

COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)

TWENTY-SECOND REPORT

(Presented on 13 December, 1983)



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1983/Agrahayana, 1905 (Saka)

Price : 3.60

Corrigenda to the Twenty-Second Report
of the Committee on Subordinate
Legislation (Seventh Lok Sabha)
presented to the Lok Sabha on
13 December, 1983.

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
2	7	last line	shall	at all
3	8	1	Recruitments	Recruitment
"	"	6	cleared	cleared
5	15	5	very	vary
8	27	5	elaboration	elaboration
10	36	2	appears	appears
30	99	last line	attan	at an
31	104	3	general	General
32	107	6	persons	person
37	126	4	formalities on	formalities
45	148	5	(Appointment by Promotion ' Regulations, 1966)	(Appointment by Promotion) Regulations, 1966
51	18	5	Recruitment	Recruitment Rules
52	33	1	the the	the
55	62	9	authorised	authorised
57	95	4	licences	licencee
"	107	6	vested	vest
58	114	9	Scheduled	Schedule
59	122	3	amed	amend

CONTENTS

PARA No. PAGE No.

	COMPOSITION OF THE COMMITTEE.....	(iii)
	REPORT	
I	INTRODUCTION.....	1—5 1
II	The Central Civil Accounts Service (Group C) Recruitment Rules, 1978 (G.S.R. 925 of 1978).....	6—24 1
III	The Merchant Shipping (Carriage of Dangerous Goods) Rules, 1978 (G.S.R. 1316 of 1978).....	25—33 7
IV	The Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts Recruitment) Rules, 1978 (G.S.R. 1345 of 1978).	34—40 9
V	The Merchant Shipping (Continuous Discharge Certificates) Amendment Rules, 1978 (G.S.R. 528 of 1978).	41—43 11
VI	The Fore. Research Institute and Colleges, (Group 'A' and Group 'B' non-tenure posts) Recruitment (Amendment) Rules, 1979.....	44—48 12
VII	The President's Secretariat (Recruitment and Conditions of Service) (First Amend- ment) Rules, 1979 (G.S.R. 1948 of 1979).....	49—54 14
VIII	The Foreign Travel Tax Rules, 1979 (G.S.R. 355-E of 1979).....	55—58 16
IX	The Sugar (Retention and Sale by Recognised Dealers) Order, 1979 (G.S.R. 702-E of 1979)—provision of minimum rank of Officer conducting search and seizure.....	59—62 17

PARLIAMENT LIBRARY
 Central Govt. Publications
 Acc. No. RG...64585 (2)

	PARA NO.	PAGE NO.	
X	Survey of India Group 'A' Recruitment (Amendment) Rules, 1980 (G.S.R. 1212 of 1980).....	63—67	18
XI	The Shipping Development Fund (Loans and other Financial Assistance) Rules, 1981 (G.S.R. 44-E of 1981).....	68—72	20
XII	The Coffee Rules, 1955 (S.R.O. 1966 of 1955).....	73—95	22
XIII	Implementation of recommendation contained in paragraph 19 of the Thirteenth Report of the Committee on Subordinate Legislation (Seventh Lok Sabha) re: the Department of Electronics (Assistants' Grade Open Competitive Examination) Regulations, 1982 (G.S.R. 199 of 1982).....	96—99	29
XIV	Referred cases where Ministries have either agreed to the suggestions made to them for the amendment of Rules or where Ministries' replies have been found satisfactory :.....	100—161	31
	(i) The Directorate General of Supplies and Disposals Senior Analyst (Work Study and Junior Analyst (Work Study) Recruitment Rules, 1980 (G.S.R. 1119 of 1980) ; ..	102—104	31
	(ii) The Lakshadweep Administration Social Welfare Officer) Recruitment Rules, 1980 (CSR 1279 of 1980) ;	105—107	32
	(iii) The Central Industrial Security Force (Third Amendment) Rules, 1978 (GSR 848 of 1978) ;	108—110	32
	(iv) The Directorate of Enforcement (Deputy Director) Recruitment Rules, 1981 (GSR 280 of 1981) ;	111—114	33
	(v) The Andaman and Nicobar Islands Administration Government College, Port Blair (Lecturer) Recruitment Rules, 1978 (GSR 752 of 1978) ;	115—117	34

(iii)

	PARA NO.	PAGE NO.
(vi) The Export of Enamelwares (Inspection) Rules, 1978 (S.O. 2910 of 1978) ;.....	118—122	35
(vii) The Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 (G.S.R. 682 of 1978) ;.....	123—144	36
(viii) The Indian Forest Service (Appointment by Promotion) Amendment Regulations, 1977 (GSR 584 of 1978) ;.....	145—149	43
(ix) The Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules, 1978 (G.S.R. 1346 of 1978).....	150—156	46
(x) The Companies (Secretary's Qualifications) Amendment Rules, 1980 (G.S.R. 5-E of 1980).....	157—161	47

APPENDICES

I	Summary of main recommendations/ observations made by the Committee.....	50
II	Ministry of Law, Justice & Company Affairs (Department of Company Affairs) Note dated 23.7.1981.....	62
III	Minutes of the Seventy-ninth, Eightieth, Eighty-first and Eighty-ninth sittings of the Committee on Subordinate Legislation (Seventh Lok Sabha).....	67

**COMPOSITION OF THE COMMITTEE ON
SUBORDINATE LEGISLATION
(1983-84)**

1. Shri R.S. Sparrow—*Chairman*
2. Shri Mohammad Asrar Ahmed
3. Shri Xavier Araka]
- *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 Brajamohan Mohanty
10. Shri C. D. Patel
11. Shri Chandrabhan Athare Patil
12. Shri T. Damodar Reddy
13. Shri M. S. K. Sathiyendran
14. Shri Satish Prasad Singh
15. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri H.G. Paranjpe—*Joint Secretary*
2. Shri S.D. Kaura—*Chief Legislative Committee Officer*
3. Shri T.E. Jagannathan—*Senior Legislative Committee Officer.*

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

**Nominated *w.e.f.* 29-11-1983. *vice* Shri B. R. Nahata died.

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-second Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on 10 August and 6 and 7 September, 1983.

3. The Committee considered and adopted this Report at their sitting held on 8 December, 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 CIVIL ACCOUNTS SERVICE (GRGUP C) RECRUITMENT RULES, 1978 (G.S.R. 925 OF 1978)

(A)

6. The Central Civil Accounts Service (Group C) Recruitment Rules, 1978 (G.S.R. 925 of 1978) were published in the Gazette of India, Part II, Section 3(i) dated 22 July, 1978 and these were deemed to have come into force on 1 April, 1976 retrospectively. The Explanatory Memorandum appended to the Rules clarified the position as under:—

“These rules have been made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Initial recruitment to this service is made by transfer of staff from the Indian Audit & Accounts Department, erstwhile Organisation of the Chief Pay & Accounts officer, and also persons appointed on permanent transfer from other Ministries/Departments consequent on the introduction of

the departmentalisation of accounts in the Central Government. The installation of the departmentalised accounts in the Central Government was carried out in phases beginning 1 April, 1976, and the transfer of personnel was effected from time to time. The Rules relating to the constitution of the Central Civil Accounts Service (Group 'C') have, therefore, to be given retrospective effect from 1.4. 1976. Giving retrospective effect to these Rules will not adversely affect in interests of any person."

7. Though the system of departmentalised accounting was introduced with effect from 1 April, 1976, the recruitment rules for the Central Civil Accounts Service were notified in July, 1978, *i.e.* after the expiry of more than 27 months. On a reference made, the Ministry of Finance (Department of Expenditure) stated in their reply as under:—

"The departmentalisation of Union accounts took place in four phases, *viz.*, on 1.4.1976, 1.7.76, 1.10.1976 and 1.4.1977. Further, the work relating to consolidation of Accounts and preparation of Finance Accounts of the Union Government was transferred from the IA & AD as late as in May, 1978. Apart from this, the decision to share the deputationists of the IA & AD was taken in April, 1979 and the allocation of staff in this regard has been finalised only recently. The selection of persons has still not [been completed and their actual joining the accounts offices will, therefore, take some more time. The draft Recruitment Rules for Group 'C' employees transferred to the departmentalised accounts offices, were prepared in July, 1976 and sent to the Department of Personnel and Administrative Reforms and the Ministry of Law for their clearance. These draft rules had to be discussed with the representatives of the Indian Audit and Accounts Department as provision relating a to promotion of senior accountants as Junior accounts officers without passing the Junior Accounts Officers (Civil) examination *vide* Rule 5 (4) (b) of Central Civil Accounts service Rules would have repercussions on other Accounts Departments, wherefrom the staff was mainly transferred. After detailed examination of these draft rules in the light of observations of the Legislative Department after consultation with the representative of the Comptroller and Auditor General of India, the DP & AR cleared the Rules in March, 1978. Final clearance from the Ministry of Law was obtained in May, 1978 and then these rules were published in July, 1978. Since the first batch of employees was transferred to the Accounts side from 1.4. 1976, the Recruitment Rules were given Retrospective effect from that date to cover their cases. It is submitted that the Central Civil Accounts Service (Group C) Recruitment Rules, 1978 were finalised with the utmost expedition shall stages soon after

departmentalisation of accounts and their publication in July, 1978 has in no way adversely affect the interests of staff governed by them.

8. The Committee note that the draft Recruitments Rules for Group 'C' employees of the Central Civil Accounts Service transferred to the departmentalised accounts offices were prepared in July, 1976 and sent to the Department of Personnel and Administrative Reforms and the Ministry of Law for their clearance. The Department of personnel and Administrative Reforms cleared the Rules in march 1978. The Committee observe that it took the Department of Personnel and Administrative Reforms about 20 months in sorting out details with the Indian Audit and Accounts Department, the Legislative Department and the Comptroller and Auditor General of India, before the Rules could be cleared. The Committee considers it to be a long period. The Committee, therefore, re-stress the need for framing the rules as early as possible in order to minimise the chances of giving retrospective operation to such rules in future.

(B)

9. Rule 3 (1) (c) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978 provided that the Service shall be constituted initially by permanent transfer of persons from the Ministries to such extent and on such terms and conditions as the Government might lay down in that regard.

10. It was felt that the terms and conditions governing the transfer of personnel from the Ministries should be mentioned in the rules in order to make them self-contained and for the information of all concerned. On a reference made the Ministry of Finance (Department of Expenditure) clarified the position as under :—

“Since the requirements of staff in the departmentalised accounts offices was not adequately met by the staff made available by the Indian Audit and Accounts Department and the organisation of the erst-while Chief Pay and Accounts Officer, it was decided to fill up the vacancies by other sources like CSCS staff, Time scale clerks and and Telecom Accounts Clerks of Posts and Telegraphs Department and Railway Accounts Department.

Keeping in view the serious stagnation in the LDC cadre in various Ministries/Departments, the official side had assured in the 26th ordinary Meeting of the Department Council of the Department of Personnel and Administrative Reforms held on 2nd April, 1976 that subject to the requirement of the persons having to pass the prescribed examination within a stipulated time, the possibility of accommodating CSCS personnel would be considered for filling additional posts at the level of LDC and UDC in the departmenta-

lised accounts officers in preference to any other sources, including direct recruitment. Initially 100 vacancies of Jr. Accountants in the departmentalised accounts offices were offered from CSCS personnel on the conditions laid down in this Ministry's circular No.2 (24)/76-SC/PH-III-Vol. IV, dated 5.11.1976. Subsequently, another 319 vacancies in their Jr. Accountants' cadre at the initial constitution have been offered to CSCS UDCs/LDCs. As on the earlier occasion, applications of CSCS personnel who are willing for transfer as Jr. Accountants will be called by DP&AR and these applications will be screened by a Committee Consisting of representative each of the DP&AR, Establishment Division of the Ministry of Finance and the CCA's organisation. So far panels of the of CSCS staff for appointment as Jr Accountants in respect of the above 319 vacancies have not been finalised. As the terms and conditions in regard to transfer of persons against these vacancies will be decided in consultation with the DP&AR and the transfer of persons to fill the vacancies will be a one-time operation. whereafter fresh vacancies will be filled in accordance with the provisions of Central Civil Accounts Service (Group 'C') Recruitment Rules, 1978 it is not considered necessary to burden the said rules with the details of terms and conditions for transfer, under Rule 3 (1) (c) *ibid.*"

11. The Committee are not satisfied with the explanation given by the Ministry of Finance (Department of Expenditure) for not incorporating the details of terms and conditions for transfer in rule 3(1)(c) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978. The Committee do not, however, insist on incorporating these details in the said rule as in their opinion no useful purpose is likely to be served at this late stage.

12. The Committee, however, emphasise that executive instructions are no substitute to statutory rules and that Government should not resort to these methods. The Committee, therefore, Caution the Ministry to be careful in taking recourse to executive instructions in lieu of framing the statutory rules in future. The Committee observe that in case the Ministry still persists in resorting to the said method, the representatives of the Ministry will have to appear before them in advance to explain the position in regard to each case.

(C)

13. Proviso to rule 4(2) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978 provided *inter alia* that if Government was satisfied that it was necessary or expedient in the public interest so to do, it might

amalgamate two or more cadres or divide one or more cadres into such number of cadres as it deemed fit.

14. It was felt that the option of the persons in position should be obtained and given due consideration before amalgamating two or more cadres or dividing one or more cadres. On a reference made, the Ministry of Finance stated the position as under:-

“The necessity for amalgamation of two or more cadres/division of one or more cadres would normally arise only when Ministries/Departments are amalgamated or work of one Ministry is transferred to another under the Government of India (Allocation of Business) Rules. The staff engaged on the work is transferred alongwith the work and the question of giving any option would not arise.”

15. While agreeing with the reply of the Ministry, the Committee hope that whenever personnel from one Department/Ministry are transferred to another Deptment/Ministry due to amalgamation, bifurcation etc., care will be taken to see that the seniority and other terms and [conditions of their service will not very to their disadvantage.

(D)

16. Rule 5(2)(e) of the Central Civil Accounts service (Group C) Recruitment Rules, 1978, provided that all persons recruited to the grade of Junior Accountant shall have to pass a Departmental Confirmatory Examination on such terms and conditions and within such period as may be specified by the Government.

17. It was felt that the period within which the Junior Accountants were required to pass the Departmental Confirmatory Examination as also its terms and conditions might be mentioned in the rules for the information of all concerned and to make them self-contained. On a reference made, the Ministry of Finance stated in reply as under:-

“The terms and conditions and syllabus of the departmental confirmatory examination as also the period (and the number of chances) within which Junior Accountants have to pass the Departmental Confirmatory Examination have been circulated through executive instructions..... In view of this, it is felt that the Recruitment Rules need not be burdened with these details.”

18. The Committee do not agree with the contention of the Ministry of Finance (Department of Expenditure) that incorporation of the details of terms and conditions pertaining to the Departmental Confirmatory Examination for the

Junior Accountants will burden the Recruitment Rules in question. The Committee desire that the Ministry should incorporate the same in the Recruitment Rules for Group C employees of the Central Civil Accounts Service to make them self-contained. However, in case the Ministry feel that the Rules will become bulky, the Committee would like the details to be appended as annexure to the Rules.

(E)

19. Rule 5(4) (a) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978 provided that vacancies in the grade of Junior Accounts Officer shall be filled by promotion of persons who had passed such examination as might be prescribed for this purpose.

20. It was felt that the particulars of the examination which a person was required to pass before his promotion to the post of Junior Accounts Officer might be mentioned in the rule to make them self-contained and for the information of all concerned. The Ministry of Finance in their reply to the reference made to them in that behalf, stated as under:-

“Rule 5(4) (a) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978, will be amended by substituting the words ‘Junior Accounts Officer (Civil) Examination, for the existing words ‘such examination’ as may be prescribed for this purpose.”

21. The Committee note with satisfaction that, on being pointed out by them the Ministry of Finance (Department of Expenditure) have agreed to amend rule 5(4) (a) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978 so as to specify therein the name of the examination namely ‘Junior Accounts Officer (Civil) Examination’ which a person is required to pass before his promotion to the post of Junior Accounts Officer.

(F)

22. Rule 7(3) of the Central Civil Accounts Service (Group C). Recruitment Rules, 1978 empowered the appointing authority to extend or curtail the period of probation or trial.

23. It was felt that the authority concerned should record the reasons in writing for any extension or curtailment of the period of probation in each case so as to obviate any scope of favouritism and discrimination in this regard. The Ministry of Finance, in their reply to the reference made in that behalf, stated as under :—

“Instructions regarding extension or curtailment of the period of probation which are for general application in the Government of India, are contained in para 4 of Chapter III (Section IV—Probation) of

the Hand Book of Personnel Officers issued by the Department of Personnel and Administrative Reforms.....These instructions apply equally to the staff in the departmentalised Accounts Offices and, therefore, no specific provisions in this regard in the Central Civil Accounts Service (Group C) Recruitment Rules appears necessary."

24. The Committee do not agree with the views of the Ministry of Finance (Department of Expenditure) that since the instructions regarding extension or curtailment of the period of probation which are of general application in the Government of India including the departmentalised Accounts Offices are contained in para 4 of Chapter III (Section IV—Probation) of the Handbook of Personnel Officers, it is not necessary to have a specific provision in the Central Civil Account Service (Group C) Recruitment Rules in this regard. The Committee desire that the Ministry should amend Rule 7(3) of the Recruitment Rules *ibid* so as to provide therein recording of reasons in writing by the concerned authority before granting an extension or curtailing the period of probation or trial, as the case may be.

III

THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS GOODS) RULES, 1978 (G.S.R. 1316 OF 1978)

(A)

25. Sub-rules (1) (a) (iv) and (3) (c) (i) of Rule 6 of the Merchant Shipping (Carriage of Dangerous Goods) Rules, 1978 (G. S. R. 1316 of 1978) contained an expression 'ordinary risk/risks'. Likewise, sub-rule (1) (b) (iii) of Rule 6 of rules *ibid.*, embodied the term 'reasonably possible'. Further, sub-rules (1) (b) and (1) (c) of Rule 7 of these rules contained an expression 'reasonable diligence'. Sub-rule (2) (f) of Rule 8 of Rules *ibid.*, carried another expression 'precautions, proper in circumstances'.

26. The aforesaid expressions appeared to be vague in as much as these could be interpreted differently by different persons. The Ministry of Shipping and Transport were requested to state if they had any objection to issuing guidelines for the use of the concerned authorities in that regard. In their reply, the Ministry stated as under ;—

"(a) The usage of the phrase 'ordinary risk in rule 6 (1) (a) (iv) and rule 6 (3) (c) (i) has been adopted from Regulation 3 (a), of the International Maritime Dangerous Goods Code (IMDG Code). Persons connected with shipment of dangerous goods by sea are conversant

with requirements of IMDG Code and as such the expression 'ordinary risk' is not likely to raise questions about its interpretation.

- (b) The phrase 'reasonable diligence' used in rule 7 (1) (b) and 7 (1) (c) has been used with a view to cast responsibility on a ship master to ascertain before accepting for shipment any consignment of dangerous goods on his ship, that the said consignment is properly packed in accordance with the provision of rule 6. This expression is very common in marine parlance and requires no elaboration.
- (c) The phrase 'precaution proper in the circumstances' used in rule 8 (2) (f) finds its origin in Regulation 7 (e) of the International Maritime Dangerous Goods Code and requires no elaboration for reasons stated in sub-paragraph (a)."

27. The Committee note that the Ministry of Shipping and Transport (Shipping Wing) are of the view that since the use of expressions like 'ordinary risk' 'reasonably possible', 'reasonable diligence' and 'precaution proper in the circumstances' is quite common in marine parlance, these expressions do not require any further elaboration. The Committee, however, do not agree with the views of the Ministry and they desire that the Ministry should review all such expressions to make them precise and free from ambiguity. The Committee further desire the Ministry to issue necessary clarifications and lay down guidelines wherever necessary to obviate any scope for discrimination.

(B)

28. Sub-rule (2) (c) (iv) of Rule 10 of the Merchant Shipping (Carriage of Dangerous Goods) Rules, 1978 contained the expression 'such other factors of safety as it may deem fit to take into account'.

29. It was felt that the expression was vague and ambiguous and was likely to be interpreted differently by different persons. On a reference made, the Ministry of Shipping and Transport stated in reply as under :—

"The phrase 'such other factors of safety as it may deem fit to take into account' used in rule 10 (2) (c) (iv) has been used so that the Central Government may have sufficient power to prescribe requirements of such stringency as it may deem fit for the carriage of dangerous goods by passenger ships having regard to the number of passengers being carried by the ship, the location of passenger spaces, location where dangerous goods are stowed and the extent of fire explosion hazard presented by the type of the dangerous goods proposed to be carried by the ship."

30. The Committee are inclined to agree with the views of the Ministry of

Shipping and Transport (Transport Wing) in this regard and they do not, therefore desire to pursue the matter any further.

(C)

31. Rule 13 of the Merchant Shipping (Carriage of Dangerous Goods) Rules, 1978 read as under :—

“13. Penalties—Every owner, master or agent of a ship who contravenes any provision of these rules or fails to comply with any provision thereof which it is his duty to comply shall be punishable with imprisonment which may extend to two years or with fine which may extend to ten thousand Rupees or with both and if the offence is a continuing one with further fine which may extend to fifty rupees for every day after the first during which the contravention continues.”

32. There was no provision in Rule 13 above for an appellate authority to review the penalties to be imposed. The Ministry of Shipping and Transport on a reference made to them in that regard, stated in reply as under :—

“Penalties can be imposed under this rule only by competent courts and not any executive authority. It is always open to an aggrieved party to go in appeal to a superior court for review of penalties, if he so desires. That being the case, it does not seem necessary to make any provision in the rules with respect to appellate authority which is an inherent feature of our system of administration of justice.”

33. The Committee accept the position stated by the Ministry of Shipping and Transport (Transport Wing) in this regard and do not desire to pursue the matter further.

IV

**THE SHIPPING DEVELOPMENT FUND COMMITTEE
(STAFF CAR DRIVER AND GROUP 'D' POSTS)
RECRUITMENT RULES, 1978 (G.S.R. 1345 OF 1978)**

(A)

34. Rule 6 of the Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts) Recruitment Rules, 1978 (G.S.R. 1345 of 1978) read as under :—

“6. Power to relax—Where the Central Government is of opinion that it is necessary or expedient so to do, it may, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons or posts.”

35. It was observed that the 'power to relax' was usually confined to any class or category of persons and that it did not extend to 'posts'. The Ministry of Shipping and Transport (Transport Wing), on a reference made to them, stated in their reply as under :—

"As regards provision under Rule 6 of the.....Rules, it may be mentioned that Hand Book for Personnel Officers (1975) issued by Department of Personnel & A.R. Cabinet Secretariat indicates on page 26 that the relaxation clause of the Recruitment Rules may be as follows :—

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

Based on the above guidelines from Department of Personnel & AR, provisions to the above effect have been incorporated in the SDFC (Staff Car and Group 'D' Posts) Recruitment Rules.

It may, therefore, appear that there is no necessity to amend the above rules."

36. The Committee do not agree with the contention of the Ministry of Shipping and Transport (Transport Wing) that there appears to be no necessity to amend the rules as suggested.

37. In this connection, the Committee while drawing attention of the Ministry to their earlier recommendation on the subject, made in paragraph 12 of their Sixteenth Report (Seventh Lok Sabha) presented to the House on 3 March, 1983, desire them to omit the words 'or posts' occurring in Rule 6 of the Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts) Recruitment Rules, 1978 in compliance with the said recommendation.

(B)

38. Under the heading 'In case of recruitment by promotion, deputation/transfer, grades from which promotion/transfer to be made' in Column 12 of the Schedule appended to the Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts Recruitment) Rules, 1978 (G.S.R. 1345 of 1978), the following entry appeared against the post of the Staff Car Driver:-

"Deputation:-

From amongst Staff Car Drivers; Group 'D' employees having requisite qualifications in other Government/Semi Government/autonomous or similar organisations."

39. The aforesaid Entry did not clearly specify the period of such deputation. The Ministry of Shipping and Transport (Transport Wing), on a reference made to them, have since amended the entry in Column 12 of the Schedule to these rules *vide* G.S.R. 1031 of 1981 specifying the period of deputation as not to exceed 3 years.

40. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport (Transport Wing) have since amended the Entry under Column 12 of the Schedule to the Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts Recruitment) Rules, 1978 to the desired effect.

V

THE MERCHANT SHIPPING (CONTINUOUS DISCHARGE CERTIFICATES) AMENDMENT RULES, 1978 (G.S.R. 528 OF 1978)

41. The Merchant Shipping (Continuous Discharge Certificates) Amendment Rules, 1978 raised the fee for obtaining a duplicate copy of the Continuous Discharge Certificate from Rs. 2.00 to Rs. 4.00 under rule 12 (2).

42. The Ministry of Shipping and Transport (Shipping Wing) were requested to state the reasons for raising the fee and the specific provision in the parent Act, *viz.* the Merchant Shipping Act, 1958 which authorised such an enhancement. In their reply dated 14 October, 1982, the Ministry stated as under :-

“The fee for obtaining a duplicate copy of the CDC (Continuous Discharge Certificate) was increased from Rs. 2/- to Rs. 4/- on account of the following reasons:-

- (a) The cost of printing and stationery has gone up considerably by 1978 when the fee was revised after a period of 18 years.
- (b) The form of the CDC which was prescribed in 1960 was bound with simple card board only with a view to cut down the cost of the CDC book. Subsequently, it was felt that since the CDC book is a permanent document of the record of seamen's service on board ships, the card board bound book should be replaced by a cloth bound book, as the latter is much more durable. While making of a cloth bound book costs Rs. 2.50, the cost in respect of card bound book is only Re. 1/-.
- (c) Since the duplicate copy of the CDC is issued after checking a large no. of entries from the records of the Shipping Master, which involves lot of labour, the fee for issuing of a duplicate copy was prescribed a little higher so as to make the seamen more conscious about the safe keeping of the CDC books.

As regards the rule in the Parent Act, which permits such enhancement, Section 457 of the Merchant Shipping Act may be referred to which authorises the Central Government to make rules to carry out the purposes of this Act. The M.S. (CDC) Rules, 1960 and amended Rules 1978 were framed under the above mentioned section of the Act."

43. The Committee do not agree with the views expressed by the Ministry of Shipping and Transport (Shipping Wing).

The Committee note that section 457 of the Merchant Shipping Act, 1958 does not expressly authorise the Government to levy any fee for the issue of a duplicate copy of the Continuous Discharge Certificate. The Committee, therefore desire the Ministry either omit rule 12 (2) of the Merchant Shipping (Continuous Discharge Certificate) Rules, 1960 which seeks to levy fee, or alternatively, they should approach Parliament for the amendment of the Parent Act so as to empower them to levy such fee for issuing a duplicate copy of the Continuous Discharge Certificate.

VI

THE FOREST RESEARCH INSTITUTE AND COLLEGES, (GROUP 'A' AND GROUP 'B' NON-TENURE POSTS) RECRUITMENT (AMENDMENT) RULES, 1979 (G.S.R. 928 OF 1979)

44. While examining the Forest Research Institute and Colleges, (Group 'A' and Group 'B' non-tenure posts) Recruitment (Amendment) Rules, 1979, published in the Gazette of India, Part II, Section 3 (i) dated 7 July, 1979, it was noticed that the validity of the recruitment Rules of 1966 for various Groups 'A' & 'B' posts in the Forest Research Institute and Colleges, Dehra Dun was Extended w.e.f. 1st October, 1978 upto 3 1st March, 1979 or till the publication of the revised Rules, whichever was earlier. The Explanatory Memorandum appended to the Rules read as under:

"The recruitment rules for various Group 'A' and Group 'B' (non-tenure) posts in the Forest Research Institute and Colleges, Dehra Dun were notified on 20 October, 1966. The rules for the posts of Research Officer (other than Engineering and Statistical), Research Officer (Statistical) and Research Officer (Engineering), were effective for a period of 5 years i.e. till 19th October, 1971. The validity of these rules was subsequently extended till 30th September, 1978.

Since finalisation of the fresh recruitment rules will take some time and since in the meantime vacant posts have to be filled in accordance with the rules notified in October, 1966, it has been decided in consultation with the Union Public Service Commission to extend the

validity of these recruitment rules upto the 31st March, 1979 or till the publication of the revised recruitment rules, whichever is earlier. The retrospective operation of these rules will not prejudice the interest of any officer in the Forest Research Institute and Colleges, Dehra Dun."

45. Since the Ministry of Agriculture (Department of Agriculture and Cooperation) had taken a period of about 9 months in arriving at a decision to continue the old Rules, they were asked to furnish information on the following points:-

- (i) When did the Institute/Ministry come to the conclusion that the old Rules would have to be extended ?
- (ii) When the necessary action to extend the old Rules was initiated and the time taken at each stage ?
- (iii) The reasons for the delay in notifying the Rules which led to giving retrospective effect.
- (iv) Have the new Service Rules since been framed ?

46. The Ministry, in their reply dated 5 July, 1980, stated as under :-

- (i) The original rules notified on 20.10.1966 were operative for a period of five years. Their date of validity expired on 19.10.1971. Action to review the Rules was initiated on 26.5.71. In December, 1971, it was decided to revise the recruitment rules in question. Since it was likely to take some time to finalise the revised rules, Union Public Service Commission was approached in January, 1972, for their approval for extending the validity of the existing rules for a period of one and a half year beyond 19.10.1971.
- (ii) As already stated above, the action to extend the date of validity of the rules was initiated in January, 1972. After exchange of some correspondence, Union Public Service Commission accorded their approval on 5.9.1972 for extending the validity date up to 30.4.73. As the revised recruitment rules for these posts could not be finalised, the Commission were again approached on 5.6.1973, 7.2.1974 and 22.7.1975 to further extend the date of validity of the pre-revised rules. The Commission accorded their approval for the same upto 30.4.1974, 30.4.1975, 31.12.1975 respectively, The Department of Agriculture again approached the Commission in March, 1976 to further extend the validity dates of the rules but the Commission agreed to extend the validity date of the rules for only two posts of Research Officer and Research Assistant (Grade-1) (Selection Grade) upto 30.9.1976 with the observation to consider the

extension of validity date to the post of Senior Research Officer (Ordinary Grade) later. Subsequently, on requests from the Department of Agriculture, the Union Public Service Commission have agreed to further extension of the validity dates of the rules from time to time till 26.9.1979. when the revised rules came into force. No further extension of the validity date of the rules in question is now necessary.

(iii) The reasons for delay in notifying the rules are-

(a) Consultation with the Forest Research Institute & Colleges, Indian Council of Agricultural Research, Council of Scientific and Industrial Research, Deptt. of Personnel and Administrative Reforms, Law Ministry etc.

(b) Personal discussions with the Union Public Service Commission.

(iv) The new rules have been notified on 26.9.1979."

47. Since it was not clear from the reply of the Ministry whether the requisite Rules had actually been notified in the Gazette, on a reference made, the Ministry, with their reply dated 18 August, 1982, furnished a copy of the notification No. 1-5/71-FRY-1 dated 26 September, 1979 notified in the Gazette of India *vide* G.S.R. 1267 of 1979.

48. The Committee note from the reply of the Ministry of Agriculture (Department of Agriculture and Cooperation) that the recruitment rules of 1966 were originally valid upto 19 October, 1971 and their validity was extended from time to time in consultation with the Union Public Service Commission till the revised recruitment rules were published *vide* G.S.R. 1267 dated 13 October, 1979. The Committee further note that although action to review the original rules was initiated on 26 May, 1971 and decision to revise them was taken in December, 1971, the revised rules have been notified only in October, 1979, *i.e.* after the expiry of a period of about 8 years. The Committee cannot help deprecating strongly the inordinate delay on the part of the Ministry in the publication of the revised rules. The Committee desire that responsibility should be fixed for such procrastination.

VII

THE PRESIDENT'S SECRETARIAT (RECRUITMENT AND CONDITIONS OF SERVICE) (FIRST AMENDMENT) RULES, 1979 (G. S. R. 1148 OF 1979)

49. The President's Secretariat (Recruitment and Conditions of Service) (First Amendment) Rules, 1979 have been framed under Rule 16 of the President's Secretariat (Recruitment and Conditions of Service) Rules, 1976 which

in turn were issued under the proviso to Article 309 of the Constitution. The Rules under reference published in the Gazette of India dated 15 September, 1979 were brought into force *w. e. f.* from 7 May, 1979. In the amending Rules the post of Joint Secretary to the President had been inserted in the Schedule to the existing Rules. The usual Explanatory Memorandum indicating the interests of no one would be prejudicially affected by giving retrospective effect to the Rules was not appended to the Rules.

50. In this connection, the Committee on Subordinate Legislation, in paragraph 10 of their Second Report (Fourth Lok Sabha) presented to the House on 14 December, 1968, recommended as under :

“The Committee are not satisfied with the explanations of the Ministries concerned and are of the view that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries/Departments should take appropriate steps to ensure the publication of rules before they come into force. O However, if, in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a foot-note to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.”

21. Rule 16 of the President's Secretariat (Recruitment and Conditions of Service) Rules, 1976 reads as under :

“16. *Power to relax.* The President may, if he is of opinion that it is necessary, or expedient so to do in the public interest, by order, relax or amend any of the provisions of these rules with respect to any class or category of officers or to any of the posts specified in the Schedule.”

52. The matter was referred to the President's Secretariat asking them to state the reasons for not appending the Explanatory Memorandum to the aforesaid Rules and whether they had any objection to amending the Rules to the desired effect. The President's Secretariat, in their communication dated 11 July, 1980, stated as under :—

“.....the amendment in question does not introduce any new rules, but merely adds another post to the existing Schedule within the framework of the existing rules. As such, the recommendation of the Committee on Subordinate Legislation is not attracted in this case.”

53. The Committee are not convinced with the reply of the President's Secretariat that the Amendment Rules, namely, the President's Secretariat (Rec-

ruitment and Conditions of Service) (First Amendment) Rules, 1979 do not introduce any new rules but they merely add another post to the existing Schedule within the framework of the existing rules and as such the recommendation of the Committee on Subordinate Legislation is not attracted in this case. The Committee feel that whenever retrospective effect is given to any rule in view of any unavoidable circumstances a clarification in the rules has to be given that no one will be adversely affected as a result thereof in compliance with the recommendation contained in paragraph 10 of their Second Report (Fourth Lok Sabha). The Committee, therefore, direct the President's Secretariat to amend the aforesaid rules by appending an Explanatory Memorandum indicating therein that interests of no one would be adversely effected by the retrospective effect given to the amendment rules of 1979.

54. The Committee further desire the President's Secretariat to amend rule 16 of the President's Secretariat (Recruitment and Conditions of Service) Rules, 1976 relating to 'power to relax' so as to omit the words 'or to any of the posts specified in the Schedule' in accordance with the recommendation made in paragraph 12 of their Sixteenth Report (Seventh Lok Sabha).

VIII

THE FOREIGN TRAVEL TAX RULES, 1979 (G. S. R. 355-E OF 1979)

55. Rule 16 of the Foreign Travel Tax Rules, 1979 provides as under :

"16. *Recovery of sums due to Government.*

Where any tax demanded from any persons or any penalty payable by any person under Chapter V of the Act is not paid, the officer of customs mentioned section 3 (d) of the Customs Act may prepare a certificate signed by him specifying the amount due and send it to the Collector of the district in which the said person owns property or resides or carries on business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified thereunder as if it were an arrear of land revenue."

56. It was felt that recovery of sums due to Government as an arrear of land revenue, being a major provision the authority therefore should flow from the parent Act.

57. On a reference made, the Ministry of Finance (Department of Revenue) in their reply stated as under :

"It may be stated in this connection that specific provision has been made in rule 7 and rules 11 and 12 of Foreign Travel Tax Rules, 1979, for (i) recovery of tax, not paid or underpaid or erroneously refunded and (ii) for adjudication and recovery of penalties. In case action

taken under these provisions proves ineffective then the certificate action as under rule 16 is to be taken as a last resort. The provision therefore, seems to have been appropriately placed in the FTT Rules, 1979, and is considered adequate.”

58. The Committee do not agree with the views of the Ministry of Finance (Department of Revenue) that in case action taken under the provisions of rule 7 and rules 11 and 12 of the Foreign Travel Tax Rules, 1979 proved ineffective, then only the certificate action as contemplated under rule 16 of the said rules is to be taken as a last resort for recovery of tax. The Committee are of the view that since recovery of sums due to Government as an arrear of land revenue is a major provision, the authority therefor should flow from the parent Act and not from the rules.

IX

THE SUGAR (RETENTION AND SALE BY RECOGNISED DEALERS) ORDER, 1979 (G S. R. 702-E OF 1979) PROVISION OF MINIMUM RANK OF OFFICER CONDUCTING SEARCH AND SEIZURE

59. Clause 5 of the Sugar (Retention and Sale by Recognised Dealers) Order, 1979 read as under :

“5. *Powers of entry, examination, search, seizure.*—(1) Any Police Officer, not below the rank of Assistant Sub-Inspector or any other officer authorised in this behalf by the Central Government or the State Government may, with a view to securing compliance with this Order or to satisfying himself that this Order has been complied with.—

- (a) stop and search any person or any boat, motor or other vehicle or any receptacle used or intended to be used for the transport of sugar ;
- (b) enter, search and examine any place ;
- (c) seize —
 - (i) any stock of sugar in respect of which he has any reason to believe that a contravention of any of the provisions of this Order has been is being, or is about to be committed ;
.....”

60. The words “any other officer” used in clause 5 (1) of the Order appeared to be vague. It was felt that the minimum rank of the officer authorised to conduct search and seizure should be spelt out in the Order.

61. On a reference made in the matter, the Ministry of Agriculture, stated as under :—

"As regards the amendment suggested in clause 5, the matter has been examined in consultation with the Ministry of Law, Justice & Company Affairs (Department of Legal Affairs) who have expressed the view that since the rank of Assistant Sub-Inspector is already provided in the beginning of the clause, similar meaning would follow thereafter. In their view, in such cases, the *ejusdem generis* principle is applied in construing a statute when there is a word having a general meaning wider than that which was intended by the legislature. It is a settled law that where the particular things or authority is named, have some common characteristics which constitute them a genus and the general words can be properly regarded as in the nature of a sweeping clause designated to guard against the accidental omissions then the rule of *ejusdem generis* would apply and the general words will be restricted to things of the same nature as those which have been already mentioned. The Ministry of Law is, therefore, of the opinion that the words "any other officer" will take care of the meaning referred to it in the first line of clause 5. In case, however, the Committee on Subordinate Legislation of Lok Sabha still considers the proposed amendment necessary this Department will have no objection to carry out the same."

62. Though technically the words 'any other officer' occurring in Clause 5 of the sugar (Retention and Sale by Recognised Dealers) Order, 1979 will take care of the meaning referred to it in the first line of the Clause *ibid* of the said Order on the basis of *ejusdem generis* principle yet, in order to make the position unambiguous, the Committee desire the Ministry of Food and Civil Supplies (Department of Food) to amend the Order so as to specify therein the minimum rank of the officer authorised to conduct search and seizure.

X

SURVEY OF INDIA GROUP 'A' RECRUITMENT (AMENDMENT) RULES, 1980 (G. S. R. 1212 OF 1980)

63. Proviso to Rule 27 (b) of the Survey of India Class I Recruitment Rules, 1960, as substituted by the Survey of India Group 'A' Recruitment (Amendment) Rules, 1980 provided that the age limit for candidates other than belonging to Scheduled Castes/Scheduled Tribes and other special categories might be relaxed upto 3 years in exceptional circumstances at the discretion of the Commission.

64. The matter was taken up with the Department of Science and Technology to enquire about the exceptional circumstances visualised for relaxing the age limit upto 3 years.

65. In their reply dated 14 April, 1981, the Department stated, *inter alia* that so far as the proviso to Rule 27 (b) regarding the age limit was concerned that was reproduced verbatim as originally existing in the Survey of India Class I Recruitment Rules, 1960 notified by the then Ministry of Scientific Research and Cultural Affairs. The question whether any guidelines had been laid down specifying the exceptional circumstances under which age limit could be relaxed upto 3 years at the discretion of the Union Public Service Commission, had been taken up with the Department of Personnel and Administrative Reforms and the Union Public Service Commission.

66. In their further reply dated 4 August, 1983, the Department stated as under :

"The Union Public Service Commission have intimated that no guidelines as such have been laid down specifying the exceptional circumstances in which the age limit can be relaxed upto 3 years by the UPSC in accordance with proviso under rule 27 (b) in part IV of the Survey of India Class I Recruitment Rules, 1960. Each case is considered on merits and the relaxation in age limit is allowed by the Commission depending upon the response to the Recruitment advertised in the context of job requirement and educational qualifications experience etc. prescribed for direct recruits. The proviso to 27 (b) is not based on any Government orders. They have further suggested that this rule will need an amendment in the light of Department of Personnel and Administrative Reforms O. M. dated 9th April, 1981 under which upper age limit can be relaxed upto five years only in favour of Government servants. They have also advised that since Survey of India Class I Recruitment Rules, 1960 have become outdated and the cadre structure also needs review it may be advisable to undertake extensive review of the rules with a view to revising them.

This Department is considering revision of Recruitment Rules of Survey of India Group 'A' Recruitment Rules, keeping in view the advice of the Commission. In the circumstances it is considered that while revising the Recruitment Rules, the observations of the Committee on Subordinate Legislation may also be taken into account."

67. The Committee note that no guidelines as such have been laid down specifying the exceptional circumstances in which the age limit for candidates other than belonging to the scheduled Castes, Scheduled Tribes and other special categories can be relaxed upto 3 years. The Committee further note that on the advice of the U.P.S.C., the Department of Science and Technology are considering revision of the Survey of India Group A Recruitment Rules and while revising the rules, the Department proposes to lay down the necessary guidelines therein. The Committee hope that in view of the advice given by the U.P.S.C. and the fact that

the rules are stated to have become outdated, the Department would take early steps to revise the rules and while revising the rules, the question of laying down the guidelines for specifying exceptional circumstances for relaxing the age limit upto 3 years by the Commission would not be lost sight of.

XI

THE SHIPPING DEVELOPMENT FUND (LOANS AND OTHER FINANCIAL ASSISTANCE) RULES, 1981 (G.S.R. 44-E OF 1981)

68. Rule 8 of the Shipping Development Fund (Loans and Other Financial Assistance) Rules, 1981 reads as under:—

“8. *Terms of loan or other financial assistance.*— (1) Every loan or other financial assistance granted under these rules shall be on the terms and conditions specified from time to time by the Central Government in pursuance of sub-section (2) of section 16 of the Act.

(2) No loan or other financial assistance shall be granted to a fishing company unless such company has furnished security to the satisfaction of the Committee.”—

69. It was felt that the terms and conditions for grant of loan or other financial assistance should be specified in the rule itself to make it self-contained and for the information of all concerned. On a reference made in the matter the Ministry of Shipping and Transport (Transport Wing), while forwarding the following opinion of the Law Member, Shipping Development Fund Committee, who is also solicitor in the Government of India, requested that the existing provisions might be permitted to continue:—

“..... sub-section (2) of section 16 of the Merchant Shipping Act, 1958, and rule 8, which follows that section, themselves postulate that the terms and conditions of the loan or financial assistance are to be specified by the Government ‘*from time to time*’. In other words, the Government will have the power to modify or amend these terms and conditions, as and when necessary, in due consideration of the relevant and ambivalent factors which may then obtain. It is also pertinent that section 16(2) uses, in this context, the words ‘as the Central Government may *specify*’, and not ‘*prescribe*’ (which would have meant the necessity of framing rules in the behalf). Similarly, section 19(2) of the Act, which is concerned with the Government’s rule making power, does not expressly authorise the Government to frame rules in this regard. There is, therefore, an element of doubt if the Government has power to frame rules, as suggested, except perhaps under its general rule making powers by virtue of sub-section (1) of section 19.

Besides, the relationships between the Committee and the Shipping Companies are matters more of contract than statutory rules. Even if the format of the contract has been, by practice standardised to a certain extent to avoid inconsistency in practice, the contract is not always identical and it is essential to provide for flexibility in the interests of law. The only exception is in the form of the statutory mortgage of the concerned vessel, which has been *prescribed* under the Merchant Shipping Act, 1958, and is universally applicable to all mortgages, including those in favour of the Committee. I, therefore, feel that the present procedure should be permitted to prevail."

70. Sub-sections (1) and (2) of section 16 and section 19 of the Merchant Shipping Act, 1958 read as under :—

- "16. (1) The Fund shall vest in the Committee and shall be applied towards meeting the expenses of the Committee and for granting loans and financial assistance in any other form to persons of the description mentioned in section 21 for acquisition and maintenance of ships.
- (2) The Committee shall not grant any loan or give any financial assistance to any person referred to in sub-section (1) except on such terms and conditions as the Central Government may from time to time specify.

* * * * *

19. (1) The Central Government may make rules to carry out the purposes of this part.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters' a mely:—
- (a) the terms of office of members of the Committee and the manner of filling casual vacancies in the Committee;
 - (b) powers of the Chairman of the Committee;
 - (c) the travelling and other allowances payable to members of the Committee;
 - (d) the appointment of officers and other employees of the Committee and the terms and conditions of their service;
 - (e) the custody and investment of the Fund;

(f) the execution of instruments and the mode of entering into contracts by or on behalf of the Committee and the proof of documents purporting to be executed, issued or signed by or on behalf of the Committee;

(g) any other matter which may be or is to be prescribed."

71. The Committee do not agree with the contention of the Law Member of the Shipping Development Fund Committee who is also Solicitor in the Government of India that the existing provision of rule 8 of the Shipping Development Fund (Loans and other Financial Assistance) Rules, 1981 may be permitted to continue.

72. The Committee are of the view that the Ministry of Shipping and Transport (Transport Wing) should specify the terms and conditions for grant of loan or other financial assistance in the rule itself so as to make it self-contained and for the information of all concerned.

XII

THE COFFEE RULES, 1955 (S.R.O. 1966 OF 1955)

(A)

73. Rule 3(2) (c) of the Coffee Rules, 1955, reads as under:—

"Rule 3 (2) (c) : Two members shall represent the coffee trade interests, one member shall represent the curing establishment, four members shall represent the interests of labour, five members shall represent the interests of consumers and the other three members shall represent such other interest as in the opinion of the Central Government ought to be represented on the Board."

74. It was felt that the interests to be represented on the Board should be specified in the Rules for the information of all concerned and to make the Rules self-contained.

75. On a reference made in the matter, the Ministry of Commerce in their reply, stated as under:—

"Under Section 4(2) (c) (vii) read with Rule 3(2) (c) there is provision for the appointment of three members by the Government to represent such other interest as in the opinion of the Central Government ought to be represented on the Board.

Under Section 31 (2) provision is made for the purpose for which the General Fund of the Board shall be applied. The said section reads as under:—

(2) The General Fund shall be applied :

- (a) to meet the expenses of the Board;
- (b) to meet the cost of such measures as the Board may consider advisable to undertake for promoting agricultural and technological research in the interest of the Coffee Industry in India;
- (c) for making such grants to coffee estates/ or for meeting the cost of such other assistance to coffee estates as the Board may think necessary for the development of such estates;
- (d) to meet cost of such measures as the Board considers advisable to undertake for promoting the sale and increasing the sale and increasing the consumption in India and elsewhere of coffee produced in India; and
- (e) to meet the expenses for securing better working conditions and the provision and improvement of amenities and incentives for workers.

In consonance with the statutory obligations laid upon the Board, provision has been kept for representation to other interest which among others, could include, (i) Agricultural scientist experts in the field of Marketing and Promotion (ii) the co-operative agency charged with the responsibilities of public distribution system such as National Co-operative Federation and (iii) outstanding personality in the Coffee Industry etc. The existing provision in rules which provides for flexibility may be allowed to continue.”

76. The Committee do not agree with the contention of the Ministry of Commerce that the existing provision in the rule which provides for flexibility may be allowed to continue. After considering the reply of the Ministry, the Committee have come to the conclusion that the Ministry should amend rule 3(2) (d) of the Coffee rules, 1955 so as to make it self-contained by indicating therein the other interests to be represented on the Board, viz Agricultural Scientist, experts in the field of Marketing and Promotion, Cooperative Agencies and the outstanding personality in the Coffee Industry.

(B)

77. Rule 16 (2) of the said Rules provides, *inter alia*, as under:

“16 (2). Any proposal or resolution so circulated and approved by the majority of members who have recorded their views in writing shall be as effectual and binding as if such proposal or resolution were decided by a majority of votes of members at a meeting :

Provided that at least twelve members of the Board have recorded their views on the resolution or proposal :

Provided further that the papers need not be sent to any members who is absent from India ;

Provided also that when a question is referred by circulation of papers any four members of the Board may require that the question be referred to a meeting and thereupon such a reference shall be made to the Board at a meeting”

Similar provision also exists in Rule 25 (2) (d).

78. It was felt that under the above provision even one member might have convincing and cogent reasons to refer a question to the Board. Therefore, the words ‘any four members’ should be substituted by the words ‘any’ member.

79. On a reference made in the matter, the Ministry of Commerce, in their reply stated as under:—

“All along Rule 16 is invoked and business by circulation is resorted to, when regular meetings of the Board are not likely to be held in the near future and a decision which has to be taken by the Board, has to be taken urgently. *Inter alia*, when any proposal is so circulated to the members of the Board, provision is made to the effect that any proposal or resolution so circulated and approved by a majority of members who have recorded their views in writing shall be as effectual and binding as if such proposal or resolution were decided by a majority of votes of members at a meeting. Also, provision is made to the effect that atleast 12 members of the Board have recorded their views on the resolution or Proposal. With these built-in safeguards, in our views the existing provisions providing for 4 members to require that the question be referred to a meeting may stand as it is and does not call for any amendments. Further, this provision, as it is, has not posed any problem.....All along Rule 25 is invoked and business by circulation is resorted to, when regular meetings of the Board are not likely to be held in the near future and a decision which has to be taken by the Committee, has to be taken urgently. *Inter alia*, when any proposal is so circulated to the members of the Committee, provision is made to the effect that any proposal or resolution so circulated and approved by a majority of members who have recorded their views in writing shall be as effectual and binding as if such proposal or resolution were decided by a majority of votes of members at a meeting. Also, provision is made to the effect that atleast a majority of the members of the Committee should have recorded their views on the resolution or Proposal. Further provision is made to the effect that when any proposal or resolution is circulated and approved by the majority of members, the Chairman of the Committee shall have the power to require any such decision to be placed before the Board for its consideration and implementation of the Committee’s decision shall be deferred till the matter is considered by the Board. With these built-in safeguards, in our view, the existing

provision providing for 2 members to require that the question be referred to a meeting, may stand as it is and does not call for any amendments. Further, this provision, as it is, has not posed any problem."

80. Being satisfied with the position stated by the Ministry of Commerce in regard to rules 16 (2) and 25 (2) (d) of the Coffee Rules, 1955, the Committee have decided not to pursue the matter any further.

(C)

81. Rule 18 (4) (a), (b), (c), (e) and (f) of the above Rules, regarding "Functions of the Committee", contained the expression 'subject to such restrictions'. As the expression appeared to be vague, the matter was referred to the Ministry of Commerce for their comments.

82. The Ministry of Commerce, in their reply, stated as under:—

"Under Rule 18 (i) of the Coffee Rules the Board may appoint every year the following standing Committees and may appoint such other Committees as the Board deems necessary to exercise such powers and discharges such functions as may be delegated to it under these rules, viz., (a) Executive Committee (b) Propaganda Committee (c) Marketing Committee (d) Research Committee (e) Development Committee (f) Coffee Quality Committee.

Under Rule 18 (4) (a) (b) (c) (e) & (f), subject to such restrictions as may be imposed by the Board, the Committees concerned shall discharge all the functions of the Board in regard to such measures as are provided for therein. Under Section 48 (2) there is provision for making rules for delegation to the Committee or Chairman or Vice-Chairman or Members or Officers of the Board of any of the powers and duties of the Board under the Coffee Act.

To illustrate, the powers of the Board relating to the Board's establishment as provided for under Rule 31 of the Coffee Rules have been delegated by the Board to the Executive Committee of the Board vide decision of the Board at its meeting held on 30.8. 1955.

Further, Rule 37 of the Coffee Rules provides that the Board shall not delegate any of the powers mentioned in (a) to (e) therein, to the Committee. In view of these it appears to us that the expression 'subject to such restrictions' and appearing in Rule 18 (4) (a) (b) (c) and (e) may stand as it is and no amendments are intended or permissible."

83. The Committed are satisfied with the position explained by the Ministry of Commerce in regard to rule 18 (4) (a) (b) (c) (e) and (f) of the Coffee Rules 1955. The Committee do not, therefore, desire to pursue the matter further.

(D)

84. Rule 31 (5) (i) of the said Rules provided as under:-

“Rule 31 (5) (i):- The following penalties may for good and sufficient reasons be imposed on the officers and servants of the Board, namely,

- (a) censure,
- (b) recovery from pay of the whole or part of any pecuniary loss caused to the Board by negligence or breach of orders
- (c) withholding of increments or promotion
- (d) reduction to a lower rank in the seniority list or to a lower post or time-scale or to a lower stage in a time-scale ;
- (e) removal
- (f) dismissal
- (g) compulsory retirement.”

85. It was felt that the expression good and sufficient reasons vests wide discretionary power in the Chairman. The Ministry were therefore asked to state whether any guidelines had been issued for the Chairman in this respect ; whether before imposing any of the penalties mentioned in the Rules the persons concerned was informed in writing of the reason of imposing such penalty and was given an opportunity to defend himself; and whether there should not be an appellate authority with whom the officer concerned might prefer an appeal against the penalties imposed.

86. The Ministry of Commerce, in their reply, stated as under :

“Rule 31 (5) (i) of the Coffee Rules, 1955 no doubt provides for the penalties that may be imposed for good and sufficient reasons on the Officers and servants of the Board. However, in exercise of the powers conferred by Sub-rule 1 of the Rule 31 of Coffee Rules, 1955, the Board, with the prior approval of the Government of India has framed Coffee Board servants (Classification, Control and Appeal) Rules, 1967 which deals with the procedure to be followed for the imposition of penalties enumerated therein. The list of penalties is given in Rule 8 of the said Rules, and the procedure to be followed for imposing the minor penalties and major penalties are dealt with in para 11 to 18. It will be seen from the Coffee Board Servants (Classification, Control and Appeal) Rules, 1967, that enough safe-

guards are provided before imposition of penalties, Before a major penalty is imposed the charged officer is given an opportunity to defend himself at several stages. Before a charge is framed, the charged officer is normally asked to explain why disciplinary proceedings should not be instituted against him for the irregularities alleged to have been committed by him. On receipt of his reply to the first show cause notice, a decision is taken by the Disciplinary Authority regarding the further course of action. If the reply given is not satisfactory and there is a *prima facie* case against the official, charges are framed and then again the official concerned is given an opportunity to either accept or deny the charges and also to file his written statement of defence. On receipt of the reply to the charge memorandum, the disciplinary authority, in case it decides to proceed with the enquiry, appoints an 'Inquiry Officer' to enquire into the charges and a 'Presenting Officer' to present the case on behalf of the Board. The charged officer is given full opportunity to defend his case, by cross examining the prosecution witnesses and also examining defence witnesses on his behalf. He may also file a defence statement before the Inquiry Officer. Further, the charged officer is given an option to take the services of an employee of the Board to assist him in his defence. If the findings of the Inquiry Officer are to the effect that the charge against the official is proved and if that decision is accepted by the disciplinary authority, a further show cause notice indicating the penalty proposed to be imposed on the charged official is issued to him. It is only on receipt of the reply to this show cause notice that a final decision is taken by the disciplinary authority for the imposition of the penalty. Provision also exists for a personal hearing by the disciplinary authority before imposing the penalty.

The Coffee Board Servants (Classification, Control and Appeal) Rules, 1967 also provides for review of his own orders by the disciplinary authority and for appellate authority over the decision of the disciplinary authority regarding the penalties imposed. In respect of penalty imposed by the Heads of Departments and other disciplinary Authorities, the Chairman is the appellate authority and in respect of penalties imposed by the Chairman, the Central Government is the appellate authority. The Schedule attached to the Coffee Board Servants (Classification, Control and Appeal) Rules, 1967 clearly indicates the penalties that could be imposed, the authority competent to impose the penalty and the appellate authority."

87. The Committee are convinced with the position explained by the Minis-

try of Commerce in regard to rule 31 (5) (i) of the Coffee Rules, 1955. The Committee have, therefore, decided not to pursue the matter further.

(E)

88. Rule 36 (3), (4) and (5) of the said Rules provided for authorisation of agent by the Board to enter into contracts.

89. It was not clear from the Rules as to how the concerned persons would know the agent. The Ministry of Commerce were, therefore, asked to state whether the names of agents were published in the Gazette for the information of general public.

90. The Ministry, in their reply, stated as under :

“Under Section 7 (3) provision is made to the effect that the Board may Authorise agents to discharge on its behalf its functions in relation to marketing, storing and curing of coffee. Under Section 48 (2) provision is made to the effect that rules may be made providing for the appointment by the Board of Agents. It is under these provisions that the Boards appoints agents for the discharge of any of its functions, eg-Pool Agents. Normally agents are appointed by the Board having regard to the needs, their standing, financial credibility etc. Considering the purposes for which these agents are appointed and also having regard to the fact that none of the functions of the Board is gazetted, in our view there is no need for publishing the names of agents in the Gazette of India.”

91. Finding the reply of the Ministry of Commerce in regard to rule 36 (3), (4) and (5) of the Coffee Rules, 1955 as satisfactory, the Committee have decided not to pursue the matter further.

(F)

92. Rule 45 (2) (ii) of the said Rules read as under :

“45 (2) (ii) The licence may be cancelled by the Board if the Board is satisfied after giving the licence that the curing establishment has committed a breach of the provisions of the Act or these Rules or of the conditions of the licence.”

93. It was felt that before cancellation of the licence, the license should be given an opportunity of being heard and the reasons for such cancellation recorded in writing.

94. On a reference made in the matter, the Ministry of Commerce, stated as under :

“It may be observed from the existing provision that the licence may be cancelled by the Board if the Board is satisfied after giving the licence that the curing establishment has committed a breach of the provisions of the Act or these Rules or of the conditions of the licence.

The suggestion of the Committee on Subordinate Legislation is acceptable and the relevant provisions of the Coffee Rules and the conditions attached to the licences for curing establishment may be amended.”

95. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Commerce have agreed to amend rule 45 (2) (ii) of the Coffee Rules, 1955 to provide for an opportunity to the licensee of being heard before cancellation of his licence and for recording the reasons therefor in writing. The Committee, however, desire the Ministry to amend the rules expeditiously.

XIII

IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARAGRAPH 19 OF THE THIRTEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) RE : THE DEPARTMENT OF ELECTRONICS (ASSISTANTS' GRADE OPEN COMPETITIVE EXAMINATION) REGULATIONS, 1982 (G. S. R. 199 OF 1982)

96. Sub-regulation (iii) of Regulation 4 of the Department of Electronics (Assistant Grade Open Competitive Examination) Regulations, 1982 reads as under :

“(iii) *Educational Qualifications*—A Candidate must possess a Degree of a recognised University :

Provided that merely satisfying the essential qualifications shall not entitle a candidate for admission to the examination, and the Department of Electronics, depending upon the response, shall have the discretion to fix a minimum percentage of marks obtained in the Degree examination as criterion for admission to the examination. This condition of minimum percentage of marks secured in the Degree examination shall be relaxable in respect of the Scheduled Castes and Scheduled Tribes candidates; and may be relaxed in the case of persons already working in the Department of Electronics/Electronics Commission and units under it.”

97. Not satisfied with the reply of the Department of Electronics which were asked to state whether they had any objection to specify in the Regulations the percentage of marks for being eligible to appear in the examination for the information of all concerned and to avoid any scope of discrimination,

the Committee in paragraph 19 of their Thirteenth Report (Seventh Lok Sabha), presented to the House on 22 October, 1980, recommended as under :

“The Committee are not convinced with the reply of the Department of Electronics. They are of the opinion that frequent changes in the minimum standard of eligibility can hardly lead to any healthy practice of recruitment policy. The Committee feel that with the experience gained in the past, the Department of Electronics could lay down a certain percentage of marks as a criterion for admission to the Assistants' Examination in the proviso to Sub-regulation (iii) of Regulation 4 of the Department of Electronics (Assistants' Grade Open Competitive Examination) Regulations, 1982. If on experience it is found that the marks prescribed for eligibility of a candidate are too severe or too lenient, the Regulations could be amended. But the advantage of prescribing the percentage of marks will be that prospective candidates will know them beforehand. Alternatively all those candidates, who satisfy the essential qualifications of graduation, should be made eligible to appear at such examination.”

98. In their Action Taken Note dated 1 December, 1982, the Department of Electronics have stated as under :

“.....in pursuance of the recommendation contained in paragraph 19 of the Thirteenth Report of Committee on Subordinate Legislation (Seventh Lok Sabha), the proviso to sub-Regulation (iii) of Regulation 4 of the Department of Electronics (Assistants' Grade Open Competitive Examination) Regulations, 1982 is being deleted thereby making all those candidates, who satisfy the essential qualification of graduation, eligible to appear at the examination. A notification in this regard is being issued separately for publication in the Part II, Section 3 Sub-section (i) of Gazette of India.”

99. The Committee note that, on being pointed out, the Department of Electronics have proposed to delete the proviso to sub-regulation (iii) of Regulation 4 of the Department of Electronics (Assistants' Grade Open Competitive Examination) Regulations, 1982, thereby making all those candidates, who satisfy the essential qualification of graduation, eligible to appear at the examination. The Committee would like the Department to notify the necessary amendment in this regard at an early date.

XIV

REFERRED CASES WHERE MINISTRIES HAVE EITHER AGREED TO THE SUGGESTIONS MADE TO THEM FOR THE AMENDMENT OF RULES OR WHERE MINISTRIES' REPLIES HAVE BEEN FOUND SATISFACTORY.

100. After the Rules/Regulations/Bye-laws are laid on the Table of the House or published in the Gazette, they are critically examined in the Secretariat of the Committee. The infirmities are pointed out to the Ministries concerned and their comments invited.

101. In the following cases, referred to Ministries for their comments, the Ministries have either agreed to the suggestions made by the Lok Sabha Secretariat for the amendment of Rules etc. or the replies furnished by them have been found to be satisfactory :

- (i) *The Directorate General of Supplies and Disposals Senior Analyst (Work Study) and Junior Analyst (Work Study) Recruitment Rules, 1980 (G. S. R. 1119 of 1980)*

102. The Directorate General of Supplies and Disposals Senior Analyst (Work Study) and Junior Analyst (Work Study) Recruitment Rules, 1980 published under G. S. R. 1119 in the Gazette of India dated 25 October, 1980 did not contain the usual 'Saving' clause regarding reservations, relaxation of age limit and other concessions required to be provided for persons belonging to the Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in that regard.

103. The Ministry of Supply and Rehabilitation (Department of Supply), on a reference made to them, have intimated, *vide* their reply dated 4 August, 1983, that the necessary amendment to the Recruitment Rules has already been issued *vide* Notification No. A-12018/3/77—ESI dated 8 July, 1983.

104. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Supply and Rehabilitation have amended the Directorate general of Supplies and Disposals Senior Analyst (Work Study) and Junior Analyst (Work Study) Recruitment Rules, 1980 *vide* Notification No. A-12018/3/77—EST dated 8 July, 1983 incorporating therein the requisite 'Saving' clause providing for reservations, relaxation of age limit and other concessions for persons belonging to the Scheduled Castes/Scheduled Tribes and other special categories in accordance with the orders issued by the Central Government from time to time in this regard.

(ii) The Lakshadweep Administration (Social Welfare Officer) Recruitment Rules, 1980 (G. S. R. 1279 of 1980)

105. Proviso to Rule 5 of the Lakshadweep Administration (Social Welfare Officer) Recruitment Rules, 1980 (G. S. R. 1279 of 1980) empowered the Administrator, Union Territory of Lakshadweep to exempt any person from the operation of the Rule, if satisfied. Similarly, Rule 6 of the said Rules empowered the Administrator to relax any of the provisions of these rules with respect to any class or category of persons.

106. Observing that such powers were normally vested in the Central Government who framed the rules, the Ministry of Social Welfare were asked to state the reasons for departure from the normal practice and whether they had any objection to amending the rules accordingly.

106A. The Ministry, *vide* their reply dated 4 July, 1983, intimated that the aforesaid Recruitment Rules had since been amended *vide* corrigendum No. 8-5/76—SSD/VC dated 18 January, 1989.

107. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Social Welfare have issued Corrigendum No. 8-5/76—SSD/VC dated 18 January, 1982 to provide to Rule 5 and Rule 6 of the Lakshadweep Administration (Social Welfare Officer) Recruitment Rules, 1980 so as to vest the powers in the Central Government instead of empowering the Administrator to exempt any persons from the operation of Rule 5 or relax any of the provisions of these Rules with respect to any class or category of persons.

(iii) The Central Industrial Security Force (Third Amendment) Rules, 1978 (G. S. R. 848 of 1978)

108. Rules 7A of the Central Industrial Security Force Rules, 1969, as inserted by the Third Amendment Rules of 1978, read as under :

"7 A. Duties of Deputy Commandant (Deputy Chief Security Officer)—

The Deputy Commandant (Deputy Chief Security Officer) shall assist the Commandant (Chief Security Officer) in the discharge of his duties and perform such functions as may be assigned to him, from time to time, by the Commandant as the head of the unit, and where he is placed as head of the unit, he shall discharge all the duties of a Commandant (Chief Security Officer) and shall exercise only those financial powers that are delegated to him under the relevant rules."

109. It was felt that the duties and functions of the Deputy Commandant should be specified in the rules rather than leaving those to be governed by the

Departmental instructions. The Ministry of Home Affairs, on a reference made to them, stated in their reply as under :—

“We have carefully examined the advice of the Lok Sabha Sectt..... in consultation with the Ministry of Law and it is proposed to modify Rule 7A of the CTSF Rules (GSR 848 of 1978) so as to read as follows :

7A. Duties of Dy. Comdt. (Dy. Chief Officer)

- (1) The Dy. Comdt. (Dy. Chief Security Officer) shall assist the Commandant (Chief Security Officer) in the discharge of his duties; and where he is placed as head of the unit, he shall discharge all the duties of a Commandant (Chief Security Officer) and shall exercise only those financial powers that are delegated to him under the relevant rules;
- (2) The Deputy Commandant (Deputy Chief Security Officer) shall be responsible for the efficiency, discipline and morals of the personnel under him and shall also be responsible for the security of the undertaking or its part entrusted to him.

The above provision is incidentally in line with Rule 8 (Duties of Asstt. Commandant).”

110. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Home Affairs have agreed to amend Rule 7A of the Central Industrial Security Force Rules, 1969 so as to specify the duties of the Deputy Commandant in the rule itself.

(iv) The Directorate of Enforcement (Deputy Director) Recruitment Rules, 1981 (G. S. R. 280 of 1981)

111. While scrutinizing the Directorate of Enforcement (Deputy Director) Recruitment Rules, 1981 (G. S. R. 280 of 1981), it was noticed that Column 13 of the Schedule appended to the Rules provided that consultation with the Union Public Service Commission would be necessary while making promotion. Neither Rule 5 regarding power to relax indicated that the Union Public Service Commission would be consulted while relaxing any of the provisions of the Rules nor any provision to that effect was made in Column 13 of the aforesaid Schedule.

112. The Ministry of Finance (Department of Revenue), on a reference made, stated in reply as under :—

“.....the matter has been considered in consultation with the Department

of Personnel & Administrative Reforms and Department of Legal Affairs. Government have no objection to the amendment of Rule 5 of the above Rules so as to provide for consultation with the Union Public Service Commission before granting any relaxation, as suggested by the Committee on Subordinate Legislation. With regard to the amendment of entries in column 13 of Schedule, a copy of the note dated 23.7.82 from the Department of Legal Affairs is enclosed.*

It is felt that with the amended Rule 5, a further provision providing for the consultation with the Union Public Service Commission while relaxing the provision of the Rules is not necessary. It will be covered by Rule 5. Since the Recruitment Rules have been framed in consultation with the UPSC, any amendments to these rules will automatically require the consultation of the Commission. Before further action to amend the rules on the above lines is taken, Committee on Subordinate Legislation may please see for their approval."

113. The Ministry have since amended Rule 5 of the rules *ibid.*, to the desired effect *vide* G.S.R. 94 dated 30 January, 1982.

114. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Finance (Department of Revenue) have amended Rule 5 of the Directorate of Enforcement (Deputy Director) Recruitment Rules 1981 so as to indicate therein that the Union Public Service Commission would be consulted while relaxing any provision of these rules. In view of this the Committee would not like to insist on the amendment of the entry in Column 13 of the Schedule appended thereto in this regard.

(v) *The Andaman and Nicobar Islands Administration Government College, Port Blair (Lecturer) Recruitment Rules, 1978*
(G.S.R. 752 of 1978)

115. In pursuance of the provisions made under Column 10 of the schedule appended to the Andaman and Nicobar Islands Administration Government College, Port Blair (Lecturer Recruitment Rules, 1978, the posts of Lecturers in the Government College at Port Blair were to be filled up by direct recruitment or transfer on deputation (including short-term contract), the exact method to be decided in consultation with the Union Public Service Commission on each occasion. Column 12 of the schedule to these rules laid down the composition of the Departmental Promotion Committee (Group A).

116. Since the posts of Lecturers were to be filled up by direct recruitment, the provisions in Column 12 of the scheduled for constituting a Departmental Promotion Committee appeared to be redundant. The Ministry of

* See Appendix II

Education and Culture (Department of Education), on a reference made to them, stated in their reply as under :

“.....vide this Ministry’s Notification dated 25th July 1980 a new set of recruitment rules have been notified in supersession of the Andaman & Nicobar Administration Govt. College, Port Blair (Lecturer) Recruitment Rules, 1978This Ministry is in full agreement with the views of the Committee on subordinate Legislation, Lok Sabha that there is no need for a D.P.C. Therefore, a D.P.C. is to be constituted for considering confirmation only. This has been taken care of in the recruitment rules mentioned above.....”

117. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Education and Culture (Department of Education) have agreed that there was no need for constitution of a Departmental Promotion Committee as the posts of Lecturers are to be filled by direct recruitment. The Ministry have, however, retained the provisions pertaining to the constitution of the Departmental Promotion Committee for purposes of considering confirmation in the grade. The Committee also note that the Ministry have expressly clarified the underlying intention in the new set of rules notified *vide* G.S.R. 840 dated 9 August, 1980 in supersession of the existing rules. The Committee, therefore feel it unnecessary to pursue the matter any further.

(vi) *The Export of Enamelwares (Inspection) Rules, 1978 (S.O. 2910 of 1978)*

118. Rule 6 of the Export of Enamelwares (Inspection) Rules, 1978 (S. O. 2910 of 1978) read as under :

“6. *Place of Inspection*— Inspection of Enamelwares for the purpose of these rules shall be carried out, either—

(a) at the premises of the manufacturer ; or

(b) at the premises at which the goods are offered by the exporter provided *adequate facilities* for the purpose exist therein.”

119. It was felt that the words ‘adequate facilities’ referred to in sub-rule (b) of rule 6 *ibid.*, tended to import an element of vagueness inasmuch as these could be interpreted differently by different persons.

120. The matter was taken up with the Ministry of Commerce to ascertain if they had any objection to define precisely the facilities needed for the purpose and to amend the rules to the desired effect. In their reply dated 8 February, 1980, the Ministry stated as under :—

“.....this Ministry has no objection to the suggestion made.....necessary action to amend the notification is being taken shortly.”

121. In their subsequent communication dated 24th September, 1980, the Ministry intimated that rule 6 had accordingly been amended by the Export of Enamelwares (Inspection) Amendment Rules, 1980 (S.O. 1786 of 1980) so as to read as under :

“Place of Inspection—Inspection of Enamelwares for the purpose of these rules shall be carried out, either

(a) at the premises of the manufacturer ; or

(b) the premises at which the goods are received by the exporter :

Provided facilities for the purpose of testing of enamelwares with a view to seeing that the same conform to the specifications given in the schedule of these rules are available at these premises.”

122. The Committee note that, on being pointed out by them, the Ministry of Commerce have amended Rule 6 of the Export of Enamelwares (Inspection) Rules, 1978 *vide* S.O. 1786 of 1980. The Committee feel, however, that the Ministry should also elaborate the nature of facilities considered necessary for the purpose of testing of enamelwares. The Committee, therefore, desire that the Ministry should amend the rules further accordingly.

(vii) *The Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 (G.S.R. 682 of 1978)*

A

123. Sub-regulation (1) of regulation 8 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 (G.S.R. 682 of 1978) read as under :

“8. Payment of interest.—(1) Interest on a Port Trust Security in the form of a bond shall be paid by the Registrar of issue specified in the Port Trust security prospectus subject to compliance by the holder of the said security with such formalities as the Registrar may require and on presentation of the Port Trust security.”

124. It was felt that with a view to obviate any scope for discrimination the formalities that were required to be complied with before payment of interest on Port Trust Security, should be spelt out in the regulations instead of leaving it to the Registrar.

125. The Ministry of Shipping and Transport (Ports Wing), on a reference made to them, have proposed to substitute the said sub-regulation as follows :—

“(1) Interest on a Port Trust Security in the form of a Bond shall be paid

by the Registrar of issue specified in the Port Trust Security Prospectus subject to satisfying the following conditions :

- (i) The interest is payable on the presentation of the Bond to the State Bank of India, Madras Main Branch, Madras-1.
- (ii) The claim for payment of interest has to be adduced by :
 - (a) the holder in person or
 - (b) the duly authorised agent, or attorney of the holder or
 - (c) the natural or certified guardian or manager of the holder (if the holder is a minor or lunatic) having unrestricted powers or
 - (d) the persons entitled to the bond as succession certificate holder or as executor or administrator to the estate of the deceased holder of the bond.
- (iii) All the endorsements should be legible and distinct without any erasure or unauthenticated deletion.
- (iv) The bond should not bear any blank or cross endorsement.
- (v) There should be one endorsement cage left unfilled and the renewal cage has to be left blank.
- (vi) The interest cages on the reverse of the bond should not be completely filled and the bond should bear printed interest cages corresponding to the half years for which interest has accrued on the date of presentation.
- (vii) Interest should not have been left undrawn for ten years or more.
- (viii) The bond should not have been soiled, torn, mutilated or otherwise defective for circulation (Division into an upper and lower half is not reckoned as mutilation if the two halves are firmly rejoined).
- (ix) No notice of stoppage stands recorded in the register against the note.
- (x) The fact of payment is marked in the interest cages provided on the reverse of the Bond.
- (xi) The interest payable by the registrar is liable for deduction of Income Tax at source at the appropriate rate prescribed from time to time in the Finance Act passed each year."

126. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport (Ports Wing) have agreed to amend sub-regulation (1) of regulation 8 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to specify the formalities on

to be complied with before payment of interest on the port Trust Securities. The Committee concur in the amendment as proposed by the Ministry in this regard.

B

127. Regulation 10 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 read as under:-

"10. *Notification of the loss, etc. of Port Trust securities in the Gazette.*—

(1) The loss, theft, destruction, mutilation or defacement of a Port Trust security or portion of a port Trust security in the form of a bond shall forth with be notified by the applicant in three successive issues of the Gazette of India and of the local official Gazette, if any, of the place where the loss, theft, destructions, mutilation or defacement occurred.

(2) The notification referred to in sub-regulation (1) shall be in the following form or as nearly in such form as circumstances permit,

'Lost', 'Stolen', 'destroyed', 'mutilated' or 'defaced' as the case may be.

Loss of Port Trust security

The port Trust Securities Nos.....for Rs.....(Rupees.....) of..... per cent Madras Port Trust security standing in the name of..... having been lost, notice is hereby given that an application has been made to the State Bank of India Main Branch, Madras, the Registrar of the securities for issue of duplicate securities. The public are cautioned against purchasing or otherwise dealing with the above mentioned Port Trust securities.

Place :

Signature :

Date :

Address :"

128. It was felt that besides notifying in the Gazette, the loss of port Trust securities should also be brought to the notice of the general public through the newspapers, to caution the general public against their illegal sale and purchase.

129. The Ministry of Shipping and Transport, on a reference made to them, have agreed to add a new sub-regulation to regulation 10 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978:-

"(3). In addition to notifying by the applicant the loss, theft, destruction, mutilation or defacement of a port Trust Security or portion of a

Port Trust Security or Port Trust Security in the form of a bond in three successive issues of the gazette, of India and in the local official gazette, the same shall also forthwith be notified by the applicant in any two newspapers in English and vernacular having vast circulation at the place at which the Port Trust Security was lost, stolen etc. cautioning the public against the illegal sale or purchase of the Port Trust Security in the form prescribed under Sub-Regulation (2) above."

130. As a corollary to the aforesaid amendment to regulation 10, the Ministry of Shipping and Transport have further proposed to add the following two clauses to sub-regulation (1) of regulation 9 of these regulations:—

"(g) Whether the loss, theft etc. was notified in three successive issues of the gazette of India, and of the local official gazette, if any, of the place whether the loss, theft etc. occurred.

(h) Whether the loss, theft, etc. was notified in the local newspapers in English and vernacular."

131. A new clause (e) was proposed to be added to sub-regulation (2) of regulation 9 as under:—

"(e) a copy each of the gazette notification and the paper cuttings regarding the notifications in the newspapers."

132. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport have agreed to amend regulation 10 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to provide for notification of the facts regarding loss etc. of the Port Trust Securities in the newspapers to caution the general public against their illegal sale and purchase. The Committee concur in the amendment in respect of Regulation 9 and the consequential amendment in Regulation 10, as proposed by the Ministry in this regard.

C

133. Sub-regulation 1 (a) of regulation 11 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 read as under:—

"11. *Issue of duplicate bond or stock certificate and taking of indemnity.*—(I) After the publication of the last notification specified in regulation 10, the prescribed officer shall, if he is satisfied of the loss, theft, destruction, mutilation or defacement of the Port Trust security and of the justice of the claim of the applicant cause the particulars of the Port Trust security to be included in a list published under regulation 13 and shall order the officer of issue:—

- (a) if only a portion of the Port Trust security has been lost, stolen, destroyed, mutilated or defaced and if a portion thereof sufficient for its identification has been produced to pay interest and to issue to the applicant, on execution of an indemnity such as in herein after mentioned, a duplicate Port Trust security in place of that of which a portion has been so lost, stolen, destroyed, mutilated or defaced either immediately after the publication of the list under regulation 13 or the expiry of such period as the prescribed officer may consider necessary from the date of publication of the said list or on such conditions as may be considered necessary in the circumstances by the prescribed officer."

134. It was felt that the expressions 'on the expiry of such period as the prescribed officer may consider necessary' and 'on such conditions as may be considered necessary, occurring in clause (a) of regulation 11(1) rendered it vague. Instead of leaving these to the discretion of the prescribed officer, the period and the conditions should have been specifically provided in the regulation itself.

135. In their reply, the Ministry of Shipping and Transport stated as under:-

"It is proposed to substitute the words 'such period as the prescribed officer may consider necessary' occurring in the Regulation by the words 'Six months from the date of publication of the said list'. It is also proposed to delete the words 'or on such conditions as may be considered in the circumstances by the prescribed officer' occurring in the Regulation. The amendments will make the regulation precise and curtail the discretionary powers of the 'prescribed officer,'"

136. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport have agreed to substitute the words 'such period as the prescribed officer may consider' by the words 'six months from the date of publication of the said list' and to delete the words 'or on such conditions as may be considered in the circumstances by the prescribed officer' occurring in Clause (a) of Regulation 11(1) of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to remove the element of uncertainty and to restrict the discretionary use of powers in this regard.

D

137. Sub-regulations (1) and (2) of regulation 16 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1971 read as under:-

“16. Person Whose title to a Port Trust security of a deceased sole holder may be recognised.—(1) The executors or administrators of a deceased sole holder of a Port Trust security (whether a Hindu, Mohammadan, Parsi or otherwise) or the holder of a succession certificate issued under Part X of the Indian Succession Act, 1925 (39 of 1925) in respect of the Port Trust security shall be the only persons who may be recognised by the office of issue (subject to any general or special instruction of the prescribed officer) as having any title to the security.

(2) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) in the case of a Port Trust security is sued, sold or held payable to two or more holders, servitors or survivor and on the death of the last survivor, his executors, administrators, or any person who is the holder of a succession certificate in respect of such security shall be the only person who may be recognised by the office of issue (subject to any general or special instructions of prescribed officer) as having any title to the security.”

138. The power to issue any general or special instructions' vested in the prescribed officer too wide a discretion liable to be abused. It was felt that details in this respect should be embodied in the regulation itself.

139. When the attention of the Ministry of Shipping and Transport was drawn to the said provisions' the Ministry replied as follows:—

“It if proposed to delete the words

(‘Subject to any general or special instructions of the prescribed officer), in sub-regulations 1 and 2 of the Regulation.”

140. The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport have agreed to delete the words (‘subject to any general or special instructions of the prescribed officer’) from sub-regulations 1 and 2 of regulation 16 of of the Madras Port Trust (Issue and Management of Port Trust securities) Regulations, 1978 as a safeguard against arbitrary use of the powers.

(E)

141. Regulation 17 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations 1978 read as under :—

“17. *Receipt of renewal etc.* — (1) Subject to any general or special instructions of the prescribed officer, the office of issue may, by its order, on the application on the holder —

(a) on his delivering the Port Trust security or securities in the form

of bond or bonds and on his satisfying the office of issue regarding the justice of his claim, renew, sub-divide or consolidate the bond or bonds, provided the bond or bonds has or have been received in Form III, Form IV or Form V, as the case may be; or

- (b) convert the bond or bonds into a stock certificate or stock certificates provided the bond or bonds has or have been endorsed as follows :

‘Pay to the Trustees of the Port of Madras’, or

- (c) renew, subdivide or consolidate a stock certificate or stock certificates, provided the stock certificate or stock certificates has or have been received in Form VI, Form VII or Form VIII as the case may be; or
- (d) convert the stock certificate or stock certificates into bond or bonds, provided the stock certificates or stock certificates has or have been received in Form IX; or
- (e) convert the securities of one series into those of another, provided —
- (i) inter series conversion is permissible; and
 - (ii) the conditions governing such conversion are complied with.
- (2) The office of issue may under the orders of the prescribed officer require the applicant for renewal, sub-division or consolidation of a Port Trust security under sub-regulation (1) to execute an indemnity in Form X with one or more securities approved by him.”

142. It was felt that the ‘general or special instructions’ which were to form the basis of action under regulation 17 should be notified in the official Gazette.

143. The Ministry of Shipping and Transport, on a reference made to them, stated in reply as under : —

“It is proposed to delete the words ‘subject to any general or special instructions of the prescribed officer) appearing in sub-regulation (1) of the Regulation.”

144. The Committee note that the Ministry of Shipping and Transport have preferred to delete the expression 'subject to any general or special instructions of the prescribed officer, appearing in sub-regulation (1) of regulation 17 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations of 1978, instead of notifying the 'general or special instructions' in the official Gazette. The Committee accept the amendment as proposed by the Ministry in this regard as it meets the object in view and desire them to notify the same at an early date.

(viii) *The Indian Forest Service (Appointment By Promotion) Amendment Regulations, 1977 (G.S.R. 584 of 1978)*

145. The Indian Forest Service (Appointment by Promotion) Amendment Regulations, 1977 (G.S.R. 584 of 1978) were published in the Gazette of India, Part II, Section 3 (i), dated 6 May, 1978 but were deemed to have come into force on 1 July, 1966 retrospectively. The Explanatory Memorandum appended to the Amendment Regulations clarified the position as under: -

"According to Rule 4 of the Indian Forest Service (Recruitment) Rules, 1966 the field of selection to the Service both for initial recruitment and subsequent reeruitment by promotion is the State Forest Service as defined in Rule 2(g) of the said rules. The original proviso (ii) to sub-regulation (2) of Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulations, 1966 restricted the field of promotion to the Service further than was envisaged in Rule 4 of the Recruitment Rules, by stating that such service has to be 'in a post of Assistant Conservator of Forests of or any other post declared equivalent thereto by the State Government with prior concurrence of the Central Government.' The above restriction was removed consequent upon the Judgement of Calcutta High Court. in Civil Rule No. 3103 (W) of 1971 *vide* this Department Notification No. 16019/1/75—AIS (IV) dated the 6th July, 1976 published in the Gazette of India Part II, Section 3, sub-section (i) dated the 24th July, 1976 as G.S.R. 1064, by substituting the following words for the old restrictive clause referred to above namely: —

'In posts (s) included in the State Forest Service' the restrictive part being *ab initio* void the said Regulations were amended from the date of their promulgation namely the 1st July, 1966. Immediately after the issue of the amendment the Government of Tamil Nadu sought clarification whether a substantive member of the State Forest Service with eight years of service would be eligible for consideration for promotion to the Indian Forest Service even though a part of the service might have been rendered in Tamil Nadu Forest Corporation Similar problems may arise where State Forest Service officers rendered a part of their Service in *ex-cadre* posts whether under the State Government

or other bodies. As it was not the intention of the Central Government to debar such officers from being considered for inclusion of their names in the Select List of State Forest Service officers for promotion to the Indian Forest Service' it has been decided by the Central Government to clarify the intention by adding an 'Explanation' under sub-regulation (2) of Regulation 5 of the Indian Forest Service (Appointment by promotion) Regulations, 1966. As the earlier amendment was given retrospective effect, this amendment which is an extension of earlier amendment shall also be given retrospective effect.

146. The aforesaid Explanatory Memorandum did not categorically state that no body would be adversely affected due to the retrospective operation of the Amendment Regulations. In this connection, attention of the concerned Department of Personnel and Administrative Reforms was invited to the observations of the Committee on Subordinate Legislation made in paragraph 10 of their Second Report (Fourth Lok Sabha), and reiterated from time to time, that all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. If, in any particular case the rules had to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a footnote to the relevant rules to the effect that *no one would be adversely affected as a result of retrospective effect being given to such rules.*

147. The Department of Personnel and Administrative Reforms, on a reference made to them, stated in their reply as under :—

“.....the IFS (Appointment by Promotion) Regulations were amended further to remove certain misgivings regarding the exact scope and implication of the phrase 'Posts included in the SFS', inserted by an amendment to the Indian Forest Service (Appointment by Promotion) Regulations, 1966 *vide* Notification No. 16019/1/ 75—AIS(IV) dated 6th July, 1976.....
Prior to amendment of 1976, only such State Forest Service officers who were holding posts of Assistant Conservator of Forests or other post declared equivalent thereto by the State Government with the prior concurrence of the Central Govt, were eligible for appointment by promotion to the Indian Forest Service. The validity of this provision was challenged by Extra Assistant Conservator of Forests of the West Bengal Junior Service in the Calcutta High Court. The High Court upheld their contention, with the said amendment of the Regulations, the extra Assistant Conservator of the Forests, of the Junior State Forest Service holding posts in a scale lower than that of the Assistant Conservator of Forest, became eligible for consideration for appointment by promotion to the Indian Forest

Service alongwith the members of the Senior Forest service. Thus, 1976 Amendment made in pursuance of the decision of the Calcutta High court is not likely to adversely affect the interests of the members of the Indian Forest Service.

As stated earlier, the Govt. of Tamil Nadu expressed some doubts regarding scope and implications of the 1976 Amendment. In this connection it may be mentioned that it is not unusual that the State Govt. allow the members of the State Forest Service to go on deputation to ex-cadre posts connected with Forestry even in a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Govt. the municipal or a local body and international organisation, an autonomous body not controlled by Govt. or a private body. During their temporary absence from the State Forest Service such officers hold liens on posts and continue to be members of the State Forest Service. In the circumstances, they are entitled to count service in ex-cadre post towards completing the minimum service prescribed for eligibility for consideration of the members of the State Forest Service for appointment by promotion to the Indian Forest Service. It is to make this position more explicit and to ensure that various State Governments adopt a uniform approach in the matter that an explanation has been added below Regulation 5 of the IFS (Appointment by promotion) Regulations 1966 in April, 1978. As the amendment of 1976, consequent to which a 'Explanation' has been added in 1978, was given retrospective effect, there was no alternative but to give the latter amendment also the retrospective effect and the question of this amendment adversely affecting the interests of any member of the Indian Forest Service does not arise.

In view of the position explained above, the Explanatory Memorandum cannot be amended by adding in the foot note that no member of the Service will be adversely affected by this amendment being given retrospective effect."

148. The Committee note that the Department of Personnel and Administrative Reforms have detailed the circumstances in justification of the retrospective effect given to the Indian Forest Service (Appointment by Promotion) Amendment Regulations, 1977 w.e.f. 1 July, 1966 viz. the date of promulgation of the Indian Forest Service (Appointment by Promotion 'Regulations, 1966) stating that the Amendment Regulations, 1977 are nothing but a mere clarification added to certain amendments necessitated due to the decision of the Calcutta High Court in the matter.

149. The Committee agree with the contention of the Department that the question of the amendment Regulations adversely affecting the interests of any

member of the Indian Forest Service does not arise as the amendment is intended to include a clarification to an earlier amendment made consequent to the Court decision, The Committee, therefore, do not like to pursue the matter any further.

(ix) *The Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules' 1978 (G.S.R. 1346 of 1978)*

A

150. Rule 7 of the Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules, 1978 (G.S.R. 1346 of 1978) read as under :—

“7. *Special provision relating to certain persons.*—Notwithstanding anything contained in the foregoing rules, every person who, immediately before the commencement of these rules, holds a post under the Shipping Development Fund Committee shall, on and from such commencement, hold a corresponding post specified in column 2 of the said Schedule and shall be deemed to have been appointed to such corresponding post according to the provisions of these rules.”

151. The aforesaid provisions appeared to be unusual. The Ministry of Shipping and Transport (Transport Wing), on being asked to state the genesis of these provisions, stated in their reply as under :—

“Shipping Development Fund Committee was set up by the Central Government under the Merchant Shipping Act, 1958 (44 of 1958) on 17th March, 1959. Various posts have been created and filled in from time to time.

It was with the object of safeguarding interests of officers and employees who were appointed prior to notification of Recruitment Rules in the official Gazette that it was stipulated in Rule 7 that ‘Notwithstanding anything contained in the foregoing rules, every person who immediately before the commencement of these rules, holds a post under the Shipping Development Fund Committee shall on and from such commencement, hold a corresponding post specified in column 2 of the said schedule and shall be deemed to have been appointed to such corresponding post according to the provision of these Rules.’”

152. The Committee consider the reply of the Ministry of Shipping and Transport as satisfactory and as such they have decided not to pursue the matter further.

B

153. Entry in Column 12 of the Schedule appended to the Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules, 1978 under the head. "In case of Recruitment by promotion deputation/transfer grades from which promotion/transfer to be made", did not specify the exact period of deputation.

154. It was felt that the period of deputation should be precisely indicated in the Recruitment Rules in order to make them self-contained and for the information of all concerned.

155. The Ministry of Shipping and Transport (Transport Wing), on a reference made to them, have amended Column 12 of the Schedule to the Rules *ibid.*, vide G.S.R. 585 of 1981, specifying the period of deputation as not to exceed three years.

156. The Committee note with satisfaction that, on being pointed out by them the Ministry of Shipping and Transport (Transport Wing) have since amended the entry under Column 12 of the Schedule to the Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules, 1978 to the desired effect.

(x) *The Companies (Secretary's Qualifications) Amendment Rules, 1980*
(G.S.R. 5-E of 1980)

157. Second Proviso to Clause (a) of Rule 2 of the Companies (Secretary's Qualifications) Rules, 1975 provided as follows :—

"Provided further that for a period of three years from the commencement of the Companies (Secretary's Qualifications) Amendment Rules, 1979, an employee of such a company having experience of performing secretarial duties or discharging secretarial functions for a period of not less than ten years in a company shall also be eligible to be appointed as secretary of that company ;"

158. The said second Proviso was amended by the Companies (Secretary's Qualifications) Amendment Rules, 1980 to read as under :—

"(i) for the words 'three years', the words 'one year' shall be substituted ;
and

(ii) for the words 'not less than ten years in a company' the words 'not less than ten years in the company of which he is an employee' shall be substituted."

159. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) were asked to state the genesis of the aforesaid amendments for the information of the Committee on Subordinate Legislation.

160. In their communication dated 27 September, 1980 received with their D.O. reply dated 30 July, 1983, the Ministry explained as under :—

“.....Section 383A of the Companies Act, 1956 requires a company having a paid up share capital of Rs. 25 lakhs and above to appoint a whole time Company Secretary. The qualifications which should be possessed by a Secretary of such a company have been prescribed under Rule 2(a) of the Companies (Secretary's Qualifications) Rules, 1975 framed by the Central Government pursuant to Section 2(45) of the Companies Act, 1956. These Rules were notified and brought into force on 7th March, 1975 *vide* notification No. GSR 144(E) dated the 7th March, 1975.

Rule 2(a) of the Companies (Secretary's Qualifications) Rules, 1975 was amended on 31st October, 1979 by the Central Government *vide* notification No. GSR. 605(E) dated the 31st October, 1979 inserting a proviso under the said Rule thereby enabling employees of companies having experience in performing Secretarial duties or discharging secretarial functions for not less than 10 years to be appointed as secretaries of companies having paid up share capital of Rs. 25 lakhs or more. The intention of the Central Government in making this amendment to the Rules has to enable companies to tide over the temporary difficulty of not being able to obtain the services of qualified company secretaries and to appoint employees having certain experience as Company Secretary.

It may be stated that certain representations were received by the Govt. immediately after the amendment of Rule 2(a) of the said Rules stating that undue advantage not intended by the Government was likely to be taken by the employees working in various companies under cover of the said Notification inserting a proviso to Rule 2(a) of the said Rules. It was also represented that the period of three years during which such appointments could be made was too long a period. Taking into account these representations, the Govt. decided to amend the said proviso to Rule 2(a) slightly so as to make the intention more clear. Accordingly a Notification was issued on 5th Jan., 1980-GSR. 5(E) dated the 8.1.1980.

As per the Rule 2(a) so amended eligibility for appointment under the Proviso to Rule 2(a) is given only to an employee who has experience of performing secretarial duties or discharging secretarial functions for a period of not less than 10 years in the company in which he is employed and not to persons having experience in other companies. It has also been made it clear by the said amendment that such appointments can be made only during the period of one year commencing from 31st October, 1979.....”

161. The Committee are satisfied with the position explained by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) in regard to the genesis of the amendments made in second proviso to clause (a) of rule 2 of the Companies (Secretary's Qualifications) Rules, 1975 under the Companies (Secretary's Qualifications) Amendment Rules, 1980. The Committee have, therefore, decided not to pursue the matter further.

NEW DELHI ;

December 8, 1983
Agrahayana 17, 1905 (Saka)

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	The Committee note that the draft Recruitment Rules for Group 'C' employees of the Central Civil Accounts Service transferred to the departmentalised accounts offices were prepared in July, 1976 and sent to the Department of Personnel and Administrative Reforms and the Ministry of Law for their clearance. The Department of Personnel and Administrative Reforms cleared the Rules in March 1978. The Committee observe that it took the Department of Personnel and Administrative Reforms about 20 months in sorting out details with the Indian Audit and Accounts Department, the Legislative Department and the Comptroller and Auditor General of India, before the Rules could be cleared. The Committee consider it to be a long period. The Committee, therefore, restress the need for framing the rules as early as possible in order to minimise the chances of giving retrospective operation to such rules in future.
2 (i)	11	The Committee are not satisfied with the explanation given by the Ministry of Finance (Department of Expenditure) for not incorporating the details of terms and conditions for transfer in rule 3 (1) (c) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978. The Committee do not, however,

1	2	3
		insist on incorporating these details in the said rule as in their opinion no useful purpose is likely to be served at this late stage.
2 (ii)	12	The Committee, however, emphasise that executive instructions are no substitute to statutory rules and that Government should not resort to these methods. The Committee, therefore, caution the Ministry to be careful in taking recourse to executive instructions in lieu of framing the statutory rules in future. The Committee observe that in case the Ministry still persists in resorting to the said method, the representatives of the Ministry will have to appear before them in advance to explain the position in regard to each case.
3	15	While agreeing with the reply of the Ministry, the Committee hope that whenever personnel from one Department are transferred to another Department/Ministry due to amalgamation, bifurcation etc., care will be taken to see that the seniority and other terms and conditions of their service will not vary to their disadvantage.
4	18	The Committee do not agree with the contention of the Ministry of Finance (Department of Expenditure) that incorporation of the details of terms and conditions pertaining to the Departmental Confirmatory Examination for the Junior Accountants will burden the Recruitment in question. The Committee desire that the Ministry should incorporate the same in the Recruitment Rules for Group C employees of the Central Civil Accounts Service to make them self-contained. However, in case the Ministry feel that the Rules will become bulky, the Committee would like the details to be appended as annexure to the Rules.
5	21	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Finance (Department of Expenditure) have agreed to amend rule 5 (4) (a) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978 so as to specify therein the name of the examination namely 'Junior Accounts Officer (Civil) Examina-

1

2

3

सुभाष च
भावे

tion' which a person is required to pass before his promotion to the post of the Junior Accounts officer.

6

24

सुभाष च
भावे
सुभाष च
भावे
सुभाष च
भावे
सुभाष च
भावे

The Committee do not agree with the views of the Ministry of Finance (Department of Expenditure) that since the instructions regarding extension or curtailment of the period of probation which are of general application in the Government of India including the departmentalised Accounts Offices are contained in para 4 of Chapter III (Section IV Probation) of the Handlook of Personnel Officers it is not necessary to have a specific provision in the Central Civil Account Service (Group C) Recruitment Rules in this regard. The Committee desire that the Ministry should amend Rule 7 (3) of the Recruitment Rules *ibid* so as to provide therein recording of reasons in writing by the concerned authority before granting an extension or curtailing the period of probation or trial, as the case may be.

7

27

सुभाष च
भावे
सुभाष च
भावे
सुभाष च
भावे

The Committee note that the Ministry of Shipping and Transport (Shipping Wing) are of the view that since the use of expression like 'ordinary risk', 'reasonably possible' 'reasonable diligence' and 'precaution proper in the circumstances' is quite common in marine parlance, these expressions do not require any further elaboration. The Committee, however, do not agree with the views of the Ministry and they desire that the Ministry should review all such expressions to make them precise and free from ambiguity. The Committee further desire the Ministry to issue necessary clarifications and lay down guidelines whenever necessary to obviate any scope for discrimination.

8

30

सुभाष च
भावे
सुभाष च
भावे
सुभाष च
भावे

The Committee are inclined to agree with the views of the Ministry of Shipping and Transport (Transport Wing) in this regard and they do not, therefore, desire to pursue the matter any further.

9

33

सुभाष च
भावे
सुभाष च
भावे
सुभाष च
भावे

The Committee accept the the position stated by the Ministry of Shipping and Transport (Transport Wing) in this regard and do not desire to pursue the matter further.

1	2	3
10 (i)	36	The Committee do not agree with the contention of the Ministry of Shipping and Transport (Transport Wing) that there appears to be no necessity to amend the rules as suggested.
10 (ii)	37	In this connection, the Committee while drawing attention of the Ministry to their earlier recommendation on the subject, made in paragraph 12 of their Sixteenth Report (Seventh Lok Sabha) presented to the House on 3 March, 1983, desire them to omit the words 'or posts' occurring in Rule 6 of the Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts) Recruitment Rules, 1978 in compliance with the said recommendation.
11	40	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport (Transport Wing) have since amended the Entry under Column 12 of the Schedule to the Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts Recruitment) Rules, 1978 to the desired effect.
12	43	The Committee do not agree with the views expressed by the Ministry of Shipping and Transport (Shipping Wing). The Committee note that section 457 of the Merchant Shipping Act, 1958 does not expressly authorise the Government to levy any fee for the issue of a duplicate copy of the Continuous Discharge Certificate. The Committee, therefore, desire the Ministry either omit rule 12 (2) of the Merchant Shipping (Continuous Discharge Certificate) Rules, 1960 which seeks to levy fee, or alternatively, they should approach Parliament for the amendment of the Parent Act so as to empower them to levy such fee for issuing a duplicate copy of the Continuous Discharge Certificate.
13	48	The Committee note from the reply of the Ministry of Agriculture (Department of Agriculture and Cooperation) that the recruitment rules of 1966 were originally valid upto 19 October, 1971 and their validity was extended from time to time in consultation with the Union Public Service Commission till the revised recruitment rules were published <i>vide</i> G. S. R. 1267 dated 13 October, 1979. The

1

2

3

Committee further note that although action to review the original rules was initiated on 26 May, 1971 and decision to revise them was taken in December, 1971, the revised rules have been notified only in October, 1979, i.e. after the expiry of a period of about 8 years. The Committee cannot help deprecating strongly the inordinate delay on the part of the Ministry in the publication of the revised rules. The Committee desire that responsibility should be fixed for such procrastination.

- 14 (i) 53 The Committee are not convinced with the reply of the president's Secretariat that the Amendent Rules, namely the President's Secretariat (Recruitment and conditions of Services) (First Amendment) Rules, 1979 do not introduce any new rules but they merely add another post to the existing Schedule within the framework of the existing rules and as such the recommendation of the Committee on Subordinate Legislation is not attracted in this case. The Committee feel that whenever retrospective effect is given to any rule in view of any unavoidable circumstances a clarification in the rules has to be given that no one will be adversely affected as a result thereof in compliance with the recommendation contained in paragraph 10 of their Second Report (Fourth Lok Sabha). The Committee therefore, direct the President's Secretariat to amend the aforesaid rules by appending an Explanatory Memorandum indicating therein that interests of no one would be adversely effected by the retrospective effect given to the amendment rules of 1979.
- 14 (ii) 54 The Committee further desire the President's Secretariat to amend rule 16 of the President's Secretariat (Recruitment and Conditions of service) Rules, 1976 relating to 'power to relax' so as to omit the words 'or to any of the posts specified in the Schedule' in accordance with the recommendation made in paragraph 12 of their Sixteenth Report (Seventh Lok Sabha).
- 15 58 The Committee do not agree with the views of the Ministry of Finance (Department of Revenue) that in case action taken under the provisions of rule 7 and rules 11 and 12
-

1

2

3

of the Foreign Travel Tax Rules, 1979 proved ineffective then only the certificate action as contemplated under rule 16 of the said rules is to be taken as a last resort for recovery of tax. The Committee are of the view that since recovery of sums due to Government as an arrear of land revenue is a major provision, the authority therefor should flow from the parent Act and not from the rules.

16

62

Though technically the words 'any other officer' occurring in Clause 5 of the sugar (Retention and sale by Recognised Dealers) Order, 1979 will take care of the meaning referred to it in the first line of the Clause *ibid* of the said order on the basis of *ejusdem generis* principle yet, in order to make the position unambiguous, the Committee desire the Ministry of Food and Civil Supplies (Department of Food) to amend the order so as to specify therein the minimum rank of the officer authorised to conduct search and seizure.

17

67

The Committee note that no guidelines as such have been laid down specifying the exceptional circumstances in which the age limit for candidates other than belonging to the Scheduled Castes, Scheduled Tribes and other special categories can be relaxed upto 3 years. The Committee further note that on the advice of the U.P.S.C., the Department of Science and Technology are considering revision of the survey of India Group A Recruitment Rules and while revising the rules, the Department proposes to lay down the necessary guidelines therein. The Committee hope that in view of the advice given by the U.P.S.C. and the fact that the rules are stated to have become outdated, the Department would take early steps to revise the rules and while revising the rules, the question of laying down the guidelines for specifying exceptional circumstances for relaxing the age limit upto 3 years by the Commission would not be lost sight of.

18 (i)

71

The Committee do not agree with the contention of the Law Member of the Shipping Development Fund Com-

1	2	3
		mittee who is also Solicitor in the Government of India that the existing provision of rule 8 of the Shipping Development Fund (Loans and other Financial Assistance) Rules, 1981 may be permitted to continue.
18 (ii)	72	The Committee are of the view that the Ministry of Shipping and Transport (Transport Wing) should specify the terms and conditions for grant of loan or other financial assistance in the rule itself so as to make it self-contained and for the information of all concerned.
19	76	The Committee do not agree with the contention of the Ministry of Commerce that the existing provision in the rule which provides for flexibility may be allowed to continue. After considering the reply of the Ministry, the Committee have come to the conclusion that the Ministry should amend rule 3 (2) (c) of the Coffee Rules, 1955 so as to make it self-contained by indicating therein the other interests to be represented on the Board viz Agricultural Scientist, experts in the field of Marketing and promotion, Cooperative Agencies and the outstanding personality in the Coffee Industry.
20	80	Being satisfied with the position stated by the Ministry of Commerce in regard to rules 16 (2) and 25 (2) (d) of the Coffee Rules, 1955, the Committee have decided not to pursue the matter any further.
21	83	The Committee are satisfied with the position explained by the Ministry of Commerce in regard to rule 18 (4) (a) (b) (c) (e) and (f) of the Coffee Rules, 1955. The Committee do not, therefore, desire to pursue the matter further.
22	87	The Committee are convinced with the position explained by the Ministry of Commerce in regard to rule 31 (5) (i) of the Coffee Rules, 1955. The Committee have, therefore decided not to pursue the matter further.
23	91	Finding the reply of the Ministry of Commerce in regard to rule 36 (3), (4) and (5) of the Coffee Rules, 1955 as

1	2	3
		satisfactory, the Committee have decided not to pursue the matter further.
24	95	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Commerce have agreed to amend rule 45 (2) (ii) of the Coffee Rules, 1955 to provide for an opportunity to the licences of being heard before cancellation of his licence and for recording the reasons therefor in writing. The Committee, however, desire the Ministry to amend the rules expeditiously.
25	99	The Committee note that, on being pointed out, the Department of Electronics have proposed to delete the proviso to sub-regulation (n) of Regulation 4 of the Department of Electronics (Assistants' Grade Open Competitive Examination) Regulations, 1982, thereby making all those candidates, who satisfy the essential qualification of graduation, eligible to appear at the examination. The Committee would like the Department to notify the necessary amendment in this regard at an early date.
26	104	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Supply and Rehabilitation have amended the Directorate General of supplies and Disposals Senior Analyst (Work Study) and Junior Analyst (Work Study) Recruitment Rules, 1983 <i>vide</i> Notification No. A-12018/3/77-EST dated 8 July, 1980 incorporating therein the requisite 'Saving' clause providing for reservations, relaxation of age limit and other concessions for persons belonging to the Scheduled Castes/ Scheduled Tribes and other special categories in accordance with the orders issued by the Central Government from time to time in this regard.
27	107	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Social Welfare have issued Corrigendum No. 8-5/76-SSD/VC dated 18 January, 1982 to provide to Rules 5 and Rule 6 of the Lakshadweep Administration (Social Welfare Officer) Recruitment Rules, 1980 so as to vest the powers in the Central Government instead of empowering the Administ-

1	2	3
		rator to exempt any person from the operation of Rule 5 or relax any of the provisions of these Rules with respect to any class or category of persons.
28	110	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Home Affairs have agreed to amend Rule 7A of the Central Industrial Security Force Rules, 1960 so as to specify the duties of the Deputy Commandant in the rule itself.
29	114	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Finance (Department of Revenue) have amended Rule 5 of the Directorate of Enforcement (Deputy Director) Recruitment Rules, 1981 so as to indicate therein that the Union Public Service Commission would be consulted while relaxing any provisions of these rules. In view of this the Committee would not like to insist on the amendment of the entry in Column 13 of the Scheduled appended thereto in this regard.
30	117	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Education and Culture (Department of Education) have agreed that there was no need for constitution of a Departmental Promotion Committee as the posts of Lecturers are to be filled by direct recruitment. The Ministry have, however, retained the provisions pertaining to the constitution of the Departmental Promotion Committee for purposes of considering confirmation in the grade. The Committee also note that the Ministry have expressly clarified the underlying intention in the new set of rules notified <i>vide</i> G. S. R. 840 dated] 9 August, 1980 in supersession of the existing rules. The Committee, therefore, feel it unnecessary to pursue the matter any further.
31	122	The Committee note that, on being pointed out by them, the Ministry of Commerce have amended Rule 6 of the Export of Enamelwares (Inspection) Rules, 1978 <i>vide</i> S.O. 1786 of 1980. The Committee feel, however, that the Ministry should also elaborate the nature of facilities

1	2	3
		considered necessary for the purpose of testing of enamels. The Committee, therefore, desire that the Ministry should amend the rules further accordingly.
32	126	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport (Ports Wing) have agreed to amend sub-regulation (1) of regulation 8 of the Madras Port Trust (Issue and Management of port Trust Securities) Regulations, 1978 so as to specify the formalities to be complied with before payment of interest on the Port Trust Securities. The Committee concur in the amendment as proposed by the Ministry in this regard.
33	132	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport have agreed to amend regulation 10 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to provide for notification of the facts regarding loss etc. of the Port Trust Securities in the newspapers to caution the general public against their illegal sale and purchase. The Committee concur in the amendment in respect of Regulation 9 and the consequential amendment in Regulation 10, as proposed by the Ministry in this regard.
34	136	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport have agreed to substitute the words 'such period as the prescribed officer may consider, by the words 'six months from the date of publication of the said list and to delete the words. or on such conditions as may be considered in the circumstances by the prescribed officer' occurring in Clause (a) of Regulation 11 (1) of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to remove the element of uncertainty and to restrict the discretionary use of powers in this regard.
35	140	The Committee note with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport have agreed to delete the words 'subject to any gene-

1	2	3
		ral or special instructions of the prescribed officer' from sub-regulations 1 and 2 of regulation 16 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 as a safeguard against arbitrary use of the powers.
36	144	The Committee note that the Ministry of Shipping and Transport have preferred to delete the expression 'subject to any general or special instructions of the prescribed officer' appearing in sub-regulation (1) of regulation 17 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 instead of notifying the 'general or special instructions' in the official Gazette. The Committee accept the amendment as proposed by the Ministry in this regard as it meets the object in view and desire them to notify the same at an early date.
37(i)	148	The Committee note that the Department of Personnel and Administrative Reforms have detailed the circumstances in justification of the retrospective effect given to the Indian Forest Service (Appointment by Promotion) Amendment Regulations, 1977 w. e. f. 1 July, 1966 viz. the date of promulgation of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 stating that the Amendment Regulations, 1977 are nothing but a mere clarification added to certain amendments necessitated due to the decision of the Calcutta High Court in the matter.
37(ii)	149	The Committee agree with the contention of the Department that the question of the Amendment Regulations adversely affecting the interests of any member of the Indian Forest Service does not arise as the amendment is intended to include a clarification to an earlier amendment made consequent to the Court decision. The Committee, therefore, do not like to pursue the matter any further.
38	152	The Committee consider the reply of the Ministry of Shipping and Transport as satisfactory and as such they have decided not to pursue the matter further.
39	156	The Committee note with satisfaction that, on being poin-

1**2****3**

ted out by them, the Ministry of Shipping and Transport (Transport Wing) have since amended the entry under Column 12 of the Schedule to the Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules, 1978 to the desired effect.

40**161**

The Committee are satisfied with the position explained by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) in regard to the genesis of the amendments made in second proviso to clause (a) of rule 2 of the Companies (Secretary's Qualifications) Rules, 1975 under the Companies (Secretary's Qualifications) Amendment Rules, 1980. The Committee have, therefore, decided not to pursue the matter further.

APPENDIX II

(Vide Paragraph 112 of the Report)

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS DEPARTMENT OF COMPANY AFFAIRS ADVICE (E) SECTION

Reference preceding note.

2. The Government has framed Rules for the recruitment to the post of Deputy Director in the Directorate of Enforcement. Rule 5 of the said Rules is as follows :

"4. *Power to relax* : Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for the reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any class or category of persons."

3. Column 13 of the aforesaid Rules is as follows :

"Consultation with the UPSC necessary while making promotions."

4. The Committee on Subordinate Legislation of Lok Sabha has, by its letter dated 30th May, 1981, desired amendment to the aforesaid two provisions on the following lines :

"(1) *Rule 5* : It empowers the Central Government to relax any of the provisions of these Rules with respect to any class or category of persons. Usually, provision is made for consultation with the Union Public Service Commission before such recourse.

(2) *Column 13 of the Schedule* : Usually, there is included a provision that consultation with the Union public Service Commission also necessary while amending/relaxing any of the provisions of these Rules which is not done in this case."

So far as the amendment of Rule 5 (so as to include the provision for consultation with the Union Public Service Commission before such relaxation) is concerned, the Ministry of Finance, Department of Revenue and the Department of Personnel and Administrative Reforms have agreed to accept the sugg-

estion of the Committee on Subordinate Legislation. We also agree with the same.

Regarding amendment of Column 13 of the Schedule, the Department of Personnel and Administrative Reforms has stated that it is not necessary, as the same is covered by main Rule 5. All recruitment rules are made in consultation with the UPSC and therefore, in amending rules, the UPSC has to be consulted. As such, it is not considered necessary to provide for power to amend in Column 13.

It may be seen that column 13 appears in the Schedule, which provides for the particulars for the recruitment to the post of Deputy Director of Enforcement. As has been stated above, Rule 5 will be amended so as to provide consultation with the UPSC in case of relaxation of the Rules. Thus, a further provision providing for the consultation with the Union Public Service Commission while relaxing the provisions of the Rules, is not necessary in column 13 of the Schedule. It is already covered by Rule 5. So far as the question of the consultation of the UPSC at the time of amending any of the provisions of these Rules is concerned, as has been stated by the Department of Personnel and A. R. all recruitment Rules are made in consultation with the UPSC. Therefore, we feel that no such provision need be made in column 13 of the Schedule. If at all, the Committee on Subordinate Legislation is very insistent on a provision for consultation with the UPSC while amending any of the provisions of the Rules, the same may have to be made in the main body of the Rules and not in the Schedule. We therefore, agree with the view of the Department of Personnel and A.R. expressed in their note dated 7.7.1981 at page 4 *ante*.

As the matter has arisen out of a reference from the Committee on Subordinate Legislation of Lok Sabha J. S. & L. A. may kindly see.

Sd/—
 (Dr. V. K. Agarwal)
 Deputy Legal Adviser.
 23.7.1981

MINUTES

APPENDIX III

(*Vide* paragraph 4 of the Report)

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

The Committee met on Wednesday, 10 August, 1983 from 15.30 to 16.30 hours.

PRESENT

Shri R.S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Ashfaq Husain
4. Shri B.R. Nahata
5. Shri M.S.K. Sathiyendran

SECRETARIAT

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

2. The Committee took up for consideration Memoranda Nos. 191 to 197 and 190 which was considered and postponed by the Committee at their sitting held on 6 July, 1983, on the following subjects:

×

×

×

×

(vi) Implementation of recommendation contained in paragraphs 19 of the Thirteenth Report of the Committee on Subordinate Legislation

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

(Seventh Lok Sabha) re: the Department of Electronics (Assistants' Grade Open Competitive Examination) Regulations, 1982 (G.S.R. 199 of 1982)—(Memorandum No. 196).

28. The Committee noted that on being pointed out by them, the Department of Electronics had proposed to delete proviso to Regulations 4(iii) of the above Regulations. The Committee ~~decided~~ the Department notify the necessary amendment at an early date.

× × × ×

The Committee then adjourned.

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

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

The Committee met on Tuesday, 5 September, 1983, from 11.00 to 12.00 hours.

MEMBERS PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammed 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 Chandrabhan Athare Patil
10. Shri T. Damodar Reddy
11. Shri Satish Prasad Singh
12. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer*
2. Shri R. C. Anand—*Senior Legislative Committee Officer*

2. At the outset, the Chairman welcomed Shri A. E. T. Barrow, M. P., who was nominated to the Committee by the Speaker with effect from 3 September, 1983.

3. The Committee then considered Memoranda Nos. 198 to 210 as follows :

× × × ×

- (2) *Referred cases where Ministries have either agreed to the suggestions made to them for the amendment of Rules or where Ministries' replies have been found satisfactory—(Memorandum No. 199)*

5. The Committee considered the above Memorandum containing seven cases, which were referred to the Ministries concerned for ascertaining their comments, in the first instance. In these cases, the Ministries had either agreed to the suggestions made to them for the amendment of the Rules, etc. or the replies as received from them had been found satisfactory by the Committee except in the case of item (vi) regarding Export of Enamelwares (Inspection) Rules, 1978. The observations made by the Committee in each case were as given below :—

- (i) *The Directorate General of Supplies and Disposals Senior Analyst (Work Study) and Junior Analyst (Work Study) Recruitment Rules, 1980 (GSR 1119 of 1980)*

The Committee noted with satisfaction that, on being pointed out by them the Ministry of Supply and Rehabilitation had amended the Directorate General of Supplies and Disposals Senior Analyst (Work Study) and Junior Analyst (Work Study) Recruitment Rules, 1980 *vide* Notification No. A-12018/3/77-EST dated 8 July, 1983 so as to incorporate therein the requisite 'Saving' clause providing for reservations, relaxation of age limit and other concessions for persons belonging to the Scheduled Castes, Scheduled Tribes and other special categories in accordance with the orders issued by the Central Government from time to time in that regard.

- (ii) *The Lakshadweep Administration (Social Welfare Officer) Recruitment Rules, 1980 (GSR 1279 of 1980)*

The Committee noted with satisfaction that, on being pointed out by them, the Ministry of Social Welfare had issued Corrigendum No. 8-5/76-SSD/VC dated 18 January, 1982 to proviso to Rule 5 and Rule 6 of the Lakshadweep Administration (Social Welfare Officer) Recruitment Rules, 1980 so as to vest the powers in the Central Government instead of empowering the Administrator to exempt any person from the operation of Rule 5 or relax any of the provisions of these Rules with respect to any class or category of persons.

× Omitted portions of the minutes are not covered by the Report.

(iii) *The Central Industrial Security Force (Third Amendment) Rules, 1978 (G.S.R. 848 of 1978).*

The Committee noted with satisfaction that, on being pointed out by them the Ministry of Home Affairs had agreed to amend Rule 7A of the Central Industrial Security Force Rules, 1969 so as to specify the duties of the Deputy Commandant in the rule itself.

(iv) *The Directorate of Enforcement (Deputy Director) Recruitment Rules, 1981 (GSR 280 of 1981)*

The Committee noted with satisfaction that, on being pointed out by them the Ministry of Finance (Department of Revenue) had since amended Rule 5 of the Directorate of Enforcement (Deputy Director) Recruitment Rules, 1981 so as to indicate therein that the Union Public Service Commission would be consulted while relaxing any provision of these rules.

In view of the fact that Rule 5 of the Directorate of Enforcement (Deputy Director) Recruitment Rules already provided for consultation with the Union Public Service Commission while relaxing any of the provisions of these rules, the Committee decided not to insist on the amendment of the entry in Column 13 of the Schedule appended thereto in that regard.

(v) *The Andaman and Nicobar Islands Administration Government College, Port Blair (Lecturer) Recruitment Rules, 1978 (GSR 752 of 1978)*

The Committee noted with satisfaction that, on being pointed out by them the Ministry of Education and Culture (Department of Education) had agreed that there was no need for constitution of a Departmental Promotion Committee as the posts of Lecturers were to be filled by direct recruitment. The Ministry had, however, retained the provisions pertaining to the constitution of the Departmental Promotion Committee for purposes of considering confirmation in the grade. The Committee noted that the Ministry had expressly clarified the underlying intention in the new set of rules notified *vide* G.S.R. 840 dated 9 August, 1980 in supersession of the existing rules. The Committee, therefore, decided not to pursue the matter any further.

(vi) *The Export of Enamelwares (Inspection) Rules 1978 (S.O. 2910 of 1978)*

The Committee noted that, on being pointed out by the Ministry of Commerce had since amended Rule 6 of the Export of Enamelwares (Inspection) Rules, 1978 *vide* S.O. 1786 of 1980. The Committee were, however, of the view that the Ministry should also elaborate the nature of facilities con-

sidered necessary for the purpose of testing of enamelwares. The Committee, therefore, desired that the rules should be amended further accordingly.

(vii) *The Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 (G.S.R. 182 of 1978)*

(A)

The Committee noted with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport (Ports Wing) had agreed to amend sub-regulation (1) of regulation 8 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to specify the formalities to be complied with before payment of interest on the Port Trust securities. The Committee concurred in the amendment as proposed by the Ministry in that regard.

(B)

The Committee noted with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport had agreed to amend regulation 10 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to provide for notification of the facts regarding loss etc. of the Port Trust securities in the newspapers to caution the general public against their illegal sale and purchase. The Committee concurred in the amendment in respect of regulation 9 and the consequential amendment in regulation 10, as proposed by the Ministry in that regard.

(C)

The Committee noted with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport had agreed to substitute the words 'such period as the prescribed officer may consider' by the words 'six months from the date of publication of the said list' and to delete the words 'or on such conditions as may be considered in the circumstances by the prescribed officer' occurring in Clause (a) of Regulation 11 (1) of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 so as to remove the element of uncertainty and to contain the discretionary use of powers in that regard.

(D)

The Committee noted with satisfaction that, on being pointed out by them, the Ministry of Shipping and Transport had agreed to delete the words '(subject to any general or special instructions of the prescribed officer)' from sub-regulations 1 and 2 of regulation 16 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 as a safeguard against arbitrary use of the powers.

(E)

The Committee noted that the Ministry of Shipping and Transport had preferred to delete the expression subject to any general or special instructions of the prescribed officer' appearing in sub-regulation (1) of regulation 17 of the Madras Port Trust (Issue and Management of Port Trust Securities) Regulations, 1978 instead of notifying the 'general or special instructions' in the official Gazette. The Committee accepted the amendment as proposed by the Ministry in that regard and desired them to notify the same at an early date.

* * * *

(5) *The Indian Forest Service (Appointment by Promotion) Amendment Regulations, 1977 (G.S.R. 584 of 1978) (Memorandum No. 202)*

10. The Committee postponed consideration of the above Memorandum to their next sitting fixed for 7 September, 1983.

* * * *

(8) *The Central Civil Accounts Service (Group C) Recruitment Rules, 1978 (GSR 925 of 1978) (Memorandum No. 205)*

(A)

13. The Committee considered the above Memorandum and observed that a period of almost 20 months was spent in sorting out details with the Indian Audit and Accounts Department prior to the clearance of the draft recruitment rules by the Department of Personnel and Administrative Reforms in March, 1978. The Committee decided to re-stress the need of framing the rules as early as possible in order that the retrospective operation of such rules was minimised, in future.

(B)

14. The Committee were not satisfied with the reply of the Ministry of Finance (Department of Expenditure). The Committee reiterated that the executive instructions were no substitute to statutory rules and that the Government should not resort to these methods in future. The Committee cautioned the Ministry that in case they persisted in resorting to executive instructions in lieu of the statutory rules, they would have to appear in person before the Committee to explain the position in those cases, in future.

(C)

15. The Committee, while deciding not to pursue the matter any further, hoped that whenever personnel from one Department or Ministry were trans-

ferred to another Department or Ministry due to amalgamation, bifurcation, etc., the seniority and other terms and conditions of their service would not vary to their disadvantage.

(D)

16. The Committee desired the Ministry of Finance (Department of Expenditure) to incorporate the terms and conditions pertaining to the Departmental Confirmatory Examination for the Junior Accountants, as set out in their Circular D.O. letter No. A-34012/10/77-MF-CGA (A) dated 11 April, 1977, in the Recruitment Rules to make them self-contained. In case the Ministry felt that the recruitment rules would become bulky, these should be appended as an annexure to the rules.

(E)

17. The Committee noted with satisfaction that, on being pointed out by them, the Ministry of Finance (Department of Expenditure) had agreed to amend Rule 5 (4) (a) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978, so as to specify the name of the examination therein, i.e., Junior Accounts Officer (Civil) Examination.

18. The Committee were not satisfied with the reply of the Ministry of Finance (Department of expenditure), The Committee desired the Ministry to amend Rule 7 (3) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978 so as to provide for recording of reasons in writing by the concerned authority before grant of an extension or curtailment in the period of probation or trial, as the case might be.

(9) *The Merchant Shipping (Carriage of Dangerous Goods) Rules, 1978 (GSR 1316 of 1978) (Memorandum No. 206)*

(A)

19. The Committee considered the above Memorandum and desired the Ministry of Shipping and Transport to review all expressions such as, 'ordinary risk', 'reasonably possible', 'reasonable diligence', and 'precaution proper in the circumstances' to make them precise and free from ambiguity. The Committee further desired the Ministry to issue necessary clarifications and lay down guidelines, wherever necessary, to obviate any scope for discrimination.

(B)

20. The Committee accepted the position as stated by the Ministry of Shipping and Transport and decided not to pursue the matter further.

(C)

21. The Committee accepted the position as stated by the Ministry of Shipping and Transport and decided to drop the matter.

(10) *The Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts) Recruitment Rules, 1978 (G.S.R. 1345 of 1978)*
(Memorandum No. 207)

(A)

22. The Committee considered the above Memorandum and desired the Ministry of Shipping and Transport to omit the words 'or posts' appearing in Rule 6 of the Shipping Development Fund Committee (Staff Car Driver and Group 'D' posts Recruitment) Rules, 1978 in compliance with their earlier recommendation made in paragraph 12 of their Sixteenth Report (Seventh Lok Sabha).

(B)

23. The Committee noted with satisfaction that, on being so pointed out by them, the Ministry of Shipping and Transport had amended the entry in Column 12 of the Schedule appended to the Shipping Development Fund Committee (Staff Car Driver and Group 'D' Posts Recruitment) Rules, 1978 so as to specify the Period of deputation.

(11) *The Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules, 1978 (G.S.R. 1346 of 1978)*
(Memorandum No. 208)

(A)

24. The Committee considered the reply of the Ministry of Shipping and Transport as satisfactory and decided to drop the matter.

(B)

25. The Committee noted with satisfaction that, on being so pointed out by them, the Ministry of Shipping and Transport had ammended the entry in Column 12 of the Schedule appended to the Shipping Development Fund Committee Deputy Director (Inspection) Recruitment Rules, 1978 so as to specify the period of deputation.

(12) *The Merchant Shipping (Continuous Discharge Certificates Amendment Rules, 1978 CGSR 528 of 1978)*
(Memorandum No. 209)

26. The Committee considered the above Memorandum and noted that Section 457 of the Merchant Shipping Act. 1958, did not expressly authorise the Government to levy any fee on the issue of the Continuous Discharge Certificate. The Committee, therefore, directed the Ministry of Shipping and Transport (Shipping Wing) to omit rule 12 (2) of the Merchant Shipping (Contiunous Discharge Certificates) Rules forthwith. If considered necessary, the Ministry might seek the requisite power in that regard through an amendment of the parent Act.

(13) The Forest Research Institute and Colleges (Group 'A' and Group 'B' Non-Tenure Posts) Recruitment (Amendment) Rules, 1979 (G.S.R. 928 of 1979) (Memorandum No. 210)

27. The Committee considered the above Memorandum and noted from the reply of the Ministry of Agriculture that the recruitment rules were originally valid upto 19 October, 1971 and their validity was extended from time to time in consultation with the Union Public Service Commission till the publication of the revised recruitment rules vide G.S.R. 1267 dated 13 October, 1979. The Committee further noted that the decision to revise the recruitment rules was taken in December, 1971 but the revised rules were notified in October, 1979 after the expiry of about eight years. The Committee strongly deprecated the inordinate delay in publication of the revised rules.

x

x

x

x

The Committee then adjourned.

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

The Committee met on Wednesday, 7 September, 1983 from 11.00 to 13.00 hours.

PRESENT

Shri R.S. Sparrow—*Chairman*

MEMBERS

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 B.R. Nahata
10. Shri Chandrabhan Athare Patil
11. Shri T. Damodar Reddy
12. Shri Satish Prasad Singh
13. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri S.D. Kaura—*Chief Legislative Committee Officer*
2. Shri R.C. Anand—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 198, 202 and 211 to 219 on the following subjects :

× × × ×

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

ibid was to be taken as a last resort for recovery of tax. The Committee felt that since recovery of sums due to Government as an arrear of land revenue was a major provision, the authority therefor should flow from the parent Act and not from the rules.

(6) *The Sugar (Retention and Sale by Recognised Dealers) Order, 1979*
(G.S.R. 702—E of 1979)—(Memorandum No. 214)

8. While not disagreeing with the plea taken by the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) that the words 'or any other officer' used in clause 5 of the Sugar (Retention and sale by Recognised Dealers) Order, 1979, would take care of the meaning referred to in the first line of clause 5 of the order *ibid* on the basis of *ejusdem generis* principle, yet the Committee desired the Ministry of Agriculture (Department of Food) to amend the Order so as to specify therein the minimum rank of the officer authorised to conduct search and seizure.

(7) *The Companies (Secretary's Qualifications) Amendment Rules, 1980* (G.S.R. 5—E of 1980)—(Memorandum No. 215)

9. The Committee considered the above Memorandum and were satisfied with the position explained by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) regarding the genesis of the second proviso to clause (a) of rule 2 of the Companies (Secretary's Qualifications) Rules, 1975 as amended by the Companies (Secretary's Qualifications) Amendment Rules, 1980. The Committee, therefore, decided not to pursue the matter further.

* * * * *

(9) *Survey of India Group 'A' Recruitment (Amendment) Rules, 1980*
(G.S.R. 1212 of 1980)—(Memorandum No. 217)

11. After considering the reply of the Department of Science and Technology, the Committee desired that, as advised by the U.P.S.C., the Department should revise the Survey of India Group 'A' Recruitment Rules which were stated to have become outdated, as early as possible. The Committee further desired that while revising the said Rules the question of laying down guidelines for specifying 'exceptional circumstances' for relaxing the age limit upto 3 years by the Commissioner would be kept in view.

(10) *The Shipping Development Fund (Loans and other Financial Assistance) Rules, 1981 (G.S.R. 44—E of 1981) —(Memorandum No. 218)*

12. The Committee did not agree with the contention of the Law Member of the Shipping Development Fund Committee, who was also Solicitor in the Government of India that the existing provision of rule 8 of the Shipping Development Fund Rules, 1981, might be permitted to continue.

The Committee were of the opinion that the Ministry of Shipping and Transport (Transport Wing) should specify the terms and conditions for grant of Loan or other financial assistance in the rule itself so as to make itself contained and for the information of all concerned.

(11) *The Coffee Rules, 1955 (S.R.O. 1966 of 1955)—(Memorandum No. 219)*

(A)

13. The Committee considered the above Memorandum and desired the Ministry to amend rule 3 (2) (c) of the Coffee Rules, 1955 so as to make it self-contained by indicating therein the other interests to be represented on the Board *viz.* Agricultural Scientist, experts in the field of Marketing and Promotion, the Cooperative Agencies ; and out standing personality in the Coffee Industry.

(B)

14. The Committee noted with satisfaction the reply of the Ministry of Commerce in regard to Rules 16 (2) and 25 (2) (d) of the Coffee Rules, 1955, and decided not to pursue the matter any further.

(C)

15. On being satisfied with the reply given by the Ministry of Commerce in regard to rule 18 (4) (a) (b) (c) (e) and (f) of the Coffee Rules, 1955, the Committee decided not to pursue the matter further.

(D)

16. On being satisfied with the reply of the Ministry of Commerce furnished by them in regard to rule 31 (5) (i) of the Coffee Rules, 1955, the Committee decided not to pursue the matter further.

(E)

17. The reply of the Ministry of Commerce in regard to Rules 36 (3), (4) and (5) of the Coffee Rules, 1955 being satisfactory, the Committee decided not to pursue the matter further.

(F)

18. The Committee noted that, on being pointed out by them, the Ministry of Commerce had agreed to amend rule, 45 (2) (ii) of the Coffee Rules, 1955 to provide for an opportunity to the licensee of being heard before cancellation of his licence and for recording the reasons therefore in writing.

The Committee, however, desired the Ministry to amend the Rules accordingly at an early date.

The Committee then adjourned.

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

The Committee met on Thursday, 8 December, 1983 from 15.00 to 15.50 hours.

PRESENT

Shri R.S. Sparrow—Chairman

MEMBERS

2. **Shri Mohammad Asrar Ahmed**
3. **Shri A.E.T. Barrow**
4. **Shri Ashfaq Husain**
5. **Shri Amal Datta**
6. **Shri Brajamohan Mohanty**

SECRETARIAT

1. **Shri S.D. Kaura—Chief Legislative Committee Officer**
2. **Shri T.E. Jagannathan—Senior Legislative Committee Officer**

2. At the outset, the Chairman welcomed Shri Brajamohan Mohanty, M.P. who was nominated by the Speaker, Lok Sabha in place of Shri B.R. Nahata who had expired at Houston, U.S.A.

3. Thereafter, the Chairman announced that the Chairman and members of the Subordinate Legislation Committee of the Karnataka Legislature would be visiting Delhi on 22 December, 1983 and that the said Committee wanted to meet the members of the committee on Subordinate Legislation, Lok Sabha at 15.00 hours on that day to have discussion on matters of common interest.

The members agreed that a sitting might be fixed on 22 December, 1983 for the purpose.

4. The Committee then took up for consideration their draft Twenty-second Report and adopted it without any amendment.

The Committee decided to present their Twenty-second Report to the House on 13 December, 1983 and authorised the Chairman and, in his absence, Shri A. E. T. Barrow, to present the Report on their behalf.

*

*

*

*

The Committee then adjourned.

**LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA
SECRETARIAT PUBLICATIONS**

Sl. No.	Name of Agent	Sl. No.	Name of Agent
BIHAR		UTTAR PRADESH	
1.	M/s Crown Book Depot, Upper Bazar, Ranch (Bihar).	11.	Law Publisher, Sardar Patel Marg, P. B. No. 77, Allahabad, U.P.
GUJARAT		WEST BENGAL	
2.	The New Order Book Company, Ellis Bridge, Ahmedabad-6.	12.	Mrs. Manimala, Buys and Sells, 128, Bow Bazar Street, Calcutta-12.
MADHYA PRADESH		DELHI	
3.	Modern Book House, Shiv Vilas Palace, Indore City.	13.	Jain Book Agency, Connaught Place, New Delhi.
MAHARASHTRA		14.	J.M. Jain & Brother, Mori Gate, Delhi.
4.	M/s Sunderdas Gian Chand, 601, Girgaum Road, Near Princess Street, Bombay-2.	15.	Oxford Book & Stationary Co., Scindia House, Connaught Place, New Delhi-1.
5.	The International Book Service, Decan Gymkhana, Poona 4	16.	Bookwell 4, Sant Nirankari Colony, Kingsway Camp, Delhi-9.
6.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-1.	17.	The Central News Agency, 23/90, Connaught Place, New Delhi.
	M/s Usha Book Depot, Law Book Seller and Publishers' Agents Govt. Publications, 585, Chira Bazar, Khan House, Bombay-2.	18.	M/s Rajendra Book Agency, IV-D/59, IV-D/50, Lajpat Nagar, Old Double Storey, New Delhi-110024.
8.	M & J Services, Publishers, Representative Accounts & Law Book Seller, Mohan Kunj, Ground Floor, 68, Jyotiba Fuele Road, Nalgaum-Dadar, Bombay-14.	19.	M/s Ashoka Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi-110033.
9	Subscribers Subscription Services India, 21, Raghunath Dadaji St., 2nd Floor, Bombay-1.		
NADU		20.	Venus Enterprises B-2/85, Phase-II, Ashok Vihar, Delhi.
10	The Manager, M. M. Subscription Services, No. 2, 1st Lay Out Vananda Colony, Coimbatore-64 012.		

© 1983 BY LOK SABHA SECRETARIAT

Published under Rule 382 of the Rules of Procedure and
Conduct of Business in Lok Sabha (Sixth Edition) and Printed by
S, Narayan & Sons, 7117/18, Pahari Dhiraj, Delhi-110006.