

**COMMITTEE ON SUBORDINATE
LEGISLATION
1988-89**

(EIGHTH LOK SABHA)

TWENTY-FIRST REPORT

(Presented on 17th March, 1989)



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1989/Phalgunā, 1910 (Saka)

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CORRIGENDA TO THE TWENTY-FIRST REPORT
OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (EIGHTH LOK SABHA)
PRESENTED ON 17 MARCH, 1989

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(1988-89)

1. Shri Jainul Basher—Chairman
2. Shri K. J. Abbasi
3. Shri G. S. Basavaraju
4. Shri Parasram Bhardwaj
5. Shri Satyendra Chandra Guria
6. Shri A. Jayamohan
7. Shri R. S. Khirhar
8. Shri Vishnu Modi
9. Shri Prakash V. Patil
10. Shri Mullappally Ramachandran
- *11. Shri Ebrahim Sulaiman Saif
12. Shri Kalicharan Sakargayen
13. Shri Natavarsinh Solanki
14. Shri Katuri Narayana Swamy
15. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri K. C. Rastogi—*Joint Secretary*
2. Shri G. S. Bhasin—*Deputy Secretary*
3. Shri Swarn Singh—*Officer on Special Duty*

*Nominated w.e.f. 28 June, 1988.

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sitting held on 18th July, 1969.

3. The Report was considered and adopted by the Committee at their sitting held on 14 March, 1969. The Minutes of the sitting relevant to the Report are appended thereto.

4. For facility of reference and convenience, recommendations/ observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in consolidated form in Appendix I to the Report.

NEW DELHI;
14 March, 1969.

23 Phalguna, 1910 (Saka)

ZAINUL BASHER
Chairman,
Committee on
Subordinate Legislation.

THE CENTRAL WAREHOUSING CORPORATION RULES, 1963

5. Rule 4(3A) of the Central Warehousing Corporation Rules, 1963 read as under:—

“(3A) The term of office of the Managing Director appointed under clause (g) of sub-section (1) of section 7 shall be 5 years from the date of his appointment as managing director or till the date of his superannuation, whichever is earlier:

Provided that if an officer of the Government or an employee of a Government Company or of a statutory body or controlled by the Government is appointed on deputation as Managing director, the term of office in his case shall be two years from the date of his appointment as Managing director or till the date of superannuation, whichever is earlier.”

6. The Ministry of Food and Civil Supplies (Department of Food) were asked to state:

- (i) The rationale for providing 5 years' term of office for Managing Director although the term of office of Directors was only 2 years; and
- (ii) The reasons for providing only 2 years' term of office for Managing Director if the incumbent was a Government officer and appointed on deputation.

7. In their reply dated 2 September, 1987, the Ministry explained the position as under:—

“This Rule was amended by the Government in January, 1986. The amended Rule states as under:

“4(3A) The term of office of the Managing Director appointed under clause (g) of sub-section (1) of section 7 shall be as determined by the Central Government:

Provided that an outgoing Managing Director shall be eligible for reappointment for such period as may be decided by the Central Government from time to time.

Provided further that every person holding the office of the Managing Director immediately before the commencement of this amendment shall continue to hold his office by the same tenure as he held such office immediately before such commencement.'

It would be seen that the Government has now the flexibility of determining Managing Director's term of office on each occasion. This is decided by the Appointments Committee of the Cabinet (ACC) after considering the recommendations of the Public Enterprises Selection Board (PESB). The amended Rule is in accordance with the similar provision in the Food Corporation of India Rules and certain other public sector undertakings. There is no inconsistency now about the term of office of Managing Director whether he is a person taken from outside or a Government officer appointed on deputation."

8. The Committee note with satisfaction that the Ministry of Food and Civil Supplies (Department of Food) have since amended rule 4(3A) of the Central Warehousing Corporation Rules, 1963 with a view to remove the inconsistency so apparent in the erstwhile rule in regard to the term of office of a Managing Director if he was a person taken from outside or a Government officer appointed on deputation. The Committee do not wish to pursue the matter further but would like to emphasise that while framing rules, sub-rules etc. due care should be taken to ensure that rules are appropriately worded.

II

9. Rule 12(9) and 17(3) of the Central Warehousing Corporation Rules, 1963 read as under:—

"12(9) The decision of the authority presiding at any meeting, at which an election is to be held as respects the eligibility of any shareholder to vote, shall be final.

17(3) The decision of the Board as to whether in a particular application for shares, there shall be full, partial or no allotment, shall be final."

10. As worded the above provisions gave an impression that the jurisdiction of the law courts was being ousted. The Committee have time and again taken exception to the use of such phraseology in the rules, regulations etc.

11. The Ministry of Food and Civil Supplies (Department of Food) to whom the matter was referred, have in their reply dated 2 September, 1987 stated as under:—

“The recommendation of the Committee on Subordinate Legislation has been accepted. Action is being initiated to amend these Rules suitably.”

12. The Committee note with satisfaction that on being pointed out by them, the Ministry of Food and Civil Supplies have agreed to suitably amend rules 12(a) and 17(3) of the Central Warehousing Corporation Rules, 1963 so that the language used in these rules does not give an impression that jurisdiction of courts of law is being ousted. The Committee would like the Ministry to issue the requisite amendment at an early date.

III

13. Rule 18 of Central Warehousing Corporation Rules, 1963 provided that Corporation shall not recognise the joint holding of shares. This provision appeared to be against the canons of natural justice.

14. The Ministry of Food and Civil Supplies (Department of Food) to whom the matter was referred for comments, have in their reply dated 2 September, 1987 replied as under:—

“This Rule should be read with the provision in sub-section (2) of section 4 and section 34 of the Warehousing Corporations Act, 1962. Sub-section 2 of section 4 of the Act indicates that the shareholders in the Central Warehousing Corporation would be Central Government; State Bank; other scheduled banks; cooperative societies; insurance companies, investment trusts and other financial institutions; recognised associations and companies dealing in agricultural produce or any other notified commodity. It would, therefore, be seen that joint holding of shares has not been envisaged in the Act itself. This is further corroborated by section 34 of the Act which states that in any meeting of the shareholders of a warehousing corporation, every member shall have one vote in respect of each share held by him in the Corporation.

The matter has also been considered in consultation with the Ministry of Law and the view taken is that since Rule 18 is in accordance with the aforesaid provision in the Act

which does not envisage joint share holding, it is not necessary to amend this Rule. Since the shareholders in the Corporation are either Central Government, cooperative societies or certain institutions and each share is worth Rs. 1,000/- only, it is not envisaged that these categories of shareholders would be interested in having joint shareholding."

15. The Committee note the clarification furnished by the Ministry of Food and Civil Supplies (Department of Food) as also the view at the Ministry of Law in the matter. The Committee do not wish to pursue the matter further.

IV

16. Rules 36 and 37 of the Central Warehousing Corporation Rules, 1963 read as under:—

"36. *Notice to be served on defaulting shareholders.* If any shareholder fails to pay any call or instalment on or before the day appointed for the payment of the same, the Board may at any time thereafter, during such time as the call or instalment remains unpaid, serve a notice on such shareholder requiring the shareholder to pay the sum together with any interest that may have accrued and all expenses that may have been incurred by the Corporation for reason of such non-payment.

37. *Form of notice for payment of call or instalment etc.* The notice for payment of call or instalment shall name a day and a place or places on and at which such call or instalment and such interest and expenses are to be paid. Such notice shall also state that in the event of non-payment at or before the time and at the place or places appointed, the share in respect of which a call was made or instalment is payable, will be liable to be forfeited."

17. The above Rules provided for service of notice to a defaulting shareholder for payment of call money or instalments. It was felt that some definite time limit within which the payment was to be made should be specified in above rules so as to make them self-contained and more informative.

18. The Ministry of Food and Civil Supplies (Department of Food) to whom the matter was referred, have in their reply dated 2 September, 1987 stated that the suggestion of the Committee has been accepted by them and action is being initiated to amend the above rules suitably.

19. The Committee are happy to note that on being pointed out to them, the Ministry of Food and Civil Supplies (Department of Food) have agreed to amend rules 36 and 37 of the Central Warehousing Corporation Rules, 1963 with a view to provide that at the time of service of a notice to a defaulting share-holder for payment of call money or instalments, definite time limit would be specified to facilitate such payments. The Committee desire the Ministry to issue the necessary amendment at an early date.

V

20. Regulation 10 of the Central Warehousing Corporation (Staff) Regulations, 1986 provided as under:—

“10. Probation:

- (i) Every person regularly appointed to any post either by direct recruitment or by promotion shall be on probation for a minimum period of one year from the date of assumption of charge.
- (ii) The Appointing Authority may, in its discretion, extend the period of probation upto a further period not exceeding one year.
- (iii) During the period of probation, an employee directly recruited shall be liable to be discharged from the service without assigning any reason by giving him a notice of one month or pay in lieu thereof. A departmental candidate appointed to any higher post through direct recruitment shall during the period of probation be liable to be reverted to the original post held by him prior to such appointment, without any notice and without assigning any reason.
- (iv) During the period of probation, an employee promoted to a higher post from a lower post shall be liable to be reverted to the lower post without notice and without assigning any reason.
- (v) Where an employee has rendered continuous temporary or officiating or *ad hoc* service or continuous service in the post on deputation immediately preceding his regular appointment to such post, the period of service so rendered, may be counted against the period of probation if the appointing authority so directs. This will, however, not affect the seniority which will be governed by the normal rules of seniority in the grade.

21. It was felt that in order to obviate any scope of discriminatory treatment to the employees, some guidelines should be laid down for the guidance of the appointing authority for exercising the discretionary power, vested in him.

22. The Ministry of Food and Civil Supplies (Department of Food) to whom the matter was referred in their reply dated 18 December, 1987, stated as under:—

“Necessary guidelines for reporting/reviewing officers for suggestion of extension of probation period already exists in the six-monthly confidential reports during the probation period. There are at present no guidelines for appointing authority for taking a decision about extension of the probation period. The appointing authority is guided by the reports received for the probation period in taking a decision. The Corporation has, however, decided to lay down guidelines for appointing authority for extension of probation period.”

23. The Committee note with satisfaction that at their instance the Ministry of Food and Civil Supplies (Department of Food) have agreed to lay down suitable guidelines for the guidance of the appointing authority for taking decision regarding extension of probation period. The Committee desire the Ministry to issue the requisite guidelines expeditiously.

VI

24. Regulation 24 of the Central Warehousing Corporation (Staff) Regulations, 1986 read as under:—

“24. *Pay on Initial Appointment*:—The initial basic pay of an employee newly appointed to a post under the Corporation shall be fixed at the minimum of the time scale of the post to which he is appointed except in the following cases:

(i) Pay of departmental candidates selected for higher posts against open advertisement will be fixed as on promotion.

(ii) In the case of emergency commissioned, short service commissioned officers and other category of employees for which special orders are issued by the Central Government the same shall be kept in view while fixing the pay of such employees in the Corporation's scale of pay.

(iii) In the case of persons who are already in employment with the Central Government or a State Government or a Public Institution pay on appointment to a post under

the Corporation will be fixed at the stage in the scale so that total emoluments (comprising Pay and Dearness Allowance) last drawn in the previous employment are protected and if there is no corresponding stage in the scale, at the next higher stage.

- (iv) Higher pay not exceeding five increments in the scale applicable to the post, as may be recommended by the Selection Committee in deserving cases and accepted by the appointing authority, may be allowed on initial appointment. However, in exceptional circumstances and on merits more than five increments can be allowed with the prior approval of the Board of Directors."

25. Under provision (iv) of the above regulation, the appointing authority could grant advance increments on the recommendations of Selection Committee and the Board of Directors was authorised to allow more than five advance increments. It was felt that in order to avoid any scope of favouritism, this power vested in Selection Committee/Board of Directors should be exercised after recording the reasons therefor in writing.

26. The Ministry of Food and Civil Supplies (Department of Food) to whom the matter was referred in their reply dated 18 December, 1987, stated as under:—

".....The appointing authority allows upto five advance increments on initial appointment on the basis of the recommendations of the Selection Committee. More than five increments can be allowed only with the prior approval of the Board. The Selection Committee invariably records the reasons while making the recommendations for grant of advance increments."

27. The Committee note from the reply furnished by the Ministry of Food and Civil Supplies (Department of Food) that the Selection Committee records the reasons while making the recommendations for grant of advance increments under regulation 24. The Committee are of the view that the Ministry should have no difficulty in putting the existing practice on a statutory footing by amending the relevant Rules under reference.

VII

28. Regulation 56 of the Central Warehousing Corporation (Staff) Regulations, 1986 read as under:—

"56. Suspension.—(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority

or any authority empowered in that behalf by the management by general or special order may place an employee under suspension:

- (a) where disciplinary proceeding against him is contemplated or is pending; or
 - (b) where case against him in respect of any criminal offence is under investigation or trial.
- (ii) An employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority, and shall remain under suspension, until further orders.
- (iii) Where a penalty of dismissal or removal from service imposed upon an employee under suspension is set aside on appeal or on review under these regulations and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.
- (iv) Where a penalty of dismissal or removal from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on consideration of the circumstances of the case, decided to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal or removal and shall continue to remain under suspension until further orders.
- (v) An order of suspension made or deemed to have been made under this regulation may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."

29. Normally the above provision is invoked when the courts/appellate authority decide the case on technical grounds without going into the merits of the case. The Ministry of Food and Civil

Supplies (Department of Food) were, therefore, requested to state the rationale of above provision.

30. The Ministry in their reply dated 18 December, 1987 stated as under:—

“The rationale for these provisions is same as indicated by the Committee, in its comments. In certain cases the appointing authority may set aside the penalty of dismissal or removal and it might become necessary to revise the charges against the employee. In that case the employee has to be given an opportunity to defend himself against such revised charges and therefore, the case has to be remitted for further inquiry. This provision enables the Corporation to keep the employees under suspension to regulate the period when the penalty was imposed on him and when it was set aside as also to continue him under suspension during the pendency of further inquiry, till a decision has been taken by the competent authority in the matter.”

31. The Committee note that provisions contained in Regulation 56 are based on the lines of similar provision contained in Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1955. The Committee however, find that following proviso indicated under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has not been included in the above Regulation:

“Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.”

32. The Committee desire that the Ministry of Food and Civil Supplies (Department of Food) may amend Regulation 56 at an early date so as to bring it in line with Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

NEW DELHI;
14th March, 1989
23Phalgun, 1910 (Saka)

ZAINUL BASHER
Chairman,
Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(Vide paragraph 4 of the Report)

Summary of main recommendations/observations made by the Committee

S. No.	Paragraph No.	Summary
1	2	3
1	8	The Committee note with satisfaction that the Ministry of Food and Civil Supplies (Department of Food) have since amended Rule 4(3A) of the Central Warehousing Corporation Rules, 1963, with a view to remove the inconsistency so apparent in the erstwhile rule in regard to the terms of office of a Managing Director if he was a person taken from outside or a Government officer appointed on deputation. The Committee do not wish to pursue the matter further but would like to emphasise that while framing rules, sub-rules etc. due care should be taken to ensure that rules are appropriately worded.
2	12	The Committee note with satisfaction that on being pointed out by them, the Ministry of Food and Civil Supplies have agreed to suitably amend rules 12(a) and 17(3) of the Central Warehousing Corporation Rules, 1963 so that the language used in these rules does not give an impression that jurisdiction of courts of law is being ousted. The Committee would like the Ministry to issue the requisite amendment at an early date.
3	15	The Committee note the clarification furnished by the Ministry of Food & Civil Supplies (Department of Food) as also the view of the Ministry of Law in the matter. The Committee do not wish to pursue the matter further.
4	19	The Committee are happy to note that on being pointed out to them, the Ministry of Food and Civil Supplies (Department of Food) have

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agreed to amend rules 36 and 37 of the Central Warehousing Corporation Rules, 1963 with a view to provide that at the time of service of a notice to a defaulting shareholder for payment and of call money or instalments, definite time limit would be specified to facilitate such payments. The Committee desire the Ministry to issue the necessary amendment at an early date.

5

23

The Committee note with satisfaction that at their instance the Ministry of Food & Civil Supplies (Department of Food) have agreed to lay down suitable guidelines for the guidance of the appointing authority for taking decision regarding extension of probation period. The Committee desire the Ministry to issue the requisite guidelines expeditiously.

6

27

The Committee note from the reply furnished by the Ministry of Food and Civil Supplies (Department of Food) that the Selection Committee records the reasons while making the recommendations for grant of advance increments under regulation 24. The Committee are of the view that the Ministry should have no difficulty in putting the existing practice on a statutory footing by amending the relevant Rules under reference.

7

31

The Committee note that provisions contained in Regulation 56 are based on the lines of similar provision contained in Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Committee however, find that following proviso indicated under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has not been included in the above Regulation:

"Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court

1**2****3**

has passed an order purely on technical grounds without going into the merits of the case."

8**32**

The Committee desire that the Ministry of Food and Civil Supplies (Department of Food) may amend Regulation 56 at an early date so as to bring it in line with Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

MINUTES

APPENDIX II

(Vide paragraph 3 of the Report).

MINUTES OF THE SIXTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA) (1968-69)

The Committee met on Monday, the 18th July, 1968 from 11.00 to 11.45 hours.

PRESENT

Shri K. J. Abbasi—*In the Chair*

MEMBERS

2. Shri G. S. Basavaraju
3. Shri Satyendra Chandra Guria
4. Shri Ebrahim Sulaiman Sait
5. Shri Kalicharan Sakargayen
6. Shri Katuri Narayana Swamy
7. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri K. C. Rastogi—*Joint Secretary*
2. Shri G. S. Bhasin—*Chief Legislative Committee Officer*
3. Shri Swarn Singh—*Officer on Special Duty*

2. In the absence of the Chairman, Shri K. J. Abbasi was chosen to act as Chairman for the sitting in terms of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered Memoranda Nos. 127 to 133 as under:—

(i). **The Central Warehousing Corporation Rules, 1963—Rule 4(3A) thereof—(Memorandum No. 127)**

4. The Committee considered the above Memorandum regarding Rule 4(3A). The Committee noted that the Ministry of Food and Civil Supplies (Department of Food) had since amended the Rule 4(3) regarding terms of office of the Managing Director and decided not to pursue the matter further.

**(ii) The Central Warehousing Corporation Rules, 1963—
Rules 12(9) and 17(3) thereof—(Memorandum No. 128)**

5. The Committee noted that on being pointed out by them the Ministry had agreed to suitably amend Rule 12(9) and 17(3) so as not to give an impression that jurisdiction of courts was being ousted. The Committee desired the Ministry to amend the Rules at an early date.

**(iii) The Central Warehousing Corporation Rules, 1963—Rule
18 thereof—(Memorandum No. 129)**

6. The Committee considered the clarification given by the Ministry regarding joint holding of shares and decided not to pursue the matter any further.

**(iv) The Central Warehousing Corporation Rules, 1963—
Rules 36 and 37 thereof—(Memorandum No. 130)**

7. The Committee considered the reply furnished by the Ministry regarding notices served on defaulting shareholders in respect of payment of call money or instalment etc. and noted that the Ministry had agreed to amend the Rules for providing therein definite time limit within which such call money/instalment might be paid. The Committee desired the Ministry to suitably amend the Rules at an early date.

**(v) The Central Warehousing Corporation (Staff) Regula-
tions, 1986—Regulation 10 (Memorandum No. 131)**

8. The Committee noted that the Ministry of Food and Civil Supplies (Department of Food) at the instance of the Committee had agreed to lay down guidelines for the appointing authority in regard to extension of probation period. The Committee desired the Ministry to issue the requisite guidelines expeditiously.

**(vi) The Central Warehousing Corporation (Staff) Regula-
tions, 1986—Regulation 24—Memorandum No. 132**

9. The Committee noted that the Selection Committee recorded the reasons for granting the advance increments under Regulation 24. The Committee however, desired the Ministry to put the existing practice on the statutory footing by amending the relevant Rules.

**(vii) The Central Warehousing Corporation (Staff) Regula-
tions, 1986—Regulation 56— (Memorandum No. 133)**

10. The Committee noted that provisions contained in Regulation 56 were based on the lines of similar provisions contained in Rule

10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It was, however, noted that following proviso under Rules 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 had not been included in the above Regulation:

“Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.”

11. The Committee desired the Ministry of Food and Civil Supplies (Department of Food) to amend the said Regulation to bring it in line with Rule 10 of the aforesaid Rules.

The Committee then adjourned.

**MINUTES OF THE SEVENTY-EIGHTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK
SABHA) (1988-89)**

The Committee sat on 14 March, 1989 from 16.00 to 16.30 hours.

PRESENT

Shri Zainul Basher—Chairman

MEMBERS

2. Shri K. J. Abbasi
3. Shri G. S. Basavaraju
4. Shri Satyendra Chandra Guria
5. Shri R. S. Khirhar
6. Shri Vishnu Modi
7. Shri Kalicharan Sakargayen

SECRETARIAT

1. Shri G. S. Bhasin—*Deputy Secretary*
2. Shri Swarn Singh—*Officer on Special Duty*

2. The Committee considered the draft Twenty-first Report and adopted it.

3. The Committee authorised the Chairman and, in his absence, Shri K. J. Abbasi, M.P. to present the Report to the House on 17th March, 1989.

The Committee then adjourned.