

COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)

NINTH REPORT

(Presented on 10 December, 1981)



LOK SABHA SECRETARIAT
NEW DELHI

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CORRIGENDA TO THE NINTH REPORT OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (PRESENTED ON
10 DECEMBER, 1981)

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1981-82)**

1. Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri M. Ankineedu
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri T. V. Chandrashekarappa
6. Shri Eduardo Faleiro
7. Shri M. Kandeswamy
8. Shri K. Lakkappa
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10. Shri M. Ramanna Rai
11. Shri Ratansinh Rajda
12. Shri Ashoke Sen
13. Shri Ajit Pratap Singh
14. Shri Chandra Shekhar Singh

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
2. Shri Ram Kishore—*Senior Legislative Committee Officer.*
3. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 5, 6 and 24 January, 29 June, 8 July, 3 and 22 October, 1981.

3. At their sitting held on 24 January, 29 June, 3 and 22 October, 1981, the Committee took evidence of the representatives of the (i) Ministry of Railways (Railway Board) and Ministry of Home Affairs (Department of Personnel and Administrative Reforms) regarding the Indian Railway Stores Service Recruitment Rules, 1969, (ii) the Ministry of Shipping and Transport regarding the Seamen's Provident Fund (Amendment) Scheme, 1976, (iii) Ministry of Defence regarding giving of retrospective effect to the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973, and (iv) Ministry of Communications (Posts and Telegraphs Department) regarding Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules, 1970. The Committee wish to express their thanks to the officers of the Ministries for appearing before the Committee and furnishing the information desired by them.

4. The Committee considered and adopted this Report at their sitting held on 7 December, 1981. The Minutes of the sittings which form part of the Report are appended to it.

5. A statement showing the summary of recommendations/ observations of the Committee is also appended to the Report.

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARAGRAPHS 13 to 15 of SIXTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING THE INDIAN POSTS AND TELEGRAPHS (CLASS IV POSTS) RECRUITMENT RULES, 1970 (G.S.R. 1932 OF 1970)

6. Notes 2 and 3 below the Schedule to the Indian Posts and Telegraphs (Class IV posts) Recruitment Rules, 1970 provide that Extra-Departmental Staff and Casual Labourers may be considered for Class IV Posts against the vacancies for direct recruitment for Class IV Posts subject to such conditions and in such manner as may be directed by the D.G., P&T from time to time.

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

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

“.....There are detailed instructions under which Extra-Departmental Staff may be considered for recruitment to Class IV posts. The Casual Labour are appointed to Class IV posts subject to general instructions issued by the Department of Personnel in this regard. There are detailed administrative instructions the inclusion of which will make the statutory Recruitment rules unnecessarily lengthy.

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

9. The Committee on Subordinate Legislation (1972-73), which considered the above reply, observed as follows, in paras 13 to 15 of their Sixth Report (Fifth Lok Sabha):—

- “13. The Committee are not convinced by the arguments advanced by the P&T Department for not accepting the suggestion that the terms and conditions subject to which ‘Extra Departmental Staff and Casual Labourers’ may be considered for Class IV posts against the vacancies for direct recruitment should be specified in the Rules. They have time and again emphasised that the rules should, as far as possible, be self-contained.
14. Apart from this, there is another important aspect involved and that is empowering the D.G., P&T to lay down the conditions of recruitment outside the rules through Departmental instructions, which the Committee feel, is tantamount to sub-delegation of legislative power. Departmental instructions laying down the conditions of recruitment are not published in the Gazette, and, therefore, would not come to the notice of the Committee for their scrutiny. Moreover, the Committee feel that conditions of recruitment, being of basic importance, should be regulated through the rules, rather than be left to be regulated outside the rules.
15. The Committee also do not see much force in the Department’s argument that the inclusion of the conditions of recruitment will make the rules unnecessarily lengthy. They are of the opinion that the conditions can be given briefly in the Schedule to the Rules. The Committee, therefore, urge the P&T Department to take early steps to include the Departmental instructions in the Rules.”
10. In an interim reply dated 18 May, 1977 to the above recommendations, the P&T Directorate stated as follows:—

“Action for amendment of our Statutory Rules of Class IV was initiated in consultation with Deptt. of Personnel and A.R. and Ministry of Labour. But the rules could not be finalised as the question whether EDA’s hold civil posts within the meaning of Article 311 of the Constitution was under the consideration of the Supreme Court. The Supreme Court have since pronounced their judgement on 23-4-1977 and its implications are being examined.

After the study of these implications further action to amend the Recruitment at Rules will be taken by this office."

11. As no further reply was forthcoming from the Ministry, the Committee decided at their sitting held on 8 July, 1981, to hear evidence of the representatives of the Ministry of Communications (Posts and Telegraphs Department) regarding inordinate delay in implementation of their recommendation.

12. At their sitting held on 22 October, 1981, the Committee heard evidence of the representatives of the Posts and Telegraphs Department.

13. During evidence the representatives of the P&T Department explained that there were certain administrative orders, which were not part of the statutory rules, for appointment of Extra-Departmental staff and the Casual Labourers to Class IV Posts in the Posts and Telegraphs Department. The representatives however, conceded that constitutionally and legally speaking, they did not have authority to issue such administrative instructions. The representatives further submitted that P & T Department decided several years back to make statutory rules as recommended by the Committee for the purpose. The draft rules were accordingly formulated and sent to the Department of Personnel and Administrative Reforms for concurrence. That Department in turn forwarded the rules to the Director-General of Employment and Training who suggested that extra-departmental agents should first be recruited through the employment exchanges only. Thereafter, a discussion was held and a revised draft of rules was made out.

14. When pointed out that the matter had been hanging over for more than eight years, the representatives of the Ministry apologised for the avoidable delay and gave an assurance that they would try to do the needful before the end of the year.

15. There has been inordinate delay of more than 8 years on the part of Ministry of Communications (Posts and Telegraphs Deptt.) in implementing the recommendations of the Committee contained in paragraphs 13-15 of their Sixth Report (Fifth Lok Sabha). The Report was presented to the House on 7 May, 1973, and a copy of the same was forwarded to the Posts and Telegraphs Department on 8 May, 1973 for necessary action. The Committee regret to note that no communication was received from the Ministry except an interim reply dated 18 May, 1977 although, the Ministry was expected to implement the recommendation of the Committee within a period

of six months from the date of the presentation of the Report. So much so that the Ministry seems to have slept over the matter till the Committee call the representatives of the Ministry to appear before them for oral evidence. As would be seen from the oral evidence of the representatives of the Ministry, the P&T Department had decided several years back to frame statutory rules for recruitment of Class IV employees from extra departmental staff and casual labourers but the matter remained pending with the Department of Personnel and Administrative Reforms and Ministry of Labour.

16. The Committee are constrained to observe that the Ministry/ Department had treated the recommendations of the Committee in most casual manner and did not pay due attention to the implementation aspect of it which it deserved. The Committee would also like to observe that wherever there are inordinate delays in finalising matters in consultation with various departments, the matter should be sorted out at the highest level in the Ministries.

The Committee trust that the requisite action would be taken to implement the aforesaid recommendation of the Committee within a period of three months from the date of the presentation of this Report.

. . . .

III

IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARAGRAPH 65 OF THE TWENTIETH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING GIVING OF RETROSPECTIVE EFFECT TO THE ORDERS FRAMED UNDER VARIOUS ACTS OF PARLIAMENT [(i) THE NAVAL CEREMONIAL, CONDITIONS OF SERVICE & MISCELLANEOUS (AMENDMENT) REGULATIONS, 1973 (S.R.O. 55 OF 1973) (ii) THE TERRITORIAL ARMY (AMENDMENT) RULES, 1974 (G.S.R. 70 OF 1974)]

17. The Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973, were published in the Gazette of India, Part II, Section 4 dated 3 March, 1973, but were made effective from July, 1971. The Navy Act, 1957, under which above Regulations were framed does not empower Government to give retrospective effect to the Regulations framed thereunder.

18. Similarly the Territorial Army (Amendment) Rules, 1974, were published in the Gazette of India, Part II, Section 4 dated 16 February, 1974, but were made effective from 19 November, 1971. The Territorial Army Act, 1948, under which these Rules were

framed also does not confer any power on Government to make Rules with retrospective effect.

19. The matter was taken up with the Ministry of Defence and their attention was invited to paragraph 49 of the Seventh Report of Committee on Subordinate Legislation (Fourth Lok Sabha) where the Committee had noted the following observation of the Attorney-General in this regard:

“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....”

20. After considering the reply of the Ministry of Defence, the Committee in paragraph 65 of their Twentieth Report (Fifth Lok Sabha) observed as under:—

“The Committee note with concern that retrospective effect to the eight ‘Orders’..... 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 retrospective effect given to the ‘Orders’ in 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’.”

21. In their action taken reply on the above recommendation, the Ministry of Defence in respect of the Territorial Army (Amendment) Rules, have stated that necessary corrigendum has been issued vide S.R.O. 153 dated 30 April, 1977, which takes away the retrospective effect of the Rules. The Ministry have further stated that no action had been taken with retrospective effect under these Rules.

22. Regarding the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973 the Ministry have republished the amendment vide S.R.O. 273 dated 28 September, 1979 making it effective from the date of publication.

23. The Committee considered the matter at their sitting held on 6 January, 1981, and observed that although the Ministry of Defence had renotified the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations to make them effective from the date of their publication, i.e., 28 September, 1979, the Government might have taken certain actions during the time of operation of 1973 Regulations under the retrospective effect given to them which had no sanction of the Law. The Committee heard evidence of the representatives of the Ministry of Defence in the matter at their sitting held on 3 October, 1981.

24. When asked whether the Navy Act, 1957 under which the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973 were framed provided for giving of retrospective effect to the Regulations framed thereunder, the representative of the Ministry stated that the Act did not specifically provide for issue of Regulations with retrospective effect but that did not mean that they had no right under the law. The representative of the Ministry of Law, however, conceded that there was no power to give retrospective effect to the 'Orders' under the Navy Act.

25. When enquired as to why they had given retrospective effect to the 1979 amendment when they had no such power under the Act, the representative of the Ministry stated that they had to issue S.R.O. 1979 for two reasons. One reason was to take note of the objection of the Committee on the earlier order having retrospective effect and the second reason was to revise the age limit. He further added that when S.R.O. 55 of 1973 was objected to by the Committee, they explained the circumstances under which they had been compelled to issue it because the U.P.S.C. had already issued a notification in 1970 changing the age limit for entry into N.D.A. The Committee after considering the explanation of Ministry again objected to the giving of retrospective effect. They, therefore, thought of superseding the 1973 Regulations by new Regulations. In the meanwhile the age limit for entry into N.D.A. was changed from 16 years to 18 years and again from 18 years to 18½ years. Hence, they had to issue S.R.O. of 1979.

26. When asked whether it would not be proper to amend the Navy Act, the representative of the Ministry stated that they were thinking of amending the Act and they had decided not to issue any Regulations in future with retrospective effect.

27. When asked that certain persons might have been recruited on the basis of impugned Regulations and how those recruitments

could be considered as valid, the representative of the Ministry of Law agreed that action under those Regulations was nullity. He further stated that it was also a fact that the U.P.S.C. had advertised the posts from 1970 taking into consideration the advancing of age limit and certain persons might have been selected on that basis. However, no body had raised any objection so far. He further clarified that the remedy was by amending the Act.

28. As regards regularising the action taken by the Government between 1970 and 1979, the representative of the Ministry stated that they would make reference to the Ministry of Law and seek their advice about the content and need of a new legislation to validate all that had happened between 1970 and 1979.

29. Considering the fact that the Ministry of Defence had to resort to giving of retrospective effect to the Naval Ceremonial Conditions of Service and Miscellaneous (Amendment) Regulations due to change in the age limit for entry into N.D.A. made by U.P.S.C., the Committee do not consider it necessary to pursue their recommendation made in paragraph 65 of their Twentieth Report (Fifth Lok Sabha). The Committee, however, desire the Ministry to amend the Navy Act, 1957 suitably in order to avoid recurrence of such a situation in future.

IV

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARAGRAPHS 95-96 OF THE NINTH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) REGARDING THE INDIAN RAILWAYS STORES SERVICE RECRUITMENT RULES, 1969 (G.S.R. 151 OF 1969)

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

31. The Ministry of Railways (Railway Board), to whom the matter was referred for stating the genesis of item 9 of the Appendix, had in their reply *inter alia* stated as follows:—

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

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

“The Committee note that the Ministry of Railways have since issued notifications omitting item 9 of Appendix to the Indian Railway Stores Service Recruitment Rules, 1969 and similar provisions contained in Recruitment Rules relating to Railway Engineering Services. They

desire that new provisions for regulating seniority of officers to be appointed to these services should be framed at an early date and furnished to the Committee for information."

33. In their action-taken note on the above recommendation the Ministry of Railways had stated as under:—

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

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

35. After considering the above reply of the Ministry of Railways, the Committee in paragraphs 95-96 of their Ninth Report (Sixth Lok Sabha) observed as under:—

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

*Appendix II.

riety of a person may be fixed otherwise than in accordance with the principles appended to the Ministry's letter should be clearly defined, and made part of the Principles. The Committee also desire that Principles for determining seniority should be placed on a statutory footing.

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

36. In their action taken note dated 16 February, 1980, the Ministry of Railways have stated as under:

".....the General Principles for determining the relative seniority of Class I Officers appointed to various Indian Railway Services circulated under this Ministry's letter of even number dated 30-11-1976, were issued with the approval of the President. These General Principles are strictly followed in the manner of Statutory Rules, and have in fact been challenged in the Supreme Court where the matter is *subjudice*. Seniority Lists, drawn upon the basis of these General Principles are circulated widely to the concerned Railway Officers. Objections when received are duly considered and if any rectification of the seniority list is necessary, this is done.

It is pointed out that the following practical difficulties may arise if principles governing seniority in the established services are included in statutory rules:—

- (i) In the recruitment rules, broad features like scale of pay, method of recruitment, educational qualifications, experience, composition of DPC etc. are incorporated. Ancilliary aspects like seniority or compilation of common eligibility list, are matters left to be dealt by administrative instructions.
- (ii) Incorporation of seniority provisions in the recruitment rules would encumber the rules with details. If Government review policy in regard to seniority, it will involve changes in the recruitment rules. This would not be in the interest of the administration or would serve the purpose for which these rules are framed.

- (iii) There are a large number of executive instructions which are distinct from statutory rules. As long as they are not inconsistent with statutory rules, they have the same force as statutory rules.

In regard to para 2 of the Railway Ministry's letter of even number dated 30-11-76, this Ministry have considered the recommendations made by the Committee on Subordinate Legislation of the Lok Sabha and point out that the intention of this provision is mainly to cover circumstances which cannot be foreseen but may arise; these circumstances cannot also be enumerated. However, to dispel the impression that such provision may be used arbitrarily by the administration, it has been decided to substitute the provisions of the relevant paragraph to indicate that, in cases not covered by the principles indicated in the Appendix to Railway Ministry's letter dated 30-11-76, seniority of officers appointed to the service shall be governed by such orders as may be issued by the Government after consultation with the UPSC, wherever necessary. It has also been decided to issue general principles of seniority for miscellaneous categories like Senior-Scale posts of Medical Deptt. and other Senior-Scale/Junior-Scale posts in miscellaneous categories viz. Printing and Stationary Department, Organisation of the Chief Mining Adviser and Chemicals & Metallurgists, where there are both direct recruits and promotees. The *inter-se* seniority in such cases will be broadly in accordance with paragraph 6 of Annexure-2 to the Deptt. of Personnel O.M. No. 9/11/55-RPS, dt. 22-12-1959.

A copy* of the general instructions issued to the Railway Administrations as mentioned in preceding paragraph is enclosed for the information of the Lok Sabha Secretariat."

37. The Committee considered the action-taken note of the Ministry of Railways (Railway Board) at their sitting held on 5 January, 1981, and heard the evidence of the representatives of the Ministry of Railways (Railway Board) for not placing on statutory footing the executive instructions governing seniority of Class I Officers of various Indian Railway Services/Officers of the Medical and Miscellaneous categories at their sitting held on 24 January, 1981.

*Appendix III.

38. When asked about the manner in which the seniority list of Class I Officers had been prepared and whether the principles of fixing seniority were being published as part of the Rules, the representative of the Ministry stated that the principles governing the seniority list of Class I Officers had been framed in consultation with the Union Public Service Commission and that they had issued them to all their subordinate offices.

39. Replying to the question of discretionary powers of the Government in the matter, the representative stated that they had no discretionary powers as such. They had to determine the seniority on the basis of 11 principles that had been laid down. He further added that these were administrative instructions and that they were in elaboration of the statutory Rules.

40. When asked whether these administrative instructions could not be put in the form of statutory Rules, the representative stated that it could be done. He, however, explained that the Department of Personnel was the parent Department which laid down the Rules for all the Government Departments and that they acted in consultation with them. He further clarified that the principles which they had laid down, had been published departmentally and issued to their subordinate offices. As for giving them a statutory shape he requested the Committee to call for the comments of the Department of Personnel in the matter. To a specific query whether the Ministry of Railways had any difficulty in giving them statutory shape, the representative categorically stated that they had no difficulty once it was decided by the Department of Personnel to do so.

41. The Committee also heard evidence of the representatives of the Department of Personnel and Administrative Reforms in the matter on 29 June, 1981.

42. On being asked whether the Rules were published in the Gazette of India after the approval of Department of Personnel and Administrative Reforms, the representative of the Department stated that Ministry of Railways and certain other Organisations were exempt from the purview of the Department of Personnel and Administrative Reforms. The Railway Department were competent to frame their own Rules for Railway Services without consulting the Department of Personnel and Administrative Reforms.

43. When asked whether the above mentioned Rules were referred to them, the representative of the Department of Personnel and Administrative Reforms stated that in 1979, the Ministry of Railways

2835 LS—2.

made a reference to their Department and they tendered their advice to them and the Ministry of Railways acted according to their advice and amended their earlier instructions of 30 November, 1976 regarding principles of seniority *vide* their letter of 16 February, 1980.

44. In reply to a question whether the principles of determining seniority should be given statutory footing, the representative of the Department of Personnel and Administrative Reforms stated that they had not given any advice to the Ministry of Railways on that issue. They had only explained to them the position pertaining to the other Civil Services which were within their purview. He further explained that in the case of Rules of few Services like that I.A.S./I.P.S., the relevant Service Rules contained the principles of determining seniority. He also stated that the general principles of seniority which they followed in Central Services were laid down *vide* their circular letter dated 22 December, 1969 and those instructions had stood the test of time. Those instructions had also come up for judicial scrutiny before the Supreme Court. The U.P.S.C. had also accepted them.

45. When specifically asked whether the administrative instructions regarding principles of seniority could be given a statutory footing or not, the representative of the Department of Personnel and Administrative Reforms stated that it was not necessary to give statutory force to these instructions. He further stated that it was not obligatory that everything must be covered under Statutory Rules. The Courts had held that where Statutory Rules were silent the executive instructions could be issued and those instructions could be examined and scrutinised by the judiciary if anybody challenged them.

46. The Committee note that the representatives of the Ministry of Railways (Railway Board) have conceded during their evidence that they have no objection to placing the executive instructions governing the principles of determining relative seniority of Class I Officers of the Indian Railways on statutory footing. The Committee further note that Railway Department is competent to frame its own Rules for the Railway Services without consulting the Department of Personnel and Administrative Reforms. The Committee feel that now the Ministry of Railways (Railway Board) should have no difficulty in giving statutory form to the principles of determining the relative seniority of Class I officers including officers of the Medical and other miscellaneous categories as contained in their letter No. E(o)I-72SR6-29 dated 30 November, 1976.

47. The Committee do not see any force in the difficulty pointed out by the Ministry that the inclusion of principles for determining seniority would render the Rules cumbersome. The Committee are also not convinced with their pleas that determination of seniority is an ancillary matter and that there are a large number of executive instructions which have the force of law so long as these are not inconsistent with the statutory Rules. The Committee feel that these principles of determining seniority should be as good a part of the recruitment Rules as other details like scale of pay, method of recruitment, educational qualification, experience etc. Further the inclusion of details of these principles would instead of encumbering the Rules, would make the position clear and eliminate to a great extent the chances of favouritism and discrimination, if any.

48. While noting the averment made by the Ministry of Railways that the cases of seniority not covered by the principles of seniority now forming part of the executive instructions would be decided in consultation with U.P.S.C., vide Ministry of Railway's letter dated 16 February, 1980, the Committee feel that this aspect of the matter should also be incorporated in the rules.

V

IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARAGRAPH 45 OF THE SIXTEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) REGARDING THE SEAMEN'S PROVIDENT FUND (AMENDMENT) SCHEME, 1976 (G.S.R. 1233 OF 1976)

49 Sub-paragraph (5) of paragraph 59 of the Seamen's Provident Fund Scheme, 1966, as inserted by the Seamen's Provident Fund (Amendment) Scheme, 1976, reads as under:

"Notwithstanding anything contained in sub-paragraph (3), a member may withdraw the full amount standing to his credit in the Fund, on termination of his service in the case of retrenchment, redundancy and without any prospect of further scope of employment duly certified by the employer, Seamen's Employment Officer and the Shipping Master:

Provided that at least a period of six months has elapsed since his last employment, preceding the date on which

the member makes the application for final withdrawal with the appropriate supporting documents to the Commissioner."

50. The Ministry of Shipping and Transport (Transport Wing) were requested to state the consideration for fixing the period of six months which should elapse before an application for final withdrawal from the Fund is made. It was also pointed out to the Ministry that proviso to paragraph 69(1)(d) of the Employees Provident Fund Scheme, 1952 on the lines of which the above provision had been made in the Seamen's Provident Fund Scheme had already been omitted from those rules *vide* G.S.R. 1184 of 1974.

51. Not being satisfied with reply of the Ministry of Shipping and Transport (Transport Wing) the Committee in para 45 of their Sixteenth Report (Sixth Lok Sabha) recommended as under:—

"The Committee are not convinced by the arguments advanced by the Ministry of Shipping and Transport (Transport Wing) that a period of six months must elapse before a retrenched Seaman could make an application for final withdrawal from the Seamen's Provident Fund. The Committee are of the view that when proviso to paragraph 69(1)(d) of the Employees' Provident Fund Scheme, 1952, on the lines of which such a provision has been made in the Seamen's Provident Fund Scheme, had since been deleted, the Ministry of Shipping and Transport (Transport Wing) should have no objection to delete proviso to paragraph 59(5) of the Seamen's Scheme for the sake of uniformity in the pattern of provident fund schemes for the workers in different establishments of Government. The Committee desire the Ministry to issue the necessary amendment to the Seamen's Provident Fund Scheme at an early date."

52. In their action-taken note dated 5 June 1979, the Ministry of Shipping and Transport (Transport Wing) have stated as under:—

".....the matter has been looked into and it is felt that the retention of proviso to paragraph 59(5) of the Seamen's Provident Fund Scheme is essential. A note* containing facts for the retention of aforesaid proviso is enclosed for being placed before the Committee."

*Appendix IV

53. The Committee considered the action-taken note of the Ministry of Shipping and Transport (Transport Wing) at their sitting held on 5 January, 1981, and heard the evidence of the representatives of the Ministry regarding retention of proviso to paragraph 59(5) of the Seamen's Provident Fund Scheme, 1966 at their sitting held on 29 June, 1981.

54. During the course of evidence the representative of the Ministry stated that the matter regarding implementation of the aforesaid recommendation was referred to the Board of Trustees which had been constituted to operate the Provident Fund for the Seamen. The Board had representatives of the employees, ship owners as well as of Seamen and Director General of Shipping. The Board examined the recommendation of the Committee and suggested that the existing proviso to section 59(5) of the Scheme might continue as that was in the interest of the orderly working of the Scheme and in the interest of the Seamen. He further explained that all Seamen in the country were governed by the Seamen's Employment Provisions and Seamen entered into an agreement with the ship owners every time there was a voyage and that procedure was accepted and agreed to between the Seamen and the ship owners through the auspices of the National Maritime Board. Normally a voyage took 4 to 6 months period and once it was complete, for all practical purposes there was cessation of that particular employment, and the Seamen had to wait for some time before he got his name in the roster again.

55. When asked whether the collection of supporting documents for claiming refund after period of 6 months was cumbersome process for the Seamen, the representative of the Ministry replied in negative and stated that documents were maintained in the office of the Seamen Provident Fund Commissioner in Bombay and a continuous service record was maintained by the Seamen Employment Officer in respect of every seaman.

56. When asked how a waiting period of less than 6 months could be misused by Seamen, the representative of the Ministry explained that since the waiting period between two voyages ranged between 9 months and 1 year, there might be tendency on the part of Seamen to apply for refund of deposits from the Provident Fund as soon as they came back after every voyage.

57. In view of the position explained by the Ministry, the Committee do not consider it necessary to pursue their recommendation contained in paragraph 45 of their Sixteenth Report (Sixth Lok Sabha).

VI

ACTION TAKEN BY GOVERNMENT ON VARIOUS RECOMMENDATIONS OF, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBORDINATE LEGISLATION

59. The Committee note with satisfaction the action taken by Government on their earlier recommendations, as indicated in Appendix V.

NEW DELHI;
December 7, 1981.

MOOL CHAND DAGA,
Chairman,
Committee on Subordinate Legislation.

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APPENDICES

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APPENDIX I

(Vide paragraph 5 of the Report)

Summary of main recommendations/observations made by the Committee

S. No.	ParaNo.	Summary
1	2	3
1(i)	15	<p>There has been inordinate delay of more than 8 years on the part of Ministry of Communications (Posts and Telegraphs Department) in implementing the recommendations of the Committee contained in paragraphs 13—15 of their Sixth Report (Fifth Lok Sabha). The Report was presented to the House on 7 May, 1973 and a copy of the same was forwarded to the Posts and Telegraphs Department on 8 May, 1973 for necessary action. The Committee regret to note that no communication was received from the Ministry except an interim reply dated 18 May, 1977 although, the Ministry was expected to implement the recommendation of the Committee within a period of six months from the date of the presentation of the Report. So much so that the Ministry seems to have slept over the matter till the Committee called the representatives of the Ministry, to appear before them for oral evidence. As would be seen from the oral evidence of the representatives of the Ministry, the P&T Department had decided several years back to frame statutory rules for recruitment of Class IV employees from extra departmental staff and casual labourers but the matter remained pending with the Department of Personnel and Administrative Reforms and Ministry of Labour.</p>

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|--------|----|--|
| 1(ii) | 16 | <p>The Committee are constrained to observe that the Ministry/Department had treated the recommendations of the Committee in a most casual manner and did not pay due attention to the implementation aspect of it which it deserved. The Committee would like to observe that wherever there are inordinate delays in finalising matters in consultation with various departments, the matter should be sorted out at the highest level in the Ministries.</p> |
| 1 (ii) | 1 | <p>The Committee trust that the requisite action would be taken to implement the aforesaid recommendation of the Committee within a period of three months from the date of the presentation of this report.</p> |
| 2 | 29 | <p>Considering the fact that the Ministry of Defence had to resort to giving of retrospective effect to the Naval Ceremonial Conditions of Service and Miscellaneous (Amendment) Regulations due to change in the age limit for entry into N. D. A. made by U.P.S.C., the Committee do not consider it necessary to pursue their commendation made in paragraph 65 of their Twentieth Report (Fifth Lok Sabha). The Committee, however, desire the Ministry to amend the Navy Act, 1957 suitably in order to avoid recurrence of such a situation in future.</p> |
| 3(i) | 46 | <p>The Committee note that the representatives of the Ministry of Railways (Railway Board) have conceded during their evidence that they have no objection to placing the executive instructions governing the principles of determining relative seniority of Class I Officers of the Indian Railways on statutory footing. The Committee further note that Railway Department is competent to frame its own Rules for</p> |

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the Railway Service without consulting the Department of Personnel and Administrative Reforms. The Committee feel that now the Ministry of Railways (Railway Board) should have no difficulty in giving statutory form to the principles of determining the relative seniority of Class I Officers including officers of the Medical and other miscellaneous categories as contained in their letter No. E(O) I-72SR6-29 dated 30 November, 1976.

3(ii)

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The Committee do not see any force in the difficulty pointed out by the Ministry that the inclusion of principles for determining seniority would render the Rules cumbersome. The Committee are also not convinced with their pleas that determination of seniority is an ancillary matter and that there are a large number of executive instructions which have the force of law so long as these are not inconsistent with the statutory Rules. The Committee feel that these principles of determining seniority should be as good a part of the recruitment Rules as other details like scale of pay, method of recruitment, educational qualification, experience etc. Further the inclusion of details of these principles would instead of encumbering the Rules, would make the position clear and eliminate to a great extent the chances of favouritism and discrimination, if any.

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While noting the averment made by the Ministry of Railways that the cases of seniority not covered by the principles of seniority now forming part of the executive instructions would be decided in consultation with U.P.S.C.

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vide Ministry of Railways's letter dated 16 February, 1960, the Committee feel that this aspect of the matter should also be incorporated in the rules.

4**57**

In view of the position explained by the Ministry of Shipping and Transport, the Committee do not consider it necessary to pursue their recommendation contained in paragraph 45 of their Sixteenth Report (Sixth Lok Sabha).

APPENDIX II

(Vide paragraph 34 of the Report)

Ministry of Railways (Railway Board) letter

GOVERNMENT OF INDIA

Ministry of Railways
(Railway Board)

Dated 30 November, 1976
9-Agrah. 1889(S)

No. E(o) 1-72SR6/29.

New Delhi, dated 30-11-76

The General Managers,

All India Railways, incl. CLW, DLW, JCF, MTP(R)/Calcutta and G.M. (Construction), S. Rly., Bengalore.

The Director General, RDSO, Lucknow.

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

The Principals,

- (i) Railway Staff College, Baroda.
- (ii) Indian Rly. Institute of Sig. Engg. & Telecommunication Secunderabad.
- (iii) Indian Rlys. Institute of Advd. Track Technology, Poona.
- (iv) Indian Railways Institute of Mech. & Elec. Engg-Jamalpur.

Sub: Principles for determining the relative seniority of Class-I Officers on the Indian Railways.

Consequent on the deletion of para 8 Appendix-I to the Indian Railway Service of Engineers, Indian Railway Service of Signal Engineers, Indian Railway Service of Electrical Engineers, Recruitment Rules, 1962, paragraph 9 of Appendix I of the Indian Railways Service of Mechanical Engineers Recruitment Rules, 1968 and the I. R. S. S. Recruitment Rules, 1969 for determining the seniority of officers on their appointment to Class-I Service, the

Board have decided to circulate the principles, laid down for determining the seniority of officers, appointed to various Class I Services from different sources, specified in the various Recruitment Rules except officers of the Medical Deptt. and other misc. categories. These are enclosed as an Appendix* to this letter.

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

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

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

ANNEXURE

(Vide paragraph 4 of the Appendix II)

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

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

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

*Anneuxre.

- Principle (iii) In the case of officers, recruited otherwise than through the regular competitive examinations and who may be granted higher initial pay on recruitment, the date for increment on time scale for the purpose of seniority, shall be so adjusted as to allow suitable credit in assigning seniority.
- Principle (iv) In cases of prolonged delay on the part of an officer in joining service after receiving orders of appointment, he is liable to ential loss in seniority. If the period of training and consequently the period of probation in the case of officers, appointed to the Indian Railway Services on the basis of the competitive examination held by the Union Public Service Commission from time to time, is extended in any particular case due to the training not having been completed satisfactorily, the officer concerned is liable to loose in seniority.
- Principle (v) Officers recruited as Temporary Assistant Officers (Unclassified), on permanent appointment to the Junior Scale (CL. I) in various Indian Railway Services may be granted weightage in seniority on the basis of half of the length of the service counted from the date of their joining service as temporary Assistant Officers (Unclassified) to the date of their permanent appointment to the Junior Scale (CL. I) of the respective services, subject to a maximum weightage of five years.
- Principle (vi) The Order of selection by the Union Public Service Commission of Officers, who are permanently appointed to the Junior Scale (CL I) from amongst Temporary Assistant Officers shall not be disturbed irrespective of the weightage worked out in accordance with principle (v) above. The Government will be at liberty to restrict the date for increment on time scale in the case of an officer with longer service as Temporary Assistant Officer so as to place him in seniority below an Officer who has been assigned a higher position based on merit although such an officer might have rendered lesser service as Temporary Assistant Officer.

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

- (a) the year of service connoted by the initial pay on permanent promotion to Class I Service; or
 - (b) half the total number of years of continuous service in Class II, both officiating & permanent;
- Whichever is higher, subject to a maximum weightage of five years.

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

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

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

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

APPENDIX III

(Vide paragraph 36 of the Report)

MINISTRY OF RAILWAYS (RAILWAY BOARD) LETTER
DATED 16 FEBRUARY, 1980

GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

RAILWAY BOARD

No E(O)I-72SR-6/29

New Delhi, dated 16-2-1980.

The General Managers,

All Indian Railways, incl. CLW, DLW.

ICF, MTP (R)/Calcutta and G.M. (construction),

S. Railway, Bangalore.

The Director General, RDSO, Lucknow.

The Chief Administrative Officer (R) MTP (R) Bombay.

The Chief Administrative Officer (R) MTP (R) New Delhi.

The Chief Administrative Officer (R) MTP (R) Madras.

The Principals,

(i) Railway Staff College, Baroda.

(ii) Indian Railway Institute of Sig. Engg. and Tele-Communication, Secunderabad.

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

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

SUBJECT.—Principles for determining the relative seniority of class-I Officers on the Indian Railways.

Reference—Railway Board's Letter of even number dated 30-11-1976. It has been decided that the provision contained in para 2 in this letter shall be substituted by the following provision:

"In cases not covered by the principles indicated in the appendix to this letter, seniority of officers appointed to

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the Service, shall be governed by such orders as may be issued by the Government in consultation with the UPSC, wherever necessary."

2. In regard to Senior Scale posts of the Medical Department and Senior Scale/Junior scale posts in miscellaneous categories viz. Chemists and Metallurgists, Printing and Stationery Department and Organisation of the Chief Mining Adviser, where both direct recruitment and promotion is resorted to, it has been decided that relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and promotees which will be based on the quotas of vacancies reserved for direct recruitment and promotion, respectively in the relevant recruitment rules.

APPENDIX IV

(Vide paragraph 52 of the Report)

Copy of Note regarding Seamen's Provident Fund Scheme

SUBJECT.—Implementation of recommendations contained in para 45 of the Sixteenth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Seamen's Provident Fund (Amendment) Scheme, 1976 (G.S.R. 1233 of 1976).

Recommendations contained in para 45 of the 16th Report of Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Seamen's Provident Fund (Amendment) Scheme, 1976 (G.S.R. 1233 of 1976) have been looked into by this Ministry. This Ministry still feels that the retention of the proviso to paragraph 59(5) of the Seamen's Provident Fund Scheme is essential due to the following facts, even though the proviso to paragraph 69(1) (d) of the Employees Provident Fund Scheme, 1952 which was referred by his Ministry as the model for making similar proviso in the Seamen's Provident Fund Scheme, had been omitted *vide* G.S.R. 1164 of 1974:—

The Seamen's Provident Fund Act, 1966, Section 2(a) refers to Agreement with the crew under the Merchant Shipping Act, 1958. Under paras 23, 26 and 27 of the Seamen's Provident Fund Scheme, 1966, every Seaman signing Articles of Agreement is required to become a member and Provident Fund is payable. The articles of Agreement are generally for a voyage of 6 months, covering more than one voyage, if the voyage is less than 6 months. After the completion of the Articles of Agreement, the Seaman has to remain unemployed for some time, before his turn comes up for next employment in the category allotted to him under the Seamen's Employment Office Rules, 1954, under Section 95 of the Merchant Shipping Act, 1958. This period of waiting varies from category to category and extends from about three to six months.

3. In view of the above facts, it is considered that the retention of the proviso to sub-paragraph (5) of Paragraph 9 of the Seamen's Provident Fund Scheme, 1966 is essential to justify the claim for Provident Fund dues of individual members (seamen) who are retrenched having been declared surplus with no chance of future employment. Also, the proviso as above will, to a reasonable extent, preclude the possibility of intentional avoidance of the provisions under para 59(3) of the Seamen's Provident Fund Scheme, 1966.

4. This note has been approved by the Minister in this Ministry.

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APPENDIX V

(Bids Paragraph 58 of the Report)

Statement showing action taken by Government on the recommendations made by, and assurances given to the Committees on Subordinate Legislation

Sl. No.	Reference to Para No. of Report	Summary of recommendations, assurances	Gist of Government's reply
(1)	(2)	(3)	(4)
1.	Sixteenth Report (Fifth Lok Sabha) 25 & 26	<p>The Committee are not convinced of the reply given by the Department of Supply for deleting the provision requiring specification in the Notice of the number of vacancies to be filled on the result of the examination. The Committee feel that this is a salutary provision which enables the prospective candidates to assess their chances of success in the examination and should be retained in the Indian Supply Service/Indian Inspection Service (Class I Recruitment by Competitive Examination) Rules. To meet the requirement of this provision, the Committee desire the Ministry/Department concerned with the examination to intimate to the Union Public Service Commission at least an approximate number of vacancies to be filled before the Notice of examination is issued by the Commission.</p> <p>The Committee desire the Department of Supply to re-incorporate the deleted provision in the Indian Supply Service/Indian Inspection Service (Class I-Recruitment by Competitive Examination) Rules. The Committee further desire the Department of Personnel and Administrative Reforms to emphasise upon all Ministries/Departments the need for including the above provision in all Rules/Regulations relating to competitive examinations with which they might be concerned.</p>	<p>The Indian Supply Service (Class I-Recruitment by Competitive Examination) Rules, 1963 and the Indian Inspection Service (Class I-Recruitment by Competitive Examination) Rules, 1963, have since been amended suitably G.S.R. Nos. 580 and 581 dated 24-5-1960.</p>

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2. Sixteenth Report (Fifth Lok Sabha) 38-40 & 42

The Committee are distressed to note that in spite of their repeated exhortation from time to time to avoid delay in laying Orders such cases of delay continue to occur. The reasons given by the Ministries/Departments of the delay are not convincing.

One of the main reasons for delay given by the Ministries/Departments is late receipt of G.S.R. Nos. from the Press. In this connection, the Committee wish to draw the attention of all Ministries/Departments to their recommendation made in para 35 of their Ninth Report (Fifth Lok Sabha) and reiterated in their Thirteenth and Fourteenth Reports in regard to the new procedure introduced by the Controller of Printing and Stationery for obtaining G.S.R. Nos. of notifications. The Committee desire all Ministries/Departments to follow the new procedure scrupulously. Difficulties, if any in obtaining G.S.R. Nos. under the new procedure should be sorted out in consultation with the Controller of Printing and Stationery.

The Committee find it difficult to appreciate explanation for delay given by the Ministry of Steel and Mines (Department of Mines) and the Ministry of Energy (Department of Coal) that the parent Act under which the Rules had been formed did not specify any limit for laying of Rules on the Table of the House.

True, under the Act, the Rules are required to be laid before the Houses of Parliament as soon as may be after they are made. But the Committee on Sub-ordinate Legislation, after putting a reasonable Construction of the words 'as soon as may be, had recommended as early as in the September, 1954 that rules etc. should be laid on the table of the House within a period of 7 days after their publication in the Gazette (*vide* paras 31-32 of Second Report (First Lok Sabha). Later, in view of the difficulties experienced by the Government in com-

(i) Ministry of Railways (Railway Board) have noted the recommendations *vide* their O.M. No. 75/Parl/21 dated 24-5-1975.

(ii) Ministry of Shipping and Transport (Transport Wing) have designated a Deputy Secretary as the officer responsible for ensuring timely laying of Rules on the Table *vide* their O.M. No. 5-G/(17)/75 dated 22-7-1975.

(iii) Ministry of Petroleum and Chemicals have issued necessary instructions to all concerned *vide* their O.M. No. 11013/10/75 -Parl. dated 8-6-1975.

(iv) Ministry of Labour have stated that due care is being taken to ensure that no delay occurs in laying 'Orders' in future *vide* their O.M. No. H. 11013(9)/75-PFI dated 10-9-1975.

(v) Ministry of Tourism and Civil Aviation have issued instructions to all Sections in the Ministry *vide* their O.M. No. 26-P.C.(15)/75 dated 10-6-1975.

(vi) Ministry of Commerce have noted the recommendation and have issued

lying with this recommendation, the Committee raised the period from 7 days to 15 days *vide* para 72 of Second Report (Second Lok Sabha). Since then the Committee have been repeatedly stressing the need of laying Orders on the Table within a period of 15 days after their publication in the Gazette.

The Committee feel that the existing procedure in the Ministries/Departments for keeping a table on laying of rules etc. on the Table of the House needs to be tightened. Each Ministry/Department should make a high ranking officer responsible for ensuring timely laying of rules on the Table. The Committee also desired the Department of Parliamentary Affairs to devise some procedure in consultation with the Ministries/Departments of Government of India to avoid recurrence of cases of delay.

- necessary instructions to all concern to ensure timely laying of 'Orders' on the Table *vide* their O.M. No. H-11013/15/ 75-Parl. dated 10-9-1975.

(vii) Ministry of Steel & Mines (Department of Steel) have noted the recommendations of the Committee for future guidance *vide* their O.M. H-11015(8)/75-Parl. dated 31-5-1975.

(viii) Ministry of Industry and Civil Supplies (Department of Civil Supplies & Co-operation) have circulated the recommendations of the Committee to all officers and Sections in the Ministry for timely laying of 'Orders' etc. *vide* their O.M. No. H-11012(24)/75-P&C dated 19-9-1975.

(ix) The Department of Parliamentary Affairs have brought the recommendation of the Committee (contained in para 42) to the Notice of all the Ministries/Departments for compliance *vide* their O.M. No. F.32 (4)/75-R & C dated 6-6-1975.

* (Sixteenth Report (Fifth Lok Sabha) 100

The Committee are satisfied to note that, on being pointed out, the Ministry of Communications proposed to amend Rules 3, 9 and 10 of the Indian Wireless Telegraph Rules, 1973, so as to incorporate therein the exceptions envisaged under them. The Committee desire the Ministry to issue the proposed amendments at an early date.

The Ministry have since amended Rules 3, 9 and 10 (1) of the Wireless Telegraph Rules, 1973 as desired by the Committee *vide* G.S.R. 2286 dated the 23-8-1975.

(4)

Rule 28(g) of the Oil Industry (Development) Rules, 1975 has since been suitably amended to provide that the Chairman shall get his decision ratified by the Board or the Committee at its next sitting *vide* G.S.R. No. 742(E) dated 13-12-1977.

The Ministry of Law, Justice and Company Affairs (Legislative Department) have brought the observation of the Committee to the notice of all Ministries/Departments for compliance *vide* their O.M. No. F.4 (6)/76-L.I. dt. 21-6-1978.

The Ministry of Law, Justice, and Company Affairs (Legislative Department) have brought to the notice of all Ministries/Departments of the Government of India *vide* their O.M. No. F. 4(6) 76-L. I dated 21-6-1973 their information for compliance in future.

(5)

The Committee are not convinced by the reply of the Ministry that the Chairman, being a very responsible person, would take the earliest possible steps to have his decision ratified by the appropriate forum. The Committee feel that there should be no difficulty in fixing a time-limit within which the decision of the Chairman should be got ratified by the Committee or the Board. In case the Ministry feel that it is not possible to do so, it should at least be provided in the Rules that the decision of the Chairman would be ratified at the next sitting of the Committee or the Board. The Committee desire the Ministry to amend the Rules accordingly at an early date.

The Committee are not satisfied with the reply of the Department of Culture. The Committee feel that section 2(2) of the Victoria Memorial Act, 1903 which empowers trustees to do all acts necessary for purpose of the Act makes too wide a delegation. They desire that to avoid any ambiguity, the limits of delegation should be well defined in an Act and the authority for important matters envisaged to be regulated through rules should clearly flow from and not be implied from its provisions. The Committee will like the Department of Culture to bear this in mind in future. They will also like the Ministry of Law, Justice and Company of the Affairs (Legislative Department) to bring the above observations Committee to the notice of all the Ministries/Departments of Government of India.

In their previous Reports, the Committee have repeatedly emphasised the need for citation of precise statutory authority in the preamble to rules. The idea underlying the above recommendation is to enable one to know whether the rules have been made under due legal authority and within the limits laid down in the parent law. The words 'and of all other powers enabling him in this behalf' used in the preamble to rules, as in the instant case, keep a person guessing as to what "other powers" are.

(6)

3A. Nineteenth Report (Fifth Lok Sabha) 31

4. Nineteenth Report (Fifth Lok Sabha) 36

5. Nineteenth Report (Fifth Lok Sabha) 48-50

According to the Ministry of Law, Justice and Company Affairs (Legislative Department) the expression 'all other powers' in this case refers to Section 21 of the General Clauses Act. If so, the Committee feel that this Section should have been cited in the preamble instead of the word "and all other powers". The Committee are not convinced by the argument of the Ministry that it would not be elegant to make an express reference to this Section as it is in the nature of a rule of construction.

The Committee have come across a number of cases in which the expression "and all other powers enabling him in this behalf" has been used in the preamble to rules. The Committee will like the Ministry of Law, Justice and Company Affairs to issue necessary instructions to all Ministries/Departments to cite precise statutory authority in the preamble to rules, and avoid using expressions of the above nature which may keep the public guessing as to what 'other powers' are. The Ministry of Law should also see at the vetting stage that precise legal authority is invariably cited in the preamble to rules.

The Committee note that important information is invariably being sent by the Ministry of Finance (Department of Revenue and Insurance) under registered cover Acknowledgement Due. In view of this, the Committee feel the Ministry should have no difficulty in making a statutory provision for the same by amending the relevant rules. The Committee desire the Ministry to amend the Rules accordingly at an early date.

The Committee note with satisfaction the assurance given by the Ministry of Finance (Department of Revenue and Insurance) that as far as possible, relaxation would be granted only to a class of assesses, and that the power to grant relaxation to individual assesses would be used only in very genuine and deserving cases where such a relaxation is warranted in public interest. The Committee desire that even in such cases of relaxation to individual assesses, the Ministry should, besides issuing Trade Notices through trade associations, also publish the Orders in the Gazette so that they come to the notice of the general public and persons similarly placed might have the benefit of such relaxations. The Committee desire the Ministry to make necessary amendment in the Rules to provide for publication of relaxations in the Gazette.

Ministry of Finance (Department of Revenue) have since amended suitably Rules 204 and 205 of the Central Excises Rules, 1944 relating to service of decision order, summons or notice *vide* G.S.R. No. 306 dated 25-2-1978.

Ministry of Finance (Department of Revenue) *vide* their O.M. No. 223/17/86-Cx-6 dated 24th April, 1976 have stated *inter alia* as follows :

2. The Committee's recommendation... has been carefully considered. The intention behind the recommendation appears to be to give the widest publicity to the relaxations granted by the Government so that all concerned assesses come to know and avail themselves of the relaxations if applicable to them. Government are fully in accord with this objective.

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'3' Some doubt was, however, felt whether the objective sought to be achieved could be fully served by publication of a notification in the Gazette. This was partly because of the formalities such as vetting by the Law Ministry and consequent time-lag involved in publication in the Gazette. It was also felt that as the majority of assesses do not subscribe to Government Gazettes, but derive their information on trade matters basically from Newspapers whose frequency and availability is much greater than that of the Gazettes, the latter would be better and quicker medium for reading the public.

'4' However, there have been some recent developments as a result of which the problem has practically ceased to exist. Experience had shown that in the past when such restrictions were imposed, numerous relaxations had to be granted, so that production and/or distribution of commodities might not be unduly interfered with. Accordingly, prior to the presentation of the budgets for 1977-78 and 1978-79, no restrictions under Rule 224 (3) were imposed. No evidence has come to light to show that there had been any abuse of the freedom from restrictions on these two occasions. The general policy of the present

Government is that any restrictions should be the least possible, and that if for any special reasons any restriction is considered necessary, this would only be after a very high level decision. Against this background, the question of pre-budget clearance restrictions being imposed under Rule 224(3) would not appear to be a live issue. *In cases however, for any exceptional reasons the practices is proposed to be revived, the observations of the Committee would be carefully kept in view.*

7. Nineteenth Report
(Fifth Lok Sabha)
73

The Committee note with satisfaction that the Ministry have agreed to specify in the Rules the time-limit within which the money not expended would be refunded to the lessee. The Committee desire the Ministry to issue the necessary amendment at an early date.

Rule 99 (2) of the Mineral Concession Rules 1960 has since been amended suitably by the Ministry of Steel and Mines (Department of Mines) vide G.S.R. No. 952 dated 23-7-1977.

8. Nineteenth Report
(Fifth Lok Sabha)
93

The Committee note with satisfaction that the Ministry have agreed to amend the Rules so as to prescribe an interval not exceeding two years between two inspections. They desire the Ministry to issue the necessary amendment at an early date.

The Ministry of Shipping & Transport (Shipping Wing) have since issued necessary amendment to the Merchant Shipping (Prevention of Pollution of the Sea by oil) Rules, 1974 vide G.S.R. No. 1349 dt. 18-9-76.

9. Nineteenth Report
(Fifth Lok Sabha)
97-99

The Committee note that the Ministries of Shipping and Transport (Transport Wing), Labour and Commerce have regretted their lapse in not giving particulars regarding publication of draft rules in the preamble to the final rules. The Committee also note the reply of the Ministry of Defence that the requisite information is being given by them since July, 1972. The Committee desire these Ministries to be careful about such matters in future.

(i) Ministry of Shipping and Transport (Coordination Section) have since circulated the observations/recommendations made by the Committee to all concerned in the Ministry for future guidance vide O.M. No. 5-C(10)/76-CDN dated 12-3-1980.

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- (ii) Ministry of Defence have circulated the observations/recommendations of the Committee to all concerned in the Ministry for future guidance vide O.M. No. 13(11)/76 D/Parl. dated 5-3-1980.
- (iii) Ministry of Commerce have since circulated the recommendation in the Department of Commerce for information and guidance vide their Endorsement No. H. 11013/11/76 Parl. dated 4-6-1976.

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The Committee reiterate their earlier recommendations made in para 88 of their First Report (Fourth Lok Sabha), Para 9 of their Fifth Report (Fifth Lok Sabha) and para 8 of their Eighth Report (Fifth Lok Sabha) that adequate opportunity should be given to the public to go through the draft rules and offer their comments. To ensure this, the particulars about (i) the date of the Gazette in which the draft rules were published; (ii) the date on which the Gazette copies containing the draft rules were made available to the public; and (iii) the last date fixed for receipt of public comments thereon, should invariably be given in the preamble to the final rules/bye-laws.

The Committee also desire the Ministries/Departments to allow, to be on the safe side, 15 days instead of 30 days as at present from the date of publication of Gazette for inviting comments/objections from the public as generally there is a time-lag between the date of publication of a Gazette and the date which its copies are made available to the public.

10. First Report
(Sixth Lok Sabha)
14-13

The Committee have been repeatedly stressing that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to the public to study the draft rules and send their comments/suggestions on their provision. With this end in view, the Committee have desired that a period of not less than 80 clear days, exclusive to the time taken in publishing the draft rules in the gazette and despatching the Gazette copies to various parts of the country should be given to the public to send their comments on such draft rules. The Committee, however regret to note that in the case of the 'Orders' enumerated in the Appendix, the net period allowed to the public to send their comments on the draft rules was less than 30 days. In one case, the net period available with the public was barely two days, and in two cases, 9 days. The Committee will once again like to emphasise that a period of not less than 90 clear days should invariably be given to the public to send their comments/suggestions on the draft rules.

- (i) Ministry of Works and Housing vide their O.M. No. H. 11016/477 FPN dated 3-6-1978 have intimated that the Directorate of Printing in the Ministry have issued 6 Memoranda in regard to the timely printing and supply of Weekly and Extraordinary Gazettes right from 1978 to 1979 the latest being D.O. No. O-17084/8/77-P dated 4-1-1978 to all Ministries/Departments of the Government of India and to the Managers of the Government of India Presses (Minto Road and King Road), New Delhi, Faridabad and Nasik,

The Committee note that while in four out of the 11 cases enumerated in the Appendix, the Ministries/Departments had themselves given a period of less than 30 days 9, 12 and 22 days (two cases) for receipt of comments/suggestions from the public. In the remaining 7 cases the period available was reduced to less than 30 days as a result of delay in making available the copies of the Gazette containing the draft rules to the public. In one of these cases, as many as 45 days were taken in making the copies of the Gazette available to the public. Even in case of Gazette Extraordinary, copies were made available to the public after an elapse of 7 days in one case and 10 days in another. The Committee will like the Ministry of Works and Housing to evolve some procedure to ensure that the time-lag between the publication of a Gazette and making available the copies to the public is reduced to the barest minimum viz. 3 to 4 days in case of Ordinary Gazettes and the one day in the case of Extraordinary Gazettes at the most.

Nevertheless, the Committee will make it clear that the onus to ensure that in no case the period allowed to the public for sending comments/suggestions is less than 30 clear days lies on the Ministries/Departments responsible for the administration of the rules. In case a Ministry/Department finds that in a particular case due to any reasons the net period made available to the public works out to less than 30 days, they should extend the period for receipt of comments/suggestions so that the net period made available to the public does not fall short of 30 clear days. The Committee desire the Department of Parliamentary Affairs to bring these observations to the notice of all Ministries/Departments for strict compliance in future.

(ii) Department of Parliamentary Affairs have since brought to the notice of all Ministries/Departments of the Government of India for their guidance and strict compliance *vide* their O.M. No. F. 32 (5)/77-R&C dated 2-12-1977.

(iii) Ministry of Shipping & Transport (Coordination Section) have brought to the notice of all concerned in the Ministry and have noted for guidance and compliance in future (O.M. No. CPA/9/78 dated 8-9-1980).

(iv) Ministry of Finance (Department of Economic Affairs) have noted the recommendations of the Committee for compliance in future (O.M. No. 57(6)/Ins, I/75 dated 23-8-1977).

(v) Ministry of Labour have noted for guidance and compliance the instructions contained in paras 11-13. The Ministry have also stated that they are normally giving 45 days notice to the public to send their comments/suggestions on the draft rules (O.M. No. S. 16011(3)/77-LW dated 28-1-1978).

(vi) Ministry of Industry (Department of Industrial Development) *vide* their Office Memoranda dated 5-8-77 and 10-10-77 received with O.M. No. 10/4/77-Fari, dated 1-4-1980 have stated that it would be ensured that in future 30 clear days will be available to the public for sending their comments on the draft rules to be published by the Ministry. They have even confirmed that this practice is currently being followed by the Department.

11. First Report
(Sixth Lok Sabha) 16

The Committee note that Bye-law 4 of the Morar Cantonment (Registration and Classification of Contractors) By-laws, 1969, as substituted by S.R.O. 288 of 1974, does not provide for giving an opportunity of being heard to a contractor, before his deposit is forfeited on account of his failure to tender for works for more than one year. The Committee are not satisfied with the reply of the Ministry of Defence that the Cantonment Board having been given the discretion to waive the forfeiture would take into account any representation which the contractor might make against the forfeiture of his deposit. The Committee need hardly re-stress that giving of a reasonable opportunity of being heard to a person before the penal provisions of a law are invoked against him is one of the basic requirements of natural justice. The Committee desire the Ministry of Defence to amend the Bye-law in question so as to provide therein for giving a reasonable opportunity of being heard to the contractor before his deposit is forfeited.

(vii) Ministry of Commerce have noted the recommendation of the Committee for compliance (O.M. No. 1(20)/77-EI & P dated 15-9-1977).

Bye-law 4 of the Morar Cantonment (Registration and Classification of Contractors) By-laws, 1969 has been amended suitably by the Ministry of Defence vide S.R.O. 414 dated 2-8-1980,

12 First Report
(Sixth Lok Sabha) 25

(i) The Ministry of Commerce have noted the recommendation of the Committee for compliance (O.M. No. 1(80)/77-EI & EP dated 15-9-1977).

(ii) Department of Parliamentary Affairs have since brought to the notice of all Ministries/ Departments of the Government of India for their guidance and strict compliance *vide* their O.M.No.F. 32(5)/77-R&D dated 2-12-1977.

The Committee are not satisfied with the reply of the Ministry of Commerce that they do not consider it necessary to give a reference to the Rule to the Gazette Notification specifying the standard specification, as both the Rules and the Notification, had been issued in the Gazette of the same date. The Committee feel that, for the convenience of the public, whenever a commodity is brought under quality control, reference should invariably be made in the Rules Relating to its inspection to the notification giving the standard specification in respect of that commodity notwithstanding the fact that both the notifications are printed in the Gazette of the same date. The Committee desire that their recommendation in this regard should be brought to the notice of all the Ministries /Departments for compliance in future.

1 First Report
(Sixth Lok Sabha)
28

The Committee note the reply of the Ministry of Shipping and Transport (Transport Wing) that in cases heretofore the ship arrival time was delayed due to exceptional circumstances like fire on board the vessel, grounding etc., special consideration could always be shown. In view of this, the Committee feel that the Ministry should have no difficulty in amending a the Order to provide that full pilotage fee would not be recovered in cases where the pilot had to return for reason of the control of the Master of the ship. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.

14 (First Report)
(Sixth Lok Sabha)
46

The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have no objection to provide in S. R. 317 A.O. 17 that a reasonable opportunity of being heard would be given to an allottee before any action is taken against him for breach of any rule or condition of allotment. The Committee desire the Ministry to issue the necessary amendment to this effect at an early date.

15 Seventh Report
(Sixth Lok Sabha)
19, 23-26.

Despite several reminders, the final reply of the Ministry of Law Justice and Company Affairs (Legislative Department) has not so far been received.

The Committee regret to note that although more than adequate time has been taken by the Ministry of Law, Justice and Company Affairs (Legislative Department), they have not yet sent their reply.

The Committee observe that as far back as May 1955, the Committee on Subordinate Legislation in para 37 of their Third Report (First Lok Sabha) had emphasised on Government to make a suitable provision for laying and modification in all future Bill which may seek to delegate power to make rules, regulations, etc. or which may seek to amend earlier Act giving power to make rules, regulations, etc. This recommendation was accepted by Government *vide* para 78-79 of their Sixth Report (First Lok Sabha).

The Ministry have since amended the 5 Kandla Port Pilotage (Fee) Order, 1975 to provide that only fifty per cent of pilotage fee otherwise chargeable shall be charged in case where a pilotages vessel in accordance with the requisition to Pilot Station to pilot a incoming vessel beyond and if the pilot has to return due to non-arrival or late arrival of the vessel for reasons beyond the control of the Master of the vessel on account of any shipping, casualty, etc., grounding or fire on board the vessel *vide* G.S.R. 320/E. dated 5-5-1984.

The Ministry have since amended the Rule to the desired effect *vide* S.O. No. 1412 dated 14-5-1977.

The observation of the Committee have been brought to the notice of all Ministries/Departments of Government of India for compliance *vide* Ministry of Law, Justice and Company Affairs (Legislative and Company Department) O.M. No. F4(5)/78 L.I. dated 16th August, 1978.

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The Committee note that, while in the case of rules, Government have by and large been complying with the above recommendation of the Committee, they have failed to comply with the said recommendation in so far as regulations are concerned. Of the 19 Acts enumerated in Appendix II, 15 were passed by Parliament after the Committee made the above recommendation, only in two of these where the regulation-making power has been conferred on the Central Government, a provision has been made for the laying of regulations before Parliament. In none of the remaining 13 Acts, where regulation-making power has been conferred on subordinate bodies, such as Corporations, Boards, Councils, etc., a provision has been made for laying of regulations framed thereunder before Parliament. The Committee are surprised that, after having accepted the above recommendations of the Committee, Government should have paid so scant a regard to it so far as regulations are concerned.

The main reasons now given by the Ministries/Departments for not incorporating a provision for laying of Regulations in Acts/Bills are

- (i) The regulations are generally framed by autonomous bodies with regard to their internal working, and are, therefore, not of general public interest ; and
- (ii) a provision for their laying before Parliament would not be consistent with the autonomous character of such bodies,

The Committee note that similar arguments were given by the Ministry of Finance for not incorporating a provision for laying of Regulations framed under the State Bank Laws Amendment Bill, 1973. The Committee which had gone into the matter in depth had seen, no force in these arguments. As observed by the Committee in paras 86-87 of their Second Report (Sixth Lok Sabha), the body which delegates the power has a right to see that the power delegated by it does not transgress the limits laid down by it,

whether the delegate is the Central Government or a body subordinate to it is not very material. Nor did the Committee see any force in the argument that the laying of regulations relating to an autonomous body before Parliament might impinge its autonomy or result in day-to-day interference with its affairs. As observed by the Committee even now the Committee on Subordinate Legislation can, and does, scrutinise the regulations framed by subordinate bodies under delegated powers. Laying of such regulations before Parliament would result in no more interference in the affairs of these bodies than their scrutiny by the Committee on Subordinate Legislation. So as not to leave any room for doubt, the Committee will like to make it clear that their whole purpose in asking Government to lay the regulations framed under delegated powers before Parliament is to enable Parliament to see that the regulations framed under such powers are within the limits laid down by it and do not contain any unreasonable or inequitable provision not intended by Parliament.

The Committee reiterate their earlier recommendations on the subject and desire that like rules, regulations should also be laid before Parliament and there should be a provision to this effect in the relevant statutes. Likewise, there should invariably be a provision in the relevant statutes for publication of regulations to be framed there under. With this end in view, the Committee desire the Ministries/Departments of Government of India to examine all Acts delegating power to make regulations, with which they are administratively concerned, and to incorporate suitable provisions for publication and laying of regulations in those Acts which do not contain such provisions. The Committee desire the Ministry of Law/Department of Parliamentary Affairs to issue necessary instructions to all Ministries/Departments of the Government of India to this effect.

16, SEVENTH REPORT
(SIXTH LOK SABHA)
38—40

The Ministry of Industry (Department of Industrial Development) have noted the recommendation for future compliance vide their O.M. No. 23 (4)/78-MI dt. 19-7-1980

Committee, broadly speaking, six to nine months period should normally be adequate for the publication of any draft rules. As such, the delay of nearly four years in the final publication of the rules in this case was inexplicable. The Committee cannot help expressing concern at the ischaedistical manner in which the matter had been dealt with.

One of the reasons for delay in the finalisation of the rules is the large number of stages through which they had to pass before their publication. The Committee feel that in such cases rules may be finalised at meetings of officers of the Ministries/Departments concerned, instead of making frequent time-con suming to and fro references and waiting for their replies to be received in due course,

The Committee note that in order to expedite the publication of rules, the Ministry of Industry have decided that when draft rules are prepared and published for inviting objections, they would also be sent simultaneously to all the agencies instead of sending them to one agency at a time so that the comments of all concerned are available at the same time. Like-wise, in order that the final publication of the rules is not delayed on account of delay in receipt of Hindi translation from the Official Language Commission, the Committee desire that, in case of voluminous rules, instead of sending the entire rules at a time, the Ministries/Departments may send them in batches. The Committee hope that all these steps will go a long way in reducing delays in finalisation of rules. The Committee trust that the Ministry of Industry will henceforth take care to see that such cases of inordinate delays do not recur.

17. SEVENTH REPORT
(SIXTH LOK SABHA)
50—53

In the opinion of the Committee, it is of utmost significance that the provisions of legislation (including subordinate legislation) are spelt out with precision and, as far as possible, use of vague expressions, which may be interpreted differently by different persons, is avoided.

The Committee note with satisfaction that, on the matter being taken up by the Committee, the Ministry of Industry (Department of Industrial Development) have proposed to amend Rules 15(1), 90(6), 96 and 172(4) of the Petroleum Rules, 1976 so as to avoid the use of vague expressions like 'unreasonably large quantity' and 'reasonable', 'frequent' or 'regular intervals' therein. The Committee desire the Ministry to issue the proposed amendments at any early date.

In regard to Rule 115(1), the Committee feel satisfied with the reply of the Ministry that it is not possible to specify the regularity at which the equipment should be treated with paint as the regularity is determinable only after knowing the prevalent conditions.

18. SEVENTH REPORT
(SIXTH LOK SABHA)
57—60

The Committee deprecate inordinate delays ranging from 2 to 13 years in the finalisation of the rules mentioned in para 53 of the Report, with the result that all of them had to be given retrospective effect.

The Committee note that one of the main reasons for such delays is the unduly long time in inter-Departmental consultations. This has been conceded by the Ministry of Education and Social Welfare (Department of Education) in the case of the Central Hindi Directorate Class III and class IV posts Recruitment (Amendment) Rules, 1974. In this connection the Committee will like to invite the attention of the Ministries/Departments to the circular O.M.No. 20-3-67-Estt(D) dated the 11th August, 1967 issued by the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) regarding measures to be taken for reducing delays in finalising Recruitment Rules. According to this circular, the Ministry of Home Affairs will ordinarily return the draft Recruitment rules with their comments within a month from the date of reference to that Ministry or, if special circumstances of a case require more time for scrutiny/discussions, the Administrative Ministry/Department will be requested to discuss the case. Other

The Petroleum Rules, 1976 have been amended to the desired effect *vide* Notification dt. 6/5/1981 published under GSR 493 in the Gazette of India Part II, Section 3(i) dated, 23-5-1981.

The Department of Personnel and Administrative Reforms have since issued to all Ministries/Departments of the Government of India a set of Consolidated Instructions regarding framing of Recruitment Rules for various posts/services *vide* their O.M.No. 14017/24 76-Estt(RR) dated, 22 May, 1979.

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wise, after the period of one month, that Ministry/Department can presume concurrence of Home Ministry and proceed further. As regards consultation with the Union Public Service Commission, it has been laid down that ordinarily they will convey their advice within four or five weeks. It has been further laid down that if the Commission's advice on the draft recruitment rules is not received within this period the Administrative Ministry/Department should settle the matter by personal discussion with the officer concerned in the Commission.

The Committee have a feeling that the Ministries/Departments are not strictly following the procedure laid down by the Department of Personnel and Administrative Reforms in Appendix VI. They desire all the Ministries/Departments to streamline their existing procedure for finalisation of Recruitment Rules in accordance with the instructions contained in the above circular. In particular, stress may be laid on settlement of matters by mutual discussion at meetings of officers of different Ministries concerned with the finalisation of Rules.

The Committee note that the Department of Personnel and Administrative Reforms have prepared a detailed note consolidating all the instructions and streamlining the procedure in regard to framing of recruitment rules, which has been sent to the U.P.S.C. for concurrence. The Committee desire the Department to issue the note at an early date and impress upon all the Ministries/Departments to strictly follow the instructions contained therein so that delays in finalisation of rules are reduced to the barest minimum if not eliminated altogether.

19. Seventh Report
(Sixth Lok Sabha) 96

The Committee note that both the Emergencies proclaimed on the 3rd December, 1971 and the 25th June, 1975 have already been revoked, and therefore the question of issuing an amendment to sub-rule (3) of rule 31-A of the Defence and Internal Security of India Rules on the lines suggested by the Committee at this stage does not arise. The Committee, however, desire that in case such rules are issued in future, these should invariably indicate the minimum rank of the officer who is authorised to exercise the power of removing a person from any place.

The observation of the Committee have been noted and will be kept in view in case such a rule as 31-A of the Defence and Internal Security of India (Amendment) Rules, 1976 is issued in future. *vide* Ministry of Home Affairs O.M. No. II/21019/2/78-S & P(VS-II) dated May, 1978.

20. (Seventh Report
(Sixth Lok Sabha) 115

The Committee note that the Ministry of Petroleum have from time to time been seeking extension of time for framing service rules of the Oil Industry Development Board. In their latest Communication, the Ministry have sought a general waiver of time-limit for framing these rules. The Committee are not convinced by the argument advanced by the Ministry that as the number of employees of the Board at present is too small, it is preferable to wait till the staff strength has stabilised. The Committee, therefore, do not accede to the request of the Ministry for grant of a general waiver of the time-limit for the framing of the above-mentioned rules and desire that the service rules in question should be formulated latest by the 30th June, 1978.

The Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) have since framed the following service rules:

- (1) Oil Industry Development Board Employees (General Conditions of Service) Rules, 1978 (G.S.R. 428-E of 1978).
- (2) Oil Industry Development Board Employees (Medical Attendance) Rules, 1978 (G.S.R. 397-E of 1978).
- (3) Oil Industry Development Board Employees (Contributory Provident Fund) Rules, 1978 (G.S.R. 512-E of 1978).

With regard to other service conditions of the staff of the Board the Oil Industry Development Board Employees (General Conditions of Service) Rules, 1978 provide that the Fundamental Rules and Supplementary Rules of the Government of India shall apply. No other rules are required to be made for the present. (Ministry's O.M. No. 7(5)/79-Fin. II dated 3-12-'79).

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21. Seventh Report
(Sixth Lok Sabha) 128

The Committee note with satisfaction that the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Dock Workers (Regulation of Employment) Act 1948 so as to make a provision therein laying of Scheme framed there under before Parliament. The Committee desire the Ministry to bring necessary legislation for the purpose an early date.

A new Section 8A has been inserted in the Dock Workers (Regulation of Employment) Act, 1948 providing for laying of every Scheme and every rule made under the Act before Parliament by the Amendment No. 9 of 1980.

22 Thirteenth Report
(Sixth Lok Sabha)

The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have since issued a corrigendum amending the short title of the latter notification published under G.S.R. 562 to read as the Shipping Development Fund Committee (General) (Second Amendment) Rules, 1977. The Committee however, note with concern that whereas the Ministry have rectified the error by inserting the relevant serial number of the amendment in its short title, they have not cared to explain to the Committee the reasons for the lapse in not complying with the recommendation of the Committee that acts of amendments to any 'Order' or 'Rule' issued from time to time in a year should be serially numbered and that relevant number should be shown in its short title for purposes of convenient reference and easy location by the public. The Committee had made this recommendation as far back as in their Third Report (First Lok Sabha) and reiterated in their several subsequent Reports. The Committee desire the Ministry to take due notice of the Committee's recommendations and comply with them. The Committee also desire the Ministry to devise suitable procedure to avoid recurrence of such lapses in future.

The Ministry of Shipping and Transport (Transport Wing) have regretted that it was not explained to the Committee that omission regarding numbering of the amendment was due to an administrative lapse. A suitable administrative procedure has been evolved to guard against such lapses in future. The Ministry have also stated that to avoid such lapses all amendments carried on to a particular statutory rule in a year would be dealt with in a single file as this will enable to ensure that amendments carried out in a particular year are serially numbered. (O.M. Nos. MSD(61)/75-MD dated 4-1-1979 and 10-10-1979).

23 (Thirteenth Report)
(Sixth Lok Sabha)
16-18

The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have since amended the Department of Family Welfare (Proof Readers) Recruitment (Amendment) Rules, 1976 (G.S.R. 925 of 1977) so as to substitute '1977' for '1976'

The observations of the Committee have been noted to ensure that in future such omissions do not occur *vide* Ministry of Health and Family Welfare O.M. No. H-11013/2/78-Estt. III dated 9-10-1979.

in its short title *vide* G.S.R. 291 published in the Gazette of India dated the 25th February, 1978.

The Committee, however, cannot help expressing their surprise that the Department of Health were 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 as soon as the rules 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 corrigendum thereto *in toto* without waiting for the Committee to point it out.

The Committee desire the Ministry to be careful in future in this regard and devise suitable procedure to ensure that such mistakes are not repeated.

24 Thirteenth Report
(Sixth Lok Sabha)
21--88

The Committee are not convinced with the explanation given by the Ministry of Health and Family Welfare (Department of Health) for not appending the explanatory note in regard to retrospective effect given to the Department of Family Welfare (Department of Nursing Adviser) Recruitment (Amendment) Rules, 1977. They reflect utter carelessness on the part of the Ministry in acting upon the recommendations of the Committee in this regard. The Committee feel that even if the explanatory note had not been appended at the final stage due to oversight as stated by the Ministry, the omission could have been rectified immediately after it came to their notice. The Committee take a serious view of the lapse on the part of the Ministry and desire them to be careful in future.

The observations of the Committee have been noted to ensure that in future such omissions do not occur *vide* Ministry of Health and Family Welfare O.M. No. H. 11013/2/78-Estt. III dated 9-10-1979.

The Department of Parliamentary Affairs have also circulated the observations of the Committee to all Ministries/Departments for future guidance and compliance *vide* their O.M. No. F/ 32(14)/78-R&C dated 24-1-1979.

The Committee further observe that in many cases the usual plea taken by the Ministries/Departments concerned in such matters is 'oversight' or 'inadvertent omission' etc. The Committee note with surprise that in spite of repeated recommendations of the Committee which were brought to the notice of all Ministries/Departments from time to time by the Depart-

ment of Parliamentary Affairs or the Co-ordinating Ministries, the Ministries/Departments concerned do not care to take adequate steps to ensure against recurrence of such lapses. The Committee desire the Department of Parliamentary Affairs to bring the observations of the Committee to the notice of all Ministries/Departments of Government impressing upon them once again the need of taking adequate steps so that such lapses do not recur.

25 Thirteenth Report
(Sixth Lok Sabha)
26-27

The Committee are not convinced with the explanation given by the Ministry of Health and Family Welfare (Department of Health) for delay in the issue of amendment to the Central Health Service Rules as a result of which there was a time lag of over 11 years between the date of publication of the amendment and the date from which the rules so amended have been given retrospective effect. The Committee are deeply distressed to note that an unduly long time for four years was taken by the Ministry in finalising the amendment in consultation with the Union Public Service Commission, Ministry of Law and the Department of Personnel. The Committee note that even after finalisation, the issue of amendment was further linked by the Ministry with the proposal for restructuring of the Central Health Service on the basis of recommendations of the Third Pay Commission causing more delay in notifying the amendment. The amendment was subsequently delinked in 1977 from the reorganisation of the Central Health Service and issued in October, 1977. This reflects a causal approach to the issue on the part of the Ministry particularly in view of the Committee's earlier recommendations made in paras 58 and 59 of their Seventh Report (Sixth Lok Sabha) in which attention of the Ministries/Departments of the Government of India had been drawn to the procedure laid down by the Ministry of Home Affairs in their Circular letter No. 20/3/67-Estt. (D) dated the 11th August, 1967 to avoid delays in finalising the Recruitment Rules. The Committee desire that the

The Ministry of Health and Family Welfare have noted the recommendations/observations of the Committee for compliance in future *vide* their O.M. No. 10011/1/78-CHS. V. dated 29-12-1980. The Department of Parliamentary Affairs have also circulated the recommendations/observations of the Committee to all Ministries/Departments for avoiding delays in the finalisation of Recruitment Rules *vide* their O.M. No. F. 32(14)/78R&C dated 24-1-1979.

aforesaid recommendations be brought to the notice of all Ministries/Departments once again by the Department of Parliamentary Affairs.

The Committee feel that there was no reason for withholding the issue of Notification pending restructuring of the Central Health Service which had resulted in an avoidable delay of 3 years without any adequate grounds. The Committee stress that once a set of amendments to any rules are finalised, they should immediately be notified and not held over on the ground that some other impending amendments are under consideration at that time.

6. Thirteenth Report
(Sixth Lok Sabha)
31—33

The Committee note with satisfaction that, on being pointed out, the Ministry of Labour have agreed to amend Rule 3(2)(a) and 4(2)(a) of the Bonded Labour System (Abolition) Rules, 1976 to provide that a member of a District or Sub-Divisional Vigilance Committee may resign his office by giving notification in writing of not less than 30 days to the authority which nominated him and he shall be deemed to have vacated his office either on the date of acceptance of his resignation or on the expiry of the period of notice whichever is earlier.

The Rules have since been amended suitably by the Ministry of Labour *vide* G.S.R. No. 1455, dated 2-12-1978.

The Committee desire the Ministry to issue the proposed amendment to the rules at an early date.

27. Thirteenth Report
(Sixth Lok Sabha)
39—42

The Committee note that in terms of sub-rule (4) of the revised rule 416 of the Indian Telegraph Rules, 1951, the Telegraph Authority is empowered to refuse an application for or withdraw an existing telephone or similar service, without notice, from persons engaged in smuggling activity or acting in violation of any law relating to conservation of foreign exchange resources or acting prejudicially to public safety and interest etc. In such cases, the persons concerned are informed in writing within seven days of the action taken together with reasons therefor. In this connection the Committee also note the judgement of the Supreme Court in *Hukam Chand Versus Union of India* (AIR 1976 SC 789) wherein dealing with rule 422 of the Indian

The Indian Telegraph Rules, 1951, have since been amended suitably *vide* G.S.R. 152 dated 26-1-1980.

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Telegraph Rules which also empower the Divisional Engineer to disconnect the telephone connections of any subscriber in the event of emergency with or without notice, the Supreme Court had *inter alia* observed that minimal safeguard against arbitrary exercise of this drastic power under the rule is that the Divisional Engineer should be required to record reasons in writing in regard to his satisfaction for taking action which requirement is implicit in the rule.

On the analogy of the above ruling the Ministry of Communications were asked to amend Rule 416 of the Indian Telegraph Rules, 1951 so as to provide for recording of reasons in writing by the Telegraph Authority before taking any action under sub-rule (4) thereof. As a further safeguard against arbitrary use of power provision in the rules for affording an opportunity of making a suitable presentation by a subscriber who had been deprived of a telephone or similar service after he had been intimated the reason for the action taken against him. The Ministry, however, have not sent any reply so far to this point.

The Committee take serious note of the fact that the Ministry of Communications had not furnished any reply to the communication sent to them by the Committee for eliciting further information in spite of reminders sent to them on 2nd May and 3rd August, 1978. The Committee impress upon the Ministry to be prompt in furnishing information sought by the Committee. In case the Ministry was not able to furnish the information asked for by the stipulated date, they should have asked for extension of time from the Committee giving the reasons for doing so.

The Committee now desire that the Ministry should issue amendments to the Order without any delay on the lines suggested by them in paras 39—40 above.

The recommendations/observations of the Committee contained in paras 79-80 have been carefully noted for compliance in future.

The recommendations/observations of the Committee made in para 53 of Twentieth Report (Fifth Lok Sabha) were duly kept in view while framing the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. These Rules were issued in replacement of the Packaged Commodities (Regulation) Order, 1975. The 1977 Rules accordingly contain no provisions delegating power to Central Government to exempt any power to individual manufacturer/packer similar to that contained in the earlier Order. The delays and inconveniences caused to the Committee is regretted. The Officers of the Directorate of Weights and Measures have been warned to ensure that no such delay occurs in future. [Ministry of Commerce, Civil Supplies and Cooperation (Department of Civil Supplies and Cooperation) O.M. No. WM-10(f) 76-45L. II dated 30-12 1978].

28. Thirteenth Report (Sixth Lok Sabha) 79-80

The Committee are not satisfied with the reply of the Ministry of Civil Supplies and Cooperation for not implementing the recommendation of the Committee made in para 53 of their Twentieth Report (Fifth Lok Sabha) which was presented to the House on the 3rd November 1976, that the question of amending the Packaged Commodities (Regulation) Order, 1975 could not be undertaken in time because of some administrative reasons. In this connection the Committee note that a copy of their Twentieth Report was sent to the Ministry on the 5th November, 1976 asking them to furnish the requisite action taken note on the recommendations contained therein for their consideration. The plea of administrative reasons now advanced by the Ministry after a lapse of more than 11 months is not at all convincing. The Committee feel that in case the Ministry had experienced any genuine difficulty, they should have brought it to their notice at the earliest opportunity without any delay. The Committee deprecate the inaction on the part of the Ministry in not caring to implement the recommendation of the Committee.

While the Committee note that after the revocation of emergency, the Order was no longer in force and as such there was no necessity to amend it in accordance with their recommendation, they recommend that in case such an 'Order' was issued in future, it should be in accordance with the recommendation of the Committee contained in para 53 of their Twentieth Report (Fifth Lok Sabha).

29. Fourteenth Report (Sixth Lok Sabha) 18 and 45;

The Department of Parliamentary Affairs have brought the recommendations/observations of the Committee to the notice of all Ministries/Departments of the

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Ministry in sending their comments to the points referred to them by the Committee. The Committee expect the Ministries/Departments to be prompt in attending to the communications sent to them by a Parliamentary Committee.]

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The Committee recommend that the Ministries/Departments devise some procedure so that the recommendations of the Committee are strictly complied with and not lost sight of while laying the amending orders on the Table of Lok Sabha.

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Government of India for guidance and strict compliance *vide* their O.M. No. F. 32(15)/78-P&T dated 14-2-1979,

30 Fourteenth Report
(Sixth Lok Sabha) 22

The Committee note with satisfaction that, on being pointed out, the Ministry of Agriculture and Irrigation (Department of Agriculture) have decided to delete the repealing provision of rule 8 of the Delhi Milk Scheme Dairy Engineering Branch (Class III and Class IV Posts) Recruitment Rules, 1975 as it was unnecessary. The Committee desire the Ministry to issue the necessary amendment at an early date.

Rule 8 of the Delhi Milk Scheme Dairy Engineering Branch (Class III and Class IV posts) Recruitment Rules, 1975 has since been omitted *vide* G.S.R. No. 14 of 1979,

31 Fourteenth Report (Sixth Lok
Sabha) 49-50

The Committee note the reply of the Ministry of Finance (Department of Expenditure) for not being able to publish simultaneously the English and Hindi versions of the Central Civil Services (Revised Pay) (Second Amendment) Rules, 1975. The Committee, however, recommend that in cases where due to urgency, English version of a notification containing Rules is first published, a foot-note should be given to the notification that its Hindi version will be published later on, and, when the Hindi version is published subsequently, an indication should be given therein regarding the previous publication of its English version also mentioning therein the Notification No. and the date of the Gazette in order to facilitate easy referencing.

(i) The Department of Parliamentary Affairs have brought to the notice of all Ministries/Departments of the Government of India the recommendation of the Committee for guidance and strict compliance *vide* their O.M. No. 32(15)/73-R&C dated 14-2-1979. (ii) The Ministry of Finance (Department of Expenditure) have noted the recommendation of the Committee for compliance in future *vide* O.M. No. 1119-E/79 dated 26-4-1979.

The Committee would like the Department of Parliamentary Affairs to bring the above recommendation of the Committee to the notice of all Ministries/Departments of the Government of India for strict compliance in future.

32 Fourteenth Report (Sixth Lok Sabha) 56-60

(i) Ministry of Industry (Department of Industrial Development) have noted the recommendations/observations of the Committee for future compliance. The Ministry are also maintaining the necessary Register regarding notifications issued under various Acts etc. as desired by the Committee (O.M. No. 18(32)/P&C/74-PP&C dated 31-5-1980).

(ii) Ministry of Agriculture and Irrigation (Department of Rural Development) have stated that a register is now being maintained for entering notifications issued under various Acts and the statutory requirements to be fulfilled in regard thereto. The Ministry have also reiterated that every effort will be made to ensure that no such lapses occur in future. (O.M. No. F. 16-26/73-AM dated 12-1-1979).

(iii) Ministry of Commerce, Civil Supplies and Commerce, (Department of Commerce) have since issued necessary instructions to all concerned in the Department regarding the procedure to be followed to ensure timely compliance with the statutory requirements relating to subordinate legislation. (O.M. No. H. 11013/44/78-Parl. dated 9-1-1979).

The Committee are surprised to note that the 'Orders' indicated in the Appendix IV had not been laid on the Table of the House until the lapse was brought to the notice of the Ministries concerned by the Committee. The Committee feel that had they not pointed out, the Ministers might have failed to comply with the statutory requirement of laying them on the Table of the House and consequently Members of Parliament would have been deprived of their statutory right of suggesting modifications to those Orders. The Committee cannot but take a serious view of this lapse on the part of the Ministries concerned.

The usual plea of 'inadvertance' and 'administrative' oversight taken by the Ministries of Shipping and Transport (Transport Wing) and Agriculture and Irrigation (Department of Rural Development) on their part for this lapse is not acceptable to the Committee. The Committee have already made recommendation in para 32 of their Ninth Report (Fifth Lok Sabha) presented to the House on the 19th November, 1973, that the Ministries/Departments should maintain a register for entering notifications issued under various Acts and the statutory requirements to be fulfilled in regard thereto.

On the 18th December, 1973, the Department of Parliamentary Affairs had brought the above recommendation of the Committee to the notice of all Ministries/Departments. Subsequently the Cabinet Secretary had also addressed a D.O. to all Ministries of Government laying down procedure to be followed to facilitate timely compliance with the statutory requirements relating to subordinate legislation.

The Committee express their deep anguish that inspite of exhortations from time to time, such lapses on the part of Ministries/Departments continue to occur. The Committee urges

the Ministries/Departments to review their existing procedure for checking the loopholes, if any, so that such lapses do not recur.

(iv) The Department of Parliamentary Affairs have brought the recommendations/observations of the Committee (paras 59-60) to the notice of all Ministries/Departments of the Government of India for guidance and strict compliance *vide* their O.M. No. F. 32(15)/78-R & C dated 14-2-1979).

The Committee are astonished to note the reply of the Ministry of Commerce (Office of the Chief Controller of Imports and Exports) in regard to Newsprint Control (Amendment) Order, 1975 that they did not have a copy of the essential Commodities Act nor were they aware of the relevant provisions of the Act. The Committee expect the Ministries to be equipped with atleast the India Code. The Committee cannot but emphasise that the Ministry which issues an 'Order' is primarily responsible for laying it before Parliament within the stipulated period.

33 Seventeenth Report (Sixth Lok Sabha)

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The Committee note with satisfaction that, on being pointed out, the Ministries of Information and Broadcasting and Home Affairs have issued amendments to the Lakshadweep Administration Information Officer (Class II Post) Recruitment Rules, 1975 and the Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 by inserting therein the 'saving clause' regarding reservations and other concessions to the Scheduled Caste/Tribes. The Committee, however, desire that the Ministries concerned should be careful in such matters in future and that they should also ensure that prior to the issuance of the rules, they are complete in all respects.

(i) Ministry of Home Affairs (Department of Personnel & Administrative Reforms) have since issued necessary instructions regarding framing of Recruitment Rules for posts/services or amendments thereto to all Ministries/Departments of the Government of India *vide* O. M. No. 14017/24/76-Estt. (RR) dated 25-5-1979. (See para 3.16 (viii) of the instructions regarding insertion of 'Saving Clause' relating to reservation, relaxation in the age limit and other concessions to SCs/STs.)

(ii) Ministry of Information and Broadcasting have circulated the Committee's recommendation to all Media Units and all officers/administrative Sections in the Ministry for guidance and strict compliance in future *vide* their U. O. No. H. 11018/5/79-Parl. dated 3-5-1979.

34 Seventeenth Report (Sixth Lok Sabha) 19-20
The Committee are inclined to accept the contention of the Ministry of Works and Housing that the amendment under reference being of a clarificatory nature, the retrospective effect to it had become necessary to make the allotment of Government Residences (General Pool in Delhi) Second Amendment Rules, 1976, consistent with the earlier orders. The Committee, therefore, agree not to insist upon the Ministry to amend the Explanatory Memorandum appended to the Rules for the affirmation that no one would be adversely affected as a result of retrospective effect given to the said Rules.

The Ministry of Works & Housing (Directorate of Estates) have since circulated the recommendations/observations of the Committee to all Officers and sections of the Directorate and also to all attached and subordinate offices of the Ministry for their compliance in future *vide* their O. M. No. 12038(7)/79-Pol. II, dated 7-5-1979.

The Committee note the assurance given by the Ministry that the recommendation of the Committee made in para 10 of their second Report (Fourth Lok Sabha) in this regard would be complied with in future.

35 Seventeenth Report (Sixth Lok Sabha), 39-41

The Committee consider it a clear case of negligence and lack of care on the part of the Ministry of Energy (Department of Coal). Had it not been brought to the notice of the Ministry, the statutory obligation of laying the Order on the Table of the House would not have, perhaps, been complied with. The Committee are surprised to know that the Ministry was not even aware of the requirements of the statute under which they had issued the amendment to the Colliery Control Order, 1945.

The Committee also note that even after the lapse had been brought to their notice it took the Ministry more than a year to lay the Order on the Table of Lok Sabha without much justification. The Committee cannot but deprecate such a casual approach on the part of the Ministry and expect them to be careful in future of such cases.

Government have noted the recommendations of the Committee for future guidance (Department of Coal O.M. No. 54016/10/80-CPD dated 2-5-1980),

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As regards the giving of short title to the Rules, the Committee note that, on being pointed out, the Ministry have since done so.

36 Eighteenth Report
(Sixth Lok Sabha)
9-11

The Committee are of the opinion that the Ministry of Health and Family Welfare (Department of Health) should have been more forthright and specific in replying to the Committee's inquiries. The Committee note that the Drugs and Cosmetics (Fifth Amendment) Rules, 1977 were published in the Gazette on the 11th November, 1977 and the reply of the Ministry with regard to making available the Gazette copies to the public was communicated on the 29th July, 1978, i.e., after an interval of over eight months. The Committee are amazed to find that even after such a long time, it had not been possible for the Ministry to state the exact date on which copies of the Gazette containing draft rules were actually made available to the public. The Committee have stressed time and again that information based on presumptions cannot be relied upon by them especially when the exact facts can easily be ascertained. The Committee deprecate the casual manner of approach on the part of the Ministry in replying to their points. The Committee need hardly stress that reply of the Ministry should have been specific and pertinent to the points raised by them.

The Committee are not convinced with the plea advanced by the Ministry that a departure was made from the normal practice of giving thirty clear days for inviting objections/suggestions from the public on the draft rules as they related to an amendment of urgent nature. Had the urgency been indeed a real one it should not have taken them eight months to publish the final rules after the publication of draft rules.

The Ministry of Health and Family Welfare while noting the observations/recommendations of the Committee for future guidance have stated that now a period of 3 months from the date the Gazette is made available to the public is given for their comments. The date on which the copies of the Gazette are made available to the public is also being indicated in the preamble of the Notification. (O.M. No. X.11014/1/77. D&MS dated 8-8-1979.)

37 Eighteenth Report
(Sixth Lok Sabha)
19—21

The Committee cannot but reiterate their earlier recommendation made in para 28 of their First Report (Fourth Lok Sabha) that sufficient time should be given to the public to study the draft rules and send their comments thereon before the rules are finalised. To ensure this, the date on which copies of the Gazette containing the draft rules were made available, to the public should invariably be mentioned in the preamble to the rules when they are finally notified in the Gazette.

The Committee find that the recommendations of the Committee made in para 10 of their Second Report (Fourth Lok Sabha) regarding avoidance of retrospective effect to the rules, regulations, etc. and giving of Explanatory Memorandum in case where such retrospective effect is unavoidable, had been duly noted by the Department of Parliamentary Affairs and circulated to all Ministries/Departments vide their O.M. No. F. 32(1)/69-R&C dated the 22nd March, 1974 for compliance. The Committee are unhappy to note that the Department of Parliamentary Affairs who circulated the recommendations to all Ministries/Departments for compliance, have themselves failed to pay due attention to it

(i) The Department of Parliamentary Affairs have noted and circulated the recommendations of the Committee to all ministries/Departments of the Government of India for necessary compliance vide O.M. No. 32(6)/79-R & C dated 7-6-1979.

(ii) Ministry of Agriculture & Irrigation (Department of Agriculture) have noted the recommendation for future guidance and have assured that such discrepancy will be avoided in future vide O.M. No. 7-94/75/MI(A) dated 17-9-1979. The Ministry have also forwarded the recommendation to the concerned officers and Sections in the Ministry to avoid recurrence of discrepancies in future vide their Circular No. H. 110/3/779-P.P. dated 1-5-1979.

(iii) Ministry of Defence have circulated the recommendations/observations of the Committee in the Ministry for compliance, in future, by all concerned vide their U.O. No. F. 3(9)/79/D(Parl.), dated 23-5-1979.

The Committee are not convinced by the explanation given by the Ministry of Agriculture and Irrigation (Department of Agriculture) for not publishing the Explanatory Memorandum alongwith the rules that it got detached while it was sent for Hindi translation and therefore, it was lost sight of and could not be detected even after the issue of the Central Ground Water Board (Group 'A' and 'B' Services) Recruitment (Second Amendment) Rules, 1976. The Committee have time and again pointed out that the responsibility of the Ministry/Department does not cease with the sending of notification to the Press for printing. After it is published in the Gazette,

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it is the duty of the Ministry/Department concerned to verify whether the same has been correctly printed and to issue corrigendum thereto if necessary. The Committee regret that in the present case, the Ministry have published the Explanatory Memorandum only after the Committee had pointed it out to them.

The Committee deprecate the carelessness on the part of the Department of Parliamentary Affairs and Ministries of Agriculture and Irrigation (Department of Agriculture) and Defence in the above cases and desire them to be careful in such matters in future. The Committee desire that some procedure should be devised whereby the recommendations of the Committee are carefully noted and complied with and not lost sight of.

The Committee find from the reply of the Ministry of Health and Family Welfare that the plea of urgency in public interest as advanced by them for reducing the period from 30 days to 10 days for inviting suggestions/objections from the affected persons on the draft rules is not borne out by facts. According to the Ministry's own reply the Cabinet had decided to amend Rule 44 of the Prevention of Food Adulteration Rules on the 8th August, 1977 immediately. The Committee observe that the draft rules were published in the Gazette on the 16th November, 1977 i.e. after a period of more than three months of the Cabinet's decision. The Committee feel that had the Ministry been a little more alert and vigilant and had taken immediate steps to implement the Cabinet's decision, the minimum required period of 30 days could have easily been given to the public to submit their suggestions/objections on the draft rules. The Committee exhort the Ministry to be prompt and alert in handling such important matters in future.

The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have agreed to notify the standards of quality of the imported rapeseed oil through an amendment to the Prevention of Food Adulteration Rules, 1955. The

38 Eighteenth Report
(Sixth Lok Sabha)
42

Ministry of Health and Family Welfare have noted for compliance the observations made by the Committee in para 42 *vide* their O.M. No. 11018/1/79/—DMS& PFA dated 29-6-1979.

39 Eighteenth Report
(Sixth Lok Sabha)
43

The Ministry have since issued an amendment to the Prevention of Food Adulteration Rules, 1955 as desired by the Committee *vide* G.S.R. No. 710(E) dated 22-12-1980.

Committee desire the Ministry to issue the proposed amendment to the above Rules at an early date if not already done.

The Committee note with satisfaction that the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) have agreed to substitute sub-rule (2) of Rule 24 of the Oil Industry (Development) Rules, so as to eliminate the power of waiving recoveries vested in the Board and to restrict the power of writing-off losses to Rs. 20 lakhs in each case, as given below:—

“(2A) while writing off losses under sub-rule (2), the Board shall have regard to the following, namely:—

- (i) the loss does not disclose a defect in the rules;
- (ii) the loss does not disclose any defect in complying with the stipulations specified by the Board;
- (iii) there has not been any serious negligence on the part of an oil industrial concern to which the Board had granted loan and its realisation requires some legal or administrative action;
- (iv) the loss is not attributable to any serious lapse on the part of any employee of the Board and in cases where the loss is not realisable from such employee/functionary;
- (v) if the loss of any property acquired by an oil industrial concern with the assistance of the Board is due to fire, flood, earthquake or any other natural cause, it has been ensured that the facts where promptly reported, and proved, to the entire satisfaction of the Board that the circumstances aforesaid where beyond the control of the said oil industrial concern;
- (vi) if the loss is due to any expenditure on all or any of the measures specified in section 6, a detailed investigation has been carried out by the Board to ascertain the causes thereof and to ensure that not due to lack of proper technical

The Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) have issued the necessary amendment to the oil Industry (Development) Rules, 1975 *vide* G.S.R. No. 311/(E) dated 14-5-1979.

survey in assessing the technical soundness and viability of the measure or any other lapse on the part of the oil industrial concern executing such measure."

The Committee approves the proposed amendment and the guidelines and desire the Ministry to issue them at an early date.

41 Twenty-first Report
(Sixth Lok Sabha)
23-24

Although the Committee appreciate the stress and strain which the Ministry of Finance (Department of Revenue) have to undergo in following the existing procedure for laying 'sensitive' notifications before Parliament more so when such notifications are sent to the Press for publication in the Gazette after 6-00 P. M. in addition to other Parliamentary work as also maintaining of utmost secrecy in the matter yet the question is more of Parliamentary propriety than the administrative convenience of the Ministry.

The Committee find it difficult to accept the plea of the Ministry for two clear days' grace time for supply of cyclostyled copies of such notifications for circulation to Members. The Committee are of the opinion that keeping in view the time-honoured and well-established convention that when Parliament is in session all important announcements should be made before it rather than anywhere else, the only relaxation possible could be that the Ministry could send the requisite number of copies of such notifications by midnight of the day on which they are sent for publication to the Press with prior intimation to the Lok Sabha/Rajya Sabha Secretariat to enable their circulation to Members the same night alongwith other Parliamentary Papers. In this arrangement the Ministry would get more time to furnish the requisite number of copies of the notifications. The Committee therefore, recommend that in the case of the 'sensitive'

The Ministry of Finance (Department of Revenue) have since issued an Office Order No. 3 dated 24-9-1980 to all officers and sections in the Department of Revenue in compliance with the suggestions made by the Committee in regard to laying of sensitive and non-sensitive notifications issued under the Customs and Central Excise Acts. (O. M. No. H. 11018/2/78-Parl. dated 27-9-1980).

The gist of the instructions issued by the Ministry in this regard is as under :

All sensitive notifications should be published in the Gazette Extraordinary. If the notification is sent to the Press for Issue before 6-00 P.M. it should be laid on the Table of both Houses the same day before the Houses adjourn for the day. For this Purpose as soon as it is decided to lay the notification on any day, a request should be sent in writing to the Speaker, Lok Sabha and Chairman, Rajya Sabha seeking per-

notifications sent to the Press for publication after 6 P.M. two copies of notification with a letter to the Speaker, Lok Sabha and Chairman, Rajya Sabha may be sent immediately informing them of the Minister's intention to lay the notifications on the Table the following day and the remaining 250 Hindi and 550 English copies may be sent to both the Secretariats by mid-night same day for circulation to the Members for their information before it is published in the Press for information of the general public and in other respects the procedure already approved by the Committee in paras 5 to 9 of their Twelfth Report (Fifth Lok Sabha) be followed.

mission to lay the notification before Houses adjourn on that day. It there is any difficulty in getting GSR number the same day, the notification may be laid without the same, the GSR number being furnished later.

If the notification is sent to the Press for issue after 6:00 P.M. two copies of the notification with a letter to the Speaker and the Chairman should be sent immediately, seeking permission to lay the notification on the Table of both Houses before they adjourn on the next working day. Both the Secretariats should also simultaneously be informed that 500 and 250 copies of English Version and 250 and 100 copies of Hindi Version respectively will be sent to them by midnight the same day (the day on which the notification is published) for circulation to the Members of both the Houses for their information before it is published in the Press (i.e. news papers) for information of the general public. (In the category of sensitive notifications will fall all notifications making changes in export duties, major changes in procedures and changes in import and Central excise duties involving revenue of more than Rs. 50/- lakhs per annum, except cases where an existing concession is being continued).

In regard to other than sensitive notifications (non-sensitive notifications) these should be laid on the Table of the two Houses within seven day of

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their publication in the Gazette after arranging to obtain the GSR number within that period.

All notifications (sensitive and non-sensitive) issued during the inter-session period should be laid on the Table of both the Houses within seven days of the commencement of the next session.

42. **Twenty-first Report**
(Sixth Lok Sabha)
52—53

The Committee are unhappy to note that the Ministry of Defence have failed to realise the importance of incorporating laying provision in the Territorial Army Act, 1948. The Committee find that instead of carrying out the direction of the Committee expeditiously, the Ministry have given a perfunctory reply that undertaking of legislation by way of an amendment to an existing Act of Parliament involves considerable administrative and procedural work both in Government and the Parliament. The Committee observe that here the question is more of propriety than of administrative convenience of the Ministry. The Committee further observe that the laying provision in the Acts confers on Parliament a right to amend, modify or even annul the Orders frame in pursuance of the power delegated under those Acts. Non-incorporation of the laying provision in the Acts results in denial of such a right to Parliament.

The Committee, therefore, desire the Ministry to bring forward necessary amendment to the Territorial Army Act to incorporate therein the 'laying provision' at their earliest but in no case than the Autumn Session, 1979.

43. **Twenty first Report** (Sixth Lok Sabha) 57, 58 & 62

The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to provide for issue of a show cause notice to the licensee

The Ministry of Defence have since incorporated the laying provision in the Territorial Army Act, 1948. (*vide* Act No. 53 of 1980).

The Major Port of New Tuticorin Rule 1977 have since been amended suitably *vide* G.S.R. No. 782 dated 11-7-1980.

before cancellation of a licence under sub-rules (2) and (3) of Rule 62 of the Major Port of New Tuticorin Rule, 1977.

The Committee have, however, accepted the Ministry's contention that laying down a maximum time-limit for suspension of a licence is not desirable.

The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend rule 73(6) of the Major Port of New Tuticorin Rules, 1977 so as to provide therein for recording of reasons in writing before any exemption is granted. The Committee approve the proposed amendment and desire the Ministry to notify the same expeditiously.

44. Twenty-first Report (Sixth Lok Sabha) 65-66

The Committee deprecate the failure on the part of the Ministry of Defence (Department of Defence Production) to send pertinent reply to the specific issue raised by them in spite of repeated reminders. The Committee have time and again stressed that failure to furnish replies to the points raised by the Committee not only hampers their work but also results in unnecessary prologation of the infirmities in the rules. The Committee now, however desire the Ministry to issue the necessary amendment to the Explanatory Memorandum appended to the Civilians in Defence Services (Revised) Sixth Amendment Rules, 1977 stating that nobody would be adversely affected as a result of retrospective effect given thereto, if not already done.

In spite of several reminders, the Ministry have not so far intimated whether the necessary amendment to the Explanatory Memorandum has since been issued in the Gazette or not. The strange part is that instead of taking the action as suggested, the Ministry have along with their letter dated the 9th March, 1979, forwarded a copy of the corrigendum correcting a patent printing error in the Rules which has nothing to do with the point raised by the Committee.

45. Twenty-first Report (Sixth Lok Sabha) 77, 78 & 79

The Committee note that the Ministry of Commerce have set up an Expert Group on Tobacco on the 15th July, 1978 to examine *inter alia* the need for amending the Tobacco Board Act, 1975. The Committee also note that the Expert Group has been asked

The Rules in question have since been amended to the desired effect *vide* S.R.O. No. 305 dated 27-9-1978.

The Tobacco Board Rules, 1976 have since been amended suitably *vide* GSR 984(E) dt. 20-6-1979.

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to submit their Report within a period of six months. The Committee further note that the Ministry want a period of 6 to 8 months for introducing a comprehensive Bill to amend the Tobacco Board Act after receipt of the Report of the Expert Group, and that the amendment recommended by them would be incorporated in that Bill. From the reply of the Ministry, the Committee find that the Ministry may not be able to introduce the Bill to amend the Tobacco Board Act before July-August, 1979.

The Committee further note that in a similar case regarding the Oil Industry (Development) Rules, 1975 the Ministry of Petroleum and Chemicals had agreed to amend these rules by deleting the provision regarding waiving of recoveries and had also issued guidelines regarding writing off losses.

The Committee, therefore, desire the Ministry of Commerce either to amend the Tobacco Board Act, at the latest by the Monsoon Session, 1979, or in the alternative, the rules in question might be amended on the lines of the Oil Industry (Development) Rules, 1975, to implement the recommendation of the Committee. The Committee also desire the Ministry to take necessary action at their earliest so that the operation of the impugned rule may not continue any more.

46 First Report (Seventh Lok Sabha) 19

The Committee note with satisfaction that, on being pointed out, the Department of Personnel and Administrative Reforms have agreed to delete the words 'or post' from rule 5 of the Staff Selection Commission (Group 'C' Posts of Statistical Assistant/Economic Investigator) Recruitment Rules, 1978 regarding 'power to relax' in order to confine the relaxation provision of rules to a class or category of persons. The Committee desire the Ministry to issue the necessary amendment to the above rules at an early date.

47 First Report (Seventh Lok Sabha) 31

The Committee note that the Ministry of Railways (Railway Board) have since published the Explanatory Memorandum to the 7 Order mentioned at S. Nos. 3 to 7 and 12 to 13 of Appendix III. Ministry of Railways (Railway Board) have noted the recommendation of the Committee for strict compliance in future *vide*

The Department of Personnel and Administrative Reforms have amended the Recruitment Rules suitably *vide* G.S.R. 713 dated 26-5-1979.

Regarding the remaining 4 Orders at S. Nos. 8 to 11 of the Appendix III, the Committee, with reluctance, are inclined to accept the explanation of the Ministry that no purpose would be served in publishing the Explanatory Memorandum at this stage as the amendments involved are of minor character and as also the Ministry have certified that retrospective effect given to the rules orders did not prejudicially affect the right of any person. The Committee, however, desire the Ministry to be careful in future in such matters.

In view of the explanation furnished by the Department of Personnel and Administrative Reforms regarding giving of retrospective effect to the 'Orders' framed by the Department under Article 309 of the Constitution, the Committee reluctantly do not like to insist on the publication of the Explanatory Memorandum at this belated stage. The Committee, however, desire the Department to follow scrupulously their earlier recommendation made in para 10 of Second Report (Fourth Lok Sabha) in such cases in future.

The Committee note with satisfaction that, on being pointed out, the Ministry of Finance (Department of Revenue) have agreed to amend the Baggage Rules, 1978 as suggested. The Committee would like the Ministry to issue the necessary amendments at an early date, if not already done so.

The Committee note that the Ministry of Tourism and Civil Aviation have agreed to specify a time-limit of 30 days or one month within which the Chairman should accept the resignation or after its expiry the resignation should be deemed to have been accepted. While concurring with the Ministry's proposal for specifying the time-limit the Committee desire that the necessary amendment to the Air Corporation Rules, 1954 be issued at an early date.

The Committee approve the amendment of sub-rule (a) of rule 5 of the Antiquities and Art Treasures Rules, 1978 as proposed by the Ministry of Education and Culture (Department of Culture—Archaeological Survey of India). The Committee desire the Ministry to issue the amendment at an early date.

The Committee approve the amendment as proposed by the Ministry of Education and Culture (Deptt. of Culture—Archaeological Survey of India), and desire the Ministry to issue it at an early date.

O.M. No. 80/(GR)/15/1 dated: -8-1980

48 First Report
Sabha) 36

(Seventh Lok

The Department of Personnel and Administrative Reforms (Ministry of Home Affairs) have noted the observation of the Committee for compliance in future *vide* O.M. No. 1/16/76-CS. III dated 29-5-1981

49 Third Report
Sabha) 32

(Seventh Lok

Ministry of Finance (Department of Revenue) have suitably amended the Baggage Rules, 1978 *vide* G.S.R. 716-E published in Part II, Section 3(i) of the Gazette of India Extraordinary dated 26-12-1980.

50 Third Report
Sabha) 30

(Seventh Lok

The Rules have since been amended suitably by the Ministry of Tourism and Civil Aviation *vide* G.S.R. No. 33(E) dated 27-1-1981.

51 Third Report
Sabha) 37 & 40

(Seventh Lok

The Archaeological Survey of India (Department of Culture) have amended the Rules suitably *vide* G.S.R. No. 56(E) dated 10-2-1981.

MINUTES

APPENDIX VI

(Vide paragraph 4 of the Report)

MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1980-81)

The Committee met on Monday, the 5th January, 1981 from 11.30 to 13.35 hours.

PRESENT

- Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri M. Ankineedu
3. Shri Eduardo Faleiro
4. Shri Harish Kumar Gangawar
5. Shri K. Lakkappa
6. Shri T. Nagartnam
7. Shri M. Ramanna Rai
8. Shri Ratansinh Rajda
9. Shri Ajit Pratap Singh

SECRETARIAT

1. Shri S. D. Kaura—*Senior Legislative Committee Officer*
 2. Shri S. S. Chawla—*Senior Legislative Committee Officer*
- 2 to 7 * * * *

(v) *Implementation of recommendation contained in para 45 of the Sixteenth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) re: The Seamen's Provident Fund (Amendment) Scheme, 1976 (G.S.R. 1233 of 1976)—(Memorandum No. 42).*

8. The Committee considered the above Memorandum in depth and decided to hear evidence of the representatives of the Ministry of Shipping and Transport (Transport Wing) regarding retention of proviso to paragraph 59(5) of the Seamen's Provident Fund Scheme, 1966. The Committee also desired to peruse "Articles of Agreement" currently in vogue.

9 to 16. * * * *

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

- (ix) *Implementation of recommendations contained in paras 95-96 of the Ninth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Indian Railway Stores Service Recruitment Rules, 1969 (G.S.R. 151 of 1969)—(Memorandum No. 46).*

17. The Committee considered the above Memorandum and decided to hear evidence of the representatives of the Ministry of Railways (Railway Board) for not transforming the executive instructions governing seniority of Class I officers of various Indian Railway Services/Officers of the Medical and Miscellaneous Categories on Statutory footing.

* * * *

MINUTES OF THE FOURTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)

(1980-81)

The Committee met on Tuesday, the 6th January, 1981 from 11.30 to 13.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Eduardo Faleiro
3. Shri Harish Kumar Gangawar
4. Shri Jaipal Singh Kashyap
5. Shri M. Ramanna Rai
6. Shri Ratansinh Rajda
7. Shri Ajit Pratap Singh
8. Shri Chandra Shekhar Singh
9. Shri Xavier Araka]

SECRETARIAT

1. Shri S. D. Kaura—*Senior Legislative Committee Officer*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer*

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

* * * *

(i) Implementation of recommendation contained in para 65 of the Twentieth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) re: giving of retrospective effect to the orders framed under various Acts of Parliament [(i) The Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973 (S.R.O. 55 of 1973), (ii) The Territorial Army (Amendment) Rules, 1974 (G.S.R. 70 of 1974)] (Memorandum No. 51).

3. The Committee considered the above Memorandum and noted that the Ministry of Defence had issued corrigendum vide S.R.O. 153 dated the 30th April, 1977 to the Territorial Army (Amendment) Rules, 1974, which took away its retrospective operation.

4. As regards the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973, the Committee felt that although the Ministry had re-notified the Amending Regulations to make them effective from the date of their publication, i.e. 28th September, 1979, the Government might have taken certain actions during the time of operation of the 1973 Regulations under the retrospective effect given to them which had no sanction of the law. The Committee, therefore, decided to hear evidence of the representatives of the Ministry of Defence in the matter.

* * * *

MINUTES OF THE SIXTEENTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)
(1980-81)

The Committee met on Saturday, the 24th January, 1981 from 11.30 hours to 13.40 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri T. V. Chandrashekhara
3. Shri Eduardo Faleiro
4. Shri Jaipal Singh Kashyap
5. Shri K. Lakkappa
6. Shri T. Nagaratnam

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

7. Shri M. Ramanna Rai
8. Shri Chandra Shekhar Singh
9. Shri Xavier Arakal

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri K. P. Jayaram, *Member Staff & Ex-officio Secretary.*
2. Shri C. Ramakrishna Rao, *Legal Adviser.*
3. Shri Radhey Shayam, *Deputy Secretary.*
4. Shri M. C. Misra, *Director, Security*
5. Shri R. K. Kharbanda, *Additional Director (Security).*
6. Shri V. Ganesh, *Joint Director.*

SECRETARIAT

1. Shri Gian Chand—*Additional Secretary*
2. Shri S. D. Kaura—*Senior Legislative Committee Officer*

2 to 13.

(iii) *Implementation of Committee's recommendation contained in paras 95-96 of their 9th Report (6th Lok Sabha) regarding the Indian Railway Stores Service Recruitment Rules, 1969 (G.S.R. 151 of 1969).*

14. The Committee desired to know the manner in which the seniority list of Class I Officers had been prepared and whether the principles of fixing seniority were being published as part of the rules. The representative of the Ministry stated that the principles governing the seniority list of Class-I Officers had been framed in consultation with the Union Public Service Commission and that they had issued them to all their subordinate offices.

15. Replying to the question of discretionary powers of the Government in the matter, the representative stated that they had no discretionary powers as such. They had to determine the seniority on the basis of 11 principles that had been laid down. He further added that these were administrative instructions and that they were in elaboration of the statutory rules.

16. When asked whether these administrative instructions could not be put in the form of statutory rules, the representative stated that it could be done. He, however, explained that the Department of Personnel was the parent Department which laid down the rules for all the Government Departments and that they acted in consultation with them. He further clarified that these principles which they had laid down, had been published departmentally and issued

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

to their subordinate offices. As for giving them a statutory shape he requested the Committee to call for the comments of the Department of Personnel in the matter. To a specific query whether the Ministry of Railways had any difficulty in giving them statutory shape, the representative categorically stated that they had no difficulty once it was decided by the Department of Personnel to do so.

17. When asked whether Government had any discretionary powers to change the seniority in special cases, the representative of the Ministry again denied this and said that perhaps the wording of their reply in that regard had led to some confusion. The representative corrected the reply to read as under:

“In cases not covered by the principles indicated in the Appendix to this letter, seniority of officers appointed to the services shall be governed by such orders as may be issued by the Government, in consultation with the Union Public Service Commission, wherever necessary.”

He also contended:

“So, there is no question of taking arbitrary decisions. The factors that will be brought to our notice by individual officers will be taken into account, they will be referred to the other officers and then changes will come about. Whenever at any point of time the seniority position of some officers have to be changed, the affected officers are issued notices, stating that the Ministry has received certain representations from certain officers on such and such lines, and they are requested to file their objections within a particular period.”

18. The Committee then wanted to know whether the Ministry of Railways had referred that matter to the Ministry of Home Affairs and if so, what was their reply. In that connection, the Committee desired to have copies of the reference made by the Ministry of Railways to the Ministry of Home Affairs and a reply of that Ministry within a period of 15 days to which the representative undertook to furnish.

19. The Committee, however, desired to call the representatives of the Ministry of Home also to hear their views in the matter.

20. When asked about the framing of seniority rules regarding officers of the Medical and Miscellaneous categories, the representative

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tative stated that the same principles would apply. He further stated that with respect to certain categories of posts as to how they would be determined, they had supplemented that with a communication.

(The witnesses then withdrew)

The Committee then adjourned.

**MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA)
(1981-82)**

The Committee met on Monday, 29 June, 1981 from 11.00 to 13.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Xavier Arakal
3. Shri Ashfaq Husain
4. Shri T. V. Chandrashekarappa
5. Shri Eduardo Faleiro
6. Shri K. Lakkappa
7. Shri M. Ramanna Rai
8. Shri Ratansinh Rajda
9. Shri Ajit Pratap Singh
10. Shri Chandra Shekhar Singh

**I. Representatives of the Ministry of Home Affairs
(Department of Personnel and Administrative Reforms)**

1. Shri A. C. Bandopadhyay—*Secretary (Personnel)*.
2. Shri J. K. Sharma—*Director*.

II. Representatives of the Ministry of Shipping and Transport

1. Shri A. P. Padmanaban—*Joint Secretary*
2. Shri S. N. Kakar—*Director*
3. Shri K. Lal—*Under Secretary*

SECRETARIAT

Shri S. D. Kaura—*Chief Legislative Committee Officer.*

2. The Committee first heard evidence of the representatives of the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) regarding the Indian Railway Stores Service Recruitment Rules, 1969 (G.S.R. 151 of 1969).

3. On being asked whether the Rules were published in the Gazette of India after the approval of Department of Personnel and Administrative Reforms, the representative of the Department stated that Ministry of Railways and certain other Organisations were exempt from the purview of the Department of Personnel and Administrative Reforms. The Railway Department were competent to frame their own Rules for Railway Services without consulting the Department of Personnel and Administrative Reforms.

4. When asked whether the above mentioned Rules were referred to them, the representative of the Department of Personnel and Administrative Reforms stated that in 1979, the Ministry of Railways made a reference to their Department and they tendered their advice to them and the Ministry of Railways acted according to their advice and amended their earlier instructions of 30 November, 1976 regarding principles of seniority *vide* their letter of 16 February, 1980.

5. In reply to a question whether the principles of determining seniority should be given statutory footing, the representative of the Department of Personnel and Administrative Reforms stated that they had not given any advice to the Ministry of Railways on that issue. They had only explained to them the position pertaining to the other Civil Services which were within their purview. He further explained that in the case of Rules of few Services like that I.A.S./I.P.S., the relevant Service Rules contain the principles of determining seniority. He also stated that the general principles of seniority which they followed in Central Services were laid down *vide* their circular letter dated 22 December, 1959 and those instructions had stood the test of time. Those instructions had also come up for judicial scrutiny before the Supreme Court. The U.P.S.C. had also accepted them.

6. When specifically asked whether the administrative instructions regarding principles of seniority could be given statutory footing or not, the representative of the Department of Personnel and Administrative Reforms stated that it was not necessary to give statutory force to these instructions. He further stated that it was not obligatory that everything must be covered under statutory Rules. The Courts had held that where statutory Rules were silent the executive instructions could be issued and those instructions could be examined and scrutinised by the judiciary if anybody challenged them.

7. The representative of the Department of Personnel and Administrative Reforms was asked to furnish a copy each of the following documents to the Committee:

- (i) Reference made to U.P.S.C. by the Department of Personnel and Administrative Reforms regarding principles for determining seniority and reply of U.P.S.C. thereto.
- (ii) O.M. dated 22 December, 1959 laying down general principles for determining the seniority.
- (iii) Supreme Court judgement relating to principles of seniority.

[The representatives of the Department of Personnel and Administrative Reforms then withdrew.]

8. The Committee then heard evidence of the representatives of the Ministry of Shipping and Transport regarding implementation of recommendation contained in para 45 of the Sixteenth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the Seamen's Provident Fund (Amendment) Scheme, 1976 (G.S.R. 1233 of 1976).

9. When asked whether the Ministry of Shipping and Transport would implement the recommendation of the Committee contained in paragraph 45 of Sixteenth Report (Sixth Lok Sabha), the representative of the Ministry stated that they referred the matter to the Board of Trustees which had been constituted to operate the Provident Fund for the Seamen. The Board had representatives of the employees, ship owners as well as of Seamen and Director General of Shipping. The Board examined the recommendation of the Committee and suggested that the existing proviso to section 59(5) of the Scheme might continue as that was in the interest of the orderly working of this scheme and in the interest of the Seamen. He further explained that all Seamen in the country were governed by the Seamen's Employment Provisions and Seamen entered into an agreement with the ship owners every time there was a voyage and that procedure was accepted and agreed to between the Seamen and the ship owners through the auspices of the National Maritime Board. Normally a voyage took 4 to 6 months period and once it was complete, for all practical purposes there was cessation of that particular employment, and the Seamen had to wait for some time till he got his name in the roster again.

10. When asked whether the collection of supporting documents for claiming refund after period of 6 months was a cumbersome job for the Seamen, the representative of the Ministry replied in negative and stated that documents were maintained in the office of the Seamen Provident Fund Commissioner in Bombay and a continuous service record was maintained by the Seamen Employment Officer in respect of every seaman.

11. When asked how a waiting period of less than 6 months could be misused by seamen, the representative of the Ministry explained that since the waiting period between voyages ranged between 9 months and 1 year, there might be tendency on the part of seamen to apply for refund of deposits from the Provident Fund as soon as they came back after every voyage.

12. In reply to a question that there was undue delay in settlement of Fund claims especially at Cochin Port, the representative of the Ministry stated that they would certainly issue instructions to the Director General of Shipping to ensure speedy settlement of cases.

[The representatives of the Ministry of Shipping and Transport then withdrew].

13. After considering the views of the representatives of the Ministry of Shipping and Transport, the Committee decided to drop their recommendation contained in para 45 of their Sixteenth Report (Sixth Lok Sabha).

The Committee then adjourned.

MINUTES OF THE TWENTY-FIRST SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA)
(1981-82)

The Committee met on Wednesday, 8 July, 1981 from 15.00 to 16.45 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Xavier Arakal
3. Shri Ashfaq Husain
4. Shri K. Lakkappa

5. Shri M. Ramanna Rai
6. Shri Ratansh Rajda
7. Shri Chandra Shekhar Singh

SECRETARIAT

1. Dr. D. N. Gadhol—Chief Legislative Committee Officer
2. Shri S. S. Chawla—Senior Legislative Committee Officer

2 to 7 * * *

(iv) Implementation of recommendations contained in paras 13 to 15 of the Sixth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules 1970 (G.S.R. 1932 of 1970)—(Memorandum No. 67).

8. The Committee considered the above Memorandum and decided to hear oral evidence of the representatives of the Ministry of Communications regarding delay in implementation of the Committee's recommendations.

9 to 13 * * *

MINUTES OF THE TWENTY-EIGHTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)
(1981-82)

The Committee met on Saturday, 3 October, 1981 from 11.45 to 13.00 hours.

PRESENT

Shri Mool Chand Daga—Chairman

MEMBERS

2. Shri M. Ankineedu
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri K. Lakkappa
6. Shri Balasaheb Vikhe Patil
7. Shri Ajit Pratap Singh
8. Shri Chandra Shekhar Singh

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

REPRESENTATIVES OF THE MINISTRY OF DEFENCE.

1. Shri P. K. Kaul, Secretary
2. Shri K. K. Mathur, Joint Secretary (N)
3. Vice Admiral S. L. Sethi, Chief of Personnel Naval HQ.
4. Shri B. R. Atre, Deputy Legislative Counsel, Ministry of Law.

SECRETARIAT

Shri S. S. Chawla—*Senior Legislative Committee Officer*

2. The Committee heard evidence of the representatives of the Ministry of Defence regarding giving of retrospective effect to the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973 (S.R.O. 55 of 1973) [Implementation of recommendation contained in paragraph 65 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha)].

3. When asked whether the Navy Act, 1957 under which the Naval Ceremonial, Conditions of Service and Miscellaneous (Amendment) Regulations, 1973 were framed provided for giving of retrospective effect to the Regulations framed thereunder, the representative of the Ministry stated that the Act did not specifically provide for issue of Regulations with retrospective effect but that did not mean that they had no right under the law. The representative of the Ministry of Law, however, conceded that there was no power to give retrospective effect under the Navy Act.

4. When enquired why they had given retrospective effect to the 1979 amendment when they had no such power under the Act, the representative of the Ministry stated that they had to issue S.R.O. 1979 for two reasons. One reason was to take note of the objection of the Committee on the earlier order having retrospective effect and the second reason was to revise the age limit. He further added that when S.R.O. 55 of 1973 was objected to by the Committee, they explained the circumstances under which they had been compelled to issue it because that the U.P.S.C. had already issued a notification in 1970 changing the ages for entry into N.D.A. The Committee after considering the explanation of Ministry again objected to the giving of retrospective effect. They, therefore, thought of superseding the 1973 Regulations by new Regulations. In the meanwhile the age limit for entry into N.D.A. was further changed from 16 years to 18 years to 16 years to 18½ years. They had to issue S.R.O. 1979.

5. When asked whether it would not be proper to amend the Navy Act, the representative of the Ministry stated that they were thinking of amending the Act and they had decided not to issue any Regulations in future with retrospective effect.

6. When asked that certain persons might have been recruited on the basis of impugned Regulations and how these recruitments could be considered, as legal, the representative of the Ministry of Law agreed that action under those Regulations was nullity. He further stated that it was also a fact that the U.P.S.C. had advertised the posts from 1970 taking into consideration the advancing of age and certain persons might have been selected by advancing the age. However, nobody had raised any objection so far. He further clarified that the remedy was by enacting legislation.

7. As regards regularising the action taken by the Government between 1970 and 1979, the representative of the Ministry stated that they would make reference to the Ministry of Law and seek their advice about the content and need of a new legislation to validate all that had happened between 1970 and 1979.

[The witnesses then withdrew].

8. After hearing the views of the representatives of the Ministry of Defence on the matter and keeping in view, the practical difficulties, the Committee decided not to pursue their recommendation contained in paragraph 65 of their Twentieth Report (Fifth Lok Sabha) any further. The Committee, however, desired the Ministry of Defence to amend the Navy Act suitably in order to avoid recurrence of such a situation in future.

The Committee then adjourned.

**MINUTES OF THE THIRTIETH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION**

**(SEVENTH LOK SABHA)
(1981-82)**

The Committee met on Thursday, 22 October, 1981 from 15.00 to 17.00 hours.

MEMBERS

2. Shri M. Ankineedu
3. Shri Xavier Arakal
4. Shri Ashfaq Hussain
5. Shri Eduardo Faleiro
6. Shri M. Kandaswamy
7. Shri K. Lakkappa
8. Shri M. Ramanna Rai
9. Shri Ratansinh Rajda
10. Shri Chandra Shekhar Singh

WITNESSES

I. * * * * *

II. REPRESENTATIVES OF THE MINISTRY OF COMMUNICATIONS

1. Shri S. K. Ghose, Secretary (Communications).
2. Shri D. K. Singh, Deputy Director General (P) (P & T Board).

SECRETARIAT

Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2 to 8. * * * * *

9. The Committee then heard oral evidence of the representatives of the Ministry of Communications with regard to non-implementation of the recommendations contained in paragraphs 13 to 15 of the Sixth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) relating to the Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules, 1970 (G.S.R. 1932 of 1970).

10. The representatives stated that there were certain administrative orders, which were not part of the statutory rules, for appointment of Extra-Departmental Staff and the Casual Labourers to Class IV Posts in the Posts and Telegraphs Department. The representatives, however, conceded that constitutionally and legally speaking, they did not have authority to issue such administrative instructions. The representatives further submitted that P and T Department decided several years back to make statutory rules as recommended by the Committee for the purpose. The draft rules were accordingly formulated and sent to the Department of Per-

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

sonnel for concurrence. The Department of Personnel in turn forwarded the rules to the Director-General of Employment and Training who suggested that extra-departmental agents should first be recruited through the employment exchanges only. Thereafter, a discussion was held and a revised draft of rules was made out.

11. When pointed out that the matter had been hanging over for more than eight years, the representatives apologised for the avoidable delay and gave an assurance that they would try to do the needful before the end of the year. The Chairman then urged the representatives of the Ministry that the assurance given to the Committee should be fulfilled and the rules be framed within three months even if more staff was to be employed to get the work done.

The Committee then adjourned.

**MINUTES OF THE THIRTY-FIRST SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA)
(1981-82)**

The Committee met on Monday, 7 December, 1981 from 15.30 to 16.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Xavier Arakal
3. Shri Ashfaq Hussain
4. Shri Eduardo Faleiro
5. Shri Ratansinh Rajda

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
2. Shri Ram Kishore—*Senior Legislative Committee Officer.*

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

3. The Committee authorised the Chairman and, in his absence, Shri Eduardo Faleiro, to present the Ninth Report to the House on their behalf on 9* December, 1981.

The Committee then adjourned.

*The Report could not be presented to the House on 9 December, 1981 as the House adjourned without transacting any business for the day due to the death of a sitting Member of the House (Shri Mubarak Shah). The Report was, therefore, presented on the next day i.e. 10-December, 1981.

GMGIPMRND—LS II—2835 LS—12-1-82—000.