obtain the prescribed minimum number of marks in the final examination".

93. Rule 9 of the Indian Police Service (Probation) Rules, 1954 and rule 10 of the Indian Foreign Service (Probation) Rules, 1968, are similarly worded.

94. The erstwhile Department of Personnel (Cabinet Secretariat) were asked to elucidate the expression 'other order', appearing in the above rule. They were also requested to state whether any criteria had been laid down as to which of the above-mentioned four methods would be applied in a particular category of cases, and if so, whether they had any objection to their incorporation in the above rules.

95. In their reply, the Department of Personnel had stated as under:—

"...the expression 'other order' occurring in rule 9 of the Indian Administrative Service|Indian Police Service (Probation) Rules, 1954, does not arise out of the amendment issued in April, 1972. It has been figuring in the rules from the time they were made in 1954. The expression would relate to the following types of orders:—

- (a) order extending the period of probation of the probationer; and
- (b) order warning the probationer about the consequences that might follow if he does not pass the Probationers' Final Examination in his subsequent appearance or appearances.

As regards the circumstances in which resort should be had to one of the alternatives referred to in rule 9, no criteria have been laid down... The alternative to be adopted is decided with reference to the merits of each case.

Certain guidelines have been issued recently in the matter of extension of probation etc. vide this Department's letter No. 22/3/71-AIS(III), dated the 13th July, 1972. One of the guidelines is that, as a matter of convention, no member of the Indian Administrative Service should be kept on probation for more than four years. Accordingly, a probationer who does not complete the Probationers' Final Examination within the period of four years should ordinarily be discharged from the service. Thus ordinarily a probationer will be permitted to sit for

re-examination or examinations held during the first four years of his Service.

If at the end of that period, he has not completed the Probationers' Final Examination by the prescribed standard, the matter will be considered for discharging him from the service. The guideline is not strictly complied with and it may lead to rigidity.

The system of granting exemption has been done away with for the future by the amendment made in April, 1972, and has been retained in the rule only in a limited context, namely, relating to the probationers appointed on the results of the competitive examinations held in 1970 or earlier. This power of grant of exemption from re-appearance in the Probationers' Final Examination to these probationers is exercised with reference to the merits of each case.

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

96. The Committee on Subordinate Legislation (Fifth Lok Sabha), after considering the matter in detail, had observed in para 70 of their Twelfth Report as under:—

"The Committee are not satisfied with the reply furnished by the Cabinet Secretariat (Department of Personnel) that each case is considered on its merits when deciding the alternative to be adopted on the failure of a probationer to pass the final examination. The Committee feel that in the absence of any criteria as to the alternative to be adopted in a particular case, there is a possibility of discrimination being made in cases similarly placed. The Committee desire the Cabinet Secretariat (Department of Personnel) to lay down guidelines in the light of past decisions as to the alternative to be adopted where a probationer fails to pass a subject or subjects at the final examination."

97. The Department have in their action-taken reply have stated as under:—

"Rule 9 of the IAS/IPS (Probation) Rules, 1954 as it stands at present, provides that, if a probationer fails at the Probationers' Final Examination, the Central Government shall permit him to sit for re-examination in the subject

or subjects in which he failed or pass such other order. The probationers who fail to pass a subject or subjects at the final examination are invariably permitted to sit for re-examination. If their attempt at passing a subject or subjects extends beyond the two years' period of probation, the probationary period in such cases is extended under sub-rule (3) of rule 3 of the said Probation Rules. The maximum period upto which the Central Government may extend the period of probation in individual cases is being laid down in the Probation Rules separately. If, therefore, the probationer fails to clear the final examination within the probationary period that may be so extended, he will be considered for being discharged from service under rule 12(a) of the Probation Rules.

In the light of the position explained in the preceding para, the Rules, position being what it is, there would seem to be no scope for laying down any guide lines, as desired by the Committee on Subordinate Legislation. The provision in rule 9 requiring the Government "or pass such other order as it may think fit" is, therefore, redundant because all possible contingencies have been covered by the existing rules. It is, therefore, proposed to delete* this expression from rule 9 of the IAS|IPS (Probation) Rules, 1954 and rule 10 of the IFS (Probation) Rules, 1968. The State Governments have been addressed in this regard.....

Action to amend the Probation Rules as indicated in the preceding paragraph has been taken, with the approval of Minister of State in this Department."

98. The Committee note that the Department of Personnel and Administrative Reforms have since initiated necessary action to amend the Probation Rules so as to lay down the maximum period upto which the Central Government may extend the period of probation in individual cases. If the probationer fails to clear the final examination within the probationary period that may be so extended, he will be considered for being discharged from service under Rule 12(a) of the Probation Rules. The Committee further note that the Department of Personnel have since omitted the expression "or pass such other order as it may think fit" from Rule 9 of the I.A.S./I.P.S: (Probation) Rules, 1954 and Rule 10 of the

*This has since been done *vide* G.S.R. 903, 904 and 905 of 1976 dated 26-6-1976.

I.F.S. (Probation) Rules, 1968. The Committee desire the Department of Personnel to issue the proposed amendment to the Probation Rules without further delay.

XV

Implementation of recommendation contained in para 31 of the Seventeenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) re. the Railway Board Secretariat Clerical Service (Amendment) Rules, 1974 (G.S.R. 519 of 1974).

99. Rule 9(3) (b) of the Railway Board Secretariat Clerical Service Rules provided that substantive appointment to the substantive vacancies shall be made in the order of seniority of the temporary officers except when, for reasons to be recorded in writing, a person was not considered fit for substantive appointment in his turn.

100. The Ministry of Railways (Railway Board), who were asked to state whether the person who was not considered fit for substantive appointment was informed in writing so that he might make up his deficiencies, had stated as under:

“The intention behind Rule 9(3) (b) of the Railway Board Secretariat Clerical Service Rules, 1970, as amended under G.S.R. 519 of 1974 is that whenever an officer of the Railway Board Secretariat Clerical Service is not considered fit for substantive appointment to the relevant grade in his turn and the officers junior to him in that grade are found fit for substantive appointment in that grade, the competent authority has to record in its minutes the reason for not finding him fit for substantive appointment in that grade. The competent authority generally makes its assessment with regard to the suitability or otherwise of the officer concerned for substantive appointment by consulting the Confidential Reports of the officer.

As in the Central Secretariat Clerical Service, in this office also it is not the practice to inform the reasons to the person who is not considered fit for substantive appointment.”

101. In para 31 of their Seventeenth Report (Fifth Lok Sabha) presented to the House on 7th January, 1976, the Committee on Sub-

ordinate Legislation had observed as follows on the above reply of the Ministry of Railways:

“The Committee are not satisfied with the above reply of the Ministry of Railways (Railway Board). They feel that as the competent authority has to record its reasons in writing, the Ministry of Railways should have no objection to communicating the same to the person concerned so that he may make up his deficiency. The Committee, therefore, recommend that the Ministry of Railways (Railway Board) should take early steps to amend the rules in question to the desired effect.”

102. In their action taken note on the above recommendation, the Ministry of Railways (Railway Board) have stated as follows:

“The matter was considered in detail in consultation with the Department of Personnel and Administrative Reforms, who have framed similar rules in respect of the Central Secretariat Clerical Services..... while considering the case of officers for confirmation, the competent authority takes into account the overall contents of the confidential reports of the officers concerned. Under the existing instructions, adverse entries recorded in the confidential reports, which form the basis of denying confirmation to the officer, are communicated to him and an opportunity afforded to him to represent against the said entries. In view of this position, there does not appear to be any necessity for giving another opportunity to the employee if it is decided not to consider him for confirmation in the grade.

In this connection, it may be added that in the case of promotion on the basis of seniority-cum-fitness, the Government servants are not informed individually the reasons for not promoting them to the next higher grade and they come to know only after they are passed over.”

103. The Committee are not satisfied with the reply of the Ministry of Railways that as, under the existing instructions, adverse entries recorded in confidential reports, which form the basis of denying confirmation to an officer, are communicated to him, there is no necessity of giving another opportunity to the employee if it is decided not to consider him for confirmation in the grade. The Committee reiterate their views expressed in para 31 of their Seventeenth Report (Fifth Lok Sabha) that as the competent

authority has to record its reasons in writing for denying confirmation to an employee, the Ministry of Railways should have no objection to communicating the same to the person concerned so that he may make up his deficiency. The Committee, therefore, desire the Ministry to take early steps to amend the rules in question to the desired effect.

SOMNATH CHATTERJEE,

Chairman.

Committee on Subordinate Legislation.

NEW DELHI;
The 1st March, 1978.

APPENDIX I

(See Para 4 of the Report)

Summary of main Recommendations/Observations made by the Committee

S. No.	Para No.	Summary
(1)	(2)	(3)
1	11	<p>The Committee note that in terms of the 'Note' inserted below sub-rule (a) of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, and the 'Note' inserted below sub-rule (8) of Rule 11 of the Department of Space Employees (Classification, Control and Appeal) Rules, 1976, an employee involved in disciplinary proceedings shall not take the assistance of any other employee or a Government servant belonging to any other Central or State Government Department who has two pending disciplinary cases in hand in which he has to give assistance. The Committee are not convinced by the arguments advanced by the Department of personnel & Administrative Reforms for insertion of the above 'Notes'. In the opinion of the Committee, the matter has to be viewed in the context that a Government servant involved in disciplinary proceedings is ordinarily precluded from taking the assistance of a legal practitioner; he can take the assistance of only a Government servant including a retired Government servant. The number of Government servants who have the ability or the capacity or the knowledge of defending a Government employee in disciplinary proceedings is very limited and as such the restriction placed by the said 'Notes' may result in virtual deprivation of many Government servants involved in disciplinary proceedings from getting any proper assistance whatsoever. In</p>

(1)

(2)

(3)

any event, the reasons given for putting the restriction of not more than two cases at a time imposed on retired Government servants are not at all convincing. The Committee, therefore, recommend that the above-mentioned 'Notes' should be omitted from the Rules in question. The Committee also desire that the provisions for enabling retired Government servants to render assistance in disciplinary cases should be incorporated in the Rules at an early date.

2

15

The Committee are not satisfied with the reply of the Ministry of Industry for giving retrospective effect to the Paper (Control of Production) Amendment Order, 1974, without an express authorisation to this effect in the parent Act, viz., the Essential Commodities Act, 1955. In this connection, the Committee note the opinion of the Attorney-General as also the ruling of the Supreme Court in *Hukam Chand vs. Union of India* (AIR, 1972 Supreme Court, 2427) that no Subordinate Legislation can be given retrospective effect, unless the law under which it is made authorises Government to give such retrospective effect. As the Essential Commodities Act, 1955, under which the Order has been issued, does not authorise Government to give retrospective effect to the Orders issued thereunder, the retrospective effect given to the Order in question was without due legal authority. The Committee, therefore, recommend that the Ministry should either give effect to the Order from the date of its publication in the Official Gazette or, alternatively, approach Parliament for incorporating a provision in the Essential Commodities Act empowering Government to give retrospective effect to the Orders issued thereunder.

3

18

The Committee note with satisfaction that, on being pointed out, the Ministry of Industry have agreed to notify in future all Orders issued

(1)

(2)

(3)

under clause 6 of the Paper (Control of Production) Order, 1974, and also to amend the said Order to provide for recording of reasons in writing while granting exemption. The Committee desire the Ministry to issue the proposed amendment at an early date.

4

22

The Committee concur with the suggestion of the Ministry of Shipping & Transport (Transport Wing) to amend Rule 5(1) of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 so as to put a ceiling of Rs. 500 as the amount of security to be charged from a ship. The Committee, therefore, desire the Ministry to give effect to the proposed amendment at an early date.

5

25

The Committee concur with the suggestion of the Ministry of Shipping and Transport (Transport Wing) to amend Rule 6 of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 so as to provide for arbitration subject to both parties agreeing to the reference of the dispute to the sole arbitration of the Director-General. The Committee, therefore, desire the Ministry to issue the proposed amendment at an early date.

6

28

The Committee note the suggestion of the Ministry of Shipping and Transport (Transport Wing) to prescribe a period of 24 months as the maximum time-limit for settlement of claims for refund under Rule 9(1) of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974. In the opinion of the Committee, the period of 24 months suggested by the Ministry is too long. The Committee desire that a maximum period of 12 months may be prescribed for the purpose, which may be extendible by the competent authority for another 12 months for reasons to be recorded in writing. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.

(1)

(2)

(3)

7

31

The Committee note that the amount of penalty provided for in Rule 11 of the Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974, exceeded the limit laid down in Section 436(1) of the Merchant Shipping Act. On being pointed out, the Ministry of Shipping and Transport (Transport Wing) have proposed to amend Rule 11 *ibid* to the effect that any person who contravenes any provisions thereof will be guilty of an offence and shall be punishable with fine which may extend to two hundred rupees and when the breach is a continuing one with a further fine which may extend to rupees fifty per day after the first breach during which the breach continues. The Committee observe that the penalty now suggested by the Ministry is within the limits laid down in the parent Act. The Committee desire the Ministry to amend the Rule in question to the above effect without any further delay.

8

34

The Committee are not satisfied with the explanation of the Ministry of Shipping and Transport (Roads Wing) that Rule 20 of the Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976, has been provided to enable the Government to meet special contingencies. In the opinion of the Committee, educational qualifications and other conditions of eligibility, being of basic nature, should be laid down in the Rules, rather than be left to be determined by the administration. The Committee need hardly point out that if at any time Government consider it necessary to relax a particular provision of rules to meet any special contingency, they can do so by invoking the relaxation provision contained in Rule 25 *ibid*. The Committee, therefore, desire that early action should be taken by the Ministry to omit Rule 20 *ibid*.

9.

37

The Committee are not satisfied with the explanation of the Ministry of Shipping and

(1)

(2)

(3)

Transport in regard to the need for Rule 27 of the Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 and Rule 15 of the Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976. The Committee are of the view that all matters not specifically provided for in the rules for appointment of officers to the services should also be governed only by rules, whether by way of an amendment to the present rules or alternatively by framing new rules, rather than by issue of administrative orders. It is hardly necessary for the Committee to point out that, unlike rules, administrative orders are not published in the Official Gazette and thereby do not come to the notice of the Committee on Subordinate Legislation. As such, the Committee are unable to examine whether they contain any provision which is apt to be abused. The Committee will, therefore, like the Ministry of Shipping and Transport (Roads Wing) to omit the rules in question at an early date.

10

41

The Committee note with concern that Government have failed to comply with the recommendation of the Committee made in para 28 of their First Report (Fourth Lok Sabha) that in cases where the rules are required to be published in draft form, the preamble to the final rules should give the particulars regarding previous publication, viz., (i) the date of publication of rules in draft form, (ii) the last date fixed for receipt of comments from the public thereon, and (iii) the date on which the Gazette copies containing the draft rules were made available to the public. The Committee also find that as against the minimum of 30 clear days to be allowed to the public for sending their comments/suggestions on the draft rules, in accordance with the oft-repeated recommendation of the Committee, the Delhi Administration had allowed only 15 days to the public for the purpose. The

(1)

(2)

(3)

Committee, however, note the assurance of the Ministry of Finance/Delhi Administration for giving particulars about previous publication in final notifications in future. The Committee will like to re-stress upon the Ministry of Finance/Delhi Administration to allow not less than 30 clear days to the public for sending comments/suggestions on the draft rules in future.

11

46

The Committee note with concern that the Ministry of Industry (Department of Industrial Development) had taken more than five years in issuing an amendment to re-designate the posts of Junior Field Officers as those of Small Industry Promotion Officers, which had necessitated retrospective effect to the Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G.S.R. 2608 of 1975). One of the reasons given by the Ministry for delay in issuing the above amendment was that a writ petition filed by some of the Junior Field Officers in the Delhi High Court for according them seniority in the feeder list of the Indian Economic Service and the Indian Statistical Service was pending. The Committee, however, observe from the subsequent reply of the Ministry that the question of redesignation of the posts did not figure in the issue before the Delhi High Court directly and that a period of more than three and a half years had elapsed in issuing the notification even after the High Court had delivered their judgement. From the facts of the case before them, the Committee cannot help observing that the Ministry had not dealt with the matter with the expedition it deserved. The Committee note the assurance given by the Ministry that all efforts will be made to ensure that delays in issuing amendments to rules do not recur in future. The Committee trust that care will be taken by the Ministry to keep their assurance to the Committee. The Committee will also like to re-stress upon

(1)

(2)

(3)

all Ministries/Departments that retrospective effect to the rules should be avoided as far as possible. In cases where it is not possible for certain unavoidable reasons to amend the relevant statutory rules simultaneously with the enforcement of an executive decision, such rules should be amended at the earliest so that the period of retrospective effect is reduced to the barest minimum.

12

49

The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have deleted Rule 18(1) of the Central Industrial Security Force Rules, 1969, which empowered the Inspector-General to lay down the procedure of selection from one rank to another or from one grade to another, as the parent Act did not empower the Central Government to sub-delegate their power to the Inspector-General in this behalf. The Committee will, however, like the Ministry of Home Affairs to take early action to formulate and incorporate in the rules the requisite procedure for promotion in the Central Industrial Security Force.

13

54

The Committee note that, pursuant to their recommendation made in para 42 of their First Report (Fifth Lok Sabha) wherein they had desired the Government to amend the Indian Forest Service (Recruitment) Rules, 1966 to specifically provide that the State Governments would be empowered to promote only those junior officers in supersession of their seniors who had passed the prescribed departmental examinations, Government had decided not only to amend the Indian Forest Service (Recruitment) Rules but also the Indian Administrative Service (Recruitment) Rules and the Indian Police Service (Recruitment) Rules to this effect. Unfortunately, however, this fact was not brought to the notice of the Committee when a reference in this regard was made to them. The Committee in this connection note the assurance of the Department of

(1)

(2)

(3)

Personnel and Administrative Reforms that steps have been taken by them to ensure that no delay occurs in future in the implementation of the recommendations of the Committee. The Committee trust that care will be taken by the Department to keep their assurance to the Committee.

14

62

The Committee have given a careful thought to the whole matter. They desire the Ministry of Finance (Department of Economic Affairs) to amend the Additional Emoluments Compulsory Deposit (Employees other than employees of Government and Local Authorities) (Amendment) Scheme, 1975 and The Additional Emoluments Compulsory Deposit (Local Authority Employees) (Amendment) Scheme, 1975 so as to provide for the issue of a demand notice for payment within a specified period, as is being done in cases of income-tax, before the nominated authority moves the Collector to recover the dues from the specified authority as arrears of land revenue.

15

65

The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended S.R. 317-AH-6(1) (6) of the Allotment of Government Residences in the Survey of India Estates Rules, 1974 to the effect that the allotment shall not be cancelled except after giving to the Government servant a reasonable opportunity of showing cause against the proposed action.

16

68

The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended S.R. 317-AH-12 (6) of the Allotment of Government Residences in the Survey of India Estates Rules, 1974, so as to provide for recording of reasons in writing in cases where the Head of Department directs the Director to cancel the allotment before the expiry of 30 days under the above Rules.

- | (1) | (2) | (3) |
|-----|-----|--|
| 17 | 71 | The Committee note with satisfaction that, on being pointed out, the Department of Science and Technology have amended S.R. 317-AH-19 of the Allotment of Government Residences in the Survey of India Estates Rules, 1974, to the effect that the allotment of the residence shall not be cancelled except after giving to the Officer concerned a reasonable opportunity of being heard in person. |
| 18 | 75 | The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have agreed to amend Rule 4 of the Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973, so as to lay down that an M.L.A. on ceasing to be an M.L.A., shall also cease to be a Member of the Advisory Committee. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date. |
| 19 | 78 | The Committee note that the Ministry of Labour propose to amend the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 suitably to take power to co-opt members to the Central Advisory Committee and the Regional Advisory Committee. The Committee desire the Ministry to take early action to amend the Act. |
| 20 | 82 | The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have agreed to amend rule 13(1) of the Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973 so as to provide a minimum short period of notice for emergency meetings and for furnishing the list of business in the agenda for such meetings. The Committee desire the Ministry to amend the rule in question to this effect at an early date. |
| 21 | 87 | The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have proposed to amend Rule 20 of the Limestone and Dolomite Mines Labour Welfare Fund Rules, |

(1)

(2)

(3)

1973, so as to provide for issue of a separate set of rules relating to staff. The Committee desire the Ministry to do the needful at an early date.

22

91

The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Rural Development) have agreed to amend Rule 6(2) of the Besan (Gram Flour) Grading and Marking Rules, 1975, for incorporating the particulars and manner of marking in the Rules, instead of their being specified by the Agricultural Marketing Adviser. The Committee desire the Ministry to do the needful at an early date.

23

98

The Committee note that the Department of Personnel and Administrative Reforms have since initiated necessary action to amend the Probation Rules so as to lay down the maximum period up to which the Central Government may extend the period of probation in individual cases. If the probationer fails to clear the final examination within the probationary period that may be so extended, he will be considered for being discharged from service under Rule 12(a) of the Probation Rules. The Committee further note that the Department of Personnel have since omitted the expression "or pass such other order as it may think fit" from Rule 9 of the I.A.S./I.P.S. (Probation) Rules, 1954 and Rule 10 of the I.F.S. (Probation) Rules, 1968. The Committee desire the Department of Personnel to issue the proposed amendment to the Probation Rules without further delay.

24

103

The Committee are not satisfied with the reply of the Ministry of Railways that as, under the existing instructions, adverse entries recorded in confidential reports, which form the basis of denying confirmation to an officer, are communicated to him, there is no necessity of giving another opportunity to the employee if it is decided not to consider him for confirmation in the

(1)**(2)****(3)**

grade. The Committee reiterate their views expressed in para 31 of their Seventeenth Report (Fifth Lok Sabha) that as the competent authority has to record its reasons in writing for denying confirmation to an employee, the Ministry of Railways should have no objection to communicating the same to the person concerned so that he may make up his deficiency. The Committee, therefore, desire the Ministry to take early steps to amend the Railway Board Secretariat Clerical Service (Amendment) Rules, 1974 to the desired effect.

APPENDIX-II

(See para 9 of the Report)

No. 35014/1/77-Estt (A)

GOVERNMENT OF INDIA|BHARAT SARKAR

MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA

Department of Personnel and Administrative Reforms

(Karmik Aur Prashasnik Sudhar Vibhag)

New Delhi, the 24th August, 1977.

OFFICE MEMORANDUM

SUBJECT.—CCS (CCA) Rules, 1965—question whether retired Government servants can be allowed to assist Government servants involved in disciplinary proceedings.

The undersigned is directed to say that rule 14(8) of the CCS (CCA) Rules, 1965, provides that a Government servant involved in disciplinary proceedings may take the assistance of any other Government servant to present the case on his behalf. A suggestion has been that Government servants involved in disciplinary proceedings can be allowed to take the assistance of retired Government servants to present their cases on their behalf. This question has been considered by the Government and the President is pleased to decide that Government servants involved in disciplinary proceedings may also take the assistance of retired Government servants subject to the following conditions:—

- (i) The retired Government servant concerned should have retired from service under the Central Government.
- (ii) No retired Government servant can take up more than two cases at a time. At the time of appearance before the inquiring officer the retired Government servant should certify that he has only two cases on hand at that time.
- (iii) A retired Government servant cannot assist a Government servant in disciplinary proceedings after the expiry of three years from the date of his retirement. The retired Government servant should produce before the Inquiring officer a declaration regarding his date of retirement.

- (iv) If the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, contained in rule 14(8) of the CCS(CCA) Rules, 1965, would apply.
- (v) In the matter of payment of travelling and other expenses to the retired Government servant assisting a Government servant in disciplinary proceedings, the instructions contained in the Ministry of Home Affairs Office Memorandum No. 16/122/56-AVD, dated 18th August, 1960 will apply. The retired Government servant concerned will be deemed to belong to the grade of Government servants to which he belonged immediately before his retirement for the purpose of these instructions. The expenditure on account of travelling and other expenses will be borne by the Department or office to which the delinquent Government servant belongs.

2. The formal amendment to the CCS(CCA) Rules, 1965 to give effect to above decision will be issued separately.

3. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions issued in consultation with the Comptroller and Auditor General.

4. The decision contained in this Office Memorandum may be brought to the notice of all concerned.

5. Hindi version will follow.

Sd/-

(R. C. GUPTA)

Deputy Secy. to the Govt. of India.

To

All Ministries/Departments of the Government of India with usual number of spare copies.

MINUTES

**MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION
(SIXTH LOK SABHA)
(1977-78)**

The Committee met on Tuesday, the 29th November, 1977 from 16.00 to 16.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman.*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Durga Chand
4. Shri Ram Sewak Hazari
5. Shri K. T. Kosalram
6. Shri Trepan Singh Negi
7. Kumari Maniben Vallabhbbhai Patel.

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee considered Memoranda Nos. 43 to 52 on the following subjects:—

S. No.	Memo No.	Subject
(1)	(2)	(3)
1	43	(i) The Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping & Transport (Roads Wing) Rules, 1976 (G.S.R. 310 of 1976); and (ii) The Central Engineering Pool Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 309 of 1976).
2	44	* * *

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

(1)	(2)	(3)
3	45	Implementation of recommendation contained in para 31 of the Seventeenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Railway Board Secretariat Clerical Service (Amendment) Rules, 1974 (G.S.R. 519 of 1974).
4	46	The Central Industrial Security Force (First Amendment) Rules, 1976 (G.S.R. 262 of 1976).
5	47	* * *
6	48	(i) The Indian Administrative Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 586 of 1971); and (ii) The Indian Police Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 587 of 1971).
7	49	The Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973 (G.S.R. 1273 of 1973).
8	50	* * *
9	51	(i) The Additional Emoluments Compulsory Deposit (Employees other than employees of Government and Local Authorities (Amendment) Scheme, 1975 (G.S.R. 253-E of 1975); and (ii) The Additional Emoluments Compulsory Deposit (Local Authority Employees) (Amendment) Scheme, 1975 (G.S.R. 254-E of 1975).
10	52	Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G.S.R. 2608 of 1975).

- (i) (a) The Central Engineering Service (Roads) Group 'A' of the Ministry of Shipping and Transport (Roads Wing) Rules, 1976 (G.S.R. 310 of 1976); and
- (b) The Central Engineering Pool Group 'A' of the Ministry of Shipping & Transport (Roads Wing) Rules, 1976 (G.S.R. 309 of 1976) (Memorandum No. 43).

7. The Committee considered the above memorandum and noted with satisfaction that, on being pointed out, the Ministry of Home Affairs had deleted rule 18(1), which empowered the Inspector General to lay down the procedure of selection for promotion.

(vi) (a) The Indian Administrative Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 586 of 1971); and

(b) The Indian Police Service (Recruitment) Second Amendment Rules, 1971 (G.S.R. 587 of 1971) (Memorandum No. 48).

9. The Committee considered the above Memorandum and noted that, pursuant to the recommendation of the Committee on Subordinate Legislation made in para 42 of their First Report (Fifth Lok Sabha) wherein the Committee had desired Government to amend the Indian Forest Service (Recruitment) Rules, 1966 to specifically provide that the State Governments would be empowered to promote only those Junior Officers in supersession of their seniors who had passed the prescribed departmental examination or examinations, Government had decided not only to amend the Indian Forest Service (Recruitment) Rules but also the IAS (Recruitment) Rules and the IPS (Recruitment) Rules to this effect. Unfortunately, however, this fact was not brought to the notice of the Committee on Subordinate Legislation when a reference in this regard was made to them. The Committee also noted the assurance of the Department of Personnel & Administrative Reforms that no delay would occur in future in the implementation of the recommendations of the Committee.

(vii) The Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973 (G.S.R. 1273 of 1973) (Memo No. 49).

(A)

10. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Labour proposed to amend rule 4 so as to lay down that an M.L.A. on ceasing to be an M.L.A. shall also cease to be a Member of the Advisory Committee. The Committee desired the Ministry to issue the necessary amendment at an early date.

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

(B)

11. The Committee noted that the Ministry of Labour proposed to amend the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 suitably to take power to co-opt members to the Central Advisory Committee and the Regional Advisory Committee. The Committee desired the Ministry to take early action to amend the Act.

(C)

12. The Committee noted that the Ministry of Labour proposed to amend rule 13(1) to provide a minimum short period of notice for emergency meetings and for furnishing the list of business in the agenda for such meetings. The Committee desired the Ministry to issue the necessary amendment at an early date.

(D)

13. The Committee noted that the Ministry of Labour proposed to amend rule 20 for issuing a separate set of rules relating to staff. The Committee desired the Ministry to do the needful at an early date.

* * *

- (ix) (a) The Additional Emoluments Compulsory Deposit (Employees other than employees of Government and Local Authorities) (Amendment) Scheme, 1975 (G.S.R. 253-E of 1975); and
- (b) The Additional Emoluments Compulsory Deposit (Local Authority Employees) (Amendment) Scheme, 1975 (G.S.R. 254-E of 1975). (Memorandum No. 51).

(A)

16. The Committee considered the above Memorandum and desired the Ministry of Finance (Department of Economic Affairs) to amend the Schemes so as to provide for the issue of a demand notice for payment within a specified period, as was being done in cases of Income-tax, before the nominated authority moved the Collector to recover the dues from the specified authority as arrears of land revenue.

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

(x) Junior Field Officers and Investigators (Small Scale Industries Organisation) Recruitment (Amendment) Rules, 1975 (G.S.R. 2608 of 1975) (Memorandum No. 52).

19. The Committee considered the above Memorandum and noted that the Ministry of Industry (Department of Industrial Development) had taken more than five years to issue an amendment to redesignate the posts of Junior Field Officers as those of Small Industry Promotion Officers, which had necessitated retrospective effect to the rules in question. They also noted that the question of the redesignation of the posts was not in issue before the Delhi High Court directly and that a period of more than 3-1/2 years had elapsed even after the Delhi High Court had given their judgement. The Committee, however, noted the assurance of the Ministry of Industry that efforts would be made to ensure that delays in issuing amendments to rule did not recur. The Committee decided to stress upon Ministries/Departments that retrospective effect to rules should be avoided as far as possible. If, in any case, it was not possible to amend the relevant statutory rules simultaneously with the enforcement of an executive decision, the rule should be amended as early as possible so that the period of retrospective effect is curtailed to minimum.

The Committee then adjourned.

MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (SIXTH LOK SABHA)

(1977-78)

The Committee met on Tuesday the 20th December, 1977 from
17.00 hours to 17.35 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman.*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Durga Chand
4. Chaudhary Hari Ram Makkasar Godara
5. Kumari Maniben Vallabhbai Patel
6. Shri Saeed Murtaza

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee considered Memoranda Nos. 53 to 63 on the
following subjects:—

S. No.	Memo No.	Subject
(1)	(2)	(3)
(i)	53	The Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 (G.S.R. 807 of 1974).
(ii)	54	* * *
(iii)	55	(a) The Paper (Control of Production) Order, 1974 (S.O. 465-E of 1974); and (b) The Paper (Control of Production, (Amendment) Order, 1974 (S.O. 172 of 1975).

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

(1)	(2)	(3)
(iv)	56	The Allotment of Government Residences in the Survey of India Estates Rules, 1974 (S.O. 2362 of 1974).
(v)	57	(a) The Delhi Sales Tax (Fifth Amendment) Rules, 1974 [No. F. 4(27)/68-Fin (Genl.) dated 19-6-1974]; and (b) The Delhi Sales Tax (Sixth Amendment) Rules, 1974 [No. F. 3(182)/71-Fin (G) dated 27-6-1974].
(vi)	58	The Besan (Gram Flour) Grading and Marking Rules, 1975 (S.O. 1618 of 1975).
(vii)	59	Implementation of recommendation made in para 70 of Twelfth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the I.A.S./I.P.S. (Probation) Amendment Rules, 1972 (G.S. R 386/387 of 1972).
(viii)	60	(a) The Department of Space Employees (Classification, Control and Appeal Amendment) Rules, 1977 (S.O. 780 of 1977); and (b) The All India Services (Discipline and Appeal Second Amendment) Rules, 1977 (G.S.R. 983 of 1977).

* * *

- (i) The Merchant Shipping (Levy of Seamen's Welfare Fee) Rules, 1974 (G.S.R. 807 of 1974)—(Memorandum No. 53).

(A)

3. Rule 5(1): The Committee considered the above Memorandum and decided to concur with the suggestion of the Ministry of Shipping & Transport (Transport Wing) to amend the Rule so as to put a ceiling of Rs. 500/- as the amount of security to be charged from a ship. The Committee desired the Ministry to effect the proposed amendment at an early date.

(B)

4. Rule 6: The Committee considered the matter and decided to concur with the suggestion of the Ministry to amend the Rule so as

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

to provide for arbitration subject to both parties agreeing to the reference of the dispute to the sole arbitration of the Director General. The Committee desired the Ministry to issue the proposed amendment at an early date.

(C)

5. *Rule 9(1)*: The Committee considered the Ministry's reply and felt that a period of 24 months for settlement of claims for refund was too long a period. The Committee decided to recommend that a period of 12 months may be prescribed for the purpose, which could be extended for another 12 months for reasons to be recorded in writing. The Committee desired the Ministry to issue the necessary amendment to this effect at an early date.

(D)

6. *Rule 11*: The Committee considered the matter and decided to endorse the amendment proposed by the Ministry that any person who contravenes any provision of the rules or fails to comply with the provisions thereof will be guilty of an offence and shall be punishable with fine which may extend to two hundred rupees and when the breach is a continuing one with a further fine which may extend to rupees fifty per day after the first breach during which the breach continues. The Committee noted that the penalty now proposed by the Ministry was within the limits laid down in Section 436(1) of the Merchant Shipping Act. The Committee desired the Ministry to issue the proposed amendment at an early date.

* * * *

(iii) (a) The Paper (Control of Production) Order, 1974 (S.O. 456-E of 1974); and

(b) The Paper (Control of Production) (Amendment) Order, 1974 (S.O. 172 of 1975)—(Memorandum No. 55).

(A)

8. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Industry for giving retrospective effect to the orders in question. In this connection, the Committee noted the opinion of the Attorney-General as also the ruling of the Supreme Court in *Hukam Chand vs. Union of India* (AIR, 1972 Supreme Court, 2427) that no Subordinate Legislation can be given retrospective effect, unless the law under which it is made authorises Government to give such retrospective effect. As

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

the Essential Commodities Act, 1955, under which Order have been issued, does not authorise Government to give retrospective effect to the Orders issued thereunder, the retrospective effect given to the Orders in question was without due legal authority. The Committee, therefore, decided to recommend that the Ministry should either give effect to the Orders from the date of their publication in the Gazette or alternatively incorporate a provision in the Essential Commodities Act empowering Government to give retrospective effect to the Orders issued thereunder.

(B)

9. The Committee noted that, on being pointed out, the Ministry had agreed to notify in future all Orders issued under clause 6 of the above Order and also to amend the Order to provide for recording of reasons in writing while granting exemption. The Committee desired the Ministry to issue the proposed amendment at an early date.

- (iv) The Allotment of Government Residences in the Survey of India Estates Rules 1974 (S.O. 2362 of 1974)—(Memorandum No. 56).

(A)

10. S.R. 317-AH-6(i) (c): The Committee considered the above Memorandum and noted that, on being pointed out the Department of Science and Technology had amended the Rule to the effect that the allotment shall not be cancelled except after giving to the Government servant a reasonable opportunity of showing cause against the proposed action.

(B)

11. S.R. 317-AH-12(6): The Committee noted with satisfaction that, on being pointed out, the Department had amended the Rules so as to provide for recording of reasons in writing in cases where the Head of Department directs the Director to cancel the allotment before the expiry of 30 days under the above Rules.

(C)

12. S.R. 317-AH-19: The Committee noted with satisfaction that, on being pointed out, the Department had amended the Rules to the effect that the allotment of the residence shall not be cancelled except after giving to the officer concerned a reasonable opportunity of being heard in person.

- (v) (a) Delhi Sales Tax (Fifth Amendment) Rules, 1974 No. F. 4(27)/68-Fin. (Genl) dt. 19-6-1974); and
 (b) Delhi Sales Tax (Sixth Amendment) Rules, 1974 (No. F. 3(182)/71-Fin (G) dt. 27-6-1974)—(Memorandum No. 57).

13. The Committee considered the above Memorandum and noted that Government had failed to comply with the recommendation of the Committee made in para 28 of their First Report (Fourth Lok Sabha) that in cases where the rules are required to be published in draft form, the preamble to the final rules should give the particulars regarding previous publication viz., (i) the date of publication of rules in draft form; (ii) the last date fixed for receipt of comments from the public thereon, and (iii) the date on which the Gazette copies containing the draft rules were made available to the public. The Committee also noted that as again the minimum of 30 clear days to be allowed to the public for sending comments/suggestions on the draft rules, in accordance with the oft-repeated recommendation of the Committee, the Delhi Administration had allowed only 15 days to public for sending comments/suggestions on the draft rules. The Committee noted the assurance of the Ministry of Finance| Delhi Administration for giving particulars about previous publication in final notifications in future. The Committee decided to again stress on the Ministry of Finance|Delhi Administration to allow not less than 30 clear days to the public for sending comments| suggestions on the draft rules.

- (vi) The Besan (Gram Flour) Grading and Marking Rules, 1975 (S.O. 1618 of 1975)—(Memorandum No. 58).

(A)

14. Rule 6(2): The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Rural Development) had agreed to amend the Rules for incorporating the particulars and manner of marking in the Rules, instead of their being specified by the Agricultural Marketing Adviser.

* * * *

- (vii) Implementation or recommendation made in para 70 of the Twelfth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the I.A.S./I.P.S. (Probation) Amendment Rules, 1972 (G.S. Rs. 386/387 of 1972)—(Memorandum No. 59).

16. The Committee considered the above Memorandum and noted that the Department of Personnel had initiated necessary action to

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

amend the Probation Rules so as to lay down the maximum period upto which the Central Government might extend the period of probation in individual cases. If the probationer failed to clear the final examination within the probationary period that may be so extended, he would be considered for being discharged from service under rule 12(a) of the Probation Rules. The Committee also noted that the Department of Personnel had since omitted the expression "or pass such other order as it may think fit" from Rule 9 of the I.A.S./I.P.S. (Probation) Rules, 1954 and Rule 10 of the I.F.S. (Probation) Rules, 1968. The Committee decided to ask Government to issue the propose amendment to the Probation Rules at a very early date.

- (viii) (a) The Department of Space Employees (Classification, Control & Appeal) Amendment Rules, 1977 (S.O. 780 of 1977); and
- (b) The All India Services (Discipline and Appeal Second Amendment) Rules, 1977 (G.S.R. 983 of 1977)—(Memorandum No. 60).

17. The Committee considered the above Memorandum and were not convinced by the arguments advanced by the Department of Personnel and Administrative Reforms for insertion of 'Notes' under sub-rule (8) of Rule 11 of the Department of Space Employees (Classification Control and Appeal) Rules, 1976, and sub-rule (a) of Rule 8 of the All India Services Discipline and Appeal Rules, 1969. In the opinion of the Committee, the matter had to be viewed in the context that the Government servant involved in disciplinary proceedings was ordinarily precluded from taking the assistance of any lawyer; he could take the assistance of only a Government servant including a retired Government servant. The number of Government servants who has the ability or the capacity or the knowledge of defending a Government employee in disciplinary proceeding very limited and such the restriction placed by the said notes may result in virtual deprivation of many Government servants involved in disciplinary proceedings from getting any proper assistance whatsoever. In any event, the reason given for putting the restriction of not more than two cases at a time imposed on retired Government servants were not at all convincing. The Committee decided to recommend that the 'Notes' in question should be omitted from the Rules.

* * * *

The Committee then adjourned to meet again on the 7th January, 1978.

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

MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)
(1977-78)

The Committee met on Wednesday, the 1st March 1978 from 15.30 to 16.15 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman.*

MEMBERS

2. Shri Bhagirath Bhanwar
3. Shri Somjibhai Damor
4. Shri Durga Chand
5. Shri Santoshrao Gode
6. Chaudhary Hari Ram Makkasar Godara
7. Shri Trepan Singh Negi
8. Kumari Maniben Vallabhbbhai Patel
9. Shri Sachindralal Singha

SECRETARIAT

Shri Y. Sahai—*Cheif Legislative Committee Officer.*

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

3. The Committee authorised the Chairman and, in his absence, Shri Durga Chand to present the Fifth Report to the House on their behalf on the 3rd March 1978.

* * *

The Committee then adjourned.

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