

**COMMITTEE ON SUBORDINATE  
LEGISLATION**  
(SEVENTH LOK SABHA)

**TWENTY-FIRST REPORT**

( Presented on 9 DEC. 1983



**LOK SABHA SECRETARIAT  
NEW DELHI**

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CORRIGENDUM TO THE TWENTY-FIRST REPORT  
OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (SEVENTH LOK SABHA)  
PRESENTED TO THE HOUSE ON 9 DECEMBER,  
1983

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION

(1983-84)

1. Shri R. S. Sparrow—*Chairman*
2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
- \*4. Shri A.E.T. Barrow
5. Shri Ashfaq Husain
6. Shri Dalbir Singh (Madhya Pradesh)
7. Shri Amal Datta
8. Shri B. Devarajan
9. Shri C. D. Patel
10. Shri Chandrabhan Athare Patil
11. Shri T. Damodar Reddy
12. Shri M.S.K. Sathiyendran
13. Shri Satish Prasad Singh
14. Shri Vijay Kumar Yadav
- \*\*15. Vacant

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*
3. Shri Ram Kishore—*Senior Personnel and Executive Officer.*
4. Shri T. E. Jagannathan—*Senior Legislative Committee Officer.*

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\*Nominated *w.e.f.* 3-9-1983.

\*\*Vice Shri B. R. Nahata died on 6-10-1983.

## 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 Twenty-first Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on 27 June and 6 July, 1983.

3. The Committee considered and adopted this Report at their sitting held on 26 October, 1983.

4. 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 appended to the Report (Appendix I).

### II

#### THE CENTRAL WAREHOUSING CORPORATION (STAFF) (AMENDMENT) REGULATIONS, 1980 (S.O. 2577 of 1980)

6. Note below S. No. (iii) of the proviso to Regulation 31 of the Central Warehousing Corporation (Staff) (Amendment) Regulations, 1980 provided that the decision of the appellate authority shall be final. The expression 'decision shall be final' gave an expression as if the jurisdiction of courts was being ousted. In that connection, attention of the Ministry of Agriculture (Department of Food) was invited to the following recommendation of the Committee on Subordinate Legislation contained in paragraph 18 of their Fourth Report (Third Lok Sabha) presented to the House on 4 May, 1965:—

"The Committee are of the view that although it is true that the interpretation of the rules given by the Executive is not binding on the Courts, yet the rules should not be worded in a manner which may give an impression on the mind of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be

be worded on the lines of regulation 24 of the Kandla Port Employees (Allotment of Residence) Regulations, 1964, which reads as under:—

**"24. Interpretation of regulations:—**If any question arises as to the interpretation of these regulations, the same shall be decided by the Board."

7. The Ministry of Agriculture (Department of Food), in their reply dated 2 April, 1981 stated as under:—

".....It may be mentioned in the first place that even before the amendment notified on 27-9-1980 was gazetted, similar provision existed in this regulation No. 31 and the amending order continued this particular provision. Secondly, the intention in this provision is not to oust the jurisdiction of the Courts, but the intention is that after the decision of the appellate authority, it would not be possible for the aggrieved employee to make any further appeal under the regulations. Thirdly, in so far as interpretation of regulations is concerned, for which a precedent of regulation 24 of the Kandla Port Employees (Allotment of Residence) Regulations, 1964 has been quoted, it may be pointed out that a similar provision exists under regulation 45 of the Central Warehousing Corporation Staff Regulations also which is reproduced below:—

**"45. Interpretation:**

Where any question relating to the interpretation of these regulations arises, it shall be referred to the Board of Directors who shall thereupon decide it."

8. The Committee note that although according to the Ministry the intention of the provision of regulation 31 of the Central Warehousing Corporation (Staff) (Amendment) Regulations, 1980 is not to oust the jurisdiction of the courts, it does not, however, clearly reflect so. The Committee find it difficult to accept the position stated by the Ministry of Agriculture (Department of Food). The Committee also do not approve the wording of the existing provision of regulation 45 of the Central Warehousing Corporation (Staff) Regulations, 1966. The Committee, therefore, desire the Ministry to amend regulation 45 of the Regulations *ibid* so as to bring it

in line with that of regulation 24 of the Kandla Port Employees (Allotment of Residence) Regulations, 1964 which reads as under:—

“24. Interpretation of regulation.—If any question arises as to the interpretation of these regulations, the same shall be decided by the Board.”

### III

#### THE ARTSILK TEXTILES (PRODUCTION & DISTRIBUTION CONTROL (AMENDMENT) ORDER, 1980 (S. O. 2619 OF 1980)

9. Sub-clause (2) of clause 4 of the Artsilk Textiles (Production and Distribution) Control Order, 1962 as substituted by the afore-said Control (Amendment) Order of 1980 provided that the manner of packing and marking on artsilk yarn might be specified by the Textile Commissioner.

10. It was felt that in order to make the Order self-contained the manner of packing and marking on artsilk yarn should more appropriately be provided in the above said sub-clause of the Order.

11. The Ministry of Commerce (Department of Textiles) who were asked to state if they had any objection to amend the Order accordingly, in their reply dated 4 June, 1981, stated as under:—

“ . . . the manner of marking and packing need to be changed from time to time depending upon the improvements and technological innovations in the field of textiles. It is not, therefore, possible to accept the suggestion made in Department\* of Parliamentary Affairs O.M. No. 39/763/CII/80 dated 31-12-1980 and make a provision about the manner of packing and marking on artsilk yarn in rules.”

12. The Committee are not satisfied with the reasons advanced by the Ministry of Commerce (Department of Textiles) for not agreeing to amend sub-clause (2) of clause 4 of the Artsilk Textiles (Production and Distribution) Control Order, 1962 as substituted by the Artsilk Textile (Production and Distribution) Control (Amendment) Order, 1980 so as to provide therein the manner of packing and marking on the artsilk yarn in order to make the Order self contained. The Committee feel that the improvements and technological innovations in the field of textiles, which are the only hurdles according to the Ministry, should not be so frequent which make it impossible for them to specify in the

\*Lok Sabha Secretariat at.



Order the manner of packing and marking on the art silk yarn. The Committee, therefore, desire the Ministry to amend the Order to the desired effect at an early date.

#### IV

#### THE CENTRAL EXCISE (SEVENTH AMENDMENT) RULES, 1980 (G.S.R. 749 OF 1980)

13. Sub-clause (d) of clause (via) of sub-rule (3) of Rule 56A of the Central Excise Rules, 1944 as inserted by the Central Excise (7th Amendment) Rules, 1980 reads as under:—

“(d) The Collector may, subject to such conditions and limitations as may be prescribed by him, on an application made in this behalf, permit a manufacturer, who had been immediately before the commencement of the Central Excise (7th Amendment) Rules, 1980, availing of set-off procedure on material or component parts used in the manufacture of dutiable finished excisable goods by a notification issued under rule 8, to transfer—

- (i) the amount of duty paid on the said material or component parts received by him and lying unutilised before such commencement to his account in Form R.G.—23.
- (ii) stocks of the said duty-paid material or component parts as such, or in process or contained in the dutiable finished excisable goods in stock, in the factory before such commencement to his account in Form R.G.—23;

Provided that the finished excisable goods have been notified under sub-rule (1) and the manufacturer has the permission of the Collector under sub-rule (2).”

14. It was felt that the ‘conditions and limitations’ instead of being prescribed by the Collector should better be spelt out in the sub-clause itself.

15. The Ministry of Finance (Department of Revenue) with whom the matter was taken up, in their reply dated 24 October, 1980 stated as follows:—

“.....that the conditions and limitations which the Collector can impose under rule 56-A (3) (d) by notification No. 118/80-CE dated 19th July, 1980 [relating to the 7th Amend-

ment Rules, 1980], have not been incorporated in the rule itself on account of the fact that scope of this rule is limited.

Vide the Second Finance Act, 1980, the set-off procedure scheme in relation to most of the excisable commodities was replaced by the proforma credit procedure prescribed under rule 56-A, of the Central Excise Rules, 1944, with effect from 1st August, 1980. In order to grant the manufacturers availing themselves of the set-off procedure, continuity of benefit even under the proforma credit procedure under rule 56-A, it was necessary to suitably amend rule 56-A. Consequently the said amendment was carried out by the above-referred to notification.

It will thus be seen that the scope and effect of this amendment is limited and relevant only for a transient period. Consequently, specifying the limitations and conditions referred to in rule 56A(3) (d) in the rule itself would have been of little purpose and instead the same was done by issuing suitable executive instructions under Ministry's F. No. 211/13/80-CX.6 dated 19th July, 1980 (Appendix II). Based on the said letter of the Ministry the Collector would have issued suitable trade notices at that time and the concerned parties would thus be aware of the limitations and conditions subject to which they could avail a continuity of benefit".

**16. The Committee do not agree with the contention of the Ministry of Finance (Department of Revenue) that the scope and effect of sub-clause (d) of clause (via) of sub-rule (3) of Rule 56A of the Central Excise Rules, 1944 are limited and relevant only for a transient period and that the specifying of the words 'conditions and limitations' in the Rule itself would have been of little purpose.**

**17. The Committee are of the view that had the intention of the Ministry behind this amendment been so, the Ministry would not have resorted to the issue of executive instructions for the guidance of the Collectors of Central Excise in this regard. Since the executive instructions, which are no substitute to the statutory rules, and which do not come to the notice of the Committee, the Committee desire that the Ministry should better specify the 'conditions and limitations' in the Rule itself instead of these being prescribed by the Collectors through issue of suitable trade notices on the basis of executive instructions issued in this regard.**

**THE WEALTH-TAX (SECOND AMENDMENT) RULES, 1980**  
**[S.O. 75(E) OF 1980]**

**'A'**

18. Sub-rule (2) of Rule 8F of the Wealth-tax Rules, 1957, as sought to be inserted by the Wealth-tax (Second Amendment) Rules, 1980, reads as under:—

“(2) On receipt of the charge-sheet and the statement referred to in sub-rule (1), the person shall be required to submit within such time as may be specified by the Board, a written statement of his defence and also to state whether he desires to be heard in person.”

19. It was felt that the minimum time within which a written statement of defence was to be made by a person ought to be specified in the sub-rule itself because there could arise a situation where the accused was given so short a time that it might not be possible for him to make his written statement of defence. It was also felt that there should be a provision in the rule for granting extension of time for filing a written statement of defence at the request of the accused person.

20. The Ministry of Finance (Department of Revenue) to whom the matter was referred forwarded with their Office Memorandum dated 23 June, 1981, a copy of opinion of both the Legislative Department and of the Department of Legal Affairs in the Ministry of Law, Justice and Company Affairs in that regard, which reads as under:—

“Rule 8F provides for framing definite charges against a registered valuer. This provision is drafted on the lines of the provision contained in rule 60 of the Income-tax Rule, 1982. The purpose of this provision is to bring to the notice of the person the definite charges against him and to give him an opportunity to submit his defence. Since a similar provision is in the Income-tax Rules and has been working without any difficulty, it is felt that it is not necessary to amend rule 8F to incorporate the suggestions made above. If, however, the committee on Subordinate Legislation is still of the opinion that the said rule 8F should be amended to incorporate the suggestions, action would be taken accordingly”.

21. The Department of Legal Affairs in the Ministry of Law, Justice and Company Affairs, however, expressed *inter alia* their opinion in the matter as follows:—

‘...Specification of time, as suggested by the Committee, may make the provisions unduly restrictive. The Board will be acting in a quasi-judicial capacity and in all likelihood will give extension of time if the facts and circumstances of a case so justify. Even in the case of other Service Rules, as for example, C.C.S. (CCA) Rules, 1965 applicable to Central Government Servants, there is no provision that the written statement of defence is to be made within a particular time. However, it is a matter of common knowledge that the employee concerned is given reasonable time to make the written statement of defence by granting suitable extensions. We have not come across any service rule providing that written statement of defence should be made within a specific time limit. Instead of safeguarding the interest of the person affected, it might work as a serious handicap to him in some cases.’

22. The Ministry of Law have desired that the above views might be brought to the notice of the Committee.

23. From the opinion expressed by the Legislative Department of the Ministry of Law, Justice and Company Affairs, the Committee observed that the Department have tacitly agreed to specify in sub-rule (2) of Rule 8F of the Wealth-tax Rules, 1957 the minimum time within which a statement of defence is to be made by a person.

24. The opinion tendered by the Department of Legal Affairs of the Ministry that instead of safeguarding the interest of the person affected the specification of minimum time might work as a serious handicap to him in some cases, is not clear and understandable to the Committee, as the intention of the Committee is to provide for a minimum time limit to the person (accused) to submit his statement of defence. It is always open to the Ministry to grant extension of time for this purpose. The Committee, therefore desire that the Ministry should provide for a minimum time limit, say about 30 days, in rule 8F of the Rules *ibid* for filing a written statement of defence by the accused and that there should also be a provision in the rule for extension of time at the request of the accused if the circumstances of the case so warranted.

## 'B'

25. Rule 8L of the Wealth-tax Rules, 1957 as inserted by the Second Amendment Rules, 1980, reads as under:—

“8L. *Powers of Board and Inquiry Officer.* — For the purposes of any proceedings under rules 8F to 8K, the Board and the Inquiry Officer shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining them on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.”

26. Since the powers of a Court vest in the Board|Inquiry Officer were substantive powers, the Ministry of Finance (Department of Revenue) were asked to state if there was any specific provision in the enabling Act viz. the Wealth-tax Act. The Ministry vide their O.M. dated 23 June, 1981 forwarded the opinion of the Ministry of Law, Justice and Company Affairs in the matter which reads as follows:—

“...there is no specific provision in the Act vesting the specific powers mentioned in rule 8L in the Board|Inquiry Officer. This rule corresponds to a similar rule contained in rule 66 of the Income-tax Rules, 1962. The only difference between the Income-tax Act and the Wealth-tax Act regarding the power to make such a rule is that in the case of the Income-tax Act, there is a specific rule-making power under section 295(2) (n) for the purpose, whereas there is no specific provision in the Wealth-tax Act. But, the power to make such a rule is in section 46, read with section 34AD of the Wealth-tax Act. Sub-section (1) of section 46 empowers the Central Board of Direct Taxes to make rules to carry out the purposes of the Act, Sub-section (2) of that section provides that in particular and without prejudice to the generality of the foregoing power [that is the power under sub-section (1)] rules made under this section may provide for the matters enumerated in clauses (a) to (f) of that

sub-section. Clause (f) of the said sub-section provides for making rules for any other matter which has to be or may be prescribed for the purposes of the Act. The provision contained in sub-section (2) is merely illustrative and does not, in any way, restrict the general power of rule-making under the said sub-section (1). In *Sudarshan Mineral Company Vs. Union of India* (AIR 1975 SC 949), the Supreme Court while examining the vires of a rule made under section 13(2)(g) of the Mines and Mineral (Regulation and Development) Act, 1957, held that sub-section (2) of section 13 of the said Act merely illustrates the nature of the rule-making power and does not restrict the general power under sub-section (1) thereof. From the above, it would be evident that the general rule-making power under sub-section (1) of section 46 of the Wealth-tax Act gives power to the Board to make rule 8L. Further, clause (g) of sub-section (2) of section 46 also provides a general provision to cover any other matter which has to be or may be prescribed for the purposes of the Wealth-tax Act. This residuary power also confers power upon the Board to make the said rule. There should, therefore, be no scope for any doubt in this behalf because of the cumulative effect of the aforesaid provisions."

27. The Committee do not consider the opinion of the Ministry of Law given in regard to rule 8L of the Wealth-tax Rules, 1957 as convincing.

28. In this connection, the Committee note that the Ministry of Law in support of their contention have stated that the aforesaid rule corresponds to a similar rule contained in rule 66 of the Income-tax Rules, 1962 and that the only difference between the Income-tax Act and the Wealth-tax Act regarding the power to make such a rule is that in the case of the Income-tax Act, there is a specific rule making power under section 295(2)(n) for the purpose, whereas there is no such specific provision in the Wealth-tax Act.

29. The Committee, however, observed that the rule-making power under section 295(2)(n) of the Income-tax Act quoted by the Ministry relates to maintenance of a register of persons other than legal practitioners or accountants as defined in sub-section (2) of section 288 of the said Act. The Committee further observe that the Ministry, while stating that there is no specific provision in the Wealth-tax Act similar to Section 295(2)(n) have maintained that the

power to make such a rule flows from section 46 read with section 34AD of the Wealth-tax Act.

30. The Committee, however, note that sub-section (1) of section 46 of the Wealth-tax Act empowers the Central Board of Direct Taxes to make rules and carry out the purposes of the Act. Thus quoting the AIR 1975 SC 949 judgement in the Supreme Court, the Ministry have deduced that the general rule making power under section (1) of section 46 of the said Act gives powers to the Board to make rule 8L. The residuary power under clause (g) of sub-section (2) of section 46 also gives a general provision to cover any other matter to be prescribed for the purposes of the Act.

31. From the explanation of the Ministry it appears to the Committee that the Ministry have defended the rule making power of the Government under section 46 of the Wealth-tax Act from which rule 8L has been derived. The Committee, however, feel that vesting the power of the Court in the Board/Inquiry Officer being a substantive power, it should expressly flow from the enabling Act, viz., the wealth-tax Act and therefore, desire the Ministry to amend the said Act to the desired effect at an early date.

## VI

### DIRECTORATE OF TECHNICAL DEVELOPMENT AND PRODUCTION (AIR) ORGANISATION, MINISTRY OF DEFENCE (GROUP 'B' JUNIOR SCIENTIFIC OFFICER) RECRUITMENT RULES, 1980 (S.R.O. 33 OF 1980)

#### 'A'

32. Sub-rule (2) of Rule 4 relating to the 'Method of Recruitment' of the Directorate of Technical Development and Production (Air) Organisation, Ministry of Defence (Group 'B' Junior Scientific Officer) Recruitment Rules, 1980 reads as under:—

"The suitability for appointment to the posts of Junior Scientific Officer in the Directorate of Technical Development and Production (Air) in the case of Defence Science Service Officers serving in the Defence Research and Development Organisation and Directorate General of Inspection who opt for Directorate of Technical Development and Production (Air) Organisation shall be determined by a Screening Committee constituted as under. The decision of the Committee shall be final and binding on all concerned and no appeal shall lie against the decision of this Committee."

33. While examining the aforesaid sub-rule, it was noticed that there was no provision to the effect that a person who felt aggrieved by a decision of the Screening Committee could make a representation. The Ministry of Defence (Department of Defence Production) were accordingly asked to furnish their comments in the matter. The Ministry were also asked to state the position that was obtained in that regard in other services.

34. In their reply dated 6 April, 1981, the Ministry of Defence (Department of Defence Production) stated that they had examined the Rules in question in consultation with the Department of Personnel and Administrative Reforms, Ministry of Home Affairs and their views were as under:

“Rule 4(2). Normally in most of the services the decision of the Screening Committee is considered as final. In order to ensure strict impartiality in the screening procedure, the screening committee is presided over by the Chairman|Member of the Union Public Service Commission. As such it is considered there is no need to make a provision for representations against the committee which is presided over by the Chairman|Member of th U.P.S.C.

35. The Committee note that in most of the Services the decision of the Screening Committee is considered as final.

36. The Committee further note that in the present case the Screening Committee is presided over by the Chairman|Member of the Union Public Service Commission to ensure strict impartiality in the Screening procedure.

37. While agreeing with the above reply of the Ministry, the Committee, however, desire that the Screening Committee constituted for the purpose should also include an expert from outside the organisation.

‘B’

38. Proviso to Rule 4(2) of the Recruitment Rules in question reads as under:—

“Provided that the Junior Scientific Officer who are found suitable by the Screening Committee shall be appointed as Junior Scientific Officers in the Directorate of Technical Development and Production (Air) Organisation on regular basis from the date of promulgation of these rules against the available vacancies in that grade and



shall retain their inter-seniority as assigned to them in the Defence Science Service on that date. Such of the officers as cannot be so absorbed for want of vacancies shall continue to serve with the Defence Research and Development Organisation|Directorate General of the Inspection till such time as regular vacancies in the grade of Junior Scientific Officer become available in the Directorate of Technical Development and Production (Air) Organisation for their absorption. The seniority of such officers shall be fixed by the Government in consultation with the Union Public Service Commission."

39. It was felt that the principles of seniority should be laid down in the rules itself for the information of all concerned. The Ministry of Defence (Department of Defence Production) with whom the matter was taken up, stated in their reply dated 6 April, 1961 as follows:—

"As per provisions of Rule 4(2) of the Directorate of Technical Development and Production (Air) Organisation Ministry of Defence (Group B) Junior Scientific Officer Recruitment Rules, 1960 there is no dispute to the fixation of seniority of the persons who are absorbed immediately after the meeting of the Screening Committee against the available or regular vacancies in the grade of Junior Scientific Officer as they will retain their original seniority in the erstwhile Defence Science Service. This leaves with the question of fixation of seniority in respect of the persons who are cleared by the Screening Committee for absorption but are not immediately absorbed and are required to be absorbed against the future vacancies. It can be visualised that such a situation may not arise as only one person has opted for absorption in DTD&P (Air) Organisation. As such there may not be any problem on this account. It is, therefore, considered that there is no need to lay down the principles of seniority as suggested by Lok Sabha Sectt."

40. The Committee accept the plea of the Ministry of Defence (Department of Defence Production) for not laying down the principles of seniority in rule 4(2) of the Directorate of Technical Development and Production (Air) Organisation Ministry of Defence (Group 'B') Junior Scientific Officer Recruitment Rules, 1960 due to the fact that only one person has opted for absorption in the Directorate of Technical Development and Production (Air) Organisation.

41. The Committee, however, desire that in case there are number of persons opting for absorption in the said Organisation, the Ministry should then lay down the principles of seniority in the rules Ibid.

## VII

### THE RAILWAY BOARD (PROTOCOL AND CATERING OFFICER RECRUITMENT RULES, 1977 (GSR 594 OF 1977))

42. Entry under Column 13 of the Schedule appended to the Railway Board (Protocol and Catering Officer) Recruitment Rules, 1977 regarding the circumstances in which Union Public Service Commission was to be consulted in making recruitment to the post of Protocol and Catering Officer reads as under:

“As required under the Union Public Service Commission (Exemption from consultation) Regulations, 1958.”

43. It was felt that the Entry as worded was vague inasmuch as it did not clearly indicate the circumstances in which the Union Public Service Commission was to be consulted.

44. The matter was taken up with the Ministry of Railways (Railway Board) inviting their attention to the following observation/recommendation of the Committee on Subordinate Legislation contained in paragraph 13 of their 17th Report (Fifth Lok Sabha):—

“The Committee note that the Ministry of Law have seen the validity of the objection raised by the Committee that the expression ‘as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958’ in Column 13 of the Schedule is not an accurate one in that the said Regulation does not require consultation with the Commission. On the contrary, it provides for cases where consultation with the Commission is not necessary. Even so, the Ministry of Law have pleaded for the retention of this expression in Column 13 of the Schedule, as there is no other regulation which positively specifies the cases in which the Commission is to be consulted. The Committee can hardly accept this explanation. They feel that it should not be difficult for the Department of Personnel and Administrative Reforms to devise, in consultation with the Ministry of Law and the U.P.S.C., some formula to precisely indicate the cases in which the U.P.S.C. is to be consulted. The Committee will like the Department of Personnel and Administrative Reforms to take early action

in the matter as the expression objected to in this case occurs in a large number of Recruitment Rules."

45. In their reply dated 13 September, 1983, the Ministry of Railways stated as under :—

".....and to draw attention of the Lok Sabha Secretariat to item No. 3.15 of the consolidated instructions regarding framing of Recruitment Rules for posts/services or amendments thereto, issued by the Department of Personnel and A. R. (Ministry of Home Affairs), vide their O.M. No. 14017/24/76-Estt. (RR) dated 22-2-79, wherein the cases in which Union Public Service Commission has to be consulted have been detailed. The Ministry of Railways will take necessary action in accordance with the instant instructions while framing the Recruitment Rules in future.

46. The Committee note with satisfaction that, on being pointed out to them, the Ministry of Railways have agreed to take necessary action in accordance with the instant instructions issued by the Department of Personnel and Administrative Reforms (Ministry of Home Affairs) vide their O.M. dated 22 February, 1979, while framing the Recruitment Rules in future.

47. The Committee, however, desire that the Ministry should also amend the Entry under Column 13 of the Schedule to the Railway Board (Protocol and Catering Officer) Recruitment Rules, 1977 to the desired effect in case it has not already been done.

#### VIII

#### THE EXPORT INSPECTION AGENCY (RECRUITMENT) RULES, 1980 (G.S.R. 794 OF 1980)

##### (A)

48. Rule 4(2) of the Export Inspection Agency (Recruitment) Rules, 1980 reads as follows :—

"*Method of recruitment, scale of pay, age limit, qualifications etc.*—The method of recruitment to the posts, age limit, qualifications and other matter connected therewith shall be as specified in columns 3 to 9 of the said schedule:

- |     |   |   |   |   |
|-----|---|---|---|---|
| (1) | * | * | * | * |
|-----|---|---|---|---|
- (2) the qualifications, experience and age may be relaxed for direct recruitment/promotion/transfer on deputation at the discretion of the appointing authority on the recommendations of the Selection/Departmental Promotion Committee."

49. As the aforesaid sub-rule vested too vast discretionary powers in the Selection/Departmental Promotion Committee and the Appointing Authority, it was felt that some guidelines should be provided in the rule. The Ministry of Commerce, with whom the matter was taken up, stated in their reply dated 23 December, 1980 as follows :—

“...in regard to relaxation in the qualifications, experience and age for direct recruitment/promotion/transfer on deputation in the Export Inspection Agency, the Central Government would adopt guidelines prescribed by the Department of Personnel. A reference to that effect may be added at the appropriate place in the rule 4(2).”

50. The Committee note the assurance of the Ministry that in regard to relaxation in the qualifications, experience and age of direct recruitment/promotion/transfer on deputation in the Export Inspection Agency, the Central Government would adopt guidelines as prescribed by the Department of Personnel in this regard and that a reference to this effect would be added at the appropriate place in rule 4(2) of the Export Inspection Agency (Recruitment) Rules, 1980. The Committee, however, desire the Ministry to amend these rules accordingly at an early date.

(B)

51. Rule 11 relating to ‘Repeal’ of the Export Inspection Agency (Recruitment) Rules, 1980, reads as under:—

“11. *Repeal*.—All rules corresponding to these rules and in force immediately before the commencement of these rules are hereby repealed.”

52. As the Committee on Subordinate Legislation had consistently been objecting to legislation by reference it was urged upon the Ministry concerned *viz.* Ministry of Commerce to enumerate the names of the repealed rules in rule 11 itself to make the rule self contained.

53. The Ministry of Commerce, in their reply dated 23 December, 1980, stated as follows:—

“As regards Rule 11, we agree with the observation of Committee on Subordinate Legislation, Lok Sabha and it is proposed that rule 11 may be amended as follows:—

Rule 11—Repeal: “The Export Inspection Agency Group ‘A’, Group ‘B’ and Group ‘C’ (Recruitment) Rules,

1977 and in force immediately before the commencement of these rules are hereby repeated."

54. The Committee approve the amendment proposed by the Ministry of Commerce to rule 11 of the Export Inspection Agency (Recruitment) Rules, 1980 and desire that the necessary amendment in this regard should be issued by the Ministry at an early date.

(C)

55. Under Column 8 of the Schedule to the Recruitment Rules in question, almost all posts listed in the schedule provided for direct recruitment but the usual note regarding the crucial date for determination of age limit for direct recruits had not been indicated against those posts.

56. The Ministry of Commerce, with whom the matter was taken up, in their reply dated 23 December, 1980, stated as under:—

"As regards provision for direct recruitment in the schedule of the G.S.R. No. 794 of 1980, it is proposed that a note may be added in the schedule that the age limit prescribed for direct recruits would be on the closing date of inviting applications for the posts in tune with the procedure followed by the U.P.S.C. e.g. if the date of publication is 1-1-1981 and its closing date is 15-1-1981, the age limit for direct recruits would be determined on 15-1-1981."

57. The Committee approve the action proposed to be taken by the Ministry of Commerce and desire that the requisite amendment should be issued at an early date.

IX

THE VISAKHAPATNAM UNREGISTERED DOCK WORKERS  
(REGULATION OF EMPLOYMENT) (AMENDMENT)  
SCHEME, 1980 (S.O. No. 2582 of 1980)

58. Clause 27 of the Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968 as substituted by the above-mentioned Amendment Scheme of 1980 reads as under:

"27. *Holidays*.—Each listed worker shall be entitled to holidays with pay not exceeding 9 days in a year at such rates as may be prescribed by the Board".

59. As the expression 'at such rates as may be prescribed by the Board' appeared to be vague, it was felt that the rates which

were to be prescribed by the Board should be specified in the Scheme itself so as to make it self contained.

60. The Ministry of Shipping and Transport (Transport Wing) who were asked to furnish their comments in the matter, stated in their reply dated 8 May, 1981 as follows:

“.....the matter has been examined in this Ministry. The workers are paid time rate wages i.e. basic fixed dearness allowance, variable dearness allowance and fixed special allowance for holidays, leave, etc. It is, therefore, felt that it will not be appropriate to indicate in the rules the rates of pay. It is, however, felt that the purpose would be served by further amending clause 27 to read as under:—

“27. *Holidays*.—Each listed worker shall be entitled to holidays with pay not exceeding nine days in a year as may be prescribed by the Board.”

61. The Committee do not agree with the amendment proposed by the Ministry of Shipping and Transport (Transport Wing) to Clause 27 of the Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968 as substituted by the Amendment Scheme of 1980. The Committee observe that the omission of the words ‘at such rates’ from the existing clause 27 will, instead of making the Scheme self-contained, confer on the Board an unintended power to decide the number of holidays not exceeding nine days in a year in lieu of ‘rates’. The Committee, therefore, desire the Ministry to examine the feasibility of specifying in the Scheme itself the rates of pay for holidays to be paid to the workers.

## X

### THE DEFENCE ACCOUNTS (GROUP ‘C’ AND ‘D’ POSTS) RECRUITMENT (AMENDMENT) RULES 1980 (S.O. No. 2038 OF 1980)

62. While examining the Defence Accounts (Group ‘C’ and ‘D’ posts) Recruitment (Amendment) Rules, 1980, it was observed that normally such rules were published in sub-section (i) of section 3, Part II of the Gazette of India and not in sub-section (ii) of section 3, Part II of the Gazette of India as has been done in this case. The matter was referred to the Ministry of Law for their advice though the Rules in question were issued by the Ministry of Finance.

63. The Ministry of Law and Justice (Legislative Department) *vide* their O.M. dated 21 January, 1981, while citing two Office Memoranda dated 9 September, 1976 and 9 October, 1980 issued by the Ministry of Home Affairs, stated that the above Recruitment Rules, in so far as they were issued by the Ministry of Finance, should have been published in Part II, Section 3, sub-section (i) of the Gazette of India.

64. As the aforesaid views of the Ministry of Law were based on the instructions issued by the Ministry of Home Affairs in their Office Memoranda referred to above, the Ministry of Finance (Department of Expenditure) who had actually published these Recruitment Rules were asked to state the exact position in that regard. The Ministry of Finance, *vide* their O.M. dated 27-8-1981 explained the position as follows:

“Para 2—The recruitment Rules for the various Class III and Class IV posts (now Group ‘C’ and Group ‘D’ posts) in the Defence Accounts Department which were framed initially in the year 1959 were notified as S.O. 1185 of 1959 in Part II Section 3 Sub-Section (ii) of the Gazette of India as also the Recruitment Rules issued in 1971, *vide* S.O. 4025 of 1971 in Supersession of those notified in 1959. In the light of this the subsequent amendment bearing S.O. 2038 of 28-3-1980 was also published in Part II Section 3(ii) which was incorrect as it deviates from the provisions of Ministry of Home Affairs O.M. No. 22/3/76—Public dated 9-9-1976. Necessary action to transfer the amendment to the Recruitment Rules notified in S.O. 2038 of 80 from Part II Section 3 Sub-Section (ii) of the Gazette of India to Sub-Section (i) of the Gazette of India is being taken separately.”

65. Subsequently, the Ministry of Finance (Department of Expenditure), *vide* their O.M. dated 21-11-1981, intimated as follows:

... is directed to invite a reference to Para 3 of this Ministry's O.M. dated 27-8-1981 cited above wherein it was indicated that necessary action to transfer the amendment to the Recruitment Rules notified in S.O. 2038 of 1980 from Part II Section 3 Sub-Section (ii) of the Gazette of India to Sub-Section (i) of the Gazette of India is being taken. Accordingly a draft Gazette Notification was referred to the Department of Personnel and to the Ministry of Law for their approval/vetting before it is sent for publication.

On scrutiny of the case, the Ministry of Law (Legislative Department) expressed the following views. The directions of the Ministry of Home Affairs as contained in their Office Memoranda dated 9-9-1976 and 9-10-1980 (cited in the Lok Sabha Secretariat O.M. dated 9-3-1981) regarding the Parts or Sections of the Gazette of India where notifications are required to be published, are only for the purpose of proper arrangement and easy reference. Any violation of such arrangement would not effect the validity of the notifications. The only legal requirement is that the notification should be published in the Gazette and this legal requirement will be fulfilled if it is published in the Gazette. In view of the above, the publication of the present rules in a different part or section of the Gazette than that in which it should be published by virtue of Home Ministry's directions does not make it illegal or in-operative. Hence it is not required to be published again in the Gazette. On the contrary, the republication of the notification will result in many other avoidable consequences like giving retrospective operation and action taken on the basis of these rules. The Ministry of Law, therefore, feel that it is not necessary to republish the Recruitment Rules. The above views of the Ministry of Law have the approval in that Ministry of Joint Secretary and Legislative Council.

Lok Sabha Secretariat are accordingly informed that action as promised in this Ministry's O.M. dated 27-8-81 is not being taken. The mistake has, however, been noted for future compliance.

**66. The Committee agree with the view-point of the Legislative Department of the Ministry of Law, Justice and Company Affairs that the republication of the Defence Accounts (Group 'C' and 'D' posts) Recruitment (Amendment) Rules, 1980 at this stage in sub-section (i) of section 3 of Part II of the Gazette will result in many other avoidable consequences like giving retrospective operation and would prejudice the action taken on the basis of these Rules. The Committee, therefore, do not desire to pursue the matter further but caution the Ministry of Finance to be careful in future in these matters.**

## XI

### THE INDIAN RAILWAYS (CHIEF CASHIER AND ASSISTANT CHIEF CASHIER) RECRUITMENT RULES, 1980 (G.S.R. 153 OF 1980)

**67. Under Column 11 of the Schedule to the Indian Railways (Chief Cashier and Assistant Chief Cashier) Recruitment Rules,**



1980, published in the Gazette of India Part II—Section 3(i), dated 2 February, 1980, against the post of Assistant Chief Cashier (Class II Post), the mode of recruitment was indicated as under:

“By promotion failing which recruitment by any other method as may be decided in consultation with the Union Public Service Commission on each occasion.”

68. The Ministry of Railways (Railway Board) were asked to state whether they had any objection in spelling out the methods of recruitment for the post of Assistant Chief Cashier in the Schedule itself rather than leaving them to be decided in consultation with the Union Public Service Commission on each occasion. In their reply dated 11 August, 1980, the Ministry stated as follows:

“ . . . . it may be stated at the outset that the Rules have been framed on the advice of the Union Public Service Commission and in consultation with the Law Ministry. A unique feature under this Ministry is that all Class II posts are filled by promotion from Class III. Therefore, the method of filling the posts of Assistant Chief Cashiers other than by promotion is not likely to arise at all. However to cover such eventualities, it has been provided that in case the method of promotion fails, the posts would be filled by any other method in consultation with the U.P.S.C. In the circumstances, the Ministry of Railways do not consider it necessary to spell out in the schedule the other methods.”

69. The Committee are not convinced with the contention of the Ministry of Railways that it is not considered necessary to spell out in the Schedule to the Indian Railways (Chief Cashier and Assistant Chief Cashier) Recruitment Rules, 1980, the other methods for recruitment of Assistant Chief Cashier as all Class II posts are filled by promotion from class III and the method of filling the posts of Assistant Chief Cashiers other than by promotion is not likely to arise at all. According to the Ministry, if the method of promotion fails, the ‘other method’ for recruitment is to be decided in consultation with the U.P.S.C. to meet any eventuality. The Committee feel that in such a situation the Ministry can always resort to residuary powers under the ‘relaxation clause’. The mode of appointment being an essential feature of recruitment rules, the Committee desire the Ministry to precisely spell out the method of recruitment for the post of Assistant Chief Cashiers in the Schedule to the Rules itself.

## XII

## THE DELHI DEVELOPMENT AUTHORITY (DISPOSAL OF DEVELOPED NAZUL LAND) RULES, 1981 (G.S.R. 872 OF 1981)

## (A)

70. Rule 5 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (G.S.R. 872 of 1981) read as under:—

“5. *Rate of premium for allotment of Nazul land to certain public institutions.*—The Authority may allot Nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organisations and local bodies for remunerative, semi-remunerative or unremunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time.”

71. It was felt that the ground rent in force should be indicated in the Rules in order to make them self-contained and for the information of all concerned.

72. The Ministry of Works and Housing, with whom the matter was taken up, stated in their reply dated 5 January, 1983 as under:—

“The Government agrees with the suggestion of the Committee that the rates of ground rent in force, should be specified in Rule 5. A copy of the draft notification prepared in this behalf is at Appendix III. It is presumed that this meets the requirements as mentioned in the Lok Sabha Secretariat O.M. dated 23-8-81 quoted above. Action will be taken to issue the notification in consultation with Ministry of Law (Legislative Department) after the Committee approve of the same.”

73. From the draft notification sent by the Ministry of Works and Housing containing amendment to Rule 5 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, indicating the rate of ground rent to be charged from the public institutions like schools, colleges, universities, hospitals etc., the Committee note that the amendment as proposed stipulates that the ground rent for such allotment will be recovered at the rates specified in the Annexure to these Rules or at such rates as the Central Government may determine from time to time hereinafter.

74. Observing that the amendment as worded has still an element of uncertainty, the Committee desire the Ministry to amend the notification suitably so as to eliminate the element of uncertainty in respect of the ground rent.

75. Sub-rule (2) and (3) of Rule 19 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 read as under:—

“(2) In making an allotment of plot for an industrial or commercial purpose, the Authority shall be guided by the advice of the Land Allotment Advisory Committee.

(3) The Land Allotment Advisory Committee shall, in making its recommendations to the Authority, take into account such relevant factors as it may deem proper in the circumstances of the case.”

76. It was felt that some guidelines should be laid down for the land Allotment Advisory Committee in order to avoid any scope of favouritism. The phrase ‘such relevant factors as it may deem proper’ appeared to be vague and discretionary.

77. The Ministry of Works and Housing, with whom the matter was taken, stated in their reply dated 5 January, 1983 as under:—

“The Delhi Development Authority has agreed to lay down the guidelines for the functioning of the Land Allotment Advisory Committee. Necessary action to place before the Delhi Development Authority, the guidelines to be followed by the Land Allotment Advisory Committee and the factors to be taken into account by the Committee in making its recommendation, has been taken by the Delhi Development Authority. The Authority will, no doubt, prescribe these guidelines.”

78. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Works and Housing have agreed to lay down the guidelines for the Land Allotment Advisory Committee for advising the Delhi Development Authority for allotment of plot for an industrial or commercial purpose. The Committee desire the Ministry to issue the proposed guidelines at an early date.

(C)

79. Rule 44 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (G.S.R. 872 of 1981) read as under:—

“44. Temporary allotment of Nazul land.—The Authority may, subject to these rules and in such cases as it deems fit, allot land for temporary periods on a licence basis, in accordance with the terms and conditions of the licence-deed contained in Form ‘D’ appended to these rules. In addition, such licence-deed may contain such other covenants, clauses or conditions, not inconsistent with the provisions of Form ‘D’, as may be considered advisable and necessary by the Authority, in the circumstances of a case.”

80. It was felt that criteria for making allotment of land on temporary basis should be laid down in the Rules in order to make them self-contained and for the information of all concerned.

81. The Ministry of Works and Housing, with whom the matter was taken up, stated in their reply dated 5 January, 1983 as under:—

“The Delhi Development Authority has reported that the criteria for making allotment on temporary basis are being drawn up and placed before the Authority for approval, keeping in view the provisions of the above mentioned Rules. The question whether they may be incorporated in the Rules themselves, as suggested by the Lok Sabha Secretariat or whether it is sufficient if they are prescribed by the Authority, will be considered by the Government, after these have been drawn up.”

82. The Committee note from the reply of the Ministry of Works and Housing that the criteria for making allotment of Nazul land on temporary basis are being drawn up by the Delhi Development Authority and the question of their incorporation in rule 44 of the Delhi Development Authority (Disposal of developed Nazul Land) Rules, 1981 will be considered by the Government after these are approved by the Authority. The Committee desire that the Ministry should expedite the process of laying down the criteria in this regard and to incorporate the same in the rules *ibid* at an early date .

**XIII**

(1) **THE CEMENT CONTROL (THIRD AMENDMENT) ORDER, 1978**

(S.O. 679-E<sup>1</sup> 1978)

AND

(2) **THE IMPORTED CEMENT CONTROL (FOURTH AMENDMENT) ORDER, 1978 (S.O. 685-E OF 1978)**

83. Clause 10 of the Cement Control Order, 1967 reads as under:—

“10. *Wholesale and retail prices:* (1) The maximum price at which cement may be sold by a dealer (whether wholesale or retail) shall be such as may be fixed by the State Government and no dealer (whether wholesale or retail) shall sell cement exceeding such maximum price.

(2) In fixing the maximum price under sub-clause (1), the State Government shall have due regard to:—

(i) the price fixed under clause 8;

(ii) handling (including charges in respect of packing or containers and transporting charges);

(iii) godown charges;

(iv) stockists' margin of profit,\*

(v) additional road transport charges, where allowed.

\*Provided that the total charges to be fixed in respect of items (ii), (iii) and (iv) shall not exceed Rs. 20.00 per tonne;

Provided further that the charges in respect of items (ii), (iii) and (iv) as in force immediately before the 1st of October, 1975 shall not be increased by the State Government except with the previous approval of the Central Government;

Provided also that where the charges in respect of items (ii), (iii) and (iv) as in force immediately before the 1st of October, 1975 exceed Rs 20.00 per tonne of cement, such charges shall, on and from that date, be deemed to have been reduced to Rs 20.00 per tonne of cement.”

84. Clause 7 of the Imported Cement Control Order, 1978 carries identical provisions except that it has only one proviso which reads as under:—

“Provided that the charges in respect of items (ii), (iii) and (iv) shall not exceed rupees twenty per metric tonne, except with the prior approval of the Central Government”.

85. Proviso to sub-clause (2) of clause 10 of the Cement Control Order, 1967 were omitted by the Third Amendment Order (S.O. 679-E of 1978). Similarly, proviso to sub-clause (2) of clause 7 of the Imported Cement Control Order, 1978 was omitted by the Fourth Amendment Order (S.O. 685-E of 1978). The Ministry of Industry (Department of Industrial Development) were asked to state the genesis of the aforesaid amendments as they sought to delete certain important provisos hitherto in force.

86. In their reply dated 7 March, 1980, the Ministry of Industry (Department of Industrial Development) stated as under:—

“...the Cement Control Order has been issued under Section 18-G and 25 of the Industries (Development and Regulation) Act, 1951 for the purpose of securing the equitable distribution and availability at fair prices of cement and to regulate the supply and distribution of trade and commerce in cement provided that the maximum price at which the cement may be sold by a dealer (whether wholesale or retail) shall be such as may be fixed by the State Government and no dealer (whether wholesale or retail) shall sell cement exceeding such maximum price. In fixing the maximum price, the State Governments shall have due regard to:—

1. The price fixed under Clause 8 of the order;
2. Handling charges (including charges in respect of packing or containers and transport charges);
3. Godown charges;
4. Stockists' margin of profit;
5. Local taxes, if any;
6. Additional road transport charges, where allowed:

**Provided:—**

- (i) the total charges to be fixed in respect of items 2, 3 and 4 shall not exceed Rs. 20 per tonne;
- (ii) the charges in respect of items 2, 3 and 4 as in force immediately before the 1st October, 1975 shall not be increased by the State Government's except with the previous approval of the Central Government;
- (iii) where the charges in respect of items 2, 3 and 4 as in force immediately before the 1st October, 1975 exceeds Rs. 20 per tonne of cement, such charges shall, from that date, be deemed to have been reduced to Rs. 20 per tonne of cement.

In a meeting of the representatives of the State Governments held on 19th September, 1978 with the Cement Controller, the representatives brought to the notice of the Government that the ceiling of Rs. 20 fixed for handling charges, godown charges and stockists margin of profit for cement was unusually low and unrealistic to the expenditure which has to be incurred by the stockists under these heads and that there was a case for re-fixing these elements according to the local conditions prevailing in the States. The representatives recommended that the ceiling should be dispensed with and the State Governments given the freedom to fix these charges taking into account the local conditions. The recommendation made by the representatives of the State Governments was considered by this Ministry. It was conceded that it would be better for the Central Government to maintain the uniform F.O.R. destination price of cement and leave the responsibility for fixing local charges to the State Governments. As most of the State Governments were inducting a large number of co-operatives, public sector marketing outlets and stockists, it was considered that the limit of Rs. 20 per tonne for handling charges, godown charges and stockists margin of profit was not sufficient. As such, provisos to sub-clause (2) of Clause 10 of the Cement Control Order, 1967, were omitted *vide* Cement Control Order (Third Amendment) Order, 1978 (S.O. 679-E of 1978) issued on 23rd November, 1978.

The Imported Cement Control Order, 1978, also had a similar provision under Clause 7 of that Order. As the sale price of indigenous as well as the Imported Cement is the same, it was decided to omit the provisos to sub-clause (2) of Clause 7 of the Imported Cement Control Order, 1978. The Imported Cement Control (Fourth Amendment) Order, 1978 (S.O. 685-E of 1978) was issued on 28th November, 1978 to give effect to this decision of the Government."

87. After perusing the reply of the Ministry of Industry (Department of Industrial Development), the Committee are of the view that for the sake of maintaining the uniform F.O.R. destination price of an essential item like cement all over the country, the Central Government should not abandon their responsibility of fixing the maximum sale price of cement taking into consideration the local charges, viz. handling charges, godown charges and stockists' margin of profit.

88. The Committee feel that it will be more appropriate if the ceiling of Rs. 20 per tonne for the local charges fixed earlier is revised to make it more realistic to the expenditure incurred in the changed circumstances and the Central Government retain to themselves the power of approval for such charges over and above the ceiling fixed. The Committee, therefore, desire the Ministry to examine if a more realistic limit relating to these charges can be fixed and any upward revision, if necessary, made with the prior approval of the Central Government.

#### XIV

#### THE POSTS AND TELEGRAPHS SUPERVISORS (TECHNICAL) RECRUITMENT RULES, 1978 (G.S.R. 499 OF 1978)

89. In Column 2 of the Schedule to the Posts and Telegraphs Supervisors (Technical) Recruitment Rules, 1978 (G.S.R. 499 of 1978) there was no mention of the number of posts of the Supervisors (Technical). It, instead, had been left to be determined by Government from time to time. Normally the recruitment indicate the exact number of posts.

90. In their reply dated 30 March, 1979 the Ministry of Communications (P&T Board) with whom the matter was taken up, furnished their comments as under:—

“...the cadre of Supervisors (Technical) is a unit cadre. There are many recruitment units in the Mail Motor Service Organisation in all the postal circles throughout India. All such units are competent to create and fill up the posts as per rules of recruitment. The number of posts is subject to frequent variations from time to time and thus incorporation of such figures in the statutory rules will serve no purpose as it will not be realistic at any given point of time. To take it realistic, every time with change in number of vacancies, these recruitment rules will have to be amended frequently. Moreover, by the time the figures are received from the



last unit, the information furnished by other units become obsolete. P&T Department is a vast Department, with a very fast rate of growth, with consequential recruitments making the figures change frequently.

It is felt that any thing mentioned in the Recruitment Rules should be stable for some years at least as amendments to statutory recruitment rules take considerable time beginning with consultation with Department of Personnel/Ministry of Law till it is finally published in the Gazette. It is therefore, not feasible to indicate the correct number of posts in the statutory rules."

91. The Committee do not agree with the reply of the Ministry of Communications (P&T Board) that it is difficult for them to indicate the number of posts in the Schedule to the Posts and Telegraphs Supervisors (Technical) Recruitment Rules, 1978 as the number of posts is subject to frequent variation. The Committee observe that the number of posts is an integral basis for determining the recruitment to any category of posts. The Committee further observe that in the absence of any indication of the number of posts, it is difficult to take care of reservations for candidates belonging to the special categories of persons. The Committee, therefore, feel that it is necessary to indicate the number of posts in the schedule itself. However, in order to overcome the difficulty, if any, in indicating the exact number of posts in the Schedule, the Committee suggest that an asterisk mark could be given on the number of posts with a foot-note that these figures are subject to changes made from time to time.

## XV

### AMENDMENTS TO THE COURT LIQUIDATOR (CLASS I POSTS) (HIGH COURT OF CALCUTTA) RECRUITMENT RULES, 1978 (G.S.R. 591 OF 1978)

#### (A)

92. Certain amendments to the Court Liquidator (Class I Posts) (High Court of Calcutta) Recruitment Rules, 1978 were notified in the Official Gazette vide G.S.R. 591 of 1978. It was noticed that the notification was published without any short title.

93. The Ministry of Finance (Department of Economic Affairs), with whom the matter was taken up, stated in their reply dated 19 May, 1973, as under:—

“The short title to the rules has been indicated in the Notification as ‘Court Liquidator (Class I Posts) (High Court of Calcutta) Recruitment Rules, 1976’.”

94. In their subsequent reply dated January, 1980, the Ministry re-stated the position as under in consultation with the Union Public Service Commission, the Ministry of Law and the Department of Personnel and Administrative Reforms:—

“The non-mentioning of short title is only a procedural defect and it will not invalidate the rules. It is, therefore, not considered necessary to introduce a short title to the 1978 amendment rules at this stage.”

95. The Committee do not accept the plea of the Ministry of Finance (Department of Economic Affairs) that since non-mentioning of short title to the rules is only a procedural defect, it is not considered necessary to introduce a short title to the Court Liquidator (Class I posts) (High Court of Calcutta) Recruitment Rules, 1978 (G.S.R. 591 of 1978) at this stage. The Committee desire that the Ministry should issue a corrigendum immediately providing for a short title to the rules *ibid* in pursuance of the Committee's recommendation contained in paragraph 44 of their Third Report (First Lok Sabha).

### (B)

96. Column 13 of the Schedule appended to the aforesaid Recruitment Rules provides for consultation with the Union Public Service Commission while making promotion and appointing an officer from State Judicial Service. The post of the Court Liquidator being a Class I post, it was felt that the rules should also provide for consultation in the case of direct recruitment also.

97. The Ministry of Finance (Department of Economic Affairs), with whom the matter was taken up, in their reply dated 19 May, 1979 stated as under:—

“As regards column 13, as the post of Court Liquidator is a Class I post to which direct recruitment can only be made by UPSC it was not considered necessary to specifically state in the rules that UPSC has to be consulted for filling the post of Court Liquidator by direct recruitment.”

98. In a subsequent reply dated 9 January, 1980 in consultation with the Union Public Service Commission, the Ministry of Law and the Department of Personnel and Administrative Reforms, the Ministry re-stated the position as under:—

“As the post of Court Liquidator is a Class I post to which direct recruitment can only be made by the U.P.S.C. it was not considered necessary to specifically state in the rules that U.P.S.C. has to be consulted for filling the post of Court Liquidator by direct recruitment. Further rule 6 of the principal Rules which deals with power to relax specifically provides for consultation with the U.P.S.C.”

99. The Committee observe that Rule 6 of the Court Liquidator (Classes I Posts) (High Court Calcutta) Recruitment Rules, 1976 referred to by the Ministry does not apply to direct recruitment under normal circumstances under the provisions of these Rules. The Committee further observe that the provisions, as they stand in column 13 of the schedule to the Amendment Recruitment Rules of 1978, are apt to give an impression that consultation with the Union Public Service Commission is necessary only while making promotion and appointing an officer from the State Judicial Service and in no other case. The Committee, therefore, desire the Ministry to amend column 13 of the Schedule appended to the Amendment Rules to provide for consultation with the Union Public Service Commission in the case of direct recruitment also.

## XVI

### INDIAN ELECTRICITY RULES, 1956

100. Rule 44A of the Indian Electricity Rules, 1956 reads as under:—

“44A.—*Intimation of accidents:*—If any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with any part of the electric supply-lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any other person authorised by the State Electricity Board in this behalf, shall send to the Inspector a telegraphic report within twenty four hours of the knowledge of occurrence of the fatal accident and a written report in the form set out

in Annexure XIII within forty eight hours of the knowledge of occurrence of fatal and all other accidents.”

101. Shri N. E. Horo, M. P. had suggested the following two points for consideration of the Committee on Subordinate Legislation in connection with the above rule:—

- (i) the words ‘or any person’ for sending to Inspector a telegraphic report, give a vague meaning. The qualification and rank of such person should have been specified in the Rules so as to make them self contained.
- (ii) knowledge of occurrence of such fatal accident should be intimated on telephone at once rather than sending the Report in this regard telegraphically within twenty four hours.

102. The matter was considered by the Committee at their sitting held on 28 January, 1983 and it was decided to call for comments of the Ministry of Energy (Deptt. of Power) on these points.

103. Accordingly, these points were referred to the Ministry of Energy (Deptt. of Power) for their comments and the Ministry were requested to state whether they had any objection to amending the afforesaid rule on the above lines. The Ministry, in their reply dated 28 February, 1983, stated as under:—

- “(i) ..... ‘any person’ refers to an authorised person of the Board or the owner of the installation, as the case may be. Hence there appears to be no ambiguity and the Boards are responsible enough to authorise only the qualified persons. Hence it is felt that the amendment may not be called for.
- (ii) ..... there would be no objection to incorporating the same, subject to the condition that this would apply only in areas where telephone facilities would exist and in other areas the intimation by telegraphic report only would have to be sent as per the existing provision.”

104. The Ministry have also stated that the amendments of the Indian Electricity Rules are carried by the Central Electricity Board created under Section 36A of the Indian Electricity Act, 1910 as per prescribed procedure.

105. The Committee note with satisfaction that the Ministry of Energy (Department of Power) have agreed to amend Rule 44A of the Indian Electricity Rules, 1956 to the effect that information about the occurrence of the fatal accident would be instantly sent on telephone, wherever such facility exists, instead of sending the report in this regard telegraphically. The Committee, however do not agree with the contention of the Ministry that there is no ambiguity about the words 'any other person' appearing in Rule 44A of the Rules *ibid.* The Committee, therefore, desire the Ministry to amplify the words 'any other person' and amend the Rules to that effect.

NEW DELHI;

26 October, 1963.

R. S. SPARROW  
*Chairman*

*Committee on Subordinate Legislation*

## APPENDIX I

(Vide paragraph 5 of the Report)

### Summary of main recommendations|observations made by the Committee

S. No.	Para No.	Summary
1	2	3
1	8	<p>The Committee note that although according to the Ministry the intention of the provision of regulation 31 of the Central Warehousing Corporation (Staff) (Amendment) Regulations, 1980 is not to oust the jurisdiction of the courts, it does not, however, clearly reflect so. The Committee find it difficult to accept the position stated by the Ministry of Agriculture (Department of Food). The Committee also do not approve the wording of the existing provision of regulation 45 of the Central Warehousing Corporation (Staff) Regulations, 1966. The Committee, therefore, desire that the Ministry of Agriculture (Department of Food) to amend regulation 45 of the Regulations <i>ibid</i> so as to bring it in line with that of Regulation 24 of the Kandla Port Employees (Allotment of Residence) Regulations, 1964 which reads as under—</p> <p><i>“Interpretation of regulation.—If any question arises as to the interpretation of these regulations, the same shall be decided by the Board.”</i></p>
2	12	<p>The Committee are not satisfied with the reasons advanced by the Ministry of Commerce (Department of Textiles) for not agreeing to amend sub-clause (2) of clause 4 of the Art Silk</p>

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Textiles (Production and Distribution) Control Order, 1962 as substituted by the Art Silk Textiles (Production and Distribution) Control (Amendment) Order, 1980 so as to provide therein the manner of packing and marking on the artsilk yarn in order to make the Order self contained. The Committee feel that the improvement and technological innovations in the field of textiles, which are the only hurdles according to the Ministry, should not be so frequent which make it impossible for them to specify in the Order the manner of packing and marking on the artsilk yarn. The Committee, therefore, desire the Ministry to amend the Order to the desired effect at an early date.

3(i) 16

The Committee do not agree with the contention of the Ministry of Finance (Department of Revenue) that the scope and effect of sub-clause (d) of clause (via) of sub-rule (3) of Rule 56A of the Central Excise Rules, 1944 are limited and relevant only for a transient period and that the specifying of the words 'conditions and limitations' in the Rule itself would have been of little purpose.

3(ii) 17

The Committee are of the view that had the intention of the Ministry behind this amendment been so, the Ministry would not have resorted to the issue of executive instructions for the guidance of the Collectors of Central Excise in this regard. Since the executive instructions, which are no substitute to the statutory rules, and which do not come to the notice of the Committee, the Committee desire that the Ministry should better specify the 'conditions and limitations' in the rule itself instead of these being prescribed by the Collectors through issue of suitable trade notices on the

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basis of executive instructions issued in this regard.

- 4 (i) 23 From the opinion expressed by the Legislative Department of the Ministry of Law, Justice and Company Affairs, the Committee observe that the Department have tacitly agreed to specify in sub-rule (2) of Rule 8F of the Wealth-tax Rules, 1957 the minimum time within which a statement of defence is to be made by a person.
- 4 (ii) 24 The opinion tendered by the Department of Legal Affairs of the Ministry that instead of safeguarding the interest of the person affected the specification of minimum time might work as a serious handicap to him in some cases, is not clear and understandable to the Committee, as the intention of the Committee is to provide for a minimum time limit to the person (accused) to submit his statement of defence. It is always open to the Ministry to grant extension of time for this purpose. The Committee, therefore, desire that the Ministry should provide for a minimum time limit, say about 30 days, in rule 8F of the Rules *ibid* for filing a written statement of defence by the accused and that there should also be a provision in the rule for extension of time at the request of the accused if the circumstances of the case so warranted.
- 5 (i) 27 The Committee do not consider the opinion of the Ministry of Law given in regard to rule 8L of the Wealth-tax Rules, 1957 as convincing.
- 5 (ii) 28 In this connection the Committee note that the Ministry of Law in support of their contention have stated that the aforesaid rule corresponds to a similar rule contained in rule 66 of the Income-tax Rules 1962 and that the only difference between the Income-tax Act and the



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**Wealth-tax Act regarding the power to make such a rule is that in the case of the Income-tax Act, there is a specific rule making power under section 295(2) (n) for the purpose, whereas there is no such specific provision in the Wealth-tax Act.**

5 (iii)

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The Committee, however, observe that the rule making power under section 295(2) (n) of the Income-tax Act quoted by the Ministry relates to maintenance of a register of person other than legal practitioners or accountants as defined in sub-section (2) of section 288 of the said Act. The Committee further observe that the Ministry, while stating that there is no specific provision in the Wealth-tax Act similar to section 295(2) (n) have maintained that the power to make such a rule flows from section 46 read with section 34AD of the Wealth-tax Act.

5 (iv)

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The Committee, however, note that sub-section (1) of section 46 of the Wealth-tax Act empowers the Central Board of Direct Taxes to make rules and carry out the purposes of the Act. Thus, quoting the AIR 1975 SC 940 judgement in the Supreme Court, the Ministry have deduced that the general rule making power under section (1) of section 46 of the said Act gives powers to the Board to make rule 8L. The residuary power under clause (g) of sub-section (2) of section 46 also gives a general provision to cover any other matter to be prescribed for the purposes of the Act.

5 (v)

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From the explanation of the Ministry it appears to the Committee that the Ministry have defended the rule making power of the Government under section 46 of the Wealth-tax Act from which rule 8L has been derived.

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The Committee, however, feel that vesting the power of the court in the Board/Inquiry Officer being a substantive power, it should expressly flow from the enabling Act, viz. the wealth-tax Act and therefore, desire the Ministry to amend the said Act to the desired effect at an early date.

- 6(i) 35 The Committee note that in most of the Services the decision of the Screening Committee is considered as final.
- 6(ii) 36 The Committee further note that in the present case the Screening Committee is presided over by the Chairman/Member of the Union Public Service Commission to ensure strict impartiality in the screening procedure.
- 6(iii) 37 While agreeing with the above reply of the Ministry, the Committee, however, desire that the Screening Committee constituted for the purpose should also include an expert from outside the organisation.
- 7(i) 40 The Committee accept the plea of the Ministry of Defence (Department of Defence Production) for not laying down the principles of seniority in rule 4(2) of the Directorate of Technical Development and Production (Air) Organisation Ministry of Defence (Group 'B') Junior Scientific Officer Recruitment Rules, 1980 due to the fact that only one person has opted for absorption in the Directorate of Technical Development and Production (Air) Organisation.
- 7(ii) 41 The Committee, however, desire that in case there are number of persons opting for absorption in the said Organisation, the Ministry should then lay down the principle of seniority in the rules *ibid*.
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8 (i)	46	The Committee note with satisfaction that, on being pointed out to them, the Ministry of Railways have agreed to take necessary action in accordance with the instant instruction issued by the Department of Personnel and Administrative Reforms (Ministry of Home Affairs) vide their O.M. dated 22 February, 1979, while framing the Recruitment Rules in future.
8 (ii)	47	The Committee, however, desire that the Ministry should also amend the Entry under Column 13 of the Schedule to the Railway Board (Protocol and Catering Officer) Recruitment Rules, 1977 to the desired effect in case it has not already been done.
9	50	The Committee note the assurance of the Ministry that in regard to relaxation in the qualifications, experience and age of direct recruitment/promotion/transfer on deputation in the Export Inspection Agency, the Central Government would adopt guidelines as prescribed by the Department of Personnel in this regard and that a reference to this effect would be added at the appropriate place in rule 4(2) of the Export Inspection Agency (Recruitment) Rules, 1980. The Committee, however, desire the Ministry to amend these rules accordingly at an early date.
10	54	The Committee approve the amendment proposed by the Ministry of Commerce to rule 11 of the Export Inspection Agency (Recruitment) Rules, 1980 and desire that the necessary amendment in this regard should be issued by the Ministry at an early date.
11	57	The Committee approve the action proposed to be taken by the Ministry of Commerce and desire that the requisite amendment should be issued at an early date.

(1)	(2)	(3)
12	61	<p>The Committee do not agree with the amendment proposed by the Ministry of Shipping and Transport (Transport Wing) to Clause 27 of the Visakhapatnam Unregistered Dock Workers (Regulation of Employment) Scheme, 1968 as substituted by the Amendment Scheme of 1980. The Committee observe that the omission of the words 'at such rates' from the existing clause 27 will, instead of making the Scheme self-contained, confer on the Board an unintended power to decide the number of holidays not exceeding nine days in a year in lieu of 'rates'. The Committee, therefore, desire the Ministry to examine the feasibility of specifying in the Scheme itself the rates of pay for holidays to be paid to the workers.</p>
13	66	<p>The Committee agree with the view-point of the Legislative Department of the Ministry of Law, Justice and Company Affairs that the republication of the Defence Accounts (Group 'C' and 'D' posts) Recruitment (Amendment) Rules, 1980 at this stage in sub-section (i) of section 3 of Part II of the Gazette will result in many other avoidable consequences like giving retrospective operation and would prejudice the action taken on the basis of these Rules. The Committee, therefore, do not desire to pursue the matter further but caution the Ministry of Finance to be careful in future in these matters.</p>
14	69	<p>The Committee are not convinced with the contention of the Ministry of Railways that it is not considered necessary to spell out in the Schedule to the Indian Railways (Chief Cashier and Assistant Chief Cashier) Recruitment Rules, 1980, the other methods for recruitment of Assistant Chief Cashiers as all Class II posts are filled by promotion from Class III and the method of filling the posts of Assistant Chief</p>

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Cashiers other than by promotion is not likely to arise at all. According to the Ministry, if the methods of promotion fails, are 'other method' for recruitment is to be decided in consultation with the U.P.S.C. to meet any eventuality. The Committee feel that in such a situation the Ministry can always resort to residuary powers under the 'relaxation clause'. The mode of appointment being an essential feature of recruitment rules, the Committee desire the Ministry to precisely spell out the methods of recruitment for the posts of Assistant Chief Cashiers in the Schedule to the Rules itself.

15 (i)

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From the draft notification sent by the Ministry of Works and Housing containing amendment to Rule 5 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, indicating the rate of ground rent to be charged from the public institutions like schools, colleges, universities, hospitals etc., the Committee note that the amendment as proposed stipulates that the ground rent for such allotment will be recovered at the rates specified in the Annexure to these Rules or at such rates as the Central Government may determine from time to time hereinafter.

15 (ii)

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Observing that the amendment as worded has still an element of uncertainty, the Committee desire the Ministry to amend the notification suitably so as to eliminate the element of uncertainty in respect of the ground rent.

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The Committee note with satisfaction that on being pointed out by them, the Ministry of Works and Housing have agreed to lay down the guidelines for the Land Allotment Advisory Committee for advising the Delhi Development Authority for allotment of plot for an industrial or commercial purpose. The Committee desire

(1)	(2)	(3)
17	82	<p>the Ministry to issue the proposed guidelines at an early date.</p> <p>The Committee note from the reply of the Ministry of Works and Housing that the criteria for making allotment of Nazul Land on temporary basis are being drawn up by the Delhi Development Authority and the question of their incorporation in rule 44 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 will be considered by the Government after these are approved by the Authority. The Committee desire that the Ministry should expedite the process of laying down the criteria in this regard and to incorporate the same in the rules <i>ibid</i> at an early date.</p>
18(i)	87	<p>After pursuing the reply of the Ministry of Industry (Department of Industrial Development), the Committee are of the view that for the sake of maintaining the uniform F.O.R. destination price of an essential item like cement all over the country, the Central Government should not abandon their responsibility of fixing the maximum sale price of cement taking into consideration the local charges, viz. handling charges, godown charges and stockists' margin of profit.</p>
18(ii)	88	<p>The Committee feel that it will be more appropriate if the ceiling of Rs. 20/- per tonne for the local charges fixed earlier is revised to make it more realistic to the expenditure incurred in the changed circumstances and the Central Government retain to themselves the power of approval for such charges over and above the ceiling fixed. The Committee, therefore, desire the Ministry to examine if a more realistic limit relating to these charges can be fixed and any upward revision, if necessary, made with the prior approval of the Central Government.</p>

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The Committee do not agree with the reply of the Ministry of Communications (P&T Board) that it is difficult for them to indicate the number of posts in the Schedule to the Posts and Telegraphs Supervisors (Technical) Report Rules, 1978 on the number of posts is subject to frequent variation. The Committee observe that the number of posts is an integral basis for determining the recruitment to any category of posts. The Committee further observe that in the absence of any indication of the number of posts, it is difficult to take care of reservations for candidates belonging to the special categories of persons. The Committee, therefore, feel that it is necessary to indicate the number of posts in the Schedule itself. However, in order to overcome the difficulty, if any, in indicating the exact number of posts in the Schedule, the Committee suggest that an asterisk mark could be given on the number of posts with a foot-note that these figures are subject to changes made from time to time.

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The Committee do not accept the plea of the Ministry of Finance (Department of Economic Affairs) that since non-mentioning of short title to the rules is only a procedural defect, it is not considered necessary to introduce a short title to the Court Liquidator (Class I posts) (High Court of Calcutta) Recruitment Rules, 1978 (GSR 591 of 1978) at this stage. The Committee desire that the Ministry should issue a corrigendum immediately providing for a short title to the rules *ibid* in pursuance of the Committee's recommendation contained in paragraph 44 of their Third Report (First Lok Sabha).

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The Committee observe that Rule 6 of the Court Liquidator (Class I Posts) (High Court of Calcutta) Recruitment Rules, 1976 referred to by the Ministry does not apply to direct re-

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recruitment under normal circumstances under the provisions of these Rules. The Committee further observe that the provisions, as they stand in column 13 of the Schedule to the Amendment Recruitment Rules, 1978, are apt to give an impression that consultation with the Union Public Service Commission is necessary only while making promotion and appointing an officer from the State Judicial Service and in no other case. The Committee, therefore, desire the Ministry to amend column 13 of the Schedule appended to the Amendment Rules to provide for consultation with the Union Public Service Commission in the case of direct recruitment also.

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The Committee note with satisfaction that the Ministry of Energy (Department of Power) have agreed to amend Rule 44A of the Indian Electricity Rules, 1956 to the effect that information about the occurrence of the fatal accident would be instantly sent on telephone, wherever such facility exists instead of sending the report in this regard telegraphically. The Committee however, do not agree with the contention of the Ministry that there is no ambiguity about the words 'any other person' appearing in Rule 44A of the Rules *ibid*. The Committee, therefore, desire the Ministry to amplify the words 'any other person' and amend the Rules to that effect.



## APPENDIX II

(Vide paragraph 15 of the Report)

F. No. 21/13/80-CX. 6

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

New Delhi, dated the 19th July,  
1980.

To

All Collectors of Central Excise.

Subject:—Central Excises-Rule 56-A:

(a) Application to captive consumption of material or component parts;

(b) Transfer of duty/stock lying to the R.G. 23 due to doing aways of set-off procedure in Budget of 1980.

Sir,

I am directed to say that in view of the expression "to receive xx xx xx in his factory" occurring in sub-rule (2) of rule 56-A, a doubt has been raised whether rule 56-A will apply to materials or component parts produced and consumed in the manufacture of a finished product notified under rule 56-A, within the factory of production.

1.2 Denial of rule 56-A facility to an integrated factory will place such a factory at disadvantage vis-a vis a factory which receives such materials or component parts from outside.

1.3 Accordingly, it has been decided to insert an Explanation after the third proviso to in sub-rule (2) of rule 56-A by notification No. 118/80-C.E. dated the 19th July, 1980, so that a manufacturer may work under rule 56-A even if the materials or component parts are produced in his own factory and used in the manufacture of finished excisable goods notified under the rule, in the same factory.

1.4 However, even in respect of such materials or component parts all formalities such as giving of notice, production of goods for verification and maintenance of records etc. have to be observed by the manufacturer and all the provisions of rule 56-A and the instructions issued on this rule will, *mutatis mutandis*, apply.

2.1 Your attention is also drawn to "part (E)-Realisation of Input Duty Relief Scheme" of the Budget instructions sent along with the Commissioner (TRU)'s D.O. letter F. No. 334/1/80-TRU (Part-I) dated 18th June, 1980. The set-off procedure scheme in relation to most of the commodities is being replaced by the proforma credit procedure under rule 56-A, with effect from 1.8.1980. In view of this action there may be certain unutilised credit-balance of duty and stock of duty-paid goods as such or in process or contained in dutiable finished excisable goods lying with the manufacturer as on 1.8.1980. In order to allow a continuity of benefit under the proforma credit procedure under 56-A to such manufacturer who prior to 1.8.1980 was working under the set-off procedure, necessary amendment to sub-rule (3) of rule 56-A has been carried out by the same notification. It gives powers to the Collector to permit transfer of such amount/stock to the R.G. 23 account of the manufacturer.

2.2 This power may be delegated to the Assistant Collector.

2.3 It may be noted that such transfer is to be permitted only in that case where the manufacturer was immediately before 1.8.1980, availing of the set-off procedure under an exemption notification.

2.4 In order to ensure that this transfer facility is not abused, suitable arrangements should be made by you for proper verification of balance of duty/stock lying with the manufacturer and shown in the "set-off register" as on the midnight of 31-7-1980/1.8.80. In addition, the quantity of materials or component parts in process or in the finished goods in stock should also be ascertained from the factory's records and shown as receipt as well as issue in R.G. 23 (Part-I). It is only after such verification has been carried out by the proper officer that the balance should be transferred to the R.G. 23 account and duly certified by the Range Superintendent.

2.5 The units at present working under set-off procedure may be kept under surveillance till the balance is transferred to RG-

23 to ensure that manipulation in accounts|stock leading to loss of revenue, does not take place.

3. The notification comes into force on 1.8.1980.

4. Suitable instructions may be issued immediately to the field formations, and the trade also be informed in this regard.

Please acknowledge receipt of this letter.

Yours faithfully,

Sd/-

(K. D. TAYAL)

For Deputy Secretary to the Government of India

*Distribution as usual.*

### APPENDIX III

(Vide Paragraph 72 of the Report)

(To be published in Part II, Section 3(i) of the Gazette of India)

Ministry of Works & Housing

New Delhi, dated the

#### NOTIFICATION

G.S.R. No. ————— In exercise of the powers conferred by Clause (j) of sub-section (2) of section 56, read with sub-section (3) of section 22 of the Delhi Development Act, 1957 (61 of 1957), the Central Government hereby makes the following rules to amend the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, namely:—

1. *Short title and commencement.*—(1) These Rules may be called the Delhi Development Authority (Disposal of Developed Nazul Land) (Amendment) Rules, 1983. (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, for the existing rule 5, substitute the following rule:—

“5. *Rates of premium and ground rent for allotment of Nazul Land to certain public institutions.*—The Authority may allot Nazul Land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organisations and local bodies for remunerative, semi-remunerative or unremunerative purposes, at the premia in force immediately before coming into force of these rules, or at such rates as the Central Government may determine from time to time. The ground rent for such allotments shall be recovered at the rates specified in the Annexure to these rules or at such rates as the Central Government may determine from time to time hereinafter.

File No. K11011|9|81-DDIIB

(J. S. SAMAD)

Deputy Secretary to the Government of India.

Tel. 382636.

## ANNEXURE

### RATES OF GROUND RENT FOR ALLOTMENT OF LAND TO CERTAIN PUBLIC INSTITUTIONS (RULE 5)

Institutions/purposes for which land is allotted	Rate of annual ground rent
<b>(A) Schools/Colleges</b>	
(i) Land for recognised and aided school/college building and nursery schools run by local bodies (Land allotted at subsidised rates)	5% of the premium
(ii) Land for recognised but unaided schools including nursery schools (except those run by local bodies)	2 1/2 of the premium
(iii) Land for hostels and staff quarters of recognised schools/colleges.	2 1/2% of the premium
(iv) Land for playgrounds	Re. 1 (Rupee one) on annual tenancy basis
<b>(B) Hospitals</b>	
(i) Land for hospital buildings (Land allotted at subsidised rate)	5% of the premium
(ii) Land for essential nursing and medical staff quarters attached to hospitals.	2 1/2% of the premium
<b>(C) Cultural, Social, Charitable and religious institutions which are non-profit making organisations</b>	2 1/2% of the premium
<b>(D) Local Bodies</b>	
(i) Land for school, hospital buildings as well as other unremunerative services such as maternity centres, community centres, libraries, public conveniences (such as public hydrants, community bathrooms, public lavatory and urinals etc.), dhobi ghats and fire stations. (Land allotted at subsidised rates)	5% of the premium
(ii) Land required for staff quarters of schools and hospitals	2 1/2% of the premium
(iii) Land required for semi-remunerative purpose such as staff quarters, cattle byres, etc.	2 1/1% of the premium
(iv) Land required for remunerative purposes, such as	
(a) Offices, shopping centres	2 1/2% of the premium
(b) Power Houses and electric sub-stations and water supply and drainage other than those which serve entirely or overwhelmingly Govt. colonies.	2 1/2% of the premium
(c) Power Houses and electric sub-stations and water supply and drainage which serve entirely or overwhelmingly Government colonies.	Nominal annual ground rent of Re. 1 (Rupee one) only.

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(v) Land required for playgrounds, parks and roads/road widenings	Re. 1/- (Rupee one) only on annual tenancy basis
(vi) Land required for service personnel quarters (dhobies, janitors, mails, domestic servants, allotted at subsidised rate)	5% of the premium
(E) Land for graveyards and cremation grounds	Nominal annual ground rent of Re. 1/- (Rupee one) only.
(F) Land for any other purpose (Not mentioned above)	2 1/2% of the premium.

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**MINUTES**

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## LXXVII

### MINUTES OF THE SEVENTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1983-84)

The Committee met on Monday, 27 June, 1983 from 11.00 to 12.30 hours.

#### PRESENT

Shri Xavier Arakal—*In the Chair.*

#### MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Amal Datta
4. Shri T. Damodar Reddy
5. Shri Satish Prasad Singh
6. Shri Vijay Kumar Yadav

#### SECRETARIAT

Shri T. E. Jagannathan—*Senior Legislative Committee Officer*

2. In the absence of the Chairman, Shri Xavier Arakal, M.P. was chosen by the Committee to act as Chairman for the sitting in terms of the provision of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

4. The Committee then took up for consideration the following Memoranda:—

5.                   \*                   \*                   \*                   \*                   \*
- (i)                   \*                   \*                   \*                   \*                   \*
- (ii) *The Central Warehousing Corporation (Staff) (Amendment) Regulations, 1980 (Memorandum No. 173).*

6. The Committee, after perusing the Memorandum, desired that the Ministry might be asked to bring the wording of the provision contained in regulation 45 of the Central Warehousing Corporation Staff Regulations in line with that of Regulation 24 of the Kandla Port Employees (Allotment of Residences) Regulations, 1964 which read as under:—

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



**"24. Interpretation of regulations.—If any question arises as to the interpretation of these regulations, the same shall be decided by the Board."**

**(iii) *The Art Silk Textiles (Production and Distribution) Control (Amendment) Order, 1980 (S.O. 2619 of 1980)-(Memorandum No. 174)***

7. The Committee were not satisfied with the reasons advanced by the Ministry for not amending sub-clause (2) of Clause 4 of the Art Silk Textiles (Production & Distribution) Control Order as substituted by the Amendment Order of 1980. The Committee felt that the improvements and technological innovations in the field of textiles, which were the only hurdles according to the Ministry, should not be so frequent which made it impossible for them to specify in the Order the manner of marking and packing on artsilk yarn.

**(iv) *The Central Excise (7th Amendment) Rules, 1980 (G.S.R. 749 of 1980) — (Memorandum No. 175)***

8. The Committee were not satisfied with the contention of the Ministry that the scope and effect of the amendment inserted as sub-clause (d) of clause (via) of sub-rule (3) of rule 56A of the Central Excise Rules, 1944 was limited and relevant only for a transient period. The Committee observed that had the intention behind the amendment been so, the Ministry would not have, perhaps, issued executive instructions in that regard for the guidance of the Collectors of Central Excise. The Committee were of the view that as executive instructions were no substitute to the statutory rules since such instructions did not come to the notice of the Committee, the Ministry ought to specify the 'conditions and limitations' in the rule itself instead of these being prescribed by the Collectors through issue of suitable trade notices, on the basis of the executive instructions.

**(v) *The Wealth-tax (Second Amendment) Rules, 1980—(Memorandum No. 176)***

**(A)**

9. The Committee noted that the Legislative Department of the Ministry of Law had tacitly agreed to specifying in sub-rule (2) of Rule 8F of the Income-tax Rules, 1957, the minimum time within which a statement of defence was to be made by a person.

10. The opinion expressed by the Department of Legal Affairs of the Ministry of Law that instead of safeguarding the interest of the person affected it might work as a serious handicap to him in some cases, was not clear to the Committee. The Committee's intention was to provide for the minimum period of time to the accused (person) to submit his statement of defence. It was always open to the Ministry to grant extension of time for the purpose. The Committee, therefore, desired the Ministry to provide for a minimum time limit, say about 30 days, in rule 8F for filing written statement of defence by the accused and that there should also be a provision in the rule for extension of time limit at the request of the accused if the circumstances of the case so warranted.

(B)

11. The Committee observed that the opinion of the Ministry of Law in regard to rule 8L of the Rules in question did not appear to be convincing. The Committee felt that vesting the power of a Court in the Board/Inquiry Officer was a substantive power which should flow from the enabling Act.

12. In that connection, the Ministry of Law had stated that rule 8L of the Wealth Tax Rules, 1957 corresponded to a similar rule contained in rule 66 of the Income-tax Rules, 1962 and that the only difference between the Income-tax Act and the Wealth-tax Act regarding the power to make such a rule was that in the case of the Income-tax Act, there was a specific rule-making power under section 295(2) (n) for the purpose, whereas there was no such specific provision in the Wealth-tax Act. However, section 295(2) (n) read as under:—

“295(2) In particular, and without prejudice to the generality of the fore-going power, such rules may provide for all or any of the following matters:—

\* \* \* \* \*

(n) the maintenance of a register of persons other than legal practitioners or accountants as defined in sub-section (2) of section 288 practising before income-tax authorities and for the constitution of and the procedure to be followed by the authority referred to in sub-section (5) of that section.”

13. It would be observed that the rule making power under section 295(2) (n) related to the maintenance of a register of persons other than legal practitioners or accountants as defined in sub-

section (2) of section 288 of the Income-tax Act. However, the Ministry of Law had pointed out that rule 8L corresponded to a similar rule contained in rule 66 of the Income-tax Rules 1962 made under Section 295 (2) (n) of the Act. While stating that there was no specific provision in the Wealth-tax Act similar to Section 295 (2) (n), the Ministry added that power to make such a rule was in Section 46 read with Section 34AD of the Wealth-tax Act. Sub-section (1) of section 46 empowers the Central Board of Direct Taxes to make rules and to carry out the purposes of the Act. Thus, after quoting the AIR 1975 SC 949 Judgement in the Supreme Court, the Ministry had deduced that the general rule making power under sub-section (1) of Section 46 of the Wealth-tax Act gave power to the Board to make Rule 8L. The residuary power under Clause (g) of Sub-section (2) of Section 46 also gave a general provision to cover any other matter to be prescribed for the purposes of the Act.

14. The Committee observed that the Ministry had defended the rule making power of the Government under Section 46 of the Wealth-tax Act from which Rule 8L had been derived. However, vesting the power of a Court in the Board/Inquiry Officer being substantive power, it should flow from the enabling Act. The Committee, therefore, desired that the Ministry of Finance (Department of Revenue) should amend the Wealth-tax Act for making the statutory provision in the Act itself to the desired effect.

(C)

*(vi) The Directorate of Technical Development and Production (Air) Organisation, Ministry of Defence (Group 'B' Junior Scientific Officer) Recruitment Rules, 1980 (S.R.O. 33 of 1980) - (Memorandum No. 177).*

(A)

16. The Committee noted the reply of the Ministry about the position obtaining in other services that in most of the services the decision of the Screening Committee was considered as final.

17. The Committee further noted that the Screening Committee was presided over by the Chairman/Member of the UPSC to ensure strict impartiality in the screening procedure.

18. The Committee, while agreeing with the aforesaid reply of the Ministry, had desired that the Ministry should also include an expert from outside the organisation in the Screening Committee constituted for the purpose.

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

(B)

19. The Committee accepted the plea of the Ministry that since only one person had opted for absorption in the Directorate of Technical Development and Production (AIR) Organisation, there was no problem and as such, the Ministry did not consider it necessary to lay down the principles of seniority in Rule 4(2) of the Recruitment Rules in question. The Committee, however, desired that in case there were number of persons opting for absorption in the organisation, the Ministry should then lay down the principles of seniority in the rules *ibid*.

(vii) *The Railway Board (Protocol and Catering Office) Recruitment Rules, 1977—(Memorandum No. 178)*

20. The Committee noted with satisfaction that, on being pointed out, the Ministry of Railways had agreed to take necessary action in accordance with the instructions issued by the Department of Personnel and Administrative Reforms while framing the Recruitment Rules in future.

21. The Committee, however, desired the Ministry to amend the entry under Column 13 of the Schedule to the Rules in question to the desired effect, in case it had not already been done.

(viii) *The Export Inspection Agency (Recruitment) Rules, 1980—(Memorandum No. 179)*

(A)

22. The Committee agreed with the reply of the Ministry that the Central Government would adopt guidelines in regard to relaxation in the qualifications, experience and age of direct recruitment/promotion/transfer on deputation in the Export Inspection Agency, as prescribed by the Department of Personnel and that a reference to that effect would be added at the appropriate place in rule 4(2) of the said Recruitment Rules in question. The Committee, however, desired the Ministry to amend the rules accordingly at an early date.

(B)

23. The Committee approved the proposed amendment and desired the Ministry to issue the same at an early date.

(C)

24. The Committee agreed with the action proposed to be taken by the Ministry and desired them to issue the requisite amendment at an early date.

*The Committee then adjourned.*

## LXXVIII

### MINUTES OF THE SEVENTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA)—(1963-64)

The Committee met on Wednesday, 6 July, 1963 from 15.00 to 16.00 hours.

#### PRESENT

Shri R. S. Sparrow—*Chairman*

#### MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri Dalbir Singh (Madhya Pradesh)
5. Shri Amal Datta
6. Shri B. Devarajan
7. Shri Vijay Kumar Yadav

#### SECRETARIAT

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

2. The Committee considered Memoranda Nos. 180 to 190 on the following subjects:—

- (i) *The Vishakhapatnam Unregistered Dock Workers (Regulation of Employment) (Amendment) Scheme, 1960 (S.O. 2582 of 1960)—(Memorandum No. 1960)*

The Committee considered the above Memorandum and observed that mere omission of the words 'at such rates' did not make the Scheme self-contained. The Committee further observed that with the proposed omission, clause 27 of the said Scheme would confer on the Board an unintended power to decide the number of holidays not exceeding nine days in a year in lieu of rates. The Committee, therefore, desired the Ministry to examine the feasibility of specifying the rates of pay for holidays to be paid to workers in the scheme itself.

(ii) *The Defence Accounts (Group 'C' and 'D' posts) Recruitment (Amendment) Rules, 1980 (S.O. 2038 of 1980)*—(Memorandum No. 181)

4. Agreeing with the view-point expressed by the Ministry of Law that the publication of the Recruitment Rules at that point of time in sub-section (i) of Section 3 of Part II of the Gazette would result in many other avoidable consequences like giving retrospective operation and would prejudice the action taken on the basis of these Rules, the Committee decided not to pursue the matter any further. The Committee, however decided to caution the Ministry to be more careful in future in that regard.

(iii) *The Indian Railway (Chief Cashier and Assistant Chief Cashier) Recruitment Rules, 1980 (G.S.R. 153 of 1980)*—(Memorandum No. 182)

5. The Committee were not convinced with the contention of the Ministry of Railways that they did not consider it necessary to spell out in the schedule the other methods for recruitment of Assistant Chief Cashiers as all Class II posts were filled by promotion from Class III and the method of filling the posts of Assistant Chief Cashiers other than by promotion was not likely to arise at all. Besides, under the existing provision the 'other method' for recruitment was to be decided in consultation with the U.P.S.C. to meet any eventuality. The Committee felt that in such a situation the Ministry could always resort to residuary powers under the 'relaxation clause'. The Committee observed that the mode of appointment was an essential feature of recruitment rules. The Committee, therefore, desired the Ministry of Railways to precisely spell out the methods of recruitment for the posts of Assistant Chief Cashier in the Schedule to the said Rules itself.

(iv) \* \* \* \* \*

6. \* \* \* \* \*

(v) *The Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (G.S.R. 872 of 1981)*—(Memorandum No. 184)

'A'

7. The Committee noted that the Ministry of Works and Housing had forwarded a draft notification containing amendment to Rule 5 of the Delhi Development Authority (Disposal of Developed

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

Nazul Land) Rules, 1981, indicating the rate of ground rent to be charged from public institutions like schools, colleges, universities, hospitals etc., for their approval. The Committee, however, observed that the amendment proposed by the Ministry stipulated that the ground rent for such allotments would be recovered at the rates specified in the Annexure to the rules or at such rates as the Central Government might determine from time to time hereafter.

8. The Committee felt that the amendment as worded had still the element of uncertainty. The Committee, therefore, desired the Ministry to amend the notification suitably so as to eliminate the element of uncertainty in respect of the ground rent.

‘B’

9. The Committee noted that on being pointed out, the Ministry of Works and Housing, had agreed to lay down the guidelines for the Land Allotment Advisory Committee for advising the Delhi Development Authority for allotment of plot for an industrial or commercial purpose.

10. The Committee desired the Ministry to issue the proposed guidelines at an early date.

‘C’

11. The Committee noted from the reply of the Ministry of Works and Housing that the criteria for making allotment of Nazul Land on temporary basis were being drawn up by the Delhi Development Authority and the question of incorporating the same in Rule 44 of the Rules *ibid* would be considered by the Government. The Committee desired the Ministry to expedite the process of laying down the criteria and to incorporate the same in the rules at an early date.

(vi) (a) *The Cement Control (Third Amendment) Order, 1978 (S.O. 679-E of 1978); and*

(b) *The Imported Cement Control (Fourth Amendment) Order, 1978 (S.O. 685-E of 1978)—(Memorandum No. 185)*

12. The Committee considered the above Memorandum and were of the view that for the sake of uniformity of the price of an essential item like cement all over the country, the Central Government should not have abandoned their responsibility of fixing the maximum sale price of cement taking into consideration the local charges, i.e., handling charges, godown charges and stockists' margin of Profit. The Committee felt that it would have been more

appropriate if the ceiling of Rs. 20/- fixed earlier for the aforesaid charges was revised to make it more realistic to the expenditure involved in the changed circumstances and the Central Government could have retained to themselves the power of approval for such local charges over and above the ceiling fixed. The Committee, therefore, desired the Ministry to examine if a more realistic limit relating to local charges on account of handling charges, etc. could be fixed and any upward revision made subject to the approval of the Central Government.

(vi) *The Posts and Telegraphs Supervisors (Technical) Recruitment Rules, 1978 (G.S.R. 499 of 1978)—(Memorandum No. 186)*

13. The Committee did not agree with the reply of the Ministry of Communications (P&T Board) that it was difficult for them to incorporate the number of posts in Schedule to the Posts and Telegraphs Supervisors (Technical) Recruitment Rules, 1978 as the number of posts was subject to frequent variation. The Committee observed that the number of posts was an integral basis for determining the recruitment to any category of posts. Besides in the absence of number of posts it was difficult to take care of reservations for candidates belonging to the special categories of persons. The Committee, therefore, felt that it was necessary to indicate the number of posts in the Schedule itself. However, in order to overcome the difficulty, if any, which might be experienced by the Ministry in indicating the exact number of posts in the Schedule, the Committee suggested that an asterisk mark could be given on the number of posts with a foot-note that these figures were subject to changes made from time to time.

(viii) *Amendments to the Court Liquidator (Class I posts) (High Court of Calcutta) Recruitment Rules, 1978 (G.S.R. 591 of 1978)—(Memorandum No. 187)*

**'A'**

14. The Committee did not accept the plea of the Ministry of Finance (Department of Economic Affairs) that non-mentioning of short-title was only a procedural lapse and as such, it was not necessary to introduce a short title to the 1978 amendment rules at that stage. The Committee desired that the Ministry should be asked to issue a corrigendum immediately providing for a short title to the rules in pursuance of the recommendations made in paragraph 44 of their Third Report (First Lok Sabha).



## 'B'

15. The Committee noted that Rule 6 of the principal Recruitment Rules referred to by the Ministry did not apply to direct recruitment under normal circumstances under the provisions of those Rules. The Committee further noted that the provisions as they stood in Column 13 of the Schedule to the Rules were apt to give an impression that consultation with the U.P.S.C. was necessary only while making promotion and appointing an officer from the State Judicial Service and in no other case. The Committee, therefore, desired the Ministry to amend Column 13 of the Schedule to the Rules to provide for consultation with the U.P.S.C. in case of direct recruitment also.

(ix) *Examination of Indian Electricity Rules, 1956—(Memorandum No. 188)*

16. The Committee noted that the Ministry of Energy (Department of Power) had agreed to amend Rule 44A of the Indian Electricity Rules, 1956 to the effect that information about the occurrence of the fatal accident would be instantly sent on telephone, wherever such facility existed, instead of sending the Report in that regard telegraphically. The Committee, however, did not agree with the contention of the Ministry that there was no ambiguity about the words 'any other person' appearing in Rule 44A of the Rules *ibid*. The Committee, therefore, desired the Ministry to amplify the words 'any other person' and amend the Rules suitably.

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18.	*	*	*	*	*	*

*The Committee then adjourned.*

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

LXXXVII

MINUTES OF THE EIGHTY-SEVENTH SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(SEVENTH LOK SABHA) (1983-84)

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The Committee met on Wednesday, 26 October, 1983 from 15.00 to 15.40 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*.

MEMBERS

2. Shri Mohammod Asrar Ahmad
3. Shri A. K. L. Barrow
4. Shri Ashfaq Husain
5. Shri Dalbir Singh (Madhya Pradesh)
6. Shri Amal Datta
7. Shri B. Devarajan
8. Shri C. D. Patel
9. Shri Chandrabhan Athare Patil
10. Shri T. Damodar Reddy
11. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri Ram Kishore—*Senior Personnel and Executive Officer*
2. Shri T. E. Jagannathan—*Senior Legislative Committee Officer*.

2. The Committee considered their draft Twenty-first Report and adopted it without any amendment but the Secretariat was authorised to make suitable or consequential changes wherever it was found necessary.

3. The Committee authorised the Chairman to present this Report to the House on their behalf on a date convenient to him during the ensuing session of Lok Sabha.

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| 4. | * | * | * | * |
| 5. | * | * | * | * |
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*The Committee then adjourned.*

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