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COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)

NINTH REPORT

(Presented on the 11th May, 1978)

LOK SABHA SECRETARIAT
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Corrigenda to the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) (Presented on the 11th May, 1978).

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23	62	6	shall be binding on the person concerned'	'shall be binding on the person concerned'
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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1977-78)

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SECRETARIAT

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

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on the 7th January, 14th and 31st March and 3rd May, 1978. At their sitting held on the 31st March, 1978, the Committee heard oral evidence of the representatives of (i) the Ministries of Petroleum and Chemicals, and Law, Justice and Company Affairs (Department of Legal Affairs) regarding the Oil Industry (Development) Rules, 1975, (ii) the Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce) regarding the Tobacco Board Rules, 1976 and (iii) the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) regarding the Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974. The Committee wish to express their thanks to the officers of these Ministries for appearing before the Committee and furnishing the information desired by them.

3. The Committee considered and adopted this Report at their sitting held on the 9th May, 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

THE OIL INDUSTRY (DEVELOPMENT) RULES, 1975 (G.S.R. 160-E OF 1975)

5. Rule 24(2) of the Oil Industry (Development) Rules, 1975 reads as under:—

> "24(2). The Board may write off losses or waive recoveries up to Rs. 25 lakhs in each case. Write off of losses or waiver of recoveries beyond this amount shall be done with the prior approval of the Central Government."

The Committee on Subordinate Legislation which examined the above Rules at their sitting held on the 17th May, 1965 desired to know the

precise legal authority under which the Board had been empowered to write off losses or waive recoveries up to Rs. 25 lakhs in each case.

6. The Ministry of Petroleum and Chemicals with whom the above matter was taken up in their reply stated as under:—

"The precise legal authority under which the Board has power to write off or waive losses has to be derived from the combined operation of sections 6(1), 6(2), 6(6), 31(1) and 32(2)(g) of the Oil Industry Development Act, 1974. The Oil Industry Development Board is, having regard to its functions under Section 6, a development-*cum*-financial corporation. By virtue of section 6(1) and (2) of the Act, the main function of the Board is to grant loans and financial assistance for the development of the oil industry. By virtue of section 6(6) of the Act, this function of granting loans, advances and other financial assistance carries with it the power to 'do all such things as may be incidental to or consequential upon the discharge' of that function. The power to write off or waive losses is incidental to the function of granting loans and financial assistance because no individual or corporation engaged in granting loans can eliminate altogether the possibility of some of the debts due to it becoming bad debts. Thus, by virtue of section 6(6) of the Act itself, the Board has the power to write off losses or waive recoveries. But as the functions of the Board have to be discharged subject to the rules made under the Act (*vide* opening portion of section 6(1) of the Act) and as according to the scheme of the Act the Board is to function subject to the control of the Central Government, it is permissible for the Central Government by relying upon section 31(1) to make rules imposing restrictions on the powers of the Board so that the purposes of the Act are properly carried out. From this point of view rule 24(2) can be regarded as, in substance, imposing a restriction on the general power of the Board under section 6(6) to write off losses and waive recoveries. Alternatively, Rule 24(2) can be justified with reference to section 31(2)(g) read with section 6(6) and section 31(1) of the Act by holding that the powers to incur expenditure derived from rules relatable to section 31(2)(g) carry with them the incidental power of writing off losses and waiving recoveries and the same can be regulated or restricted by rules under section 31(1) for carrying out properly the purposes of the Act. Provisions similar to rule 24(2) occur in rules relating to other Boards also and are in accordance with standard practice, *vide* rule 33(2) of

the Cardamom Rules, 1966 made under section 33 of the Cardamom Act, 1965. The limit of Rs. 25 lakhs was considered an operational need for the proper day to day functioning of the Board."

7. The Committee on Subordinate Legislation (1975-76) considered the matter at their sitting held on the 10th December, 1975. As there was no specific provision in the Act empowering the Board to write off losses or waive recoveries, the Committee desired that opinion of the Ministry of Law might be sought in the matter.

8. The Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) in their opinion stated as under:—

"** ** **

2. The Oil Industry (Development) Board established under section 3 of the Oil Industry (Development) Act, 1974 is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract. [Section 3(3)].

3. Having regard to the functions of the Board as laid down in sub-sections (1) to (6) of Section 6, it would be reasonable to hold that the Board is a development-*cum*-financial corporation. It has powers to render financial and other assistance for the promotion of all such measures as are conducive to the development of oil industry. [Section 6(1)]. The Board can make grants or advance loans to any oil industrial concern or other person who is engaged in any activity relating to oil industry. It may guarantee the loans raised by any industrial concern or other person. It may underwrite the issue of stock, shares, bonds or debentures by any oil industrial concern relating as part of its assets any stock, shares, bonds or debentures which it may have to take up in fulfilment of its obligations thereto. It can act as agent for the Central Government or with its approval, for any overseas financial organisation or credit agency in the transaction of any business with any oil industrial concern in respect of loans or advances granted, or debentures subscribed by the Central Government or such organisation or agency. It has powers to subscribe to the stock or shares of any oil industrial concern [Section 6(2)].

4. The Board can render assistance for the promotion of measures with respect to prospecting for and exploration of mineral oil

within India (including the continental shelf thereof) or outside India and scientific, technological and economic research which could be directly or indirectly, useful to oil industry, experimental or pilot studies in any field of oil industry. [Section 6(3)].

5. The Board may charge such fees or receive such commission, as it may deem appropriate, for any services rendered by it in the exercise of its functions. [Section 6(1)].

6. Lastly, the Board may transfer for consideration any instrument relating to loans or advances granted by it to any oil indus- in the exercise of its functions. [Section 6(4)].

7. Even though the power of write off of losses is not conferred in specific terms on the Board under the aforesaid provisions, sub-section (6) of Section would, by necessary implication, include such a power, in as much as the same empowers the Board to do all such things as may be incidental to or may be consequential upon discharge of functions under the Act. The expression 'incidental to' or 'consequential upon' has to be understood in the sense of what necessarily follows from the main functions laid down under sub-sections (1) to (5) of Section 6. The Development-*cum*-Financial Corporation, as the Board, in discharge of its function of making grants, advancing loans, guaranteeing loans, giving financial assistance for prospecting, exploration for oil and for scientific, technological and economic research etc., may possibly incur losses which have to be written off or recovery in the appropriate cases may have to be waived. Accordingly, the power to write off such losses or waive recoveries is incidental to and consequential on to that of granting loans, guaranteeing the same or financing the other measures for promotion of oil industry.

8. Attention may also be invited to section 20 relating to preparation by the Board, of accounts and the balance sheet, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India, auditing of said accounts by CAG and for laying of the certified copies of the accounts of the Board with the audit report thereon before each House of the Parliament. These provisions, among others, are in the nature of specific safeguards with respect to the Board exercising all financial powers under the statute including the power to write off of loans and waiving recoveries.

9. It may also be pertinent to mention that there are stringent provisions conferring powers on the Board for calling for repayment before agreed period in the circumstances mentioned in section 8 and there are also special provisions for enforcement of claims by the Board in section 9. This would mean that the necessity for write off of losses or waiving recoveries would arise only in circumstances where the debts in question, could not be realised even after invoking the provisions of section 8 9, as the case may be.

10. The fact that under section 31(1) read with clause (g) of sub-section (2) of the said section, the rules can be made with regard to the powers of the Board, its Chairman and other members, Secretary and Committees of the Board with respect to the incurring of the expenditure lends further support to the proposition that the Board under the statute would be empowered to write off losses or waive recoveries.

11. In fact rule 24(2) of the Oil Industry (Development) Rules, 1975 objected to by the Committee on Subordinate Legislation, in substance, seeks to place limitations on the Board's power to write off losses or waive recoveries by providing that beyond a sum of rupees twenty-five lakhs, the write off of losses or waiver of recoveries shall be done with the prior approval of the Central Government. The power of writing off of losses or waiving the recoveries as discussed earlier flows from the provisions of the Act itself.

12. By way of analogy, it may as well be pertinent to refer to rule 4 of the Industrial Financial Corporation Rules, 1957 (made under section 42 of the Industrial Finance Corporation Act, 1948) which lays down that the Corporation shall refer to the Central Government for sanction of writing off of any amount exceeding Rs. 25,000 in all in any one case. The Industrial Finance Corporation Act, 1948, in section 23, lays down the business which the Corporation may transact, which includes granting of loans or advances, guaranteeing of payments, loans etc. which are part of functions of the Board also. Rule 4 of the Rules made under the 1948 Act also proceeds on the valid assumption that the power to write off all losses is incidental to or consequential upon the power to grant loans or rendering financial assistance. If the suggestion of the Committee on Subordinate Legislation to expressly provide for the power of write off of losses in the parent Act, is accepted, the same would necessitate amendment to all the statutes of

similar nature dealing with the Development-*cum*-Financial Corporations and would be throwing in doubt and be a departure from the Legislative practice so far followed. The legal necessity for such a course of action is not, according to us, established."

9. The Committee considered the matter at their sitting held on the 7th January, 1978 and decided to hear oral evidence of the representatives of the Ministries of Petroleum and Chemicals and Law, Justice and Company Affairs in regard to the provision of Rule 24(2) empowering the Board to write off losses or waive recoveries up to Rs. 25 lakhs in each case.

10. At their sitting held on the 31st March, 1978, the Committee heard oral evidence of the representatives of the Ministries of Petroleum and Chemicals and Law, Justice and Company Affairs (Department of Legal Affairs) in the matter.

11. Explaining the authority for write off of losses or waiver of recoveries by the Board up to Rs. 25 lakhs in each case, without the prior approval of the Central Government, the representative of the Department of Legal Affairs stated that the Board was a body corporate with a legal personality and certain powers had been given to it including the power to grant loans and grants. The Board being a body corporate engaged in financial transactions, there was always the possibility of some loss. Therefore, the power of the Board had necessarily to be construed as including the power of write off under the general or inherent power. The rule in question was restrictive of general power of the Board to write off. Under the Act, there is no limitation on the power of the Board to write off or waive. But the rule imposes a restriction in that it lays down a limit, beyond which the write off or waiver shall be done with the prior approval of the Central Government.

12. The Committee desired to know whether there was any difficulty in making a specific provision in the Act confering the power of write off or waiver on the Board. The representative of the Department of Legal Affairs stated in reply that the general pattern of the laws relating to commodity Boards and other development boards was that no such provision was included therein. Even in the case of an ordinary company registered under the Campanies Act, the power to write off was not specified in its memorandum or articles of association. It was incidental to the running of the business of the company.

13. Differentiating between 'write off' and 'waiver', the representative of the Department of Legal Affairs stated that write off was recognition in

the accounts of an existing fact, which had already occurred. The loss had taken place and instead of showing it in the books, it was written off, so that the true state of affairs was brought to the notice of Parliament. The waiver might be of a different kind. There the claim may be doubtful, it might be compromised. He added that if the power of waiver was not available to the Board, even in a hopeless case it would have to file a suit and incur expenditure on court fees, etc.

14. When asked whether it was necessary to have this provision, the representative of the Ministry of Petroleum stated that the Board deals in hundred of crores of rupees. It finances schemes which are of an exploratory nature, particularly Research and Development Schemes. It is quite possible that some schemes might not yield necessary fruits, and they might have to write off the resulting loss.

15. In reply to a question whether any guidelines had been laid down for waiver of recovery, the representative of the Ministry of Petroleum stated that no occasion had arisen so far. Therefore, nothing had been laid down.

16. The Committee referred to the Ministry of Law's note wherein it had been stated that if the suggestion of the Committee on Subordinate Legislation to expressly provide for the power of write off in the parent Act is accepted, the same would necessitate amendment to all the statutes of a similar nature dealing with Development-*cum*-Financial Corporations. The Committee enquired whether, to meet this difficulty, a general statute could not be brought in, with the names of the different Acts constituting Development-*cum*-Financial Corporations in the Schedule to the Bill. The representative of the Department of Legal Affairs stated that it might be possible.

17. The Committee observe that under Rule 24(2) of the Oil Industry (Development) Rules, 1975, the Oil Industry Development Board may write off losses or waive recoveries up to Rs. 25 lakhs in each case. Neither the Ministry of Petroleum and Chemicals nor the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) have been able to point out any express provision in the parent Act—the Oil Industry Development Act, 1974—which confers or authorises the conferring of such a power on the Board. According to Government, the power of write-off or waiver is incidental to the Board's function of granting loans and advances. The Committee are not satisfied with this explanation. In their opinion, the power of waiver of recoveries, as contradistinguished from the formal power of write off, is a substantial power, and not just incidental to or consequential upon the Board's function of granting loans and advances. The Committee feel that in view of the huge public funds involved, the power of waiver should have an express authorisation from the parent law. The

power of write off may flow from the rules, but even in the case of write-off, there should be clear guidelines indicating the circumstances in which the power of write off shall be exercised.

18. The Committee further feel that the Board's power of write off or waiver should not exceed rupees twenty lakhs in a case. Write off of losses or waiver of recoveries beyond this amount, should have the prior approval of the Central Government.

19. It has inter alia **been argued by the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) that if the suggestion of the Committee on Subordinate Legislation to expressly provide for the power of waiver in the parent Act is accepted, the same would necessitate amendment to all the statutes of a similar nature dealing with Development-cum Financial Corporations. In the opinion of the Committee, this difficulty is not an insurmountable one. As conceded by the representative of the Department of Legal Affairs in evidence, to meet this difficulty, a general statute for the purpose can be brought in, with the names of the different Acts constituting Development-cum-Financial Corporations in the Schedule to the Bill.**

20. The Committee desire the Ministry of Petroleum and Chemicals to take early steps for the amendment of the Rules and the Act in question, in the light of the observations of the Committee in paras 17—19 of the Report.

III

THE TOBACCO BOARD RULES, 1976 (G.S.R. 1-E OF 1976)

21. Sub-rule (2) of rule 24 of the Tobacco Board Rules, 1976 provides as under :—

"(2) The Board may write off losses or waive recoveries up to ten thousand rupees in any single case."

22. During the course of examination of the rules, the Committee noticed that the Tobacco Board Act does not empower the Board to write off losses or waive recoveries. The Ministry of Commerce were asked to state the authority under which this power was conferred on the Board through the rules.

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

"Rule 24(2): It is a usual practice consistent with the autonomous character of such institutions to give them some power for

writing off losses or waiving recoveries. An identical provision exists in sub-rule (2) of rule 22 of the Marine Products Export Development Authority Rules, 1972."

24. The Committee which considered the matter at their sitting held on 7-1-1978 decided to hear oral evidence of the representatives of the Ministry of Commerce in regard to the provision of Rule 24(2) empowering the Board to write off losses or waive recoveries upto Rs. ten thousand in any single case.

25. At their sitting held on 31-3-1978, the Committee heard oral evidence of the representatives of the Ministry or Commerce in the matter.

26. During evidence the Committee desired to know whether there was any authorisation in the parent Act for the Board to write off losses and waive recoveries. The representative of the Department of Commerce stated that they had proceeded under Section 32 of the Tobacco Board Act. They had been advised that under section 32(1) of the Act which empowered Government to make rules for carrying out the purposes of the Act and under Section 32(2)(i) which empowered Government to lay down the powers of the Board, it was possible for Government to frame rules empowering the Board to write off irrecoverable amounts.

27. In reply to a question, the representative of the Department of Commerce stated that there had so far been no occasion for the Board to exercise the power of write-off or waiver since 1976.

28. In reply to a further question whether any guidelines had been laid down in the matter, the witness stated that during the current year when the money was advanced to the Board for disbursement, guidelines were given to the Board. He further assured that the suggestion for guidelines would be kept in view in future also.

29. The Committee observe that, as in the previous case of Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975) dealt within Chapter II of this Report, there is no express provision in the parent Act—the Tobacco Board Act, 1975—which empowers or authorises the empowering of the Tobacco Board to write off losses or waive recoveries. As, in the opinion of the Committee, the power of waiver of recoveries is a substantial power, there should be an express authorisation therefor from the parent Act. The power to write off may flow from the rules but even in the case of write off, there should be clear guidelines indicating the circumstances in which the power of write off shall be exercised. The Committee will like the Ministry of Commerce to take early steps for the amendment of the Act and the rules in question accordingly.

IV

INDIAN CONSORTIUM FOR POWER PROJECTS PRIVATE LTD. AND THE BHARAT HEAVY ELECTRICALS LTD. AMALGAMATION ORDER, 1974 (G.S.R. 155-E OF 1975)

30. Paragraph 11(b) of the Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974, provides as under :—

> "Dissolution of the Indian Consortium for Power Projects Private Limited.—Subject to the other provisions of this order, as from the appointed day :—
>
> (a) xx xx xx
>
> (b) the right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceedings in respect of any such share."

31. The wording of the above provision was such that it appeared to bar the jurisdiction of Courts. It was also felt that there should be an express provision in the parent Act empowering the Executive to extinguish the rights of partners by delegated legislation.

32. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs), with whom the above matter was taken up, in their reply stated as under :—

> "Paragraph 11(b) of the Order has the effect of extinguishing the rights of the shareholders of the dissolved company and of preventing such shareholders from asserting or taking any claim or making any demand or proceedings in respect of any share held by them in the dissolved company. Under paragraph 7 of the Orderfi every shareholder of a dissolved company is entitled to be paid in cash, by the company resulting from the amalgamation the face value of the shares held by him in the dissolved company. In view of this categorical provision of the Order, paragraph 11(b) does not appear to take away any substantial right of the shareholder. In any case, that paragraph, as it stands, takes away the right of the shareholder and not the power of the court."

33. On a further reference regarding the provision of the Act under which the rights of the shareholders had been extinguished through subordinate legislation, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) stated as under :—

> "The amalgamation order in respect of Indian Consortium for Power Projects (P) Ltd. (ICPP) and the Bharat Heavy Electricals

Ltd. (BHE) is made u/s 396 of the Companies Act, 1956, Section 396 has to be read with Sections 391, 392 and 394 of the Companies Act, 1956, whereunder power to approve Scheme of Amalgamation of two or more companies is vested in the High Courts. S. 396 is an extension of the same power vested in the Central Government in cases where amalgamation of two or more companies is considered essential in national or public interest. The powers that are exercised by the Central Government are on the same lines and on the same pattern as contained in s. 394 of the Companies Act, 1956.

The word 'Amalgamation' has no precise legal definition. But, by 'Amalgamation', it is implied the combination of two or more companies into one or into the control of one company. Amalgamation can take place by sale of the business of one or more companies to another existing company in any of the following four ways :—

(a) Sale of the whole Undertaking.

(b) Sale of the undertaking by the Liquidator in case the company is under liquidation.

(c) A Scheme of arrangement u/s 391 of the Companies Act, 1956.

(d) Sale of all or a large proportion of the shares in one or more companies by the shareholders to another company.

In the case of amalgamation of Indian Consortium for Power Projects Private Ltd. and Bharat Heavy Electricals Ltd. the entire undertaking of ICPP has been transferred to and vested in Bharat Heavy Electricals. After the entire undertaking has so vested in the resultant company, namely, BHE, there is no legal status for ICPP and naturally it has to go out of existence. In this connection, attention is invited to s.394(1) (b) (iv) of the Companies Act, 1956 where it has been provided that while approving any scheme of amalgamation, the Court may also order the dissolution without winding up of any transferor company, *i.e.* Indian Consortium for Power Projects Private Ltd. It may, therefore, be seen that the parent Act itself provides for making an Order for dissolution of the transferor company. Clause No. 7 of the order of Amalgamation whereunder it has been provided that payment in cash at the par value of the shares held by shareholders of M/s. ICPP other than BHE would be made. Therefore, after cash payment has

been made to the shareholders they cease to be shareholders of the co. and consequently, there will be no rights which they enjoy in respect of ICPP. In the circumstances, the order is consistent with the provisions made in the Companies Act, 1956 and does not suffer any defects or infirmities."

34. The Committee considered the matter at their sitting held on the 7th January, 1978 and decided to hear oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) in regard to the provision of paragraph 11(b) extinguishing the rights of shareholders and seeking to oust the jurisdiction of courts in regard thereto.

35. At their sitting held on 31-3-1978, the Committee heard oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) in the matter.

36. During evidence, the Committee desired to know the authority under which a provision had been made in para 11(b) of the Amalgamation order for extinguishing the rights of shareholders in the dissolved company. The representative of the Department of Company Affairs stated that para 11(b) read with 11(a) provided that subject to the other provisions, as from the appointed date, the Indian Consortium Power Projects Private Ltd. shall be dissolved and no person might make claim, demand or start proceedings against the dissolved company. He added that from the appointed date the dissolved company had ceased to exist and therefore, its share-holders could not have a claim in their capacity as share-holders .

37. When pointed out that the Amalgamation Order had been issued under Section 396 of the Companies Act wherein there was no specific authority for extinguishing the rights of the shareholders, the representative of the Department of Company Affairs stated that under sub-section (1) (b) (iv) of Section 394 of the Companies Act, if a party had gone to the High Court for the same Amalgamation, the High Court could by order sanction a compromise arrangement or by a subsequent order make provision for all or any of the following matters, namely, transfer, allotment, dissolution, without winding up of any transferor company. Section 396(2) of the Companies Act provided that an order to be issued thereunder might contain such consequential, incidental or supplemental provisions as might be necessary to give effect to the agreement. The Government had assumed that what the High Court could do under Section 394, the Company Law Board could do under Section 396(2).

38. When asked why the Central Government had under paragraph 11(b) of the Order sought to take away the right of a share-holder to move

a court of law for redressal of his grievances, the representative of the Department stated that no citizen was barred by para 11(b) of the Amalgamation Order from going to a Court. The intention was merely to ensure that he no longer functioned as a share-holder and whatever power he might have under the Company Law as a share-holder ceased to exist when he was no longer a share-holder. He further stated that in the present case, the two amalgamating companies had already expressly agreed that three shareholders of the amalgamating companies should get back the face value of their shares and the transferee company, the Bharat Heavy Electricals, should pay back these shares.

39. In reply to a question, the witness conceded that the Company Law Board cannot take away the right of a citizen to go to a court of law if the parent law does not provide for it. Rather this would be "illegal".

40. In reply to a another question, he stated that in the particular case, all the share-holders were public sector undertakings and there was therefore no question of any of them going to a court of law. But in the case of Balmar Lawrie, certain private share-holders were still claiming that they were not being adequately compensated.

41. In reply to a further question, the representative of the Ministry agreed to consider the question of making a provision for reveissiosary or appellate authority in the order.

42. The Committee note that in their evidence before the Committee, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have conceded that although para 11(b) of the Amalgamation Order provides that "the right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceedings in respect of any such share", no citizen is barred from going to a court of law. It has also been conceded by the Department of Company Affairs during evidence that the Company Law Board cannot fake away the right of a citizen to go to a court of law when the parent law does not provide for it. In view of this, the Committee desire that the Department of Company Affairs should amend the Order in question so as not to give an impression that it seeks to take away the right of a shareholder to go to a court of law.

43. The Committee also feel that, apart from courts, there should be some sort of revisionary or appellate authority for the redressal of any grievance of a person who might feel aggrieved by any action taken under the Amalgamation Order. The Committee desire the Department to examine whether the provisions of the existing law empower Government to provide for such an authority or an amendment of the parent law is

necessary for this purpose. The Committee will like the Department of Company Affairs to take necessary action to this end without any loss of time.

V

THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) (SECOND AMENDMENT) RULES, 1975 (G.S.R. 985 OF 1975)

44. Under Rule 5(4) and Rule 5A(2)(i) of the All India Services (Discipline and Appeal) Rules, 1969, as substituted by the All India Services (Discipline and Appeal) (Second Amendment) Rules, 1975 (G.S.R. 985 of 1975), in cases where an Order of dismissal, removal or compulsory retirement from service is set aside by *the Appellate or reviewing authority solely on the ground of non-compliance with the requiring of clauses* (2) *of article* 311 *of the Constitution and no further enquiry is proposed to be held,* or in cases where the dismissal, removal or compulsory retirement of a Member of the Service is set aside by a *Court of Law solely on the ground of non-compliance with the requirements of clause* (2) *of article* 311 *of the Cons.itution and where he is not exonerated on merits,* the Member of the Service shall be paid such proportion of the full pay and allowances to which he would have been entitled and had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the authority competent to order re-instatement may determine, after giving notice to the Member of the Services of th quantum proposed and later considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

> Provided that any payment under the above rules to a Member of the Service shall neither be equal to full pay and allowances nor less than the subsistence allowance and other allowances admissible to him :
>
> Provided further that such payment shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Member of the Service are passed by the appellate authority or reviewing authority or immediately preceding the date on which the judgement of the Court was passed or the date of retirement under the All India Services (death-cum-retirement benefits) Rules, 1958 of such Member of the Service, as the case may be.

45. Rule 5-B(5) of the above rules made a similar provision in cases where the order of suspension was revoked by the competent authority.

46. The Committee on Subordinate Legislation (Fifth Lok Sabha) which considered the above rules at their sitting held on the 23rd February, 1976, desired that the comments of the Department of Personnel might be called on the following points:

(i) Considerations for not paying full pay and allowances to the Employees in the above cases where the order of dismissal, removal or compulsory retirement had been set aside by the appellate or reviewing authority or a Court of Law.

(ii) Period of notice to be given by the authority to the employee in regard to the quantum of his pay and allowances should be specified in the rules.

(iii) Considerations for the payment being restricted to three years only preceding the date of reinstatement or the date of judgement.

47. The Department of Personnel and Administrative Reforms with whon the matter was taken up have in their reply stated as follows:

Point (I) "Cases falling under Rules 5 and 5A of the All India Services (Discipline and Appeal) Rules, 1969, can be divided into two categories as under:—

(i) Where the authority competent to order reinstatement is of the opinion that the member of the Service who was dismissed, removed or compulsorily retired has been fully exonerated [Rule 5(2)], or

(ii) Where the order of dismissal, removal or compulsory retirement is set aside by a Court of law on the merits of the case [Rule 5A(3)].

and

Category II

(i) where the authority competent to order reinstatement does not fully exonerate the member of the Service [rule 5(4)], or

(ii) where the order of dismissal, removal or compulsory retirement is set aside by the appellate or reviewing authority solely on grounds of non-compliance with the requirements of Art. 311(2) of the Constitution [rule 5(4)], or

(iii) where the order of dismissal, removal or compulsory retirement is set aside by a Court of Law solely on grounds of non-compliance with the requirements of article 311(2) of the Constitution [rule 5A(2) (i)].

In cases falling under the first category, members of the Service are entitled to full pay and allowances. In cases falling under the second category the member of the Service shall be paid such proportion of pay and allowances as the authority competent to order reinstatement may determine, after giving due notice and consideration his representation, if any.

The position with regard to cases falling under the first category, *i.e.* where the member of the Service is *fully exonerated* or where the order of dismissal etc. is set aside on merits by a Court of Law, is quite clear and needs no further explanation. Similarly, in cases where a member of the Service *is not fully exonerated,* i.e. cases falling under (i) of the second category, the position is also clear; an officer will get such proportion of pay and allowances as the competent authority may determine. In respect of those members of the Service where the order of dismissal, removal or compulsory retirement is set aside by a Court of Law or by an appellate or reviewing authority solely on grounds of non-compliance with the requirements of article 311(2) of the Constitution, i.e. cases falling under (ii) and (iii) of the second category, it cannot be said that if the provisions of article 311(2) of the Constitution were strictly followed, the disciplinary proceedings would have ended in complete exoneration. It, therefore, follows that in such a case, it would be improper to allow full pay and allowances as it cannot be equated with a case where there is full exoneration either by a Court of Law or by the appellate|reviewing authority after considering the merits of the case.

On the other hand in cases, where the order of dismissal, removal or compulsory retirement is set aside on grounds of non-compliance with the requirements of article 311(2) of the Constitution, as there is no exoneration on merits, such cases will have to be equated with cases in which the member of the Service is not fully exonerated by the authority competent to order reinstatement. It follows that in both type of cases, the provisions regarding pay and allowances should be similar, *i.e.* the member of the Service will be entitled to such propertion of pay and allowances as may be determined by the competent authority. It would be discriminatory to permit full pay and allowances to a member of the Service whose order of dismissal, removal or compulsory retirement is set aside on ground of non-compliance of article 311(2), when no such provision is possible for an officer who is similarly placed in that he is not fully exonerated.

It may be clarified that Rules 5, 5A and 5B of the All India Services (Discipline and Appeal) Rules, 1969 substituted *vide* this Department's Notification dated 26th July, 1975 are based on the provisions contained in FR 54, 54A and 54B. The old FR 54 was substituted by the present FR 54 in 1971 because of the ruling of the Supreme Court in the case of

Devendra Pratap Narain Sharma *versus* State of Uttar Pradesh (AIR) 1962 SC 1334). In this case the Supreme Court held that FR of U.P. (which was identical with F.R. of the Central Government) had no application in cases where the dismissal of a Government servant was declared invalid by a civil court and he continued in service notwithstanding the order of dismissal. The Supreme Court held that this rule applied only when the dismissal was set aside in departmental proceedings. The result of the judgment was that there was no provision in the rules to regulate pay and allowances of a Government servant for the period of suspension proceeding dismissal set aside by a Court. In order to fill this gap, FR 54 was substituted by the new FR 54, 54A and 54B. In order to cover cases where (i) a Government servant is reinstated in service after dismissal, removal or compulsory retirement as a result of appeal|review, (ii) dismissal, removal or compulsory retirement is set aside by a Court of Law, and (iii) a Government servant under suspension is reinstated in service pending finalisation of disciplinary proceedings or when he dies before the conclusion of disciplinary proceedings."

Point (ii)

"The Ministry of Finance (Expenditure) have amended sub-rule 4(i) of FR 54 to provide that the period of notice shall in no case exceed 60 days from the date on which the notice has been served, *vide* their Notification No. 1(1)-E.IV(A)/75, dated 4-10-76. The All India Services (Discipline and Appeal) Rules are being amended on these lines."

Point (iii)

"The provision for the payment being restricted to three years is based on the provisions of the law of limitations."

48. The Committee observe that article 311(2) of the Constitution which requires that a Government servant involved in disciplinary proceedings should be given a reasonable opportunity of being heard in respect of the charges against him and a reasonable opportunity of representation against the penalty proposed to be imposed on him is based on the principles of natural justice and strict compliance with its requirements is of paramount importance from the point of view of equity and fair-play. The Committee are therefore unable to appreciate the reply of the Department of Personnel and Administrative Reforms that in cases covered by Rules 5(4) and 5A(2)(i) of the All India Services (Discipline and Appeal) Rules, 1969 where the order of dismissal, removal or compulsory retirement from ser-

vice is set aside by the appellate or reviewing authority or by a court of law solely on grounds of non-compliance with the requirements of article 311(2) of the Constitution and no further enquiry is proposed to be held, there is no complete exoneration. If the Department's contenion is accepted, it will be tantamount to punishing a member of the service on the basis of an enquiry which is held not to have been properly conducted. The Committee are of the opinion that once an order of dismissal, removal or compulsory retirement from service is set aside by a Court of Law or by the appellate or reviewing authority on the ground of non-compliance with the requirements of clause (2) of article 311 and no further enquiry is proposed to be held, the member of the service should be treated on the same footing as the one having been completely exonerated and he should be allowed full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. In case the competent authority feels that in a particular case if the provisions of article 311(2) of the Constitution were strictly followed, the disciplinary proceedings would not have ended in complete exoneration of the member of the service, it is open to the competent authority to hold a further enquiry. Till this is done, there is no justification whatever for making any reduction in the pay and allowances of the member of the service.

49. The Committee also feel that it is not appropriate for Government to proceed on the analogy of the law of limitation in such cases and restrict payment to only three years. The affected members of the service should therefore get pay and allowancs for the whole period immediately preceding the date of their reinstatement during which they remained dismissed, removed or retired from service or suspended.

50. The Committee note that the Department of Personnel and Administrative Reforms propose to amend the Rules to provide that the period of notice should in no case exceed sixty days from the date on which the notice has been served. In the opinion of the Committee, the proposed amendment is in the right direction. But in order that the period allowed to a member of the service to make a representation in any particular case is not too short, some minimum period for making a representation should also be specified in the rules.

51. The Committee desire the Department of Personnel and Administrative Reforms to take early step for the amendment of the rules in question on the lines as indicated in paras 48—50 above.

VI

THE SUGARCANE (CONTROL) AMENDMENT ORDER, 1975 (G.S.R. 492-E OF 1975).

52. Proviso to sub-clause (7) of clause 5A of the Sugarcane (Control) Order, 1966, as inserted by the Sugarcane (Control) Amendment Order, 1975 (G.S.R. 492-E of 1975), provides for payment of additional price to the sugarcane grower even when he supplies less than 85 per cent of the agreed quantity of sugarcane. Sub-clause (7) of clause 5A *ibid*, lays down that additional price shall become payable to a sugarcane grower, if he supplies not less than 85 per cent of the agreed quantity. It was felt that the words 'less than 85 per cent' appearing in the proviso introduced an element of uncertainty as it might mean any figure varying from 1 to 85.

53. The Ministry of Agriculture and Irrigation (Department of Food), with whom the matter was taken up, stated in reply as under:—

> "......the intention of clause 5A(7) of the Sugarcane Control Order is that the grower should normally supply at least 85 per cent of the contracted quantity of cane to qualify to receive the determined additional price of cane. Failure to do so can be condoned only in circumstances envisaged in the proviso to this clause to enable the grower to get the payment.
>
> To clarify the matter further, the sugarcane grower will be eligible for payment of additional price for the supplies of not less than 85 per cent of the sugarcane as agreed to between him and the producer of sugar. In spite of his best intentions, however, the grower may not be in a position to keep up his supplies of not less than 85 per cent of the cane agreed to be supplied by him, for reasons beyond his control, such as, drought, floods, etc. To take care of such exigencies, it has been provided in the proviso that the additional price shall be payable, even though supplies fell short of 85 per cent of the agreed quantity, provided for the same supplies, the grower had not been subjected to any penalty under any Central/State Acts/Rules/Orders for his failure to supply the 85 per cent of the cane contracted for supply the proviso is intended to prevent frivolous claims by growers, and ensure only genuine claims."

54. In reply to a further query, the Ministry clarified the position as follows:—

> "the intention is that a grower should normally supply at least 85 per cent of the cane he had agreed to supply and to deny him the benefit of additional cane price if he fails to do so.

There may be occasions, when for reasons beyond his control he may not be able to do so, and the intention further is that he should not be deprived of the additional price for the cane he actually supplied, even if it is as low as 45 per cent or 50 per cent."

55. In pursuance of their above reply, the Ministry were requested to state whether they had any objection to incorporate their intention in the Order that the grower would not be deprived of the additional price for the sugarcane he actually supplied, even if it fell short of 85 per cent of the agreed quantity, if the short supply *was occasioned by reasons beyond his control.*

56. While not agreeing with the above suggestion the Ministry have urged as follows:—

"The main objective behind the provision to supply 85 per cent of the cane agreed to be supplied by the farmer for being eligible to receive additional cane price under Clause 5A of the Sugarcane (Control) Order, 1966 (as amended by the Sugarcane (Control) Amendment Order 1975) is that in the normal course every producer of sugarcane should supply at least 85 per cent of the contracted amount. It is only in exceptional circumstances beyond his control that he would be entitled to his share of the additional cane price even if he failed to supply 85 per cent. The test for this qualification is that he should not have been penalised by a competent authority for his failure to supply 85 per cent of the sugarcane so agreed. Incorporating this intention in the form suggested by the Lok Sabha Secretariat would lead to frivolous claims for additional cane price and laxity on the part of sugarcane grower to supply at least 85 per cent of the quantity of cane agreed.

In the circumstances, it is felt that no change in the existing Clause 5A(7) of the Sugarcane (Control) Order, 1966, is called for."

57. The Committee are not satisfied with the above reply of the Ministry of Agriculture and Irrigation (Department of Food). According to the Ministry, the intention underlying the proviso to sub-clause (7) of clause 5A is that the cane grower should get the benefit of additional price even in cases where he supplies less than 85 per cent of the agreed quantity if the shortfall is occasioned by reasons beyond his control. If so, the Ministry should have no objection to clearly spelling out their intention in the Order. The argument advanced by the Ministry for not incorporating the above intention in the Order is that it would lead to frivolous claims for additional cane price. The Committee are unable to appreciate this argument, for, as

they observe, natural calamities, such as floods, droughts, etc. which are generally the cause of shortfall in agricultural production are a well-known phenomenon. Also, the additional payment will become admissible only when the grower shows that the shortfall in supply is ascribable to reasons beyond his control. On the other hand, as, under the existing proviso, the only condition for admissibility of additional price is that the supplier has not be subjected to any penalty under any Central/State Act/Rules/Order for the shortfall in supply, there could be cases where additional price is paid to a supplier even where such shortfall has not been occasioned by reasons beyond his control. Apparently, this would be against the underlying intention of the proviso. The Committee will, therefore, like the Ministry of Agriculture and Irrigation (Department of Food) to take early steps to amend the proviso in question so as to clearly spell out their intention.

VII

THE GENERAL INSURANCE (RATIONALISATION OF PAY SCALES AND OTHER CONDITIONS OF SERVICE OF OFFICERS) SCHEME, 1975 (S.O. 521-E OF 1975).

58. Paragraphs 10(6) and 14 of the General Insurance (Rationalisation of Pay Scales and other conditions of Service of Officers) Scheme, 1975 (S.O. 521-E of 1975) read as follows:

"10(6) Notwithstanding anything contained in the foregoing sub-paragraphs—

(a) where the penalty of dismissal is imposed on an Officer—

(i) who has been convicted of an offence, committed in the course of his employment and which offence, in the opinion of the Corporation or the Company, as the case may be involves moral turpitude, or

(ii) for any act involving violence against the management or other Officers or employees, or any riotous or disorderly behaviour in or near the place of employment,

the gratuity payable to him shall stand wholly forfeited; and

(b) where the penalty of compulsory retirement, removal from service, or dismissal is imposed on an Officer for any act involving the Corporation or the Company, or both, in financial loss, the gratuity payable to him shall stand forfeited to the extent of such loss."

* * *

"14. *Interpretation.*—Where any doubt or difficulty arises as to the interpretation of any of the provisions of this Scheme, it shall be referred to the Central Government for decision and the decision of the Central Government thereon shall be binding on the persons concerned."

59. At their sitting held on the 23rd February, 1976, the Committee on Subordinate Legislation (Fifth Lok Sabha) considered the above scheme and desired to call for the comments of the Ministry of Finance on the following points arising out of their examination:

(i) *Paragraph* 10(6).—Whether the Ministry have any objection to providing for giving a reasonable opportunity of being heard to the person concerned before action is taken against him under this sub-paragraph.

(ii) *Paragraph* 14.—The paragraph, as worded, gives an impression that it seeks to bar the jurisdiction of courts in regard to the interpretation of the scheme. Whether the Ministry have any objection to amending the paragraph so as not to convey such an impression.

60. The Ministry of Finance (Department of Economic Affairs-Insurance Wing) with whom the matter was taken up, have stated as under:

"(i) Para 10(6)—This paragraph of the General Insurance (Rationalisation of pay scales etc. of officers) Scheme provides that where an officer is convicted of an offence involving moral turpitude or for any act involving violence against the management, the gratuity shall be wholly forfeited or where the Corporation or a subsidiary Company has been put to a financial loss for which any of the penalties of compulsory retirement, removal or dismissal has been imposed, the gratuity shall be forfeited to the extent of such a loss. It will be seen that para 10(6) only stipulates the circumstances under and the extent to which the gratuity payable under para 10 of the Scheme shall be forfeited. The scheme does not provide for the procedure for examination and imposition of the penalties on an officer. They have been provided for separately in the General Insurance (Conduct, Discipline and Appeal) Rules, as framed by the G.I.C. and each of its subsidiaries for its employees (including officers). According to these rules, penalty of compulsory retirement, removal from service or dismissal cannot be imposed on an officer without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him. It may also be added that the provision in para 10(6) is similar to the provision under section 4(6) of the payment of Gratuity Act, 1972.

(ii) Para 14—It provides that where any doubt or difficulty arises as to the interpretation of any of the provisions of this Scheme, it shall be referred to the Central Government for decision and the decision of the Central Government thereon shall be binding on the persons concerned. The said para does not oust the jurisdiction of the Courts completely. If the interpretation given by the Central Government is not in accordance with the provisions of the General Insurance Business (Nationalisation) Act, 1972, in such a case the person aggrieved can always approach the Courts for appropriate relief. Further, if a person claime a relief under any of the provisions of the said Scheme, in such cases also, the jurisdiction of the Courts has not been ousted. Besides, in view of section 16(4) of the said Act, providing for the termination of the services of an officer to whom the rationalisation of pay scales and service conditions are not acceptable, and of section 16(7) providing that the provisions of this section and of any scheme framed thereunder shall have effect notwithstanding anything to the contrary contained in any other law or any agreement, award or other instrument for the time being in force, there is practically no scope for any difference of opinion or dispute arising out of the provisions of the said Scheme. Ministry of Law also concurs with this view."

61. **The Committee have given a careful thought to the whole matter. They observe that as in the cases enumerated in clause (a) of paragraph 10(6) of the Scheme, the gratuity shall stand** wholly forfeited, **no purpose is likely to be served by issuing a show-cause notice to the persons concerned. However, as in the cases coverd by class (b), the gratuity is forfeitable only to the extent of the loss suffered by the Corporation as a result of any act of omission or commission on the part of the person concerned, the precise amount of gratuity that may be forfeited on this account may not be beyond dispute. The Committee feel that in such cases it is but fair that a reasonable opportunity to show cause against the proposed forfeiture is afforded to the persons concerned, before such forfeiture is actually made. The Committee will like the Ministry of Finance (Department of Economic Affairs—Insurance Wing) to take early steps to amend clause (b) of paragraph 10(6) of the Scheme to this end.**

62. **As regards paragraph 14 of the Scheme, the Committee note the Ministry's reply that the said paragraph does not oust the jurisdiction of courts. While the Committee agree that the legal position stated by the Ministry is correct, they cannot help observing that the said paragraph by saying that the decision of the Central Government on questions of interpretation shall be binding on the persons concerned' does give an impression that**

there is no further remedy available to the persons concerned. Time and again, the Committee have urged that rules should not be worded in a manner as to give an impression to the layman that they seek to oust the jurisdiction of courts or that no further legal remedy is available. As early as May, 1963, commenting upon a similar provision in the Service Rules for the Flying Crew, for Employees in Aircraft Engineering Department, the Committee on Subordinate Legislation in para 29 of their Second Report (Third Lok Sabha), had observed that such provisions were 'misleading.' **The Committee, however, regret to observe that even 15 years after they had first made the above observation such provisions continue to be made in rules. The Committee will like the Ministry of Finance (Department of Economic Affairs—Insurance Wing) to take early action to amend the paragraph in question so as not to give an impression that no further legal remedy is available to the persons concerned.**

63. The Committee will also like the Ministry of Law, Justice and Company Affairs (Legislative Department) to issue instructions to all the Ministries/Departments as not to so frame their rules as to give an impression to the layman that they seek to oust the jurisdiction of courts or that no further legal remedy is available, unless the parent Act expressly empowers them to do so.

VIII

THE SUGARCANE (CONTROL) SECOND AMENDMENT ORDER, 1975 (G.S.R. 542-E OF 1975).

64. Sub-clause (1) of Clause 9A of the Sugarcane (Control) Order, 1966, as inserted by the Sugarcane (Control) Second Amendment Order, 1975, *inter alia*, reads as under:—

> "9A. *Power of entry, search and seizure.*—(1) The Central Government or the State Government, as the case may be, authorise any person to enter and search any premises where any accounts, books, registers or other documents belonging to, or under the control of a producer of sugar or his agent, or an owner of a crusher, a power crusher or a khandsari unit or an agent of such an owner, are maintained or kept for safe custody:
>
> * * * * *"

65. The above sub-clause empowered *'any person'* to enter and search any premises to see whether the provisions of that Order were being complied with.

66. Attention of the Ministry of Agriculture and Irrigation (Department of Food) was invited to the oft-repeated recommendation of the Committee on Subordinate Legislation that the minimum rank of the officer to be authorised to carry out searches, etc. should be specified in the Order.

67. In their reply, the Ministry of Agriculture and Irrigation (Department of Food) have stated that the amendment as suggested by the Committee, has since been made in the Sugarcane (Control) Order, 1966 *vide* G.S.R. 484(E) of 1976. In the amended sub-clause, the words "any officer not lower than the rank of a police Inspector or Tehsildar or an Officer of an equivalent rank" have been substituted for the words "any officer".

68. The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Food) have amended sub-clause (1) of clause 9A of the Sugarcane (Control) Order, 1966, so as to provide that an officer not lower than the rank of a Police Inspector or Tehsildar or an Officer of an equivalent rank would be authorised to enter and search any premises where any accounts, books, registers or other documents are maintained or kept for safe custody.

IX

THE CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) AMENDMENT RULES, 1975 (S.O. 4541 OF 1975)

69. Under the first proviso to sub-rule (2) of Rule 10 of the Central Civil Services (Temporary Service) Rules, 1965, as substituted by the Central Civil Services (Temporary Service) Amendment Rules, 1975 (S.O. 4541 of 1975) the competent authority has been empowered to make reduction in the amount of gratuity payable to a government servant if the service renderd by him is not held by it to be satisfactory.

70. The Department of Personnel and Administrative Reforms were requested to state whether they had any objection to provide in the Rules for giving an opportunity of being heard to the person concerned before effecting any reduction in the amount of gratuity on this ground.

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

> "....the proposal made by the Lok Sabha Secretariat, has since been accepted and the amendment of the Central Civil Service (Temporary Service) Rules, 1965, is being processed. As soon as the notification effecting the above amendment is issued, a copy of the same will be supplied to the Lok Sabha Secretariat."

72. The Committee note with satisfaction that, on being pointed out, the Department of Personnel and Administrative Reforms have agreed to provide in the Central Civil Services (Temporary Service) Rules, 1965 for giving an opportunity of being heard to a Government servant before the competent authority makes a reduction in the amount of gratuity payable to him on account of the service rendered by him as being not satisfactory. The Committee desire the Department of Personnel and Administrative Reforms to issue necessary amendment to this effect at an early date.

X

THE CENTRAL ENGINEERING SERVICE CLASS I (DIRECT RECRUITMENT) AMENDMENT RULES, 1974 (G.S.R. 135-E OF 1974)

73. While examining the Central Engineering Service Class I (Direct Recruitment) Amendment Rules, 1974, it was noticed that the original rules *i.e.* the Central Engineering Service Class I (Direct Recruitment) Rules were published in 1961. These rules had been extensively amended since then.

74. The attention of the Ministry of Works and Housing was invited to the following recommendation of the Committee on Subordinate Legislation contained in para 103 of their seventh Report (Fifth Lok Sabha):—

> "In paras 28-29 of their Fourth Report (First Lok Sabha), the Committee on Subordinate Legislation had recommended reprinting of Rules etc. whenever there were extensive amendments to them so that the general public as also the Departments of the Government could refer to them without any inconvenience. The Committee had also observed that the question of economy in such cases should be balanced against the convenience to the persons for whose use the Rules are made....The Committee will also like to stress upon all Ministries/Departments of Government the need for strict compliance with their afore-mentioned recommendation."

75. The Ministry of Works and Housing were asked whether, in the light of the recommendations made by the Committee on Sudordinate Legislation in paras 28-29 of their Fourth Report (First Lok Sabha), and reiterated by the Committee in para 103 of their Seventh Report (Fifth Lok Sabha), the Ministry had any objection to the reprinting of the rules incorporating all the amendments issued so far.

76. The Ministry of Works and Housing in their reply dated the 27th November, 1974 stated that they had no objection in principle to the revision of the rules to incorporate all amendments, and reprinting them; but some of the provisions of rules, both relating to Class II and Class I Service were under challenge before the Supreme Court.

77. In their further reply dated the 26th July, 1976, Ministry stated as under:—

> "At present it may not be possible to undertake a comprehensive amendment to the recruitment rules for C.E.S./C.E.E.S. Class II (Group B) in view of the fact that these rules are under challenge before the Supreme Court and we would like to await the outcome of these cases before undertaking re-printing.
>
> The position in respect of the recruitment rules for C.E.S./C.E.E.S. Class I is, however, different. As these rules are not affected by the cases pending before the Supreme Court, action has ben initiated for issuing a comprehensive amendment to these recruitment rules and the case stands referred to the Department of Personnel and Administrative Reforms for their concurrence. The proposed amendments will also require the concurrence of the Union Public Service Commission and the Ministry of Law. Thus, the finalisation of the amendments of the Recruitment Rules will take some time."

78. In their latest communication dated the 11th August, 1977, the Ministry have stated that the finalisation of the amendment of recruitment rules will take some time more.

79. The Committee note that the Ministry of Works and Housing have agreed to republish the Central Engineering Service/Central Electrical Engineering Service, Class I (Direct Recruitment) Rules, after incorporating therein all the amendments issued from time to time. They desire the Ministry to re-print the said Rules without any further delay.

80. The Committee also recommend that expeditious action should be taken to re-print the Central Engineering Service/Central Electrical Engineering Service, Class II Rules, after the relevant cases pending in the Supreme Court are disposed of.

XI

THE INDIA METEOROLOGICAL DEPARTMENT (COST ACCOUNTANT) RECRUITMENT RULES, 1974 (G.S.R. 708 OF 1974).

81. Rules 5 of the India Meteorological Department (Cost Accountant) Rules reads as under:—

> "*Power to relax*:—Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules."

82. Normally the rule regarding relaxation provision in recruitment rules reads as follows:—

> "Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules *with respect to any class or category of persons*."

83. On a comparison of the above rules, it was noticed that whereas in the normal relaxation rule, there is a provision for relaxation with respect to *any class or category of persons, as contradistinguished from an individual*, the rule under reference did not provide for relaxation with respect to any class or category of persons.

The Committee on Subordinate Legislation in para 95 of their Fifth Report (Fifth Lok Sabha) insisted upon the inclusion of the phrase "with respect to any class or category of persons" in the relaxation provision to obviate the possibility of discrimination among persons similarly placed by making the benefits of relaxation available to all persons coming in the same category or class.

84. The Ministry of Tourism and Civil Aviation with whom the matter was taken up have amended rule 5 of the above rules by adding the words "with respect to any class or category of persons" at the end *vide* G.S.R. No. 1511 dated the 23rd October, 1976.

85. The Committee note with satisfaction that, on being pointed out, the Ministry of Tourism and Civil Aviation have amended Rule 5 of the India Meteorological Department (Cost Accountant) Recruitment Rules so as to add the word 'with respect to any class or category of persons' with a view to obviate the possibility of discrimination among persons similarly

placed by making the benefits of relaxation available to all persons coming under the same category or class.

XII

THE COMMISSIONS OF INQUIRY (CENTRAL) (AMENDMENT) RULES, 1974 (G.S.R. 987 OF 1974)

86. Sub-rule (6) of rule 5 of the Commissions of Inquiry (Central) Rules, 1972, as substituted by the Commissions of Inquiry (Central) (Amendment) Rules, 1974 (G.S.R. 987 of 1974) provides that travelling and other expenses, as the Commission may deem reasonable, shall be paid to a person who is summoned to assist the Commission. Like-wise sub-rule (d) of rule (6), as inserted by the above mentioned rules, provides that the Commission may determine the travelling allowance, daily allowance and other incidental expenses that may be paid to the assessors.

87. The Ministry of Home Affairs were asked to state the specific provisions of the parent Act—the Commissions of Inquiry Act—which empowers the Commission to pay the travelling and other expenses to witnesses, assessors etc.

88. In their reply dated the 2nd January, 1978, the Ministry of Home Affairs have stated as under:—

> "....the suggestion to make a specific provision in the Commissions of Inquiry Act, 1952, for appointment of assessors and payment of T.A./D.A. to the witnesses and assessors was accepted by the previous Government, but the amendment of the Act was not, so far, undertaken in view of the fact that another proposal for amendment of the Act was being considered and the intention was to process a combined proposal.
>
> After getting the approval of the new Government, the proposed amendment of the Act may be undertaken next year, as early as possible."

89. The Committee note that the Ministry of Home Affairs propose to undertake amendment of the Commissions of Inquiry Act, 1952 for making a specific provision for appointment of assessors and payment of of T.A./D.A. to the witnesses and assessors. The Committee desire the Ministry to take necessary action for amending the Commissions of Inquiry Act to this effect at an early date because the payment of T.A./D.A. and other expenses without a specific authorisation in the Act is apparently without due legal authority.

XIII

IMPLEMENTATION OF THE RECOMMENDATION CONTAINED IN PARA 22 OF THE FOURTH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING THE INDIAN RAILWAY STORES SERVICE RECRUITMENT RULES, 1969 (G.S.R. 151 OF 1969).

90. Item 9 of the Appendix to the Indian Railway Stores Service Recruitment Rules, 1969 provided that the relative seniority of officers recruited to the service by the competitive examination held by the Union Public Service Commission would ordinarily be determined by the order of merit in the examination. However, the Government of India reserved the right of fixing seniority *at their discretion* in individual cases. The Government also reserved the right of assigning to officers appointed by other methods of recruitment positions in the seniority list *at their discretion.*

91. The Ministry of Railways (Railway Board), to whom the matter was referred, had in their reply *inter alia* stated as follows:—

> "....item 9 of the Appendix to the Recruitment Rules for the Indian Railway Stores Service is based on a similar provision appearing in the recruitment Rules for the various Railway Engineering Services, *viz.*, Indian Railway Service of Engineers, Indian Railway Service of Mechanical Engineers, Indian Railway service of Electrical Engineers and Indian Railway Service of Signal Engineers, which have been in vogue for a long time....................recently the Hon'ble High Court, Allahabad, while dismissing the writ petition No. 964 of 1969 filed by Shri K.K. Gupta, Deputy Director, Research Designs and Standards Organisation, Ministry of Railways, Lucknow, *Vs.* the Union of India and*others, have held as invalid the above mentioned clause of the Recruitment Rules for the Indian Railway Service of Signal Engineers so far as it empowers the Government to fix seniority of officers recruited otherwise than through Competitive Examination at their discretion. The reasons for declaring the above-mentioned clause invalid, as given by the Hon'ble High Court, are that an unguided power has been given to Government to fix seniority of officers at its discretion and the rule as framed can enable the Government to discriminate among persons similarly placed. As already stated above, a similar clause exists in the Recruitment Rules for all the Railway

*Item 8 of Appendix I to the Indian Railway Service of Signal Engineers Recruitment Rules, 1962.

Engineering Services and the Indian Railway Stores Service. Therefore, action has been initiated in the Ministry of Railways to amend the above-mentioned clause in the Recruitment Rules for all the Services, in consultation with the Union Public Service Commission and the Ministry of Law."

92. Taking note of the above reply, the Committee on Subordinate Legislation in para 22 of their Fourth Report (Fifth Lok Sabha) had observed as follows:—

"The Committee note that the Ministry of Railways have since issued notifications omitting item 9 of Appendix to the Indian Railway Stores Service Recruitment Rules, 1969 and similar provisions contained in Recruitment Rules relating to Railway Engineering Services. They desire that new provisions for regulating seniority of officers to be appointed to these services should be framed at an early date and furnished to the Committee for information."

93. In their action-taken note on the above recommendation, the Ministry of Railways have stated as under:—

"The principles governing the seniority of officers, appointed to various Class I Services from differnt sources, specified in the various Recruitment Rules except officers of the Medical and Other Misc. Categories have since been finalised and circulated* to All Indian Railway Administrations concerned......"

94. In para 2 of their forwarding letter No. E(o) I-72SRG/29 dated 30-11-76,* the Ministry of Railways have, *inter alia* mentioned that the principles, indicated in the Appendix to the letter, do not fetter the general powers of Government for giving to individual officers, *in special circumstances,* such position in the seniority list as the circumstances of the case may require.

95. The Committee note that in implementation of their recommendation made in para 22 of their Fourth Report (Fifth Lok Sabha), the Ministry of Railways have circulated a set of 'Principles for determining the relative seniority of Class I Officers on the Indian Railways' in the form of administrative instructions instead of incorporating them in the relevant Recruitment Rules and notifying them in the Gazette for the information of all concerned. The Committee also note that in para 2 of their forwarding letter No. E(o) I-72SRG/29 dated 30-11-76 (Appendix II), the Ministry of Railways have, inter alia **mentioned that the Principles circulated by them do not fetter the general powers of Government for giving to individual Officers,** in special circumstances, **such position in the seniority list as the**

*Appendix II

circumstances of the case may require. The Committee feel that this paragraph gives an impression that the Railway Administrations have still unfettered powers in the matter of fixing seniority. The Committee desire that the 'special circumstances' in which the seniority of a person may be fixed otherwise than in accordance with the Principles appended to the Ministry's letter should be clearly defined, and made part of the Principles. The Committee also desire that Principles for determining seniority should be placed on a statutory footing.

96. The Committee also note that the Ministry have not yet formulated the requisite rules in respect of Officers of the Medical and other miscellaneous categories. The Committee will like the Ministry to finalise the requisite rules in respect of Officers of these categories also at a very early date.

SOMNATH CHATTERJEE,

NEW DELHI; *Chairman,*

The 9th May, 1978. *Committee on Subordinate Legislation.*

APPENDICES

APPENDIX I

(*Vide* para 4 of the Report)

Summary of main Recommendations/Observations made by the Committee

S. No.	Para	*Summary*
(1)	(2)	(3)
1(i)	17	The Committee observe that under Rule 24(2) of the Oil Industry (Development) Rules, 1965, the Oil Industry Development Board may write off losses or waive recoveries upto Rs. 25 lakhs in each case. Neither the Ministry of Petroleum & Chemicals nor the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) have been able to point out any express provision in the parent Act—the Oil Industry Development Act, 1974—which confers or authorises the conferring of such a power on the Board. According to Government, the power of write-off or waiver is incidental to the Board's function of granting loans and advances. The Committee are not satisfied with this explanation. In their opinion, the power of waiver of recoveries, as contradistinguished from the formal power of write off, is a substantial power, and not just incidental to or consequential upon the Board's function of granting loans and advances. The Committee feel that in view of the huge public funds involved, the power of waiver should have an express authorisation from the parent law. The power of write off may flow from the rules, but even in the case of write off, there should be clear guidelines indicating the circumstances in which the power of write off shall be exercised.
1(ii)	18	The Committee further feel that the Oil Industry Development Board's power of write off or waiver should not exceed rupees twenty lakhs in a case.

(1)	(2)	(3)
		Write off of losses or waiver of recoveries beyond this amount, should have the prior approval of the Central Government.
1(iii)	19	It has *inter alia* been argued by the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) that if the suggestion of the Committee on Subordinate Legislation to expressly provide for the power of waiver in the parent Act—the Oil Industry Development Act—is accepted, the same would necessitate amendment to all the statutes of a similar nature dealing with Development-*cum*-Financial Corporations. In the opinion of the Committee, this difficulty is not an insurmountable one. As conceded by the representative of the Department of Legal Affairs in evidence, to meet this difficulty, a general statute for the purpose can be brought in, with the names of the different Acts constituting Development-*cum*-Financial Corporation in the Schedule to the Bill.
1(iv)	20	The Committee desire the Ministry of Petroleum and Chemicals to take early steps for the amendment of the Oil Industry (Development) Rules, 1975 and the Oil Industry Development Act, 1974, in the light of the observations of the Committee in paras 17—19 of the Report.
2.	29	The Committee observe that, as in the case of Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975) dealt with in Chapter II of this Report, there is no express provision in the parent Act—the Tobacco Board Act, 1975—which empowers or authorises the empowering of the Tobacco Board to write off losses or waive recoveries. As, in the opinion of the Committee, the power of waiver of recoveries is a substantial power, there should be an express authorisation therefor from the parent Act. The power to write off may flow from the rules but even in the case of write off, there should be clear guidelines indicating the circumstances in which the

(1)	(2)	(3)
		power of write off shall be exercised. The Committee will like the Ministry of Commerce to take early steps for the amendment of the Act and the rules in question accordingly.
3(i)	42	The Committee note that in their evidence before the Committee, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have conceded that although para 11(b) of the Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 provides that "the right of every shareholder to or in respect of any share in the dissolved company shall be extinguished, and thereafter no such shareholder shall make, assert or take any claim or demands or proceedings in respect of any such share", no citizen is barred from going to a court of law. It has also been conceded by the Department of Company Affairs during evidence that the Company Law Board cannot take away the right of a citizen to go to a court of law when the parent law does not provide for it. In view of this, the Committee desire that the Department of Company Affairs should amend the Order in question so as not to give an impression that it seeks to take away the right of a shoreholder to go to a court of law.
3(ii)	43	The Committee also feel that, apart from courts, there should be some sort of revisionary or appellate authority for the redressal of any grievance of a person who might feel aggrieved by any action taken under the Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974. The Committee desire the Department to examine whether the provisions of the existing law empower Government to provide for such an authority or an amendment of the parent law is necessary for this purpose. The Committee will like the Department of Company Affairs to take necessary action to this and without any loss of time.

(1)	(2)	(3)
4(i)	48	The Committee observe that article 311(2) of the Constitution which requires that a Government servant involved in disciplinary proceedings should be given a reasonable opportunity of being heard in respect of the charges against him and a reasonable opportunity of representation against the penalty proposed to be imposed on him is based on the principles of natural justice and strict compliance with its requirements is of paramount importance from the point of view of equity and fair-play. The Committee are therefore unable to appreciate the reply of the Department of Personnel and Administrative Reforms that in cases covered by Ruls 5(4) and 5A(2)(i) of the All India Services (Discipline and Appeal) Rules, 1969 where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority or by a court of law solely on grounds of non-compliance with the requirements of article 311(2) of the Constitution and no further enquiry is proposed to be held, there is no complete exoneration. If the Department's contention is accepted, it will be tantamount to punishing a member of the service on the basis of an enquiry which is held not to have been properly conducted. The Committee are of the opinion that once an order of dismissal, removal or compulsory retirement from service is set aside by a Court of Law or by the appellate or reviewing authority on the ground of non-compliance with the requirements of clause (2) of article 311 and no further enquiry is proposed to be held, the member of the service should be treated on the same footing as the one having been completely exonerated and he should be allowed full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. In case the competent authority feels that in a particular case if the provisions of article 311(2) of the Constitution were strictly followed, the disciplinary proceedings would not have ended in complete exoneration of the

(1)	(2)	(3)
		member of the service, it is open to the competent authority to hold a further enquiry. Till this is done, there is no justification whatever for making any reduction in the pay and allowances of the member of the service.
4(ii)	49	The Committee also feel that it is not appropriate for Government to proceed on the analogy of the law of limitation in cases covered by Rules 5(4) and 5A(2)(i) of the All India Services (Discipline and Appeal) Rules, 1969 where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority or by a court of law solely on grounds of non-compliance with the requirements of article 311(2) of the Constitution and no further enquiry is proposed to be held, and restrict payment to only three years. The affected members of the service should therefore get pay and allowances for the whole period immediately preceding the date of their reinstatement during which they remained dismissed, removed or retired from service or suspended.
4(iii)	50	The Committee note that the Department of Personnel and Administrative Reforms propose to amend the All India Services (Discipline and Appeal) Rules, 1969 to provide that the period of notice should in no case exceed sixty days from the date on which the notice has been served. In the opinion of the Committee, the proposed amendment is in the right direction. But in order that the period allowed to a member of the service to make a representation in any particular case is not too short, some minimum period for making a representation should also be specified in the rules.
4(iv)	51	The Committee desire the Department of Personnel and Administrative Reforms to take early step for the amendment of the All India Services (Discipline and Appeal) Rules, 1969 on the lines as indicated in paras 48—50 of the Report.

(1)	(2)	(3)
5	57	The Committee are not satisfied with the reply of the Ministry of Agriculture and Irrigation (Department of Food) contained in para 56 of the Report. According to the Ministry, the intention underlying the proviso to sub-clause (7) of clause 5A of the Sugarcane Control Order, 1966, as inserted by the Sugarcane Control (Amendment) Order, 1975 is that the cane grower should get the benefit of a additional price even in cases where he supplies less than 85 per cent of the agreed quantity if the *shortfall is occasioned by reasons beyond his control.* If so, the Ministry should have no objection to clearly spelling out their intention in the order. The argument advanced by the Ministry for not incorporating the above intention in the Order is that it would lead to frivolous claims for additional cane price. The Committee are unable to appreciate this argument, for, as they observe, natural calamities, such as floods, droughts, etc. which are generally the cause of shortfall in agricultural production are a well-known phenomenon. Also, the additional payment will become admissible only when the grower shows that the shortfall in supply is ascribable to reasons beyond his control. On the other hand, as, under the existing proviso, the only condition for admissibllity of additional price is that the supplier has not been subjected to any penalty under any Central/State Act/Rules/Order for the shortfall in supply, there could be cases where additional price is paid to a supplier even where such shortfall has not been occasioned by reasons beyond his control. Apparently, this would be against the underlying intention of the proviso. The Committee will, therefore, like the Ministry of Agriculture and Irrigation (Department of Food) to take early steps to amend the proviso in question so as to clearly spell out their intention.
6(i)	61	The Committee have given a careful thought to the Ministry's reply in regard to para 10(6) of the General Insurance (Rationalisation of Pay Scales

(1)	(2)	(3)
		and other Conditions of Service of Officers) Scheme, 1975. They observe that as in the cases enumerated in clause (a) of paragraph 10(6) of the Scheme, the gratuity shall stand *wholly forfeited*, no purpose is likely to be served by issuing a show-cause notice to the persons concerned. However, as in the cases covered by clause (b), the gratuity is forfeitable only to the extent of the loss suffered by the Corporation as a result of any act of omission of commission on the part of the person concerned, the precise amount of gratuity that may be forfeited on this account may not be beyond dispute. The Committee feel that in such cases it is but fair that a reasonable opportunity to show cause against the proposed forfeiture is afforded to the persons concerned, before such forfeiture is actually made. The Committee will like the Ministry of Finance (Department of Economic Affairs—Insurance Wing) to take early steps to amend clause (b) of paragraph 10(6) of the Scheme to this end.
6(ii)	62	As regards paragraph 14 of the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Officers) Scheme, 1975, the Committee note the Ministry's reply that the said paragraph does not oust the jurisdiction of courts. While the Committee agree that the legal position stated by the Ministry is correct, they cannot help observing that the said paragraph by saying that the decision of the Central Government on questions of interpretation 'shall be binding on the persons concerned' does give an impression that there is no further remedy available to the persons concerned. Time and again, the Committee have urged that rules should not be worded in a manner as to give an impression to the layman that they seek to oust the jurisdiction of courts or that no further legal remedy is available. As early as May, 1963, commenting upon a similar provision in the Service Rules for the Flying Crew, for Employees in Aircraft Engineering Department, the Committee on Subordinate Legislation in para 29

(1)	(2)	(3)
		of their Second Report (Third Lok Sabha), had observed that such provisions were *'misleading.'* The Committee, however, regret to observe that even 15 years after they had first made the above observation such provisions continue to be made in rules. The Committee will like the Ministry of Finance (Department of Economic Affairs—Insurance Wing) to take early action to amend the paragraph in question so as not to give an impression that no further legal remedy is available to the persons concerned.
6(iii)	63	The Committee will also like the Ministry of Law. Justice and Company Affairs (Legislative Department) to issue instructions to all the Ministries/ Departments as not to so frame their rules as to give an impression to the layman that they seek to oust the jurisdiction of courts or that no further legal remedy is available, unless the parent Act expressly empowers them to do so.
7	68	The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Food) have amended sub-clause (1) of clause 9A of the Sugarcane (Control) Order, 1966, so as to provide that an officer not lower than the rank of a Police Inspector or Tehsildar or an Officer of an equivalent rank would be authorised to enter and search any premises where any accounts, books, registers or other documents are maintained or kept for safe custody.
8	72	The Committee note with satisfaction that, on being pointed out, the Department of Personnel and Administrative Reforms have agreed to provide in the Central Civil Services (Temporary Service) Rules, 1965 for giving an opportunity of being heard to a Government servant before the competent authority makes a reduction in the amount of gratuity payable to him on account of the service rendered by him as being not satisfactory. The Committee desire the Department of Personnel and Administrative Reforms to

(1)	(2)	(3)
		issue necessary amendment to this effect at an early date.
9(i)	79	The Committee note that the Ministry of Works and Housing have agreed to republish the Central Engineering Service/Central Electrical Engineering Service, Class I (Direct Recruitment) Rules, after incorporating therein all the amendments issued from time to time. They desire the Ministry to re-print the said Rules without any further delay.
(ii)	80	The Committee also recommend that expeditious action should be taken to re-print the Central Engineering Service/Central Electrical Engineering Service, Class II Rules, after the relevant cases pending in the Supreme Court are disposed of.
10	85	The Committee note with satisfaction that, on being pointed out, the Ministry of Tourism and Civil Aviation have amended Rule 5 of the India Meteorological Department (Cost Accountant) Recruitment Rules so as to add the words 'with respect to any class or category of persons' with a view to obviate the possibility of discriminatoin among persons similarly placed by making the benefits of relaxation available to all persons coming under the same category or class.
11	89	The Committee note that the Ministry of Home Affairs propose to undertake amendment of the Commissions of Inquiry Act, 1952 for making a specific provision for appointment of assessors and payment of T.A./D.A. to the witnesses and assessors. The Committee desire the Ministry to take necessary action for amending the Commissions of Inquiry Act to this effect at an early date because the payment of T.A./D.A. and other expenses without a specific authorisation in the Act is apparently without due legal authority.
12(i)	95	The Committee note that in implementation of their recommendation made in para 22 of their Fourth

(1)	(2)	(3)
		Report (Fifth Lok Saha), the Ministry of Railways have circulated a set of 'Principles for determining the relative seniority of Class I Officers on the Indian Railways' in the form of administrative instructions instead of incorporating them in the relevant Recruitment Rules and notifying them in the Gazette for the information of all concerned. The Committee also note that in para 2 of their forwarding letter No. E(O) I-72SRG/29 dated 30-11-76, the Ministry of Railways have, *inter alia* mentioned that the Principles circulated by them do not fetter the general powers of Government for giving to individual Officers, *in special circumstances* such position in the seniority list as the circumstances of the case may require. The Committee feel that this paragraph gives an impression that the Railway Administrations have still unfettered powers in the matter of fixing seniority. The Committee desire that the *'special circumstances'* in which the seniority of a person may be fixed otherwise than in accordance with the Principles appended to the Ministry's letter should be clearly defined, and made part of the Principles. The Committee also desire that Principles for determining seniority should be placed on a statutory footing.
12(ii)	96	The Committee also note that the Ministry of Railways have not yet formulated the requisite rules in respect of Officers of the Medical and other miscellaneous categories. The Committee will like the Ministry to finalise the requisite rules in respect of Officers of these categories also at a very early date.

APPENDIX II

(See paras 93 to 95 of the Report)

GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)

9—*Agrah*. 1898(S)

No. E(o)I-72SR6/29. New Delhi, dated 30-11-76.

The General Managers,

All Indian Railways, incl. CLW, DLW, ICF, MTP(R)/Calcutta and G.M. (Construction), S. Rly., Bangalore.

The Director General, RDSO, Lucknow.

The Chief Administrative Officer (R)MTP(R) Bombay
—do— New Delhi
—do— Madras.

The Principals,

(i) Railway Staff College, Baroda.

(ii) Indian Rly. Institute of Sig. Engg. & Telecommunication, Secunderabad.

(iii) Indian Rlys. Institute of Advd. Track Technology, Poona.

(iv) Indian Railways Institute of Mech. & Elec. Engg. Jamalpur.

SUB.: *Principles for determining the relative seniority of Class I Officers on the Indian Railways.*

Consequent on the deletion of Para 8 of Appendix I to the Indian Railway Service of Engineers, Indian Railway Service of Signal Engineers, Indian Railway Service of Electrical Engineers, Recruitment Rules, 1962, Paragraph 9 of Appendix I of the Indian Railways Service of Mechanical Engineers Recruitment Rules, 1968 and the I.R.S.S. Recruitment Rules, 1969 for determining the seniority of officers on their appointment to Class I Service, the Board have decided to circulate the principles, laid down for determining the seniority of officers, appointed to various Class I Services from different sources, specified in the various Recruitment Rules except officers of the Medical Deptt. and other misc. categories. These are enclosed as an Appendix* to this letter.

*Annexure

2. The principles, indicated in the Appendix* to this letter, do not fetter the general powers of the Government for giving to individual officers, *in special circumstances,* such position in the seniority list as the circumstances of the case may require.

3. The seniority of officers who were recruited as Ty. Officers during the war period or of the officers who were taken over by the Indian Railways from the ex-States Railways or ex-Company managed Railways or isolated cases of officers where the seniority has already been determined under orders applicable to such officers at the relevant time shall not be altered, based on principles now set forth in the Appendix to this letter.

4. The principles, mentioned in the Appendix* to this letter, have the approval of the President.

Sd/

(B. Mohanty)

Secretary, Railway Board.

---

*Annexure

ANNEXURE

PRINCIPLES FOR DETERMINING THE RELATIVE SENIORITY OF CLASS I OFFICERS OF ALL SERVICES ON INDIAN RAILWAYS EXCEPT OFFICERS OF THE MEDICAL DEPARTMENT AND OTHER MISCELLANEOUS CATEGORIES.

Principle (i)—The seniority of officers, appointed to various Indian Railway Services (Cl. I), shall be determined on the basis of the "date for increment on time scale" to be specifically determined in each case in accordance with these principles.

Principle (ii)—Unless otherwise stated, officers appointed to the Indian Railway Services (Cl. I) on the basis of competitive examinations, held by the Union Public Service Commission, shall count service for seniority from the date they commence earning increments in the regular scale as Assistant Officers subject to the condition that the *inter-se* seniority of officers in each service recruited as probationers in a particular year will be regulated by their place in the order of merit.

Principle (iii)—In the case of officers, recruited otherwise than through the regular competitive examinations and who may be granted higher initial pay on recruitment, the date for increment on time scale for the purpose of seniority, shall be so adjusted as to allow suitable credit in assigning seniority.

Principle (iv)—In cases of prolonged delay on the part of an officer in joining service after receiving orders of appointment, he is liable to entail loss in seniority. If the period of training and consequently the period of probation in the case of officers, appointed to the Indian Railway Services on the basis of the competitive examination held by the Union Public Service Commission from time to time, is extended in any particular case due to the training not having been completed satisfactorily, the officer concerned is liable to loose in seniority.

Principle (v)—Officers recruited as Temporary Assistant Officers (Unclassified), on permanent appointment to the Junior Scale (Cl. I) in various Indian Railway Services may be granted weightage in seniority on the basis of half of the length of the service, counted from the date of their joining service as Temporary Assistant Officers (Unclassified) to the date of their permanent appointment to the Junior Scale (Cl. I) of the respective services, subject to a maximum weightage of five years.

Principle (vi)—The Order of selection by the Union Public Service Commission of officers, who are permanently appointed to the Junior Scale (Cl. I) from amongst Temporary Assistant Officers shall not be disturbed irrespective of the weightage worked out in accordance with principle (v) above. The Government will be at liberty to restrict the date for increment on time scale in the case of an officer with longer service as Temporary Assistant Officer so as to place him in seniority below an officer who has been assigned a higher position based on merit although such an officer might have rendered lesser service as Temporary Assistant Officer.

Principle (vii)—In the case of Class II Officers permanently promoted to Class I Services, if two or more than two officers are promoted on the same date their relative seniority will be in the order of selection. Subject to the aforesaid provision the seniority of officers, permanently from Class II to Class I Services, shall be determined by giving weightage based on:

(a) the year of service connoted by the initial pay on permanent promotion to Class I Service; or

(b) half the total number of years of continuous service in Class II, both officiating & permanent;

whichever is higher, subject to a maximum weightage of five years.

Principle (viii)—As permanent promotion from Class II to Class I Service and permanent appointment of Temporary Assistant Officers to Junior Scale (Class I) involves definite act of selection, the *inter-se* seniority of officers in each of the categories will be regulated by the date of permanent promotion or permanent appointment to Class I Services.

Principle (ix)—Officers, permenently appointed to the Junior Scale (Class I) from amongst the categories mentioned in principles (vi) and (vii) above against quotas of vacancies reserved for them shall be placed below or above a particular batch of direct recruits accordingly as their dates for increment on time scale are earlier or later than the earliest date on which any one of the direct recruits in a particular batch joined service.

Principle (x)—The seniority of officers, recruited to Class I Services under the provision of the rules relating to "Occasional admission of other qualified persons" shall be determined by the Government on the merits of each case.

Principle (xi)—Seniority of the released Emergency Commissioned Officers or Short Service Commissioned Officers appointed to various Indian Railway Services against vacancies reserved for them, shall be determined keeping in view the instructions issued by the Cabinet Secretariat (Deptt. of Personnel).

MINUTES

APPENDIX III

(*See* para 3 of the Report)

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

The Committee met on Saturday, the 7th January, 1978 from 11.00 to 12.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Shri Santoshrao Gode
4. Shri Tarun Gogoi
5. Shri Ram Sewak Hazari
6. Shri K. T. Kosalram
7. Shri P. Rajagopal Naidu
8. Shri Trepan Singh Negi
9. Kumari Maniben Vallabhbhai Patel

SECRETARIAT

Shri H. S. Kohli—*Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 64 to 74 on the following subjects:

S. No.	Memo. No.	Subject
(1)	(2)	(3)
2 to 7	64 to 60	* * *
8.	71	The Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975).

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

3. to 13. (i) to (vii)

(viii) The Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975) (Memorandum No. 71).

14. The Committee considered the Memorandum for some time and decided to hear oral evidence of the representatives of the Ministries of Petroleum & Chemicals and Law, Justice and Company Affairs in regard to the provision of Rule 24(2) empowering the Board to write off losses or waive recoveries upto Rupees 25 lakhs in each case.

(ix) The Tobacco Board Rules, 1976 (G.S.R. 1-E of 1976) (Memorandum No. 72).

15. The Committee considered the above Memorandum for some time and decided to hear oral evidence of the representatives of the Ministry of Commerce in regard to the provision of Rule 24(2), empowering the Tobacco Board to write off losses or waive recoveries upto ten thousand rupees in any single case.

(x) Indian Consortium for Power Projects Private Ltd. and the Bharat Heavy Electricals Ltd. Amalgamation Order, 1974 (G.S.R. 155-E of 1975) (Memorandum No. 73).

16 to 17 (A) & (B) * * *

(1)	(2)	(3)
	(C)	
18.		*Paragraph 11(b)* The Committee considered the above Memorandum for some time and decided to hear oral evidence of the representatives of the Ministry of Law, Justice & Company Affairs (Department of Company Affairs) in regard to extinguishing the rights of shareholders and seeking to oust the jurisdiction of courts in regard thereto.
19.	(xi)	* * *

The Committee then adjourned to meet again on the 28th January, 1978.

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

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

(1977-78)

The Committee met on Tuesday, the 14th March, 1978 from 15.00 to 15.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Somjibhai Damor
3. Shri Durga Chand
4. Shri Santoshrao Gode
5. Chaudhary Hari Ram Makkasar Godara
6. Shri Ram Sewak Hazari
7. Shri P. Rajagopal Naidu
8. Shri Trepan Singh Negi
9. Kumari Maniben Vallabhbhai Patel

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

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

3. The Committee authorised the Chairman and, in his absence, Shri Santoshrao Gode to present the Sixth Report to the House on their behalf on the 17th March, 1978.

4. The Committee considered Memoranda Nos. 96 to 102 on the following subjects:—

S.No.	Memorandum No.	Subject
(1)	(2)	(3)
(i)	96	The Planning Commission Adviser (Employment and Manpower Planning) Recruitment Rules, 1975 (G.S.R. 2647 of 1975).

1	2	3
(ii)	97	The Planning Commission Adviser (Project Appraisal) Recruitment Rules, 1974 (G.S.R. 1321 of 1974).
(iii)	98	The Central Engineering Service Class I (Direct Recruitment) Amendment Rules, 1974 (G.S.R. 135-E of 1974).
(iv)	99	The India Meteorological Department (Cost Accountant) Recruitment Rules, 1974 (G.S.R. 708 of 1974).
(v)	100	The Commissions of Inqiry (Central) (Amendment) Rules, 1974 (G.S.R. 987 of 1974).
(vi)	101	Implementation of recommendations contained in paras 69-71 of the Fourteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Delhi Development Authority (Issue and Management of Bonds) Regulations, 1970 (S.O. 1135 of 1972).
(vii)	102	Implementation of recommendation contained in para 8 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Conduct of Elections (Amendment) Rules, 1974 (S.O. 286-E of 1974).

(i) *The Planning Commission Adviser (Employment and Manpower Planning) Recruitment Rules,* 1975 *(G.S.R.* 2647 *of* 1975)—*(Memorandum No.* 96); *and*

(ii) *The Planning Commission Adviser (Project Appraisal) Recruitment Rules,* 1974 (G.S.R. 1321 *of* 1974)—*(Memorandum No.* 97).

5. The Committee considered the above Memoranda and noted the submission of the Planning Commission that in the two instant cases, the method of selection was not by direct recruitment and, as such, it did not affect the public in general. In view of this, the Committee decided, as a very special case, not to insist upon the Scheme for Staffing Senior Administrative Posts being appended to the Rules in question.

(iii) *The Central Engineering Service, Class I (Direct Recruitment) Amendment Rules,* 1974*(G.S.R.* 135-*E of* 1974)—*(Memorandum No.* 98).

6. The Committee considered the above Memorandum and noted that the Ministry of Works and Housing had agreed to republish the

Rules in question, after incorporating therein all the amendments issued from time to time, and that they had already initiated necessary action to this end in the case of Recruitment Rules for the Central Engineering Service/Central Electrical Engineering Service, Class I. The Committee decided to recommend to the Ministry to expedite the re-publication of the said rules.

(iv) *The India Meteorological Department (Cost Accountant) Recruitment Rules*, 1974 (*G.S.R.* 708 *of* 1974)—(*Memorandum No.* 99).

7. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Tourism and Civil Aviation had amended Rule 5 of the India Meteorological Department (Cost Accountant) Recruitment Rules, 1974 by adding the words "with respect to any class or category of persons" with a view to obviate the possibility of discrimination among persons similarly placed by making the benefits of relaxation available to all persons coming under the same category or class.

(v) *The Commissions of Inquiry (Central) (Amendment) Rules*, 1974 *G.S.R.* 987 *of* 1974)—(*Memorandum No.* 100).

8. The Committee considered the above Memorandum and were satisfied with the reply of the Ministry of Home Affairs that since the Commission may have to summon not only Government servants but also private persons, it would be preferable to leave it to the Commission to decide, in each individual case, the rates of T.A. and D.A. etc to be paid to a witness depending upon his status. The Committee in this connection also noted the Ministry's reply that even under the Code of Civil Procedure, the expenses of witnesses are such as appear to the Court to be sufficient to defray the travelling and other expenses of the persons summoned. In view of this, the Committee decided not to pursue their suggestion for specifying the rates of T.A. and D.A. to be paid to witnesses etc. in the rules.

9. As regards the suggestion for making a specific provision in the Commissions of Inquiry Act, 1952 for appointment of assessors and payment of T.A./D.A. to the witnesses and assessors, the Committee noted from the Ministry's reply dated the 2nd January, 1978 that the Ministry proposed to undertake the amendment of the Act to this end next year, as early as possible. The Committee desired the Ministry of Home Affairs to take necessary action for amending the Commissions of Inquiry Act to this effect at an early date because the payment of T.A., D.A. and other expenses without a specific authorisation in the Act was apparently without due legal authority.

(vi) *Implementation of recommendations contained in paras 69-71 of the Fourteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Delhi Development Authority (Issue and Management of Bonds) Regulations,* 1970 (*S. O.* 1135 *of* 1972)—(*Memorandum No.* 101).

10. The Committe considered the above Memorandum and decided to agree with the suggestion of the Ministry of Works and Housing that the Central Government might themselves frame the Delhi Devlopment Authority (Issue and Management of Bonds) Rules under Section 56(2)(mm) of the Delhi Development Act, 1957, and publish them in the Gazette. The Committe desired the Ministry to farme and notify the said rules in the Gazette at a very early date.

(vii) Implementation of recommendation contained in para 8 of the *Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Conduct of Elections (Amendment) Rules,* 1974 *S.O.* 286-*E of* 1974)—*Memorandum No.* 102).

11. The Committee considered the above Memorandum and noted that, in pursuance of the recommendation of the Committee on Subordinate Legislation made in para 8 of their Twentieth Report (Fifth Lok Sabha), Government had inserted a new section 132-A in the Representation of the People Act, 1951 by section 7 of the Representation of the People (Amendment) Ordinance, 1977. Subsequently, however, a decision had been taken by Government not to replace the Representation of the People (Amendment) Ordinance, 1977, by an Act of Parliament. The Ministry of Law had now stated that the recommendation of the Committee on Subordinate Legislation would be implemented when that Act was taken up for amendment *in due course.* The Committee decided to urge the Ministry of Law to take early action for these amendment of the Act to the necessary end.

The Committee then adjourned.

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

(1977-78)

The Committee met on Friday the 31st March, 1978 from 15.30 hours to 17.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Shri Santoshrao Gode
4. Shri N. Sreekantan Nair
5. Shri Trepan Singh Negi
6. Kumari Maniben Vallabhbhai Patel.

I *Representatives of the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum).*

Shri S. L. Khosla—*Joint Secretary and Financial Advisor.*

Shri M. K. Ganesan—*Director and Financial Advisor and Chief Accounts Officer.*

II *Representative of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs).*

Shri P. B. Venkatasubramanian—*Secretary.*

III *Representatives of the Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce).*

Shri R. D. Thapar—*Secretary.*

Shri C. Venkataraman—*Financial Adviser and Joint Secretary.*

Shri V. C. Pande—*Joint Secretary.*

IV *Representatives of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs)*

Shri P. Krishnamurti—*Secretary.*

Shri A. G. Sirsi—*Deputy Secretary.*

SECRETARIAT

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

OIL INDUSTRY (DEVELOPMENT) RULES, 1975 (G.S.R. 160-E of) 1975).

2. The Committee first heard oral evidence of the representatives of the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) and the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) in regard to the provision of Rule 24(2) of the Oil Industry (Development) Rules, 1975 (G.S.R. 160-E of 1975).

3. Explaining the authority for write-off of losses or waiver of recoveries by the Board of upto Rs. 25 lakhs in each case, without the prior approval of the Central Government, the representative of the Department of Legal Affairs stated that the Board was a body corporate with a legal personality and certain powers had been given to it including the power to grant loans and grants. The Board being a body corporate engaged in financial transactions, there was always the possibility of some loss. Therefore, the power of the Board had necessarily to be construed as including the power of write-off under the general or inherent power. The rule in question was restrictive of general power of the Board to write off. Under the Act, there is no limitation on the power of the Board to write off or waive. But the rule imposes a restriction in that it lays down a limit, beyond which the write-off or waiver shall be done with the prior approval of the Central Government.

The Committee desired to know whether there was any difficulty in making a specific provision in the Act confering the power of write-off or waiver on the Board. The representative of the Department of Legal Affairs stated in reply that the general pattern of the laws relating to commodity boards and other development boards was that no such provision was included therein. Even in the case of an ordinary company registered under the Companies Act, the power to write off was not specified in its memorandum or articles of association. It was incidental to the running of the business of the company.

5. Differentiating between 'write off' and 'waiver', the representative of the Department of Legal Affairs stated that write-off was recognition in the accounts of an existing fact, which had already occurred. The loss had taken place and instead of showing it in the books, it was written off, so that the true state of affairs was brought to the notice of Parliament. The waiver might be of a different kind. There the claim may be doubtful, it might be compromised. He added that if the power of waiver was not available to the Board, even in a hopeless case it would have to file a suit and incur expenditure on court fees, etc. When asked on how many occasions the power to write off or waive recoveries had been used, the representative of the Department of Petroleum stated that no occasion for any write off or waiver of recovery had arisen so far.

6. When asked whether it was necessary to have this provision, the representative of the Ministry of Petroleum stated that the Board deals in hundred of crores of rupees. It finances schemes which are of an exploratory nature, particularly Research and Development schemes. It is quite possible that some schemes might not field necessary fruits, and they might have to write off the resulting loss.

7. In reply to a question whether any guidelines had been laid down for waiver of recovery, the reprsentative of the Ministry of Petroleum stated that no occasion had arisen so far. Therefore, nothing had been laid down.

8. The Committee referred to the Ministry of Law's note wherein it had been stated that if the suggestion of the Committee on Subordinate Legislation to expressly provide for the power of write-off in the Parent Act is accepted, the same would necessitate amendment to all the statutes of a similar nature dealing with Development-*cum*-Financial Corporations. The Committee enquired whether, to meet this difficulty, a general statute could not be brought in, with the names of the different Acts constituting Development-*cum*-Financial Corporations in the Schedule to the Bill. The representative of the Department of Legal Affairs stated that it might be possible.

In reply to a question, the representative of the Ministry of Petroleum stated that upto 1976-77, the Board had disbursed an amount of about Rs. 156 crores. Most of the funds were given as budgetary support for plan schemes to the public undertakings in consultation with the Ministry of Finance and Planning Commission. Some funds were also given to semi-public organisations like the Petroleum Conservation Action Group, National Productivity Council etc.

(The witnesses then withdrew)

II

RULE 24(2) OF THE TOBACCO BOARD RULLES, 1976

9. The Committee next heard oral evidence of the representative of the Ministry of Commerce, Civil Supplies and cooperation (Department of Commerce) in regard to the provision of Rule 24 of the Tobacco Board Rules, 1976 (G.S.R. 1-E of 1976).

10. The Committee desired to know whether there was any authorisation in the parent Act for the Board to write off losses and waive recoveries. The representative of the Department of Commerce stated that they had proceeded under Section 32 of the Act. They had been advised that under section 32(1) of the Act which empowered Government to make rules for carrying out the purposes of the Act and under Section 32(2)(i) which empowered Government to lay down the powers of the Board, it

was possible for Government to frame rules empowering the Board to write off irrecoverable amounts.

11. In reply to a question, the representative of the Department of Commerce stated that there had so far been no occasion for the Board to exercise the power of write-off or waiver since 1976.

12. In reply to another question as to who were the recipients of money from the Tobacco Board, the representative of the Department of Commerce stated that they were mainly tobacco growers. He further stated that in the regular budget of the Board, there was no provision for giving any loan to anybody. The Tobacco Board had certain schemes like setting up of auction platforms, introducing gradings, extension work, regulating marketing etc. This year because of cyclone, the Central Government had channelled Rs. 3.5 crores of loans through the Tobacco Board for distribution to these people who had to do either replanting of the crop or had damaged their crops.

13. In reply to a further question whether any guidelines had been laid down in the matter, the witness stated that during the current year when the money was advanced to the Board for disbursement, guidelines were given to the Board. He further assured that the suggestion for guidelines would be kept in view in future also.

(The witness then withdraw)

III

INDIAN CONSORTIUM FOR POWER PROJECTS PRIVATE LIMITED AND THE BHARAT HEAVY ELECTRICALS LTD. AMALGAMATION ORDER, 1974 (G.S.R. 155-E of 1975)

14. The Committee next heard the oral evidence of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) in regard to paragraph 11(b) of the Indian Consortium for Power Projects Private Ltd. Amalgamation Order, 1974 (G.S.R. 155-E of 1975).

15. The Committee desired to know the authority under which a provision had been made in para 11(b) of the Amalgamation Order for extinguishing the right of shareholder in the dissolved company. The representative of the Department of Company Affairs stated that para 14(b) read with 11(a) provided that subject to the other provisions, as from the appointed date, the Indian Consortium Power Projects Private Ltd. shall be dissolved and no person might make claim, demand or start proceedings against the dissolved company. He added that from the appointed date the dissolved company had ceased to exist and therefore, its share-holders could not have a claim in their capacity as share-holders.

16. When pointed out that the Amalgamation Order had been issued under Section 396 of the Companies Act wherein there was no specific authority for extinguishing of the right of the share-holders, the representative of the Department of Company Affairs stated that under sub-section (1) (b) (iv) of Section 394 of the Companies Act, if a party had gone to the High Court for the same Amalgamation, the High Court could by order sanction a compromise arrangement or by a subsequent order make provision for all or any of the following matters, namely, transfer, allotment, dissolution, without winding up of any transferor company. Section 396 (2) of the Companies Act provided that an order to be issued thereunder might contain such consequential, incidential or supplemental provisions as might be necessary to give effect to the agreement. The Government had assumed that what High Court could do under Section 394, the Company Law Board could do under Section 396 (2).

17. When asked why the Central Government had under paragraph 11 (b) of the Order sought to take away the right of a share-holder to move a court of Law for redressal of his grievances, the representative of the Department stated that no citizen was barred by para 11 (b) of the Amalgamation Order from going to a Court. The intention was merely to ensure that he no longer functioned as a share-holder and whatever power he might have under the Company Law as a share-holder ceased to exist when he was no longer a share-holder. He further stated that in the present case, the two amalgamating companies had already expressly agreed that three share-holders of the amalgamating companies should get back the face value of their shares and the transferee company, the Bharat Heavy Electricals, should pay back these shares.

18. In reply to a question, the witness conceded that the Company Law Board cannot take away the right of a citizen to go to a court of law if the parent law does not provide for it. Rather this would be 'illegal.'

19. In reply to a another question, he stated that in the particular case, all the share-holders were public sector undertakings and there was therefore no question of any of them going to a court of law. But in the case of Balmar Lawrie, certain private share-holders were still claiming that they were not being adequately compensated.

20. In reply to a further question, the representative of the Ministry agreed to consider the question of making a provision for revisionary or appellate authority in the order.

(The witnesses then withdrew)

The Committee then adjourned.

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

The Committee met on Wednesday, the 3rd May, 1978, from 15.30 to 16.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri Tarun Gogoi
5. Shri Ram Sewak Hazari
6. Shri N. Sreekantan Nair
7. Shri Trepan Singh Negi
8. Kumari Maniben Vallabhbhai Patel
9. Shri Saeed Murtaza

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 107 to 113 on the following subjects:—

S. No.	Memorandum No.	Subject
1	2	3
1	107	The All India Services (Discipline and Appeal) (Second Amendment) Rules, 1975 (G.S.R. 985 of 1975).
2	108	The Surgarcane (Control) Amendment Order, 1975 (G.S.R. 492-E of 1975).
3	109	The Sugarcane (Control) Second Amendment Order, 1975 (G.S.R. 542-E of 1975).

1	2	3
4	110	The General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Officers) Scheme, 1975 (S.O. 521-E of 1975).
5	111	The Company Law Board (Bench) Rules, 1975 (G.S.R. 583-E of 1975).
6	112	The Central Civil Services (Temporary Service) Amendment Rules, 1975 (S.O. 4541 of 1975)
7	113	Implementation of the recommendation contained in para 22 of the Fourth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Indian Railway Stores Service Recruitment Rules, 1969 (G.S.R. 151 of 196)

(i) THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) (SECOND AMENDMENT) RULES, 1975 (G.S.R. 985 OF 1975).

(*Memorandum No.* 107)

3. The Committee considered the above memorandum and were not satisfied with the reply of the Department of Personnel and Administratice Reforms that in cases covered by Rules 5 (4) and 5A (2) (i) of the All India Services (Discipline and Appeal) Rules, 1969 where the order of dismissal, removal or compulsory retirement is set aside on grounds of non-compliance with the requirements of Article 311 (2) of the Constitution, there is no exoneration on merits and as such the members of the service will be entitled to such proportion of pay and allowances as may be determined by the competent authority. The Committee were of the opinion that once an order of dismissal, removal or compulsory retirement from service was set aside by a Court of Law or by the appellate authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311, and no further enquiry is proposed to be held, the member of the service should be treated on the same footing as the one having been completely exonerated of all charges against him and he should be allowed full pay and allowances. The Committee desired the Department of Personnel and Administrative Reforms to amend the relevant rules accordingly.

4. The Committee noted that the Department of Personnel and Administrative Reforms proposed to amend the rules to provide that the period of notice to be served on the member of the service under rules 5 (4) and

5A (2) (i) *ibid.* should in no case exceed 60 days. The Committee decided to recommend that minimum period in which the person concerned might submit his representation on the orders should also be specified in the rules and the requisite amendments to the rules should be issued at an early date.

5. The Committee were not satisfied with the replies of the Department of Personnel and Administrative Reforms for restricting the payment of pay and allowances to three years on account of the law of limitation. The Committee desired the Department to amend the rules so as to provide for payment of pay and allowances for the whole period immediately preceding the date of his reinstatement during which he remained dismissed or suspended.

(ii) THE SUGARCANE (CONTROL) AMENDMENT ORDER, 1975 (G.S.R. 492-E OF 1975)

(*Memorandum No.* 108)

6. The Committee considered the above memorandum and noted from the reply of Ministry of Agriculture and Irrigation (Department of Food) that the underlying intention behind the proviso to sub-clause (7) of clause 5 (A) of the Sugarcane (Control) Order, 1966 was that a grower should not be deprived of the additional price for the Sugarcane he actually supplied even if it fell short of 85 per cent of the agreed quantity, if the short supply was occasioned by reasons beyond his control such as drought, floods etc. The Committee were not convinced with the argument of the Ministry that incorporation of this intention in the Order would lead to frivolous claims for additional cane price as natural calamities such as flood, drought etc. were a well-known phenomenon. The Committee, therefore, decided to recommend to the Ministry to amend the proviso to sub-clause (7) of clause 5A ibid. so as to make it clear that the cane-growers would be entitled to additional price of sugarcane even if the quantum supplied by them was less than 85 per cent of the agreed quantity only when the short supply was due to reasons beyond his control.

(iii) THE SUGARCANE (CONTROL) SECOND AMENDMENT ORDER, 1975 (G.S.R. 542-E OF 1975)

(*Memorandum No.* 109)

7. The Committee considered the above memorandum and were satisfied to note that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Food) had amended sub-clause (1) of clause 9A of the Sugarcane (Control) Order so as to provide that an officer not lower than the rank of a police inspector or Tehsildar or an officer of an equivalent rank would be authorised to make searches and seizures under the Order (vide G.S.R. 484-E of 1976).

(iv) THE GENERAL INSURANCE (RATIONALISATION OF PAY SCALES AND OTHER CONDITIONS OF SERVICE OF OFFICERS) SCHEME, 1975. (S.O. 521-E OF 1975).

(*Memorandum No.* 110)

8. The Committee considered the above memorandum and noted that in case of persons covered by paragraph 10 (6) (a) of the General Insurance (Rationalisation of Pay Scales and other conditions of service of officers) Scheme, 1975, the gratuity payable to them stood wholly forfeited. In view of this, the Committee felt it unnecessary to issue a show cause notice to them before forfeiting their gratuity. However, in case of persons covered by paragraph 10 (6) (b), the forfeiture of gratuity is required to be to the extent of financial loss suffered by the Corporation or Company on account of any act of the person concerned. As the extent of loss suffered may not be beyond dispute, the Committee decided to recommend to the Ministry of Finance (Department of Economic Affairs) to amend the para so as to provide therein for issue of a show cause notice to the persons concerned before forfeiting their gratuity.

9. As regards paragraph 14 of the scheme, the Committee, while agreeing with the Ministry's contention that the jurisdiction of courts was not ousted by the provision, felt that the phraseology of the para did give an impression to a layman that it sought to bar the jurisdiction of courts. The Committee, therefore, desired the Ministry of redraft the para in a manner that it did not give such an impression.

(v) THE COMPANY LAW BOARD (BENCH) RULES, 1975 (G.S.R. 583-E OF 1975)

(*Memorandum No.* 111)

10. The Committee considered the above memorandum and were satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) that Section 637A (2) (c) of the Companies Act, 1956 authorised the levy of fees for supply of certified copies of orders made by the bench or documents filed before it or for taking extracts from the list of creditors kept at the registered office of the company.

(vi) THE CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) AMENDMENT RULES, 1975 (S.O. 4541 OF 1975).

(*Memorandum No.* 112)

11. The Committee considered the above memorandum and were satisfied to note that on being pointed out the Department of Personnel and Administrative Reforms had agreed to provide in the Central Civil Services (Temporary Service) Rules, 1965 for an opportunity of being heard to a

Government servant before the competant authority made a reduction in the amount of gratuity payable to him on account of the service rendered by him not being satisfactory. The Committee desired the Department to issue necessary amendment in this regard at an early date.

(vii) IMPLEMENTATION OF THE RECOMMENDATION CONTAINED IN PARA 22 OF THE FOURTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING THE INDIAN RAILWAYS STORES SERVICE RECRUITMENT RULES, 1969 (G.S.R. 151 OF 1969).

(*Memorandum No.* 113)

12. The Committee considered the memorandum and noted that in implementation of the recommendation made in para 22 of their Fourth Report (Fifth Lok Sabha) the Ministry of Railways had circulated a set of 'Principles for determining the relative seniority of class I officers on the Indian Railways' in the form of administrative instructions instead of incorporating them in the Gazette for the information of all concerned.

13. The Committee further noted that while circulating the Principle for determining seniority, the Ministry had mentioned in para 2 of their letter No. E(O) I-72 SRG/29 dated 30-11-76 that the Principles circulated by them did not fetter the general powers of the Government for giving to the individual officers in special circumstances of such position in the seniority list as the circumstances of the case may require. The Committee felt that this paragraph gave an impression that the Railway Administration had unfettered powers in the matter of fixing seniority. The Committee, therefore, desired that the special circumstances in which the seniority of a person might be fixed otherwise than in accordance with the principles should be clearly defined and made a part of the principles.

14. The Committee further desired that the Principles for determining seniority should be placed on a statutory footing for the information of all concerned.

15. The Committee also desired the Ministry of Railways to frame requisite rules for determining seniority in respect of the Medical and other miscellaneous categories at an early date.

16. The Chairman placed before the Committee a resume of the work done by the Committee since its constitution, which is as follows:

"The Committee on Subordinate Legislation for the year 1977-78 was constituted on the 1st July, 1977. During its term of about 10 months, the Committee scrutinised approximately 1500 'Orders'. The Committee has almost become up-to-date in the examination of 'Orders'.

The Committee has held 18 Sittings, out of which 12 Sittings were held during the Session period.

The Committee considered 116 Memorandum at its sittings. The number of Memoranda considered by the present Committee during the last ten months exceeds the total number considered by the Committee during the entire Third Lok Sabha (88) and the Fourth Lok Sabha (103).

The Committee has so far presented 8 Reports during its term of less than a year. It is likely to present one more report during the current term, raising the total to 9. Without commenting in any way on the substantial work done by the previous Committees, it may be stated that the number of Reports presented by the present Committee during the last ten months exceeds the total number presented by the Committee during the whole First Lok Sabha (6 Reports) and the Fourth Lok Sabha (7 Reports). The total number of Reports presented by the Committee during the Fifth Lok Sabha was 20, but the average per year came to 3.4 reports.

A special feature of the work done by the present Committee is presentation of an exclusive action-taken report—Eighth Report (presented to the House on 26-4-78). Since the inception of the Committee in 1954, only once before, the Committee had presented such an Action-taken report—Tenth Report (Fifth Lok Sabha).

In the Report, under reference, the Committee has for the first time included a Chapter regarding non-receipt of replies from the Ministries/ Departments to furnish final replies in respect of these recommendations within period of three months from the presentation of the Report."

The Chairman expressed his deep sense of appreciation to the hon. Members for their kind co-operation in the discharge of the duties and functions of the Committee and also expressed his gratitude for the same. The Chairman also referred to the help and assistance he has received from the staff of the Secretariat attached to the Committee and expressed his appreciation of the sincerity, efficiency and devotion to duty on the part of the staff.

The Committee then adjourned.

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

(1977-78)

The Committee met on Tuesday, the 9th May, 1978 from 15.00 to 15.30 hrs.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Shri Santoshrao Gode
4. Chaudhary Hari Ram Makkasar Godara
5. Shri Tarun Gogoi
6. Kumari Maniben Vallabhbhai Patel
7. Shri Saeed Murtaza
8. Shri Sachindralal Singha

SECRETARIAT

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

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

3. The Committee authorised the Chairman and, in his absence, Kumari Maniben Vallabhbhai Patel to present the Ninth Report to the House on their behalf on the 11th May, 1978.

The Committee then adjourned.