

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(SIXTH LOK SABHA)

ELEVENTH REPORT

(Presented on the 24th August, 1978)



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 1978/Bhadra, 1900 (Saka)
Price ∴ Rs. 2.90

LOK SABHA SECRETARIAT

**CORRIGENDA TO THE ELEVENTH REPORT OF
THE COMMITTEE ON SUBORDINATE LEGISLATION
(SIXTH LOK SABHA)**

<u>S.No.</u>	<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
1.	2	8	3	advanco	advance
2.	2	9	4	darwing	drawing
3.	8	above para 25	-	-	(B)
4.	39	-	15 from bottom	now	know
5.	50	-	13	explaantion	explanation

CONTENTS

	PARA No.	PAGE No.
Composition of the Committee		(iii)
REPORT—		
I. Introduction	1—4	1
II. The Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976 (G.S.R. 93 of 1977)	5—13	1
III. The Department of Electronics (Group 'B' & 'C' Posts) Recruitment Rules, 1977 (G.S.R. 747 of 1977)	14—19	4
IV. The Central Excise (Nineteenth Amendment) Rules, 1977 (G.S.R. 554-E of 1977)	20—28	5
V. The Department of Social Welfare (Statistician) Recruitment Rules, 1977 (G.S.R. 524 of 1977)	29—37	9
VI. The Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 (G.S.R. 537 of 1977)	38—55	11
VII. The General Provident Fund (Central Services) Fourth Amendment Rules, 1976 (S.O. 1026 of 1976)	56—60	16
VIII. The Central Excise (Fourth Amendment) Rules, 1976 (G.S.R. 35-E of 1976)	61—66	17
IX. The Port of New Mangalore (Goods in Transit) Rules, 1976 (G.S.R. 1344 of 1976)	67—74	19
X. The Export of Common Salt (Quality Control and Inspection) Rules, 1977 (S.O. 2191 of 1977)	75—78	21
XI. The Aircraft (Fourth Amendment) Rules, 1976 (G.S.R. 1202 of 1976)	79—82	22
XII. Incorporation of a provision in Acts for laying of Rules framed thereunder before Parliament	83—88	23
XIII. The Export (Quality Control and Inspection) Amendment Rules, 1977 (S.O. 263 of 1977)	89—99	25
XIV. (i) The Directorate of Sugar (Class III Posts) Recruitment (Amendment) Rules, 1977 (G.S.R. 639 of 1977); and (ii) The Directorate of Sugar (Recruitment to Class I and Class II Posts) Amendment Rules, 1977 (G.S.R. 640 of 1977)	100—105	28
XV. Implementation of Recommendations :—		
(i) Implementation of Recommendation contained in para 21 of the seventeenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) Regarding the Motor Cars (Distribution and Sale) Control (2nd Amendment) Order, 1974	106—110	30

(ii) Implementation of Recommendation contained in para 66 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) Reg: Giving of retrospective effect to the 'Orders' framed under various Acts of Parliament [The Cement Control (2nd Amendment) Order, 1973 (S.O. 246-E of 1973)]. . .	111-118	32
---	---------	----

APPENDICES

I. Summary of main recommendations/observations made by the Committee		39
II. Minutes of the Twenty-First, Twenty Second, Twenty Third and Twenty Fourth Sitzings of the Committee on Subordinate Legislation (Sixth Lok Sabha)		55

COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1978-79)

1. Shri Somnath Chatterjee—*Chairman.*
2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri Ram Sewak Hazari
5. Shri B. K. Nair
6. Shri T. S. Negi
7. Kumari Maniben Vallabhbhai Patel
8. Shri G. S. Reddi
9. Shri Saeed Murtaza
10. Shri P. A. Sangma
11. Shri Madan Lal Shukla
12. Shri Sachindralal Singha
13. Shri Ramji Lal Suman
14. Shri Krishnarao Thakur
15. Shri C. N. Visvanathan

SECRETARIAT

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

REPORT

I

INTRODUCTION

1. 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 Eleventh Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on the 3rd and 20th July and 3rd August, 1978.

3. The Committee considered and adopted this Report at their sitting held on the 22nd August, 1978. The Minutes of the sittings, which form part of the Report are appended to it.

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

II

THE SHIPPING DEVELOPMENT FUND COMMITTEE EMPLOYEES CONTRIBUTORY PROVIDENT FUND) RULES, 1976 (G.S.R. 93 OF 1977).

(A)

5. Sub-rule (5) of rule 13 of the Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976 provides that if an advance has been granted to a subscriber and drawn by him and the advance is subsequently disallowed, the subscriber shall forthwith repay with interest the whole or the balance of the amount withdrawn and on his default the amount shall be recovered by deduction from his emoluments in a lump-sum or in monthly instalments.

6. The Ministry of Shipping and Transport (Transport Wing) were requested to indicate the circumstances in which the advance already sanctioned and withdrawn may subsequently be disallowed as provided in sub-rule (5) of rule 13 and whether the Ministry had any objection to amend the rule so as to provide for giving a reasonable opportunity of being heard before the subscriber was asked to repay the whole or the balance amount together with interest.

7. In their reply dated 5-11-77, the Ministry have stated as under:

"Rule 13(5) is intended to cover irregular sanction of advances. If a sanction had been accorded by an authority not competent to do so, it may be disallowed by audit. Also sanctions can sometime be in excess of 3 months' pay or half the amount of the balance in the account and such sanctions will also be irregular unless they are resanctioned by the Head of the Department. Further, a sanction involving a relaxation of rule, issued without concurrence of the Ministry of Finance will also be irregular.

In such cases, unless the sanction is reissued with the approval of the competent authority the amount will have to be recovered. The point is both the subscriber and the sanctioning authority are supposed to know the rules and the subscriber is also responsible for drawing an amount only in an authorised and proper manner under valid sanction. In such circumstances, the question of giving opportunity before recovery of wrong payment does not seem to arise. It may also be added that in practice, the number of such instances is likely to be very few. In the ordinary course, if a sanction is accorded by an authority who is not competent to issue such a sanction, on a reference from audit, the Department will usually obtain the approval of the appropriate competent authority and issue a valid sanction."

8. The Committee note that Rule 13(5) of the Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976 has been framed to cover irregular sanction of advance e.g. when the sanction is accorded by an authority not competent to do so or when it is in excess of 3 months' pay or half the amount of the balance in the account or when a sanction involving a relaxation of rules has been issued without concurrence of the Ministry of Finance.

9. The Committee are, however, not convinced with the reply of the Ministry of Shipping and Transport (Transport Wing) that the subscriber is supposed to know the rules and therefore, he is also responsible for drawing an amount only in an authorised and proper manner under valid sanction and as such giving an opportunity of being heard before recovery of wrong payment is not necessary. The Committee are of the view that if a mistake takes place on the part of the sanctioning authority, they only should be held responsible for it. The Committee feel that where an advance has been

sanctioned to a subscriber and drawn by him under an irregular sanction, the effort should be to regularise it by issue of a valid sanction without forcing the subscriber to repay the amount. However, if a recovery becomes unavoidable, the subscriber should be given a reasonable opportunity of being heard before ordering recovery of the amount. The Committee desire the Ministry of Shipping and Transport (Transport Wing) that a provision to this effect should be made in the rules at an early date.

(B)

10. Sub-rule (7) of Rule 13 of the Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976 provides as under:

"Notwithstanding anything contained in the rules, if the sanctioning authority is satisfied that money drawn as an advance from the Fund under rule 12 has been utilised for the purpose other than that for which sanction was given to the drawal of the money, the amount in question shall forthwith be repaid by the subscriber to the Fund, or in default, be ordered to be recovered by deduction in one lump-sum from the emoluments of the subscriber even if he be on leave."

A similar provision is made in sub-rule (2) of Rule 15 in regard to withdrawals.

11. The Ministry of Shipping and Transport (Transport Wing) were requested to state whether they had any objection to amend the rules so as to provide for giving a reasonable opportunity of being heard before the subscriber was asked to repay the whole or the balance amount together with interest in lump-sum as provided in sub-rule *ibid*.

12. The Ministry in their reply dated 5-11-77 have stated as under:

"Rule 13(7) and Rule 15(2) refer to a..... case namely, the money drawn as an advance or as a withdrawal having been utilised for a purpose other than for which sanction was given. In such cases, before reaching a conclusion that the advance or withdrawal sanctioned has been utilised for a purpose other than those for which sanction was given, the employee would have been asked to state his case in writing and make such submissions as may be necessary thereon. Therefore, it would appear that the concept of reasonable opportunity is worked out and would be available to the employees concerned. In the

circumstances it does not appear necessary to make any amendment to the rules."

13. The Committee note from the reply of the Ministry of Shipping and Transport (Transport Wing) that before reaching a conclusion that the advance or withdrawal sanctioned has been utilised for a purpose other than that for which sanction was given, the employee will be asked to state his case in writing and make such submissions as may be necessary. This is however, not clear from the rules as worded at present. The Committee feel that if a practice is already in vogue to give the employee an opportunity of being heard and submit his representation before he is actually required to repay the whole or the balance amount of an advance/withdrawal under sub-rule (1) of rule 13 and sub-rule (2) of the rule 15, the Ministry should have no objection to placing it on a statutory footing by suitably amending the rules. The Committee desire the Ministry to issue the necessary amendment at an early date.

III

THE DEPARTMENT OF ELECTRONICS (GROUP 'B' & 'C' POSTS) RECRUITMENT RULES, 1977 (G.S.R. 747 OF 1977).

14. Rule 5 of the Department of Electronics (Group 'B' & 'C' Posts) Recruitment Rules, 1977 provides for regulations to be made by the Central Government for conducting competitive examinations.

15. The Department of Electronics who were asked to state whether the regulations were published in the Gazette for general information, have in their reply dated 31-12-77 stated as follows:

"Regulations for conducting four of the departmental competitive examinations for various posts have since been framed and circulated to all the prospective candidates and other employees in the Department. Copies of the regulations have also been displayed on the Notice Board for general information and circulated in the Sections. They will also be included in the Administration Manual of the Department which is under compilation. As the number of employees working in this Department is limited and they have already been apprised of the regulations, it is presumed that this will be sufficient for the purposes of the regulations. We are not aware of any provisions in the Recruitment Rules or elsewhere for any other form of publicity such as publishing in the Gazette."

16. The Committee note that the Regulations framed under Rule 5 of the Department of Electronics (Group 'B' and 'C' Posts) Recruit-

ment Rules, 1977 have been circulated to the candidates and the employees in the Department. Copies of the Regulations have also been displayed on the Notice Board and they are also proposed to be included in the Administration Manual of the Department presently under compilation.

17. The Committee feel that though the purpose of publicity of the regulations made under rule 5 is being served to a great extent by the various methods adopted or proposed to be adopted by the Department of Electronics in this regard, yet such regulations do not come to the notice of the Committee on Subordinate Legislation to judge their fairness. Under Rules 317 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Committee are required to report to the House whether the power to make regulations under the powers conferred by the Constitution or delegated by Parliament is being properly exercised within such delegation. In order to enable the Committee to scrutinise and comment upon any inequitable provision in the regulations, it is necessary to publish them in the Gazette of India.

18. The Committee note that regulations relating to limited Departmental competitive examinations framed under certain Central Services have been published in the Gazette and scrutinised by the Committee in the past. In paras 14—18 of their First Report (Fourth Lok Sabha) the Committee have commented upon the Central Secretariat Clerical Service (Upper Division Grade Limited Departmental Competitive Examination) Regulations, 1966.

19. The Committee, therefore, desire the Department of Electronics to take necessary steps to publish these regulations in the official Gazette at an early date.

IV

THE CENTRAL EXCISE (NINETEENTH AMENDMENT) RULES,
1977 (G.S.R. 554-E OF 1977).

(A)

20. Sub-rule (1) of Rule 10 of the Central Excise Rules, 1944 as substituted by the Central Excise (Nineteenth Amendment) Rules, 1977 reads as under:—

“Recovery of duties not levied or not paid, in full or erroneously refunded.

Where any duty has not been levied or paid or has been short-levied or erroneously refunded or any duty assessed

has not been paid in full, the proper officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid, or which has been short-levied, or to whom the refund has erroneously been made, or which has not been paid in full, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that—

- (a) where any duty has not been levied or paid or has been short-levied or has not been paid in full, by reason of fraud, collusion or any wilful misstatement or suppression of facts by such person or his agent, or
- (b) where any person or his agent, contravenes any of the provision of these rules with intent to evade payment of duty and has not paid the duty in full, or
- (c) where any duty has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts by such person or his agent, the provisions of this sub-section shall, in any of the cases referred to above, have effect as if for the words "six months", the words "five years" were substituted.

Explanation.—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the period of six months, or five years, as the case may be.

21. The Ministry of Finance (Department of Revenue) were requested to state the express provision in the Central Excise Act which empowers the Government to issue notices for recovery of duty long after the relevant date (e.g. five years under the proviso to the sub-rule). They were also requested to state whether period of limitation should not more appropriately be laid down in the Act itself.

22. In their reply, the Ministry of Finance (Department of Revenue) have stated as under:

"Section 37 of the Central Excises and Salt Act, 1944 empowers the Central Government to make rules to carry into effect the purposes of the Act. Furthermore sub-section 2(i) of section 37 specifically provides for issue of notices for payment and recovery of duty not paid.

As regards providing for the time limit of five years in cases of fraud, collusion or wilful misstatement or suppression of facts by an assessee or his agent it might be mentioned

that providing of such a longer period is necessary as otherwise the assessee may wilfully suppress facts relevant for determining classification/valuation to escape proper assessment and thus cause considerable loss to Government revenue. Sometimes, such cases came to light only after a long period. The consideration which is shown to an assessee in a normal course would not be equally deserved in a case of fraud or the like.

The Central Excise (S.R.P.) Review Committee had also commented upon the provisions of the law relating to time bar as it existed prior to the amendment made vide notification No. 267/77-CE dated 6-8-77. It had stated that where a short levy was primarily due to some deliberate commission or omission on the part of the assessee the amount should be recoverable without time-limit of the commission or omission as the same amount to a criminal offence. However, the Government accepted this subject to the modification that in the case of forgery, fraud, collusion etc., the time-limit should be five years.

Attention is also drawn in this connection to section 28 of the Customs Act, 1962. Proviso to sub-section (1) of the said section states "provided that where any duty has not been levied or has been short-levied or has been erroneously refunded by reasons of collusion or any wilful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provision of this sub-section shall have effect as if for the words "six months" the words "five years" were substituted. It will thus be seen that the provisions in amended rule 10 have been brought at par with section 28 of the Customs Act as enacted by Parliament.

The period of limitation is proposed to be incorporated in the Central Excises and Salt Act, 1944 itself vide Bill No. 149 of 1977 which has been introduced in Lok Sabha on 19-12-77."

23. The Committee note from the reply of the Ministry of Finance that the time-limit of six months for recovery of duty as laid down in sub-rule (1) of Rule 10 of the Central Excise Rules has been increased to five years under the proviso to the said rules in cases where the duty of excise had not been levied or paid or short-levied or short-paid or erroneously refunded by reasons of fraud or wilful misstatement or suppression of facts by an assessee or his agent.

24. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Revenue) have incor-

porated the provisions of the above rule in the Central Excises and Salt Act, 1944, vide Section 21 of the Customs, Central Excise and Salt and Central Boards of Revenue (Amending) Act, 1978 (25 of 1978).

25. Sub-rule (2) of Rule 11 of the Central Excise Rules as substituted, empowers the Assistant Collector of Central Excise to make an order for refund of duty.

26. The Ministry of Finance (Department of Revenue) were requested to state whether they had any objection to fixing a maximum time-limit within which claims for refund of duty should be disposed of.

27. In their reply dated 23-12-1977, the Ministry have stated as under:

"Regarding fixation of a statutory time-limit within which claims for refund of duty should be disposed of it might be mentioned that the Central Excise (S.R.P.) Review Committee had recommended that the Department should stipulate a period within which all claims for refund must be settled. In this connection it had suggested a period of three months which should count from the date from which full information relevant to the claims has been furnished by the claimant. (Chapter 18.28). Regarding claims for rebate of duty it had suggested that the stipulated period should be given from the date of shipment of goods and that the stipulated period should be appreciably less than the periods stipulated in other cases. These recommendations of the Committee were accepted in principle and instructions issued by the Board vide its F. No. 318/A/4/76-CX.10 dated the 13th December, 1976 stipulated a period of three months within which refund/rebate claims should be sanctioned.

The suggestion for fixing a statutory time-limit for finalising refund claims has been examined several times in the past but has not been accepted because of its likely adverse impact on the proper disposal of refund claims. If such a statutory time-limit is fixed, there would be a tendency on the part of the officer to reject or give ill-considered disposal to claims in order to comply with the statutory time-limit. This would unnecessarily result in the assessee having to pursue the case in appeal, so that instead of facilitating and expediting disposal, the result might be to create further delay and difficulty. It has

therefore been considered preferable to strive for the objective of quicker disposal by executive instructions rather than by setting a statutory time-limit."

28. The Committee note that the Ministry of Finance (Department of Revenue) have issued executive instructions stipulating a period of three months within which refund/rebate claims under sub-rule (2) of the rule 11 of the Central Excise Rules should be sanctioned. The Committee feel that executive instructions are no substitute for statutory provision. In order to avoid inordinate and unjustified delay in settling refund claims it is necessary to bring these instructions on a statutory footing. The Committee, therefore, desire the Ministry to amend the rules at an early date to provide for a time-limit for sanction of claims.

V

THE DEPARTMENT OF SOCIAL WELFARE (STATISTICIAN) RECRUITMENT RULES, 1977 (G.S.R. 524 OF 1977).

29. Rule relating to disqualification on account of plural marriage which is incorporated in Recruitment Rules is usually worded on the following lines:—

"Disqualification.—No person,—

- (a) Who has entered into or contracted a marriage with a person having a spouse living; or
- (b) who, having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to the said post:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule."

30. It was observed during examination of the Department of Social Welfare (Statistician) Recruitment Rules, 1977 that following clause was missing from Rule 4 relating to disqualification:

"(a) Who has entered into or contracted marriage with a person having a spouse living, or"

31. The Department of Social Welfare who were requested to state whether they had issued any corrigendum in this regard, have replied as under:

“the original notification forwarded to the Government of India Press for publication contained the provision now brought to notice in the O.M. under reference but was omitted by the Press inadvertently. This has been brought to the notice of Press.

The Hindi version published along with the English notification, however, contains this provision.”

32. In a further communication dated 15-12-1977 the Department of Social Welfare has stated as under:

“the Gazette Notification had not been received in this Department. A copy of the notification was obtained for verification after omission was pointed out in the O.M. dated 2 December, 1977 and the Press was requested to issue the necessary corrigendum.”

33. The Committee are amazed to observe that the Department of Social Welfare was not aware of the Printing error in the rules till it was brought to their notice by the Committee. The Committee have repeatedly emphasised that after the rules, regulations, etc. are published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine them whether they have been correctly printed and if necessary, to issue a corrigendum thereto suo moto without waiting for the Committee to point it out.

34. The Committee desire to emphasise in this connection that it is the responsibility of the Ministry/Department concerned to arrange for obtaining a copy of the Gazette containing their notification immediately after its publication for verifying that it has been correctly printed.

35. In para 93 of the Twentieth Report (Fifth Lok Sabha) presented to the House on the 3rd November, 1976 the Committee have observed that henceforth serious view will be taken of such lapses. The Department of Parliamentary Affairs brought it to the notice of all Ministries|Departments vide their O.M. No. F.32(1)|76-R&C dated the 31st January, 1977. The Committee are constrained to observe that the Department of Social Welfare have paid no heed to above recommendation of the Committee even after it was brought to their notice by the Department of Parliamentary Affairs.

36. The Committee take serious note of the fact that Ministries/Departments concerned do not take care to keep in mind and pay

heed to the recommendations of the Committee on Subordinate Legislation and often take the plea of inadvertent omission etc. when the mistakes are brought to their notice by the Committee. The Committee desire the Department of Parliamentary Affairs to bring to the notice of all Ministries/Departments that due care should be taken and suitable procedure evolved to see that recommendations of the Committee are taken note of and implemented quickly.

37. The Committee reiterate their earlier recommendation made in para 93 of their Twentieth Report (Fifth Lok Sabha) and desire the Department of Social Welfare to issue necessary corrigendum to the above rules at an early date.

VI

THE INDIAN CIVIL ACCOUNTS SERVICE (GROUP 'A') RECRUITMENT RULES, 1977 (G.S.R. 537 OF 1977).

(A)

38. Rule 18 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 provides that inclusion of a candidate's name in the list confers no right to appointment unless the Government is satisfied, after such inquiry as may be considered necessary, that the candidate is suitable in all respects for appointment to service.

39. It was felt that the nature of inquiry considered necessary for the suitability of the candidate should be mentioned in the Rules. The Ministry of Finance (Department of Expenditure) were, therefore, requested to state whether they had any objection to amend the above Rule on the lines of the amendment made to Regulation 13 of I.A.S./I.P.S. (Appointment by Competitive Examination) Regulations, 1955, which now reads as under:—

"Inclusion in list confers no right to appointment. The inclusion of a candidate's name in the list confers no right to appointment unless the Central Government is satisfied, after such inquiry as may be considered necessary that the candidate *having regard to his character and antecedents* in all respects is suitable for appointment to the service."

Attention of the Ministry, in this connection, was invited to paras 125 to 135 of the 13th Report of the Committee (Fifth Lok Sabha).

40. In their reply dated 10-3-1978, the Ministry have stated as under:

"We are agreeable to the amendment of this rule as suggested by the Committee. We have already obtained concurrence of the Department of Personnel and Administrative Reforms and are approaching the Union Public Service Commission for their clearance."

41. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to amend rule 18 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules so as to specify that the inquiry contemplated thereunder relates to the character and antecedents of the candidate. The Committee desire the Ministry to issue the necessary amendment at an early date.

(B)

42. Rule 20(1) (iii to vi) of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 provides for promotion by selection of officers on merit.

43. The Ministry were requested to state whether any guidelines have been laid down as to how the relative merit of different candidates in each grade will be determined.

In their reply dated 10-1-78 the Ministry have stated as under:

"*Promotion by selection of officers on merit*:—The guidelines for selection on merit are those laid down by the Government of India (Relevant extract of D.P. & A.R. dated 30-12-1976 is given below).

"Where promotions are to be made by selection method as prescribed in the Recruitment Rules, the field of choice viz., the number of officers to be considered should ordinarily extend to 5 or 6 times the number of vacancies expected to be filled within a year. The officers in the field of selection, excluding those considered unfit for promotion by Departmental Promotion Committee, should be classified by the Departmental Promotion Committee as "out-standing", "Very Good" and "Good" on the basis of their merit, as assessed by the DPC after examination of their respective records of service. In other words, it is entirely left to the DPC to make its own classification of the officers being considered by them for..... promotion to selection posts, irrespective of the grading that may be shown in the C.Rs. The panel should, there-

fore, be drawn up to the extent necessary by placing the names of the 'Outstanding Officers' first, followed by the officers categorised, as 'Very Good' and followed by the officers categorised as 'Good'. The inter-seniority of officers belonging to any one category would be the same as their seniority in the lower grade. Seniority is given due consideration while making promotions by selection on merit."

44. The Ministry were, then asked to state whether they had any objection to incorporate these guidelines in the rules. In their reply dated 10-3-1978 the Ministry have stated as follows:

"It is considered that the recruitment rules and the guidelines for promotion are two different things and it would not be appropriate to include them in the recruitment rules. The DPAR who have a co-ordinating role to play in the formalisation of recruitment rules for the various services are also in agreement with the above views. Since this is in consonance with the practice followed generally in this regard, the recruitment rules may be allowed to stand as they are in this respect."

45. The Committee agree with the contention of the Ministry of Finance (Department of Expenditure) that recruitment rules and guidelines for promotion are two different things and it would not be appropriate to include the guidelines in the recruitment rules. The Committee, therefore, do not insist upon incorporating the guidelines regarding promotion and selection of officers on merit in the Civil Accounts Service (Group 'A') Recruitment Rules, 1977. The Committee, however, desire that if any change is effected in these guidelines, the Department of Personnel and Administrative Reforms should bring them immediately to the notice of the Committee.

(C)

46. Rule 20(2) (a) of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 provides that *inter-se seniority* of the persons falling under clause (a) & (b) of sub-rule (1) of rule 6 appointed to the service after the initial constitution shall be determined in accordance with the general orders regulating seniority of Government employees issued by Government from time to time.

47. It was felt that principles of determining seniority, being a basic ingredient of recruitment rules should be laid down in the rules. In this connection while drawing attention of the Ministry of Finance (Department of Expenditure) to the following observa-

tions of the Committee made in para 64 of their Second Report (Sixth Lok Sabha) were requested to state whether they had any objection to mention the principles of determining seniority in the above rules.

“.....The Committee felt that the criteria for determining seniority, being a basic ingredient of the recruitment rules, should be incorporated in the rules and not left to be determined through executive instructions, as the executive instructions issued by Government are not published in the Gazette and therefore, their reasonableness or fairness cannot be judged by the Committee. The Committee note in this connection that criteria for determining seniority have been laid down in a number of rules including the Indian Economic/Statistical Service Rules, 1961. The Committee, therefore, desire the Ministry of Defence to amend the Defence Science Service Rules to incorporate therein the criteria for determining seniority.”

48. The Ministry of Finance, in their reply dated 10-1-78 have stated as under:

“Incorporation of principles for determining the Seniority in the Recruitment Rules.—The cadre authorities have, generally the option either to follow the general principles for seniority laid down by the Department of Personnel and Administrative Reforms or to evolve their own seniority principles to suit the requirements of the individual service. Wherever the cadre authorities formulate their own principles of seniority as in the example quoted, these principles are spelt out in the service rules. Wherever the cadre authorities follow the general principles of seniority laid down by the Department of Personnel, it is not customary to lay down these principles in the Service Rules. In fact, the vast majority of Recruitment Rules do not spell out the principles of seniority because they follow the general principles laid down by the Department of Personnel and Administrative Reforms.”

49. The Committee are unable to appreciate the contention of the Ministry of Finance (Department Expenditure) that wherever the cadre authorities follow the general principles of seniority laid down by the Department of Personnel, it is not customary to incorporate them in the Service Rules. The Committee note that general principles of seniority laid down by the Department of Personnel are in

the form of executive instructions and as such they do not come to the notice of the Committee for adjudging their fairness or otherwise.

50. In para 64 of their Second Report (Sixth Lok Sabha) the Committee had recommended that the criteria for determining seniority, being a basic ingredient of the recruitment Rules, should be incorporated in the rules and not left to be determined through executive instructions.

51. The Committee reiterate their earlier recommendation and desire the Ministry of Finance to incorporate the principles of determining seniority in the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977.

(D)

52. Rule 31 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 provides that Government may in consultation with the Union Public Service Commission relax any of the provisions of the rules. Normally, the relaxation clause in recruitment rules reads as under:

"Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reason 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 or posts.*"

53. The Ministry of Finance (Department of Expenditure) were asked to state whether they had any objection to amending the rule on the above lines so as to provide for relaxation with respect to any class or category of persons or posts.

54. In their reply dated 10th January, 1978 the Ministry have stated as under:

"We agree to the suggestion to amend the rules by adding the expression 'with respect to any class or category of persons or posts.' Necessary action is being taken in consultation with Union Public Service Commission and Department of Personnel and Administrative Reforms."

55. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to amend rule 31 so as to provide therein for relaxation of any provision of the rules *ibid.*, 'with respect to any class or category of persons or posts'. The Committee desire the Ministry to issue the necessary amendment at an early date.

VII

**THE GENERAL PROVIDENT FUND (CENTRAL SERVICES)
FOURTH AMENDMENT RULES, 1976 (S.O. 1026 OF 1976)**

56. While examining the General Provident Fund (Central Services) Fourth Amendment Rules, 1976, it was noticed that the original rules i.e. the General Provident Fund (Central Services) Rules had been extensively amended since their issue in 1960. Attention of the Ministry of Finance (Department of Expenditure) was invited to para 29 of the Fourth Report of the Committee on Subordinate Legislation (First Lok Sabha) where they had recommended that whenever there were extensive amendments to any rules, the rules should be re-printed. The question of economy should be balanced against the convenience to the persons for whose use rules were made.

57. The Ministry of Finance (Department of Expenditure) to whom the matter was referred for re-printing of above rules, have in their reply dated 7th March, 1978 stated as under:

“...due to some practical difficulties, the Hindi version of the aforesaid Rules is not likely to be finalised early.

The Department of Publication have since advised that these Rules should be reprinted early, as the publication is in very good demand and the stock has run down to a few copies.

In the circumstances it has been decided, in consultation with the Official Language Department, that, for the present, only the English version of the Rules should be reprinted as early as possible. The English reprint is likely to be available in about four months.”

58. The Committee note that on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to reprint for the present, only English version of the General Provident Fund (Central Services) Rules, 1960 as these have been extensively amended since their issue. The Committee desire the Ministry to print the rules at an early date and also to expedite the work relating to the printing of Hindi version of the Rules.

59. Reprinting of rules with all amendments incorporated therein is necessary to facilitate easy reference. The Committee, therefore, desire all Ministries/Departments of Government to examine the rules/regulations/orders etc. with which they are administratively concerned and take immediate steps for reprinting of those rules etc. in which extensive amendments have been made since their last publication.

60. The Committee further desire that the Ministries/Departments should initiate action suo moto for reprinting of the rules etc. wherever it becomes necessary rather than leaving it to the Committee to point out such cases. Normally it should be the endeavour of the Ministries/Departments to see that the rules are reprinted both in English and Hindi versions simultaneously. However, in cases where there is any likelihood of delay in finalisation of Hindi version, English version thereof may be reprinted first and Hindi version reprinted later at the earliest possible time.

VIII

THE CENTRAL EXCISE (FOURTH AMENDMENT) RULES, 1976 (G.S.R. 35-E OF 1976).

61. The Central Excise (Fourth Amendment) Rules, 1976, have inserted a new Chapter VII-B in the Central Excise Rules which lays down a simplified procedure for payment of excise duty in certain cases. Sub-rule (3) of Rule 173RJ in the new Chapter provides as under:

“Where the assessee fails to discharge the duty liability in the manner provided for in rule 173RD or has committed any breach of the provisions of this Chapter, the proper officer, may, without prejudice to any action to which such assessee may be liable under the Act or the rules made thereunder, require him to pay, in accordance with the provisions of Chapter V, the duty due on the excisable goods manufactured by him after the last day of the month in which such failure or breach occurred.”

62. The Committee on Subordinate Legislation (1975-76) which examined the above Rules at their sitting held on the 23rd February, 1976 felt that an opportunity of being heard should be given to the assessee before he was asked to pay the duty under Chapter V instead of under the simplified procedure laid down in the Chapter VII-B.

63. The Ministry of Finance (Department of Revenue and Banking) with whom the matter was taken up stated as under in their reply dated 18-6-1976:—

“Attention in this connection is invited to sub-rule (2) of the rule 173A which occurs in Chapter VII-A relating to Self Removal Procedure. This sub-rule was amended on 1st March, 1976 and it reads as follows:—

‘(2) Nothing in this Chapter shall apply to a manufacturer or producer who has been allowed to discharge his duty

liability in accordance with the provisions contained in sections C-1, E-III, E-VII, E-VIII or E-IX of the Chapter V or *who is entitled to discharge his duty liability in the matter provided for in rule 173RD.*'

The effect of the above amendment is that an assessee who is entitled to discharge his duty liability under the simplified procedure is barred from availing of the self removal procedure for payment of duty. * * * Such an assessee has to work under the simplified procedure, or pay duty under physical control. The reference to payment of duty in accordance with the provisions of Chapter V in rule 173RJ (3) has, therefore, become redundant and needs to be omitted. Action to amend rule 173RJ(3) is being taken in consultation with the Ministry of Law, Justice and Company Affairs.

In the circumstances submitted above, it appears that the question of providing in rule 173RJ(3) for reasonable opportunity of being heard in the matter before an assessee is asked to pay duty in accordance with the provisions of Chapter V, does not arise."

64. The matter was further pursued with the Ministry who were asked to state whether an assessee, after the proposed amendment of the rule, could be required by the proper officer to pay the duty in accordance with a procedure other than the simplified procedure and if so, whether they had any objection to issuing a show-cause notice to the assessee before he was asked to pay the duty in accordance with some procedure other than the simplified procedure.

65. In their reply dated 11th July, 1977, the Ministry have *inter alia* stated as under:—

"...this Department has no objection to provide for issue of a show-cause notice to the assessee in case of failure on his part or any breach of provisions of Chapter VII-B requiring him to pay duty due on the excisable goods manufactured by him in accordance with the provisions of Chapter V, that is to say, being placed under the Clearance Based or Physical Control. Orders have been issued accordingly. Rule 173-RJ has been amended *vide* *notification No. 104/77-CE dated the 9th June, 1977."

66. The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue and Banking) have amended sub-rule (3) of Rule 173RJ of the Central Excise Rules, as substituted by the Central Excise (Fourth Amendment) Rules, 1976, so as to provide an opportunity of being heard to the assessee before he is required to pay duty in accordance with the provisions of Chapter V instead of under the simplified procedure as laid down in Chapter VII-B.

IX

THE PORT OF NEW MANGALORE (GOODS IN TRANSIT)
RULES, 1976 (G.S.R. 1344 OF 1976)

(A)

67. Rule 7 of the Port of New Mangalore (Goods in Transit) Rules, 1976, reads as under:—

“Unclaimed Goods:—Transit fees shall not be charged on unclaimed goods provided that they are cleared within two months from the date of complete discharge of the vessel from which they were landed.”

68. In terms of above rule, transit fees may be charged of goods are not cleared within two months from the date of complete discharge of the vessel. It was not evident from whom these fees would be charged when the goods remain unclaimed.

69. The Ministry of Shipping and Transport (Transport Wing) who were requested to state whether they have any objection to specifying the person or parties from whom the transit fees for unclaimed goods will be charged have proposed to amend the rule as under:—

“Rule 7.—Unclaimed Goods.— Transit fees shall not be charged on unclaimed goods from Masters of the ship or the steamer agents provided that they are cleared within two months from the date of complete discharge of the vessel, from which they were landed.”

70. The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have

proposed to amend rule 7 of the Port of New Mangalore (Goods in Transit) Rules, so as to clarify therein that the transit fees for unclaimed goods would be charged from the Masters of the Ship or the steamer agents if the goods are not cleared within two months from the date of complete discharge of the vessel. The Committee desire the Ministry to issue the necessary amendment at an early date.

(B)

71. Rule 18 of the Port of New Mangalore (Goods in Transit) Rules, 1976 reads as under:—

“Congestion of Goods:—If at any time the Traffic Manager of the Port should apprehend serious congestion in the transit sheds or other spaces allotted for the goods in transit to the detriment of the rapid transit of goods through the Port, he may cause the goods to be removed at the cost of the owner and may stack them in any open space within the Port premises at the risk of the owner. Transit fees shall be leviable on such goods in accordance with the rules for the third week under rule 16.”

72. The Ministry of Shipping and Transport (Transport Wing) were requested to state the considerations for not making a provision for asking the owner or consignees to remove the goods within a specified period, as has been done in the case of Rule 11. They were further requested to state the rationale for levying fee from third week instead of actual week.

73. The Ministry of Shipping and Transport (Transport Wing) have proposed to amend the said rule as follows:—

“Rule 18. Congestion of goods:—If at any time the Traffic Manager of the port apprehends a serious congestion in the transit sheds or other spaces allotted for the goods in transit to the detriment of the rapid transit of goods through the port, he may, *direct the owners or consignors or Agents of any specified goods to remove such goods from the port premises within a specified period.* If the goods are not removed within such period, the said Traffic Manager may cause them to be removed and restacked in any other place within the port premises at the expense and the sole risk of the owner or shipper/agents. Transit fees shall be leviable on such goods in accordance with the rules for the third week under Rule 16.”

“Transit fee is leviable under Rule 4 of the said Rules. The rates prescribed for the goods left in the port's transit sheds:

or open space after the expiry of the free period increases week after week. The third week (and subsequent week) rates in the matter are therefore, the highest. Rule 18 refers to the compelling conditions under which the Traffic Manager is required to exercise power to require the owner etc. to remove their goods from the port's premises within specified period. There should therefore be some deterrent provision in cases of default of port's above requirements.'

74. The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have proposed to amend rule 18 for making a provision for asking the owner or consignee to remove the goods within a specified period when there is apprehension of a serious congestion in the transit sheds of the Port. The Committee desire the Ministry to issue the necessary amendment at an early date.

X

THE EXPORT OF COMMON SALT (QUALITY CONTROL AND INSPECTION) RULES, 1977 (S.O. 2191 OF 1977).

75. Rule 3 of the Export of Common Salt (Quality Control and Inspection) Rules, 1977, provides that the quality of salt should conform to the specifications recognised by the Central Government under Section 6 of the Export (Quality Control and Inspection) Act, 1963.

76. The Ministry of Commerce were requested to state whether they had any objection to indicating in the Rule the Gazette notification in which the specifications recognised by Government under Section 6 of the Act had been published.

77. In their reply dated 19-12-1977, the Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce) have stated as under:—

"this Ministry has no objection to the suggestion made by them. Necessary action to amend the notification is being taken in the matter."

78. The Committee note with satisfaction that on being pointed out, the Ministry of Commerce have agreed to amend rule 3 of the Export of Common Salt (Quality Control and Inspection) Rules, 1977 so as to indicate therein the particulars of the Gazette Notification

in which the specifications for common salt recognised by Government under Section 6 of the Export (Quality Control and Inspection) Act, 1963 had been published. The Committee desire the Ministry to issue the requisite amendment at an early date.

XI

THE AIRCRAFT (FOURTH AMENDMENT) RULES, 1976 (G.S.R. 1202 OF 1976).

79. Sub-rule (10) of rule 133-B and sub-rule (9) of rule 155-A of the Aircraft Rules, 1937, as inserted by the Aircraft (Fourth Amendment) Rules, 1976 (G.S.R. 1202 of 1976) empower the Director-General to cancel, suspend or endorse any approval or authorisation or take any other action against an organisation/operator or any other person.

80. The Ministry of Tourism and Civil Aviation were asked to state whether they had any objection to providing for issue of a show-cause notice in the above rules before taking action against an organisation or a person under rules 133-B(10) and 155-A(9) of rules *ibid*; and to elucidate the words '*take any other action*' occurring in both the said sub-rules.

81. In their reply, the Ministry of Tourism and Civil Aviation have stated as follows:—

“.....rules 133-B(10) and 155-A(9) of the Aircraft Rules, 1937 provide that Director General of Civil Aviation will take the necessary action after enquiry. This would presuppose that an opportunity of being heard shall be given to the person against whom action is to be taken. However, the rules also provide for action other than suspension, cancellation or endorsement of an authorisation or approval. The words '*any other action*' in these sub-rules would mean corrective action such as warning/admonition or undergoing further checks etc. in proficiency. In case of such action, there would be no need to issue a show cause notice. It is, therefore, felt that provision for show cause notice is not necessary. However, if the Committee on Subordinate Legislation has strong views in the matter, this Ministry would have no objection to amend the rules accordingly, on receipt of reply from the Lok Sabha Secretariat.”

82. The Committee are not convinced with the reply of the Ministry of Tourism and Civil Aviation that Rules 133-B(10) and 155-A(9)

of the Aircraft Rules, 1937, as inserted by the Aircraft (Fourth Amendment) Rules, 1976, provide that the Director General would take action thereunder after enquiry which would presuppose that an opportunity would be given to the person against whom action is to be taken and as such provision for show-cause notice is not necessary. The Committee feel that an express provision is necessary in the Rules for issue of a show-cause notice to the person or organisation before action is taken for cancellation or suspension of an authorisation or approval granted to him. The Committee, therefore, desire the Ministry to amend the rules so as to provide for an express provision for giving a show-cause notice to the party against whom action is to be taken under the Rules. The Committee further desire that instead of using the expression 'any other action' in the rules, the Ministry should specify therein the precise nature of other action proposed to be taken such as warning, admonition or further checks etc. in proficiency and amendment to this effect should be issued at an early date.

XII

INCORPORATION OF A PROVISION IN ACTS FOR LAYING OF RULES FRAMED THEREUNDER BEFORE PARLIAMENT.

83. It was noticed during the scrutiny of the Council (Institutes of Technology) Amendment Rules, 1977 which were framed under Section 35 of the Institutes of Technology Act, 1961 that there is no provision in the Act requiring the laying of rules framed thereunder before Parliament.

84. Attention of the Ministry of Education and Social Welfare (Department of Education) was invited to the following recommendation made by the Committee on Subordinate Legislation in para 11 of their 14th Report (Fifth Lok Sabha).

"The Committee earnestly desire all Ministries|Departments to undertake examination of all Acts with which they are administratively concerned in order to find out which of them do not contain a provision for laying of rules before Parliament and to incorporate this provision in the Acts at their earliest."

85. In their reply, the Ministry of Education and Social Welfare (Department of Education) have stated as under:—

"Section 35 of the IIT Act, 1961 empowers the Central Government to make rules governing various matters of the

Council. Section 35(2) lays down what these rules should provide for. There is, however, no provision in this section for placing these rules before Parliament. Under this provision Rules regarding TA|DA payable to the members of the IIT-Council were framed as early as in 1962. These Rules were not laid before Parliament as there is no provision to this effect in the IIT Act."

86. The question of amending the Act so as to provide for laying such rules in Parliament has been considered in consultation with the Ministry of Law. They have observed as follows:—

"It is not stated if the Committee on Subordinate Legislation in any of their recommendations have desired that the rules already framed in exercise of the powers under section 35 of the IIT Act, 1961 or any other law need to be placed on the Table of the Parliament. Hence there is no necessity as such of placing rules under Section 35 fore-mentioned which were passed as far back as 1962 or the amendments thereto to be placed on the Table of the Parliament.

The proposal to amend the IIT Act for making a provision for placing the first rules i.e., the rules already framed under the Act on the Table of the Parliament will not serve the recommendation of the Committee on Subordinate Legislation made in their Fourteenth Report in view of what has been stated above.

In view of the fact that the rules in exercise of the powers under section 35 of the IIT Act have already been framed, a clarification may be obtained from the Lok Sabha Secretariat whether it is at all necessary to amend the IIT Act and the Acts under which Rules have already been framed.

In view of the above, Lok Sabha Secretariat is requested kindly to clarify whether it is necessary to amend the Institutes of Technology Act."

87. In para 11 of their Fourteenth Report (Fifth Lok Sabha) the Committee had desired all Ministries|Departments to undertake examination of all Acts with which they were administratively concerned to find out which of them did not contain a provision for laying of rules before Parliament and to incorporate such a provision in the Acts at their earliest. The intention underlying their

recommendation is that the provision for laying of rules on the Table, when incorporated in the relevant Act, should have prospective and not retrospective effect, so that any rules, whether original or amending, framed thereafter be laid before Parliament. The Committee, therefore, desire the Ministry of Education and Social Welfare (Department of Education) to bring suitable legislation to amend the Institutes of Technology Act, 1961 with a view to provide for laying of rules hereafter.

88. The Committee also desire the Department of Parliamentary Affairs to bring the above clarification to the notice of all Ministries/Departments of Government of India for removal of doubts, if any, in this regard.

XIII

THE EXPORT (QUALITY CONTROL AND INSPECTION) AMENDMENT RULES, 1977 (S.O. 2603 OF 1977).

(A)

89. Under Rule 14(A) of the Export (Quality Control and Inspection) Rules, as inserted by the above amending rules the Director is empowered *inter alia* to—

- (i) exercise supervision and administrative control over the employees, accounts and records of the agencies established under section 7 of the Act; and
- (ii) issue directions in writing to the agencies in regard to their proper functioning.

90. The Ministry of Commerce were asked to state whether there was any express provision in the Export (Quality Control and Inspection) Act, 1963 empowering the Government to confer these powers on the Director.

91. In their reply dated the 22nd December, 1977, the Ministry of Commerce have forwarded the following opinion of the Ministry of Law who were consulted by them in the matter.

“Section 7(1) empowers the Central Government to establish agencies for quality control or inspection or both. Section 1 provides for the delegation of powers of the Central Government to any officer or authority subordinate to the Central Government along with other authorities. Section 4 of the Act provides for the appointment

of a director to exercise such powers and perform such duties under the Act as may be prescribed. Hence the rules in question were issued in pursuance of section 4 and 17 read with section 7(1) and section 13."

92. It was seen that while sections 4 and 13 of the Act covered the powers of the Director to exercise supervision and administrative control over the employees, accounts and records of the agencies there was no express provision in the Act empowering the Government or the Director to issue directions in writing to the agencies in regard to their proper functioning as provided for in Rule 14-A(v).

93. The Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce) with whom the matter was taken up have replied as under:

"After examination in consultation with the Ministry of Law, Justice and Company Affairs, this Ministry have decided to delete rule 14A(v) (power to issue the directions in writing to the agencies in regard to their proper functioning) of the Export (Quality Control and Inspection) Rules, 1964. Action is being initiated to delete the provision from the Export (Quality Control and Inspection) Rules, 1964."

94. The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have agreed to delete rule 14-A(v) of the Export (Quality Control and Inspection) Rules, 1964 regarding power to issue directions in writing to the agencies in regard to their proper functioning, as there is no express provision in the Export (Quality Control and Inspection) Act, 1963, empowering the Government to confer such power on the Director. The Committee desire the Ministry of Commerce to issue the necessary amendment at an early date.

(B)

95. In their reply quoted in para 91 above the Ministry have stated that the rules were issued in pursuance of Section 4 and 17 read with Section 7(i) and Section 13 of the Export (Quality Control and Inspection) Act. However, in the preamble to the Rules there is mention of only section 17 of the Act which is the general rule-making Section. In this connection attention of the Ministry was invited to the following recommendations of the Committee

made in paras 27 and 29 of their Fourteenth Report (Fifth Lok Sabha):

"While examining various rules, the Committee have very often faced an uphill task of locating the section of the Act under which the particular rules have been framed. Where the section pertaining to rule-making power is only generally worded, the Committee is absolutely left guessing whether there is clear authority for the rule or not. Where, in addition to generally worded sub-section (1), there is also a sub-section (2) enumerating matters on which the rules can be made, it has sometimes been found that such enumeration has left out some of the matters mentioned in other sections of the same Act. On the other hand, on account of the fact that preamble of the rules ordinarily makes mention only of the general rule-making power, the preamble is also of no help in the examination of rules.

* * * *

The Committee, therefore, recommend that (i) either sub-section (2) of the rule-making power section should enumerate all matters on which rules have to be framed under various sections of a statute and quote the section to which that matter relates as has been done in section 27 of the Interest Tax Act, 1974 or (ii) in the alternative, the preamble to the rules should refer not only to the general rule-making power section of the Act but also other sections of the Act under which the rules have been framed."

96. The Ministry of Commerce who were asked to state the reasons for not referring to all the relevant sections in the preamble to the rules in accordance with the above quoted recommendation of the Committee, have replied as under:

"As regards the non-reference to Section 4, 7(1) and 13 in the preamble of the Rules (S.O. 2603 of 1977), the Ministry of Law have observed that since the rules in question being amendment rules to Export (Quality Control and Inspection) Rules, 1964, section 17 alone has been referred as per the pattern of the original rules."

97. The Committee do not agree with the observation of the Ministry of Law as conveyed to the Ministry of Commerce that,

being amending rules only section 17 has been referred to in the preamble to the Export (Quality Control and Inspection) Amendment Rules, 1977 on the pattern of the original rules.

98. In paras 27 and 29 of their Fourteenth Report (Fifth Lok Sabha), the Committee have clearly recommended that either the rule-making section of an Act should enumerate all matters on which rules have to be framed under various sections of the statute and quote the section to which that matter relates or in the alternative, the preamble to the rules should refer not only to the general rule-making power Section of the Act but also other Sections under which the rules have been framed.

99. The Committee feel that giving a reference to all the relevant Sections of the Act in the preamble to the rules is necessary to ascertain whether the authority for framing of the rules flows from the parent Statute. The same principle is equally applicable to amending rules. The Committee, therefore, desire the Ministry of Commerce to amend the preamble to the Export (Quality Control and Inspection) Amendment Rules, 1977 so as to refer therein Sections 4, 7(1) and 13 also of the parent Act as the authority for framing of the rules.

XIV

- (i) THE DIRECTORATE OF SUGAR (CLASS III POSTS) RECRUITMENT (AMENDMENT) RULES, 1977 (G.S.R. 639 OF 1977); AND
- (ii) THE DIRECTORATE OF SUGAR (RECRUITMENT TO CLASS I AND CLASS II POSTS) AMENDMENT RULES, 1977 (G.S.R. 640 OF 1977).

100. The Directorate of Sugar (Class III posts) Recruitment (Amendment) Rules, 1977 and the Directorate of Sugar (Recruitment to Class I and II posts) Amendment Rules, 1977 were published in the Gazette of India dated the 21st May, 1977 but were given retrospective effect from 31st May, 1969 *vide* Rule 1(2) *ibid*. It was seen that no explanatory memorandum as required by the recommendation of the Committee on Subordinate Legislation in para 10 of Second Report (Fourth Lok Sabha) had been published along with the Rules, explaining the circumstances under which retrospective effect had been given and affirming that nobody was adversely affected as a result of retrospective effect.

101. The Ministry of Agriculture and Irrigation (Department of Food) with whom the matter was taken up have replied as under:

“...while the two notifications along with the explanatory Memoranda were sent to the Press on 30-4-77, there was a complete change in the set up and the staff in the concerned Division of the Department of Food *w.e.f.* 2-5-77. The Government of India Press, by oversight, did not publish the explanatory Memoranda and the omission could not be noticed due to changes in the Department. This omission, therefore, came to notice very late. The oversight is very much regretted. More care will be taken in future to obviate the possibility of such omissions in future. Incidentally it may be added that amendment with retrospective effect did not affect adversely the interests of any individual or the general public. The lapse is once again regretted with the assurance that special care will be taken in future.”

102. The Committee note that the explanatory memoranda regarding retrospective effect given to the rules had been sent by the Ministry to the Government of India Press along with the notifications but the Press had not published them due to oversight. The Committee observe that the Ministry of Agriculture and Irrigation (Department of Food) have failed to check the notifications after these were published in the Gazette to verify whether they had been correctly printed.

103. The Committee are not satisfied with the explanation of the Ministry that the omission had come to their notice very late because of a complete change in the set up and staff of the concerned Division of the Department of Food. Even after the omission came to their notice, the Department of Food had taken no steps to publish the explanatory memoranda till the Committee brought it to their notice. It seems that there are no satisfactory arrangements in the Ministry to ensure that the notifications sent to the Press have been correctly printed in the Gazette.

104. The Committee have time and again recommended that the responsibility of the Ministry/Department does not cease with sending the notification to the Press. After the rules/regulations etc. are published in the Gazette the Ministry/Department concerned should verify whether these have been correctly printed and, if necessary, issue corrigendum thereto.

105. The Committee are of the view that the explanatory memoranda regarding retrospective effect, if not published along with the relevant Notification due to any reason, should be got published in the Gazette as soon as the omission comes to notice. This is necessary to enable a person who feels adversely affected, due to retrospective effect to take up the matter with the concerned authorities. The Committee, therefore, desire the Ministry of Agriculture and Irrigation (Department of Food) to publish the requisite explanatory memoranda in the Gazette at an early date. The Committee also desire the Ministry of Agriculture and Irrigation (Department of Food) to make adequate arrangements for scrutinizing the notifications soon after they are published in the Gazette and take steps to rectify immediately the errors, if any.

XV

IMPLEMENTATION OF RECOMMENDATIONS

- (i) IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 21 OF THE SEVENTEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING THE MOTOR CARS (DISTRIBUTION AND SALE) CONTROL (2ND AMENDMENT) ORDER, 1974.

106. Clause 7-A of the Motor Cars (Distribution and Sale) Control Order, 1959 as substituted by the Motor Cars (Distribution and Sale) Control (2nd Amendment) Order, 1974 reads as under:—

“7A. Restrictions on purchase of a new motor car:—No person who has purchased a new motor car shall be permitted to purchase another new motor car until two years have elapsed from the date of purchase of the said motor car, except under a permit in writing from the Controller or, in a State, an Officer appointed for the purpose by the Government of that State:

Provided that where a purchaser is a company, association or other body of persons, whether incorporated or not, the Controller or the officer so appointed may, having regard to the nature of its business or functions or any other circumstances, by order in writing stating the reasons therefore, authorise the purchase of such number of new motor cars in any calendar year as he may fix.”

107. It was felt that while permitting an individual to purchase a new motor car before the specified period of 2 years, the reason

for granting the permission should be recorded in writing by the controlling officer as has been provided for in the case of a company where the controlling officer has to record the reasons in writing for authorising the purchase of such number of new motor cars as he may fix.

108. The Committee were not satisfied with the reply of the erstwhile Ministry of Industry and Civil Supplies (Department of Heavy Industry) to whom the matter was referred. In para 21 of their Seventeenth Report (Fifth Lok Sabha) the Committee had recommended as under:—

“The Committee are not convinced by the argument advanced by the Ministry of Industry and Civil Supplies (Department of Heavy Industry) that in view of the recent amendment to the Motor Cars (Distribution and Sale) Control Order excluding the Ambassador and Standard Gazel cars from its purview, it is not necessary to amend the Order particularly when the number of applications for allotment of Premier President cars are fast receding. They feel that when in the case of a company the reasons for granting permission are required to be recorded in writing, the Department of Heavy Industry should have no difficulty in applying the same principle in the case of individuals. In the opinion of the Committee, such a provision is necessary to guard against the possible abuse of the discretionary powers vested in the officers empowered to issue permits for purchase of motor cars before the specified period of two years. They desire that the Ministry of Industry and Civil Supplies (Department of Heavy Industry) should amend the Order in question to the necessary effect at a very early date.”

109. In their action taken note dated 27-4-1978 on the above recommendation, the Ministry of Industry (Department of Heavy Industry) have stated as under:—

“Motor Cars (Distribution and Sale) Control Order, 1959 has since been rescinded with effect from 10th February, 1976. There is now no control on distribution and sale of any make of cars being manufactured in the country. It is, therefore, not possible to make amendment in the Control Order as indicated in the Report of the Committee on Subordinate Legislation.”

110. The Committee note that the Motor Cars (Distribution and Sale) Control Order, 1959 had been rescinded with effect from the 10th February, 1976 before any action could be taken by the Ministry of Industry (Department of Heavy Industry) for amending the same. The Committee, however, desire that whenever such an order is issued in future it should be in accordance with the recommendation of the Committee contained in para 21 of their Seventeenth Report (Fifth Lok Sabha).

(ii) IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 66 OF THE TWENTIETH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REG: GIVING OF RETROSPECTIVE EFFECT TO THE 'ORDERS' FRAMED UNDER VARIOUS ACTS OF PARLIAMENT [THE CEMENT CONTROL (2ND AMENDMENT) ORDER, 1973 (S.O. 246-E OF 1973)].

111. The Cement Control (Second Amendment) Order, 1973 (S.O. 246-E of 1973) was published in the Gazette of India, Part II, Section 3(ii) dated 25-4-1973 but was deemed to have come into force from 15-12-72.

112. The matter was referred to the erstwhile Ministry of Industrial Development whose attention was invited to paragraph 49 of the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) where they had noted the following observations of the Attorney-General.

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

113. No reply was received from the erstwhile Ministry of Industrial Development. The Committee in paras 65-66 of their Twentieth Report (Fifth Lok Sabha) observed as under:

"The Committee note with concern that retrospective effect to the eight 'Orders' mentioned in Appendix II has been given without an authorisation to this effect in the parent

statutes. As without such an authorisation, no subordinate legislation can operate retrospectively, the Committee feel that the retrospective effect given to the 'Orders' question was without due legal authority. The Committee, therefore, desire the Ministries/Departments concerned either to give effect to the 'Orders' in question from the dates of their publication in the Gazette, or, alternatively, to take steps to incorporate a provision in the relevant Acts empowering Government to give retrospective effect to these 'Orders'.

The Committee note that final replies have not yet been received from the Ministries of Commerce and Industrial Development although the matter was taken up with them more than two years back. The Committee cannot help expressing unhappiness over non-receipt of final replies from these Ministries, despite reminders. The Committee need hardly point out that Ministries/Departments of Government are expected to give prompt replies to the points raised by Parliamentary Committees."

114. The Ministry of Industry (Department of Industrial Development) in their reply dated 25-7-77 have stated as under:

"The above amendment relates to the fixation of the ex-works price for cement delivered ex-Sewree Works of Shree Digvijay Cement Company Limited. In pursuance of the recommendations of the Tariff Commission in 1961, the price for cement delivered ex-Sewree was being revised from time to time by taking into account the national cost of transport of cement from Sikka to Sewree, whenever there was a revision of the shipping freight rates by the Coastal Conference. Similarly, when the freight rates were revised by the conference with effect from the 15th December, 1972, the price for cement delivered ex-Sewree was revised in terms of the above amendment. The retrospective effect in terms of the above order did not affect adversely any one. This is because a uniform f.o.r. destination price is charged from the consumer and there was no revision of the f.o.r. destination price consequent on the above amendment. This was not, unfortunately, made clear in the Order by the addition of a suitable footnote as required under the instructions. The inadvertent omission is regretted. Such retrospective effect is not,

however, being given subsequently. Besides, the method of fixation of ex-works price for Sewree Works of the above producer has also been changed from 1976. As it does not appear appropriate to issue an amendment at **this stage for the Amendment Order** issued in 1973 and considering that such retrospective effect is no longer being given effect to now, it is requested that in the circumstances stated above, the matter may kindly, be explained to the Committee on Subordinate Legislation with the request that if there is no objection, the matter may kindly not be pursued further."

115. The Committee note from the reply of the Ministry of Industry (Department of Industrial Development) that the Cement Control (Second Amendment) Order, 1973 relating to the fixation of ex-works price for cement was issued in accordance with the recommendations of the Tariff Commission and retrospective operation of the Order had not affected anyone adversely because there was no revision of the f.o.r. destination price consequent upon the above amendment.

116. The Committee further note that the Ministry have regretted their omission in not explaining this position by addition of a suitable foot-note to the rules.

117. The Committee desire to point out in this regard that the Cement Control (Second Amendment) Order, 1973 was issued under the Industries (Development and Regulation) Act, 1951 which does not contain any provision for giving retrospective effect to Orders issued thereunder. In the absence of such a provision in the Act, retrospective effect given to the above Order would not have become valid even if an explanatory note regarding the same might have been appended thereto. The Committee had clarified this position in para 8 of their Nineteenth Report (Fifth Lok Sabha) which had been brought to the notice of all Ministries/Departments of Government by the Department of Parliamentary Affairs. The Committee desire the Ministries/Departments to keep the observations of the Committee in view while giving retrospective effect to Orders.

118. The Ministry have also stated in their reply that retrospective effect is not being given subsequently. The Committee desire to point out in this regard that the retrospective effect already given was without due legal authority in the absence of a specific provi-

sion in the Act, empowering the Government to give retrospective effect. The Committee, therefore, desire the Ministry of Industry (Department of Industrial Development) to bring necessary amendment to the Industries (Development and Regulation) Act, 1951 for the purpose of validating the retrospective effect already given to the above order.

SOMNATH CHATTERJEE,

Chairman.

*Committee on Subordinate
Legislation. . .*

NEW DELHI;

The 22nd August, 1978.

A P P E N D I C E S

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)	8	The Committee note that Rule 13(5) of the Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976 has been framed to cover irregular sanction of advance from the Provident Fund e.g. when the sanction is accorded by an authority not competent to do so or when it is in excess of 3 months' pay or half the amount of the balance in the account or when a sanction involving a relaxation of rules has been issued without concurrence of the Ministry of Finance.
1 (ii)	9	The Committee are, however, not convinced with the reply of the Ministry of Shipping and Transport (Transport Wing) that the subscriber is supposed to know the rules and therefore, he is also responsible for drawing an amount only in an authorised and proper manner under valid sanction and as such giving an opportunity of being heard before recovery of wrong payment is not necessary. The Committee are of the view that if a mistake takes place on the part of the sanctioning authority, they only should be held responsible for it. The Committee feel that where an advance has been sanctioned to a subscriber and drawn by him under an irregular sanction, the effort should be to regularise it by issue of a valid sanction without forcing the subscriber to repay the amount. However, if a recovery becomes unavoidable, the subscriber

(1)

(2)

(3)

should be given a reasonable opportunity of being heard before ordering recovery of the amount. The Committee desire the Ministry of Shipping and Transport (Transport Wing) that a provision to this effect should be made in the rules at an early date.

1 (iii)

10

The Committee note from the reply of the Ministry of Shipping and Transport (Transport Wing) that before reaching a conclusion that the advance or withdrawal sanctioned from the Provident Fund has been utilised for a purpose other than that for which sanction was given, the employee will be asked to state his case in writing and make such submissions as may be necessary. This is, however, not clear from the Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules as worded at present. The Committee feel that if a practice is already in vogue to give the employee an opportunity of being heard and submit his representation before he is actually required to repay the whole or the balance amount of an advance/withdrawal under sub-rule (7) of rule 13 and sub-rule (2) of rule 15, the Ministry should have no objection to placing it on a statutory footing by suitably amending the rules. The Committee desire the Ministry of Shipping and Transport (Transport Wing) to issue the necessary amendment at an early date.

2 (i)

16

The Committee note that the Regulations framed under Rule 5 of the Department of Electronics (Group 'B' and 'C' Posts) Recruitment Rules, 1977 have been circulated to the candidates and the employees in the Department. Copies of the Regulations have also been displayed on the Notice Board and they are also proposed to be included in the Administration Manual of the Electronics Department presently under compilation.

(1)	(2)	(3)
2(ii)	17	<p>The Committee feel that though the purpose of publicity of the regulations made under rule 5 is being served to a great extent by the various methods adopted or proposed to be adopted by the Department of Electronics in this regard, yet such regulations do not come to the notice of the Committee on Subordinate Legislation to judge their fairness. Under Rule 317 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Committee are required to report to the House whether the power to make regulations under the powers conferred by the Constitution or delegated by Parliament is being properly exercised within such delegation. In order to enable the Committee to scrutinise and comment upon any inequitable provision in the regulations, it is necessary to publish them in the Gazette of India.</p>
2(iii)	18	<p>The Committee note that regulations relating to limited Departmental competitive examinations framed under certain Central Services have been published in the Gazette and scrutinised by the Committee in the past. In paras 14—18 of their First Report (Fourth Lok Sabha) the Committee have commented upon the Central Secretariat Clerical Service (Upper Division Grade Limited Departmental Competitive Examination) Regulations, 1966.</p>
2(iv)	19	<p>The Committee, therefore, desire the Department of Electronics to take necessary steps to publish these regulations in the Official Gazette at an early date.</p>
3(i)	23	<p>The Committee note from the reply of the Ministry of Finance that the time-limit of six months for recovery of duty as laid down in sub-rule (1) of Rule 10 of the Central Excise Rules has been increased to five years under the proviso to the said rule in cases where the duty of excise had not been levied or paid or short-levied</p>

(1)	(2)	(3)
-----	-----	-----

or short paid or erroneously refunded by reasons of fraud or wilful mis-statement or suppression of facts by an assessee or his agent.

- 3(ii) 24 The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Revenue) have incorporated the provisions of the above rule in the Central Excises and Salt Act, 1944, *vide* Section 21 of the Customs, Central Excise and Salt and Central Boards of Revenue (Amending) Act, 1978 (25 of 1978).
- 3(iii) 28 The Committee note that the Ministry of Finance (Department of Revenue) have issued executive instructions stipulating a period of three months within which refund/rebate claims under sub-rule (2) of rule 11 of the Central Excise Rules should be sanctioned. The Committee feel that executive instructions are no substitute for statutory provision. In order to avoid inordinate and unjustified delay in settling refund claims it is necessary to bring these instructions on a statutory footing. The Committee, therefore, desire the Ministry of Finance (Department of Revenue) to amend the rules at an early date to provide for a time-limit for sanction of claims.
- 4(i) 33 The Committee are amazed to observe that the Department of Social Welfare was not aware of the printing error in the Department of Social Welfare (Statistician) Recruitment Rules, 1977, till it was brought to their notice by the Committee. The Committee have repeatedly emphasised that after the rules, regulations, etc. are published in the Gazette, the Ministry/Department concerned should take immediate steps to examine them whether they have been correctly printed and if necessary, to issue a corrigendum thereto *suo moto* without waiting for the Committee to point it out.
-

-
- | (1) | (2) | (3) |
|---------|-----|--|
| 4 (ii) | 34 | The Committee desire to emphasise in this connection that it is the responsibility of the Ministry/Department concerned to arrange for obtaining a copy of the Gazette containing their notification immediately after its publication for verifying that it has been correctly printed. |
| 4 (iii) | 35 | In para 93 of the Twentieth Report (Fifth Lok Sabha) presented to the House on the 3rd November, 1976, the Committee have observed that henceforth serious view will be taken of such lapses. The Department of Parliamentary Affairs brought it to the notice of all Ministries/Departments <i>vide</i> their O.M. No. F.32(1)/76-R&C dated the 31st January, 1977. The Committee are constrained to observe that the Department of Social Welfare have paid no heed to above recommendation of the Committee even after it was brought to their notice by the Department of Parliamentary Affairs. |
| 4 (iii) | 36 | The Committee take serious note of the fact that Ministries/Departments concerned do not take care to keep in mind and pay heed to the recommendations of the Committee on Subordinate Legislation and often take the plea of inadvertent omission etc. when the mistakes are brought to their notice by the Committee. The Committee desire the Department of Parliamentary Affairs to bring to the notice of all Ministries/Departments that due care should be taken and suitable procedure evolved to see that recommendations of the Committee are taken note of and implemented quickly. |
| 4 (iv) | 37 | The Committee reiterate their earlier recommendation made in para 93 of their Twentieth Report (Fifth Lok Sabha) and desire the Department of Social Welfare to issue necessary corrigendum to the Department of Social Welfare (Statistician) Recruitment Rules, 1977 at an early date. |
-

-
- | (1) | (2) | (3) |
|--------|-----|---|
| 5(i) | 41 | The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to amend rule 18 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977, so as to specify that the inquiry contemplated thereunder relates to the character and antecedents of the candidate. The Committee desire the Ministry of Finance (Department of Expenditure) to issue the necessary amendment at an early date. |
| 5(ii) | 45 | The Committee agree with the contention of the Ministry of Finance (Department of Expenditure) that recruitment rules and guidelines for promotion are two different things and it would not be appropriate to include the guidelines in the recruitment rules. The Committee, therefore, do not insist upon incorporating the guidelines regarding promotion and selection of officers on merit in the Civil Accounts Service (Group 'A') Recruitment Rules, 1977. The Committee, however, desire that if any change is effected in these guidelines, the Department of Personnel and Administrative Reforms should bring them immediately to the notice of the Committee. |
| 5(iii) | 49 | The Committee are unable to appreciate the contention of the Ministry of Finance (Departments of Expenditure) that wherever the cadre authorities follow the general principles of seniority laid down by the Department of Personnel, it is not customary to incorporate them in the Service Rules. The Committee note that general principles of seniority laid down by the Department of Personnel are in the form of executive instructions and as such they do not come to the notice of the Committee for adjudging their fairness or otherwise. |
| 5(iv) | 50 | In para 64 of their Second Report (Sixth Lok Sabha) the Committee had recommended |
-

- | (1) | (2) | (3) |
|-------|-----|---|
| | | that the criteria for determining seniority, being a basic ingredient of the recruitment Rules should be incorporated in the rules and not left to be determined through executive instructions. |
| 5(v) | 51 | The Committee reiterate their earlier recommendation and desire the Ministry of Finance (Department of Expenditure) to incorporate the principles of determining seniority in the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977. |
| 5(vi) | 55 | The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to amend rule 31 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 so as to provide therein for relaxation of any provision of the rules <i>ibid.</i> , 'with respect to any class or category of persons or posts'. The Committee desire the Ministry to issue the necessary amendment at an early date. |
| 6(i) | 58 | The Committee note that, on being pointed out, the Ministry of Finance (Department of Expenditure) have agreed to reprint for the present, only English version of the General Provident Fund (Central Services) Rules, 1960, as these have been extensively amended since their issue. The Committee desire the Ministry to print the rules at an early date and also to expedite the work relating to the printing of Hindi version of the Rules. |
| 6(ii) | 59 | Reprinting of rules with all amendments incorporated therein is necessary to facilitate easy reference. The Committee, therefore, desire all Ministries/Departments of Government to examine the rules/regulations/orders etc. with which they are administratively concerned and take immediate steps for reprinting of those rules etc. in which extensive amendments have been made since their last publication. |

(1)	(2)	(3)
6(iii)	60	<p>The Committee further desire that the Ministries/Departments should initiate action <i>suo moto</i> for reprinting of the rules etc. whether it becomes necessary rather than leaving it to the Committee to point out such cases. Normally, it should be the endeavour of the Ministries/Departments to see that the rules are reprinted both in English and Hindi versions simultaneously. However, in cases where there is any likelihood of delay in finalisation of Hindi version, English version thereof may be reprinted first and Hindi version reprinted later at the earliest possible time.</p>
7	66	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue and Banking) have amended sub-rule (3) of Rule 173RJ of the Central Excise Rules, as substituted by the Central Excise (Fourth Amendment) Rules, 1976, so as to provide an opportunity of being heard to the assessee before he is required to pay duty in accordance with the provisions of Chapter V instead of under the simplified procedure as laid down in Chapter VII-B.</p>
8(i)	70	<p>The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have proposed to amend rule 7 of the Port of New Mangalore (Goods in Transit) Rules, so as to clarify therein that the transit fees for unclaimed goods would be charged from the Masters of the Ship or the steamer agents if the goods are not cleared within two months from the date of complete discharge of the vessel. The Committee desire the Ministry of Shipping and Transport (Transport Wing) to issue the necessary amendment at an early date.</p>
8(ii)	74	<p>The Committee note with satisfaction that on being pointed out, the Ministry of Shipping</p>

(1)	(2)	(3)
		<p>and Transport (Transport Wing) have proposed to amend rule 18 of the Port of New Mangalore (Goods in Transit) Rules, 1976 for making a provision for asking the owner or consignee to remove the goods within a specified period when there is apprehension of a serious congestion in the transit sheds of the Port. The Committee desire the Ministry to issue the necessary amendment at an early date.</p>
9	78	<p>The Committee note with satisfaction that on being pointed out, the Ministry of Commerce have agreed to amend rule 3 of the Export of Common Salt (Quality Control and Inspection) Rules, 1977 so as to indicate therein the particulars of the Gazette Notification in which the specifications for common salt recognised by Government under Section 6 of the Export (Quality Control and Inspection) Act, 1963 had been published. The Committee desire the Ministry of Commerce to issue the requisite amendment at an early date.</p>
10	82	<p>The Committee are not convinced with the reply of the Ministry of Tourism and Civil Aviation that Rules 133-B(10) and 155-A(9) of the Aircraft Rules, 1937, as inserted by the Aircraft (Fourth Amendment) Rules, 1976, provide that the Director General would take action thereunder after enquiry which would presuppose that an opportunity would be given to the person against whom action is to be taken and as such provision for show-cause notice is not necessary. The Committee feel that an express provision is necessary in the Rules for issue of a show-cause notice to the person or organisation before action is taken for cancellation or suspension of an authorisation or approval granted to him. The Committee, therefore, desire the Ministry to amend the Aircraft Rules so as to provide for an express provision for giving a show-cause notice to the party against whom action is to be taken</p>

(1)

(2)

(3)

under the Rules. The Committee further desire that instead of using the expression 'any other action' in the rules, the Ministry of Tourism and Civil Aviation should specify therein the precise nature of other action proposed to be taken such as warning, admonition or further checks etc. in proficiency and amendment to this effect should be issued at an early date.

11 (i)

87

In para 11 of their Fourteenth Report (Fifth Lok Sabha) the Committee had desired all Ministries/Departments to undertake examination of all Acts with which they were administratively concerned to find out which of them did not contain a provision for laying of rules before Parliament and to incorporate such a provision in the Acts at their earliest. The intention underlying their recommendation is that the provision for laying of rules on the Table, when incorporated in the relevant Act, should have prospective and not retrospective effect, so that any rules, whether original or amending, framed thereafter be laid before Parliament. The Committee, therefore, desire the Ministry of Education and Social Welfare (Department of Education) to bring suitable legislation to amend the Institutes of Technology Act, 1961 with a view to provide for laying of rules hereafter.

11 (ii)

88

The Committee also desire the Department of Parliamentary Affairs to bring the above clarification to the notice of all Ministries/Departments of Government of India for removal of doubts, if any, in this regard.

12 (i)

94

The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have agreed to delete rule 14-A(v) of the Export (Quality Control and Inspection) Rules, 1964 regarding power to issue directions in writing to the agencies in regard to their proper functioning, as there is no express provision in the Export

(1)	(2)	(3)
		(Quality Control and Inspection) Act, 1963, empowering the Government to confer such power on the Director. The Committee desire the Ministry of Commerce to issue the necessary amendment at an early date.
12 (ii)	97	The Committee do not agree with the observation of the Ministry of Law as conveyed to the Ministry of Commerce that, being amending rules only section 17 of the Export (Quality Control & Inspection) Act, has been referred to in the preamble to the Export (Quality Control and Inspection) Amendment Rules, 1977 on the pattern of the original rules.
12 (iii)	98	In paras 27 and 29 of their Fourteenth Report (Fifth Lok Sabha), the Committee have clearly recommended that either the rule making section of an Act should enumerate all matters on which rules have to be framed under various sections of the statute and quote the section to which that matter relates or in the alternative, the preamble to the rules should refer not only to the general rule-making power Section of the Act but also other Sections under which the rules have been framed.
12 (iv)	99	The Committee feel that giving a reference to all the relevant Sections of the Act in the preamble to the rules is necessary to ascertain whether the authority for framing of the rules flows from the parent Statute. The same principle is equally applicable to amending rules. The Committee, therefore, desire the Ministry of Commerce to amend the preamble to the Export (Quality Control and Inspection) Amendment Rules, 1977 so as to refer therein Sections 4, 7(1) and 13 also of the parent Act as the authority for framing of the rules.
13 (i)	102	The Committee note that the explanatory memoranda regarding retrospective effect given

(1)	(2)	(3)
-----	-----	-----

to the Directorate of Sugar (Class I, II and III Posts) Recruitment Rules, 1977 had been sent by the Ministry of Agriculture and Irrigation (Department of Food) to the Government of India Press along with the notifications but the Press had not published them due to oversight. The Committee observe that the Ministry of Agriculture and Irrigation (Department of Food) have failed to check the notifications after these were published in the Gazette to verify whether they had been correctly printed.

- | | | |
|----------|-----|--|
| 13 (ii) | 103 | <p>The Committee are not satisfied with the explanation of the Ministry that the omission had come to their notice very late because of a complete change in the set up and staff of the concerned Division of the Department of Food. Even after the omission came to their notice, the Department of Food had taken no steps to publish the explanatory memoranda till the Committee brought it to their notice. It seems that there are no satisfactory arrangements in the Ministry to ensure that the notifications sent to the Press have been correctly printed in the Gazette.</p> |
| 13 (iii) | 104 | <p>The Committee have time and again recommended that the responsibility of the Ministry/Department does not cease with sending the notification to the Press. After the rules/regulations etc. are published in the Gazette the Ministry/Department concerned should verify whether these have been correctly printed and, if necessary, issue corrigendum thereto.</p> |
| 13 (iv) | 105 | <p>The Committee are of the view that the explanatory memoranda regarding retrospective effect, if not published along with the relevant Notification due to any reason, should be got published in the Gazette as soon as the omission comes to notice. This is necessary to enable a person who feels adversely affected, due to</p> |
-

(1)	(2)	(3)
-----	-----	-----

retrospective effect to take up the matter with the concerned authorities. The Committee, therefore, desire the Ministry of Agriculture and Irrigation (Department of Food) to publish the requisite explanatory memoranda in the Gazette at an early date. The Committee also desire the Ministry of Agriculture and Irrigation (Department of Food) to make adequate arrangements for scrutinizing the notifications soon after they are published in the Gazette and take steps to rectify immediately the errors, if any.

- 14(i) 110 The Committee note that the Motor Cars (Distribution and Sale) Control Order, 1959 had been rescinded with effect from the 10th February, 1976 before any action could be taken by the Ministry of Industry (Department of Heavy Industry) for amending the same. The Committee, however, desire that whenever such an order is issued in future it should be in accordance with the recommendation of the Committee contained in para 21 of their Seventeenth Report (Fifth Lok Sabha).
- 14(ii) 115 The Committee note from the reply of the Ministry of Industry (Department of Industrial Development) that the Cement Control (Second Amendment) Order, 1973 relating to the fixation of ex-works price for cement was issued in accordance with the recommendations of the Tariff Commission and retrospective operation of the Order had not affected anyone adversely because there was no revision of the f.o.r. destination price consequent upon the above amendment.
- 14(iii) 116 The Committee further note that the Ministry of Industry (Department of Industrial Development) have regretted their omission in not explaining this position by addition of a suitable footnote to the rules.

-
- | (1) | (2) | (3) |
|--------|-----|--|
| 14(iv) | 117 | <p>The Committee desire to point out in this regard that the Cement Control (Second Amendment) Order, 1973 was issued under the Industries (Development and Regulation) Act, 1951 which does not contain any provision for giving retrospective effect to Orders issued thereunder. In the absence of such a provision in the Act, retrospective effect given to the above Order would not have become valid even if an explanatory note regarding the same might have been appended thereto. The Committee had clarified this position in the para 8 of their Nineteenth Report (Fifth Lok Sabha) which had been brought to the notice of all Ministries/Departments of Government by the Department of Parliamentary Affairs. The Committee desire the Ministries/Departments to keep the observations of the Committee in view while giving retrospective effect to Orders.</p> |
| 14(v) | 118 | <p>The Ministry of Industry (Department of Industrial Development) have also stated in their reply that retrospective effect is not being given subsequently. The Committee desire to point out in this regard that the retrospective effect already given was without due legal authority in the absence of a specific provision in the Act, empowering the Government to give retrospective effect. The Committee, therefore, desire the Ministry of Industry (Department of Industrial Development) to bring necessary amendment to the Industries (Development and Regulation) Act, 1951 for the purpose of validating the retrospective effect already given to the above order.</p> |
-

MINUTES

APPENDIX II
(Vide para 3 of the Report)

MINUTES OF THE TWENTY-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Monday, the 3rd July, 1978 from 15-30 to 16-15 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri B. K. Nair
5. Shri T. S. Negi
6. Kumari Maniben Vallabhbhai Patel
7. Shri G. S. Reddi
8. Shri P. A. Sangma
9. Shri Madan Lal Shukla
10. Shri Sachindralal Singha
11. Shri Ramji Lal Suman
12. Shri Krishnarao Thakur
13. Shri C. N. Visvanathan.

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 122 to 131 on the following subjects:—

Sl. No.	Memo No.	Subject
(1)	(2)	(3)
(i)	122	* * *

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

(1)	(2)	(3)
(ii)	123	. . .
(iii)	124	. . .
(iv)	125	. . .
(v)	126	. . .
(vi)	127	The Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976 (G.S.R. 93 of 1977).
(vii)	128	The Department of Electronics (Group 'B' and 'C' Posts) Recruitment Rules, 1977 (G.S.R. 747 of 1977).
(viii)	129	The Central Excise (Nineteenth Amendment) Rules, 1977 (G.S.R. 554-E of 1977).
(ix)	130	The Department of Social Welfare (Statistician) Recruitment Rules, 1977 (G.S.R. 524 of 1977).
(x)	131	The Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 (G.S.R. 537 of 1977).
3. to 13. (i) to (v) * * * * *		

(vi) *The Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976 (G.S.R. 93 of 1977)—(Memorandum No. 127).*

(A)

14. The Committee considered the above Memorandum and were not convinced with the contention of the Ministry of Shipping and Transport (Transport Wing) that a subscriber is also responsible for drawing advance under a valid sanction. They were of the view that if a mistake takes place on the part of the sanctioning authority, they only should be responsible for it. The Committee felt that where advance has been sanctioned and drawn under an irregular sanction, the effort should be to regularise the same by issue of a valid sanction without forcing the subscriber to repay the amount. However, if a recovery becomes unavoidable, the subscriber should be given a reasonable opportunity of being heard before ordering recovery of the amount. The Committee desired that a provision to this effect should be made in the Rules by issuing amendment to the same at an early date.

(B)

15. The Committee noted from the reply of the Ministry of Shipping and Transport (Transport Wing) that before reaching a conclusion that the advance or withdrawal sanctioned had been

utilised for a purpose other than those for which sanction was given, the employee would have been asked to state his case in writing and make such submissions as might be necessary thereon. This was, however, not clear from the rule as worded at present. The Committee felt that if a practice was already in vogue to give the employee an opportunity of being heard and submit his representation before he was actually required to repay the whole or the balance amount of an advance/withdrawal under sub-rule (7) of rule 13 and sub-rule (2) of rule 15 of the Shipping Development Fund Committee (Employees Contributory Provident Fund) Rules, 1976, the Ministry should have no objection to placing the same on a statutory footing by amending the relevant rules. The Committee desired the Ministry to issue the necessary amendment at an early date.

(vii) *The Department of Electronics (Group 'B' and 'C' Posts) Recruitment Rules, 1977 (G.S.R. 747 of 1977)—(Memorandum 128).*

16. The Committee considered the above Memorandum and felt that even though the purpose of publicity of the regulations made under rule 5 of the Department of Electronics (Group 'B' and 'C' Posts) Recruitment Rules, 1977, was served to a great extent by the various methods adopted or proposed to be adopted by the Department of Electronics in this regard, such regulations escaped notice of the Committee on Subordinate Legislation. Under Rule 317 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Committee are required to report to the House whether the power to make regulations under the powers conferred by the Constitution or delegated by Parliament was being properly exercised within such delegation. With a view to enable the Committee to scrutinise and comment upon any inequitable provision in the regulations, it was necessary to publish them in the Gazette of India.

17. The Committee noted that regulations relating to limited departmental examinations framed under certain Central Services were actually published and scrutinised by the Committee in the past. One such case, namely, the Central Secretariat Clerical Service (Upper Division Grade Limited Departmental Competitive Examination) Regulations, 1966 had been commented upon by the Committee in paras 14-18 of their First Report (Fourth Lok Sabha).

18. The Committee, therefore, desired the Ministry to take necessary steps to publish the above regulations in the Official Gazette at an early date.

(viii) *The Central Excise (Nineteenth Amendment) Rules, 1977* (G.S.R. 554-E of 1977)—(Memorandum No. 129).

(A)

19. The Committee considered the above Memorandum and noted from the reply of the Ministry of Finance (Department of Revenue) that the time-limit of six months for recovery of duty as laid down in sub-rule (1) of rule 10 of the Central Excise Rules, as substituted by the Central Excise (Nineteenth Amendment) Rules, 1977, had been increased to five years in cases where the duty of excise had not been levied or paid or short-levied or short-paid or erroneously refunded by reason of fraud, collusion or wilful mis-statement or suppression of facts by an assessee or his agent. The Committee noted with satisfaction that, on being pointed out, the provisions of the above Rule had now been incorporated in the Central Excises and Salt Act, 1944 *vide* amending Act No. 25 of 1978.

(B)

20. The Committee noted from the reply of the Ministry of Finance that they had issued executive instructions stipulating a period of three months within which refund/rebate claims under sub-rule (2) of rule 11 of the Central Excise Rules, as substituted by the above rules, should be sanctioned. The Committee were of the opinion that executive instructions were no substitute for statutory provisions. It was necessary to bring them on a statutory footing in order to avoid inordinate and unjustified delay in settling claims. The Committee desired the Ministry of Finance (Department of Revenue) to amend the rule accordingly at an early date.

(ix) *The Department of Social Welfare (Statistician) Recruitment Rules, 1977* (G.S.R. 524 of 1977)—(Memorandum No. 130).

21. The Committee considered the above Memorandum and noted with regret that the Department of Social Welfare were not even aware of the printing mistake in the above rules till it was brought to their notice by the Committee. The Committee felt that the Department had paid no heed to their earlier recommendation made in para 93 of Twentieth Report (Fifth Lok Sabha) presented to the House on the 3rd November, 1976 that after the Rules, regulations etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine them whether the same had been correctly printed and if necessary, to issue a corrigendum thereto.

22. The Committee emphasised in this connection that it was the responsibility of the Ministry/Department concerned to arrange for obtaining a copy of the Gazette containing their Notification for verifying that it had been correctly printed.

23. The Committee took serious notice of the fact that Ministries/Departments concerned did not take care to keep in mind and pay heed to the recommendations of the Committee and often the plea of inadvertent omissions etc. was taken. The Committee desired the Department of Parliamentary Affairs to bring to the notice of all Ministries/Departments concerned that due care should be taken and suitable procedure evolved to see that recommendations of the Committee are taken note of and implemented quickly. The Committee decided to reiterate their earlier recommendation made in para 98 of Twentieth Report (Fifth Lok Sabha) in this regard.

(x) *The Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 (G.S.R. 537 of 1977)—(Memorandum No. 131).*

(A)

24. The Committee considered the above Memorandum and noted that on being pointed out, the Ministry of Finance (Department of Expenditure) had agreed to amend rule 18 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 so as to specify that the inquiry contemplated thereunder related to the character and antecedents of the candidate. The Committee desired the Ministry to issue the necessary amendment at an early date.

(B)

25. The Committee were satisfied with the reply of the Ministry of Finance that recruitment rules and guidelines for promotion were two different things and it would not be appropriate to include the guidelines in the Recruitment Rules. The Committee, therefore, decided not to insist upon incorporating the guidelines regarding promotion by selection of officers on merit, in the Civil Accounts Service (Group 'A') Recruitment Rules, 1977. The Committee, however, desired that if any change was effected in the guidelines, the Department of Personnel and Administrative Reforms should bring them immediately to the notice of the Committee.

(C)

26. The Committee noted from the reply of the Ministry of Finance (Department of Expenditure) that wherever the cadre

authorities formulated their own principles of seniority, those were spelt out in the service rules. However, wherever the cadre authorities followed the general principles of seniority as laid down by the Department of Personnel, those were not incorporated in the service rules. The Committee, however, noted that the general principles of seniority laid down by the Department of Personnel were in the form of executive instructions and as such they did not come to the notice of the Committee for adjudging their fairness or otherwise.

27. In view of the importance of the principles of seniority, the Committee desired the Ministry of Finance to incorporate them in the above Rules. The Committee also decided to reiterate their earlier recommendation in the matter made in para 64 of Second Report (Sixth Lok Sabha) and desired the Department of Parliamentary Affairs to bring it to the notice of all Ministries/Departments for compliance in future.

(D)

28. The Committee noted that, on being pointed out, the Ministry of Finance (Department of Expenditure) had agreed to amend rule 31 of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 so as to provide therein for relaxation of any provision of the rules *ibid.*, 'with respect to any class or category of persons or posts'. The Committee desired the Ministry to issue the necessary amendment to the rules at an early date.

The Committee then adjourned to meet again on the 20th July, 1978.

Minutes of the Twenty-Second Sitting of the Committee on Sub-ordinate Legislation
(Sixth Lok Sabha)
(1978-79)

The Committee met on Thursday, the 20th July, 1978 from 15.30 to 16.00 hours.

PRESENT

Shri Somnath Chatterjee—Chairman

MEMBERS

2. Shri Durga Chand
3. Shri Ram Sewak Hazari

4. Kumari Maniben Vallabhbhai Patel
5. Shri G. S. Reddi
6. Shri Saeed Murtaza
7. Shri P. A. Sangma
8. Shri Sachindralal Singha
9. Shri Krishnarao Thakur

SECRETARIAT

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

2and 3 * * * * *

4. The Committee then considered Memoranda Nos. 132 to 138 on the following subjects:—

S. No.	Memo No.	Subject
(1)	(2)	(3)
(i)	132	The General Provident Fund (Central Services) Fourth Amendment Rules, 1976 (S.O. 1026 of 1976)—Reprinting of Rules.
(ii)	133	The Central Excise (Fourth Amendment) Rules, 1976 (G.S.R. 35-E of 1976).
(iii)	134	The Port of New Mangalore (Goods in Transit) Rules, 1976 (G.S.R. 1344 of 1976).
(iv)	135	The Export of Common Salt (Quality Control and Inspection) Rules, 1977 (S.O. 2191 of 1977).
(v)	136	The Aircraft (Fourth Amendment) Rules, 1976 (G.S.R. 1202 of 1976).
(vi)	137	Implementation of recommendation contained in para 66 of the Twentieth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) <i>re.</i> giving of retrospective effect to the 'Orders' framed under various Acts of Parliament & The Cement Control (2nd Amendment) Order, 1973 (S.O. 246-E of 1973)].
(vii)	138	Implementation of recommendation contained in para 21 of the Seventeenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Motor Cars (Distribution and Sale) Control (2nd Amendment) Order, 1974.

(i) The General Provident Fund (Central Services) Fourth Amendment Rules, 1976 (S.O. 1026 of 1976)—Reprinting of Rules—(Memorandum No. 132).

5. The Committee considered the above Memorandum and noted that on being pointed out, the Ministry of Finance (Department of Expenditure) had agreed to reprint for the present, only

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

the English version of the General Provident Fund (Central Services) Rules, 1960 as these rules had been extensively amended since their issue. The Committee desired the Ministry to expedite the work relating to the printing of Hindi version of the Rules also.

6. The Committee desired all Ministries/Departments of Government to examine the rules/regulations/orders etc. with which they were administratively concerned and take immediate steps for reprinting of the rules etc. in which extensive amendments have been made since their last publication. The Committee emphasised that reprinting of rules with all amendments incorporated therein was necessary to facilitate easy reference. The Committee observed that the Ministries/Departments should initiate action *suo moto* for reprinting of the rules etc., wherever it became necessary rather than leaving it to the Committee to point out such cases. The Committee further observed that normally it should be the endeavour of the Ministries/Departments to see that the rules were reprinted both in English and Hindi versions simultaneously. However, in cases where there was any likelihood of delay in finalisation of Hindi version. English version thereof might be reprinted first and the Hindi version reprinted later at the earliest possible time.

(ii) *The Central Excise (Fourth Amendment) Rules, 1976 (G.S.R. 35-E of 1976)*—(Memorandum No. 133).

7. The Committee considered the above Memorandum and felt satisfied that, on being pointed out, the Ministry of Finance (Department of Revenue and Banking) had amended sub-rule (3) of rule 173RJ of the Central Excise Rules, as substituted by the Central Excise (Fourth Amendment) Rules, 1976, so as to provide an opportunity to the assessee of being heard before he was required to pay duty in accordance with the provisions of Chapter V instead of under the simplified procedure as laid down in Chapter VIIB. (*vide* Notification No. 104/77/CF, dated 9-6-1977).

(iii) *The Port of New Mangalore (Goods in Transit) Rules, 1976 (G.S.R. 1344 of 1976)*—(Memorandum No. 134).

(A)

8. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had agreed to amend rule 7 of the Port of New Mangalore (Goods in Transit) Rules, 1976 so as to specify therein that the transit fees for unclaimed goods would be

charged from Masters of the Ship or the steamer agents if the goods were not cleared within two months from the date of complete discharge of the vessel. The Committee approved the amendment proposed to be made by the Ministry in this regard and desired them to issue the same at an early date.

(B)

9. The Committee noted that on being pointed out, the Ministry of Shipping and Transport had agreed to amend rule 18 of the Port of New Mangalore (Goods in Transit) Rules, 1976 for making a provision for asking the owner or consignee to remove the goods within a specified period when there was an apprehension of a serious congestion in transit sheds of the port. The Committee approved the amendments proposed to be made by the Ministry in this regard and desired them to issue the same at an early date.

(iv) *The Export of Common Salt (Quality Control and Inspection) Rules, 1977 (SO. 2191 of 1977)—(Memorandum No. 135).*

10. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Commerce, Civil Supplies and Cooperation (Department of Commerce) had agreed to amend Rule 3 of the Export of Common Salt (Quality Control and Inspection) Rules, 1977 for indicating in the Rules the Gazette Notification in which the specifications for common salt recognised by Government under Section 6 of the Export (Quality Control and Inspection) Act, 1963 had been published.

The Committee desired the Ministry to issue the requisite amendment at an early date.

(v) *The Aircraft (Fourth Amendment) Rules, 1976 (G.S.R. 1202 of 1976)—(Memorandum No. 136).*

11. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Tourism and Civil Aviation that Rules 133-B(10) and 155-A(9) of the Aircraft Rules, 1937, as inserted by the Aircraft (Fourth Amendment) Rules, 1976, provided that the Director General would take action thereunder after enquiry which would presuppose that an opportunity would be given to the person against whom action was to be taken and as such provision for show-cause notice was not necessary. The Committee felt that an express provision was necessary in the Rules for issue of a show-cause notice to the person or organisation before cancellation or suspension of an authorisation or approval granted to him. The Committee note in this connection that if so desired, the Ministry

had no objection to amend the rule accordingly. The Committee, therefore, desired the Ministry to amend the rules so as to provide for an express provision for giving a show-cause notice to the party against whom action was to be taken under the Rules. The Committee further desired that instead of using the expression 'any other action in the rules, the Ministry should specify therein the precise nature of other action such as warning, admonition or further checks etc. in proficiency.

(vi) *Implementation of recommendation contained in para 66 of the Twentieth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) re. giving of retrospective effect to the 'Orders' framed under various Acts of Parliament [The Cement Control (2nd Amendment) Order, 1973 (S.O. 246-E of 1973)]— (Memorandum No. 137).*

12. The Committee considered the above Memorandum and noted from the reply of the Ministry of Industry (Department of Industrial Development) that the Cement Control (Second Amendment) Order, 1973 related to the fixation of ex-works price for cement in accordance with the recommendations of the Tariff Commission and the retrospective operation of the order had not affected any one adversely because there was no revision of the F.O.R. destination price consequent on the above amendment. The Committee further noted, that the Ministry had regretted their omission in not explaining this position by addition of a suitable footnote as required.

13. The Committee observed in this connection that the Order had been issued under the Industries (Development and Regulation) Act, 1951 which did not authorise giving of retrospective effect to the Orders framed thereunder. The Committee clarified that appending of an explanatory memorandum or footnote in such a case would not validate the retrospective effect. The purpose of the explanatory memorandum or foot-note was simply to state the special circumstances under which retrospective effect, if so authorised by the parent Act, was being given and to clarify that no one was likely to be adversely affected thereby.

14. The Committee further observed that even though retrospective effect was not being given subsequently, the retrospective effect already given to the order was without due legal authority in the absence of a specific provision in the Act empowering the Government to give retrospective effect. The Committee, therefore, desired the Ministry to bring necessary amendment to the Act for the purpose of validating the retrospective effect already given to the amending Order.

(vii) *Implementation of recommendation contained in para 21 of the Seventeenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Motor Cars (Distribution and Sale) Control (2nd Amendment) Order, 1974.—(Memorandum No. 138).*

15. The Committee considered the above Memorandum and noted from the reply of the Ministry of Industry (Department of Heavy Industry) that the Motor Cars (Distribution and Sale) Control Order, 1959 had since been rescinded and as such there was no question of issuing any amendment as recommended by the Committee on Subordinate Legislation in para 21 of their 17th Report (Fifth Lok Sabha). The Committee, however, desired that whenever such an order was issued in future it should be in accordance with the recommendations of the Committee.

The Committee then adjourned to meet again on the 3rd August, 1978.

Minutes of the Twenty-Third Sitting of the Committee of Subordinate Legislation (Sixth Lok Sabha) (1978-c9)

The Committee met on Thursday, the 3rd August, 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 B. K. Nair
5. Shri T. S. Negi
6. Shri G. S. Reddi
7. Shri P. A. Sangma
8. Shri Sachindralal Singha
9. Shri Krishnarao Thakur

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 140 to 149 on the following subjects:—

S. No.	Memo. No.	Subject
(1)	(2)	3
(i)	140	(a) The Directorate of Sugar (Class III posts) Recruitment (Amendment) Rules, 1977 (G.S.R. 639 of 1977); and (b) The Directorate of Sugar (Recruitment to Class I and Class II posts) Amendment Rules, 1977 (G.S.R. 640 of 1977).
(ii)	141	The Export (Quality Control and Inspection) Amendment Rules, 1977 (S.O. 263 of 1977).
(iii)	142	Incorporation of a provision in Acts for laying of Rules framed thereunder before Parliament.
(iv)	143	
(v)	144	
(vi)	145	* * *
(vii)	146	
(viii)	147	
(ix)	148	
(x)	149	

(i) (a) *The Directorate of Sugar (Class III posts) Recruitment (Amendment) Rules, 1977 (G.S.R. 639 of 1977); and*

(b) *The Directorate of Sugar (Recruitment to Class I and Class II posts) Amendment Rules, 1977 (G.S.R. 640 of 1977)— (Memorandum No. 140).*

3. The Committee considered the above Memorandum and noted from the reply of the Ministry that two explanatory memoranda regarding retrospective effect given to the rules had been sent to the Government of India Press along with the notifications but the Press had not published them due to oversight. The Committee did not feel satisfied with the reply of the Ministry that the omission had come to their notice very late mainly because there had been a complete change in the set up and the staff in the concerned Division of the Department of Food. The Committee felt that it so appeared that there were no satisfactory arrangements in the Ministry to en-

sure that the notifications were correctly published in the Gazette. Even after the omission had come to their notice, the Ministry had taken no steps for publishing the explanatory memoranda in the Gazette. The Committee decided to re-stress that it was necessary to publish the explanatory memoranda regarding retrospective effect given to the rules in the Gazette so that if a person was being adversely affected thereby, he could take up the matter with the concerned authorities. The Committee decided to impress upon the Ministry that adequate arrangements be made to scrutinise the notifications soon after they were published in the Gazette and take steps to rectify immediately any errors so detected. The Committee desired the Ministry to publish the requisite explanatory memoranda in the Gazette at an early date in the instant case.

(ii) *The Export (Quality Control and Inspection) Amendment Rules, 1977 (S.O. 263 of 1977)—(Memorandum No. 141).*

(A)

4. The Committee considered the above Memorandum and noted that the Ministry of Commerce have agreed to delete rule 14A(v) of the Export (Quality Control and Inspection) Rules, 1964 regarding power to issue directions in writing to the agencies in regard to their proper functioning, for which there was no express provision in the parent Act, viz., the Export (Quality Control and Inspection) Act, 1963, empowering the Government to confer such power on the Director. The Committee desired that the necessary amendment may be issued at an early date.

(B)

5. The Committee felt that the explanation given by the Ministry of Law for not making reference to the relevant sections 4, 7(1) and 13 in the Preamble to the Export (Quality Control and Inspection) Amendment Rules, 1977 being amendment rules, was untenable particularly in view of the Committee's clear directions in paras 27 and 29 of their Fourteenth Report (Fifth Lok Sabha). The purpose of giving reference to all the relevant sections of the Act in the Preamble to the rules was to ascertain whether there was sufficient authority flowing from the parent Act for framing of such rules. The same is equally true in the case of amending rules as well, even when the reference in original rules pertains only to the general rule-making power in its Preamble. The Committee desired the Ministry of Commerce to amend the Preamble to the Rules so as to refer therein to sections 4, 7(1) and 13 also of the parent Act, as the authority for framing of these rules.

(iii) *Incorporation of a provision in Acts for laying of Rules framed thereunder before Parliament. (Memorandum No. 142).*

6. The Committee considered the above Memorandum and observed that the intention underlying their recommendation contained in para 11 of their Fourteenth Report (Fifth Lok Sabha) was that the provision for laying of rules on the Table when incorporated in the relevant Act should have prospective and not retrospective effect, so that any rules, whether original or amending, framed thereafter be laid before Parliament. The Committee, therefore, desired the Ministry of Education and Social Welfare (Department of Education) to bring suitable legislation to amend the Institutes of Technology Act, 1961 with a view to provide for laying of rules framed hereafter. The Committee also wanted that the above clarification may also be brought to the notice of all Ministries/Departments of Government of India by the Department of Parliamentary Affairs for removal of doubts, if any.

7 to 21. (iv) to (x)

*

*

*

The Committee then adjourned to meet again on the 22nd August 1978.

XXIV

MINUTES OF THE TWENTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA)

The Committee met on Tuesday, the 22nd August, 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 Ram Sewak Hazari
5. Shri B. K. Nair
6. Shri T. S. Negi
7. Kumari Maniben Vallabhbbhai Patel

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

8. Shri G. S. Reddi
9. Shri Madan Lal Shukla
10. Shri Sachindralal Singha
11. Shri C. N. Visvanathan.

SECRETARIAT

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

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

3. The Committee authorised the Chairman and, in his absence, Shri Durga Chand to present the Eleventh Report to the House on their behalf on the 24th August, 1978.

* * * *

The Committee then adjourned.