

COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

NINTH REPORT

(Presented on 4 August, 1993)



**LOK SABHA SECRETARIAT
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THE NINTH REPORT OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (TENTH LOK SABHA)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1992-93)

- *Shri Amal Datta — *Chairman*
2. Shri Frank Anthony
3. Shri R. Dhanuskodi Athithan
4. Shri Chhitubhai Gamit
5. Dr. K.D. Jeswani
6. Shri Ram Singh Kashwan
7. Shri Guman Mal Lodha
8. Shri Ram Niwas Mirdha
9. Shri Shravan Kumar Patel
10. Shri A. Venkata Reddy
11. Shri Mohan Singh
12. Shri Shivendra Bahadur Singh
13. Shri Tara Singh
14. Kumari Frida Topno
15. Shri Ratilal Kalidas Varma

SECRETARIAT

Shri G.L. Batra	— <i>Additional Secretary</i>
Shri S.C. Gupta	— <i>Joint Secretary</i>
Shri R.K. Chatterjee	— <i>Deputy Secretary</i>
Shri Ram Kumar	— <i>Under Secretary</i>

*Appointed w.e.f. 3.5.1993 vice Shri Sornnath Chatterjee resigned.

REPORT

I

INTRODUCTION

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

2. The matters covered by the Report were considered by the Committee at their sitting held on 22 April, 1993.

3. The Committee considered and adopted this Report at their sitting held on 31 May, 1993. The minutes of the sittings relevant to this Report are appended to it.

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

II

THE CANTONMENT FUND SERVANTS (AMENDMENT) RULES, 1991 (SRO 52 OF 1992)

5. The Cantonment Fund Servants (Amendment) Rules, 1991 were published in Gazette of India dated 21 March, 1992. It was observed from Preamble to these rules that whereas the draft rules for eliciting public opinion were published in the official gazette on 9 December, 1989, the final rules were notified in the gazette dated 21 March, 1992 after a spell of more than 27 months. The matter was taken up with the concerned Ministry of Defence for ascertaining the reasons for such inordinate delay in publication of the final rules and how the matters, sought to be regulated by the amendment rules, were actually governed during the intervening period. In their reply dated 11 March, 1993, Ministry stated as under:—

“Rules 5-C providing for transfer of employees of Cantonment Boards from one cantonment to other was added in the Cantonment Fund Servants Rule, 1937 in 1983 in exercise of powers conferred on the Central Government under section 280 of the Cantonments Act, 1924. However, this Rule was struck down by Hon'ble Supreme Court in Civil Appeal No. 754 of 1988 and was held ultra-vires. Accordingly, a proposal was initiated to delete Rule 5-C of the CFSR, 1937.

The draft public notice for this purpose eliciting public opinion was published in the Official Gazette dated 9.12.1989. There were suggestions from certain quarters that those Cantonment Board employees who have already been transferred out of their parent cantonments should be transferred back to their parent cantonments before issuing final notification. Accordingly, instructions were issued by the Directorate General of Defence Estates for transferring back to all such personnel to their parent cantonments.

As the subject matter involved a policy decision regarding posting/transfer of employees of one Cantonment Board to other and also since all the employees, who have already been transferred out of their parent Cantonments, had to be repatriated to their parent cantonments, it took time to issue final notification.

As already mentioned above, during the intervening period no inter-cantonment boards transfers were effected except in respect of those employees who had to be repatriated to their parent cantonments."

6. The Committee note that rule 5-C, as inserted in 1983, of the Cantonment Fund Servants Rules, 1937 provided, inter-alia, for transfer of employees from one Cantonment Board to another and for determining their seniority and service conditions upon such transfer. The rule was later declared ultra-vires by the Supreme Court of India in Civil Appeal No. 754 of 1988. In the wake of Court Judgement, the Ministry of Defence notified draft public notice for eliciting public opinion on their proposal to delete the said rule, in compliance with the provisions of Section 280(1) of the Cantonments Act, 1924 which provided for previous publication of the rules. Even though no suggestion or objection had been received, the Ministry took more than 27 months in notifying the final rules.

7. The Committee are astonished to note that the Ministry had resorted to eliciting public opinion on the proposal to delete rule 5-C despite its having been declared ultra-vires by the highest Court of the land. In all fairness, the said rule could have been deleted straight away from the statute book following the Court orders.

8. The Committee further note that the delay has been attributed mainly to the fact that the Ministry had acted on the suggestions from certain quarters for repatriating the employees to their parent Cantonment Boards prior to issuance of the final notification. However, the Ministry have not revealed the identity of such 'quarters' which made the suggestions. In the opinion of the Committee, the Ministry seem to have laboured under some mistaken notion that the transfer of the employees could be effected under the provisions which had been quashed by the court so long as these were not removed from the statute book. In all fairness, the best course, for the Ministry would have been to turn to the Ministry of Law etc. for advice in determining their further course of action which they had unfortunately not done.

9. The Committee cannot but express their strong dissatisfaction over the manner in which the whole matter has been dealt with in the Ministry of Defence. The Committee feel that had the Ministry taken up the matter with the seriousness it deserved, the delay in final notification of the rules could have been averted. The Committee need hardly emphasize that the Ministry should evolve suitable procedural safeguards to keep under check any undue delays in finalisation of the statutory rules in order that the infirmities that creep into the rules, are not allowed to remain incorporated even for a day. In fact, the Ministry could have taken extra care to give effect to the judgement of the Court. Hence there was no justification for such delay in implementing the Supreme Court judgement declaring the rules *ultra vires*.

III

THE VISAKHAPATNAM PORT EMPLOYEES (FESTIVAL ADVANCES) REGULATIONS, 1989 (GSR 130-E OF 1991)

10. The Visakhapatnam Port Employees (Festival Advances) Regulations, 1989 were published in the Gazette of India : Extraordinary dated 13 March, 1991. Regulation 12 of these regulations read as under:—

“12. Repeal and Savings.—All rules corresponding to these regulations and any orders issued in this regard from time to time and in force immediately before the commencement of these regulations are hereby repealed.

Provided that any order made or any action taken under the regulations so repealed shall be deemed to have been made or taken under the corresponding provisions of these regulations”.

11. The expression ‘*all rules corresponding to these regulations and any orders issued in this regard from time to time*’ appeared to be vague and too general and it was not known as to what regulations/orders had actually been repealed. The matter was taken up with the concerned Ministry of Surface Transport to ascertain whether they had any objection to incorporating the particulars of the exact rules and orders which were sought to be repealed, in regulation 12 itself. In their reply dated 1 April, 1992, the Ministry stated as under:—

“.....As the regulation on the subject is on the basis of refund of Festival Money the Repeal and Saving are general in this regard”.

12. The Committee observe that the expressions like ‘all rules corresponding to these regulations’ or ‘any orders issued in this regard from time to time’ are quite vague and too general and their use in the statutory formulations should be avoided. The Committee do expect the Ministries/Departments to exercise the rule-making power delegated to them with utmost caution, precision and full measure of knowledge of facts leaving practically no scope for any speculation thereabout. With the objective of making the statutory formulations precise, specific and free from

ambiguities and uncertainties, they should not be too general, vaguely worded or otherwise illusory. While repealing or superseding any existing 'Orders', those should be enumerated in the repeal and savings clause or in the preamble, as the case may be. In the absence of the full facts, this Committee would not be able to evaluate the propriety or otherwise of such formulations. The Committee, therefore, desire the Ministry of Surface Transport to recast the provisions in regulation 12 regarding repeal and savings to indicate the regulations/orders which are sought to be repealed in the instant case, for the information of all concerned.

IV

THE PORT OF VISAKHAPATNAM PILOTAGE AND OTHER SERVICES (FEES) ORDER, 1992 (GSR 578-E OF 1992)

13. The Port of Visakhapatnam Pilotage and Other Services (Fees) Order, 1992 was published in the Gazette of India: Extraordinary dated 2 June, 1992. Preamble to the said Order read as under:—

"In exercise of the powers conferred by sub-section (1) of section 35 of the Indian Ports Act, 1908 (15 of 1908) and *in supersession of all the previous notifications* relating to the Visakhapatnam Port Pilotage and Other Services (Fees) Order, 1988, issued from time to time the Central Government hereby makes the following order for regulating the levy of fees for Pilotage and other services for the Port of Visakhapatnam, as under."

14. The phraseology "*in supersession of all the previous notifications* relating to the Visakhapatnam Port Pilotage and Other Services (Fees) Order, 1988" was vague inasmuch as it did not specify the Orders which were sought to be superseded. The matter was taken up with the concerned Ministry of Surface Transport for clarification. In their reply dated 23 February, 1993, the Ministry stated as under:—

".....the Ministry has no objection in amending the Notification, specifying the details of the Orders which have been superseded."

15. The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend the Preamble to the Port of Visakhapatnam Pilotage and Other Services (Fees) Order, 1992 so as to specify the exact nomenclatures of the Orders sought to be superseded. The Committee desire the Ministry to do the needful at the earliest in consultation with the Ministry of Law and Justice.

V

THE PORT OF NEW MANGALORE PILOTAGE AND OTHER SERVICES (FEES) ORDER, 1992 (GSR 631-E OF 1992)

16. The Port of New Mangalore Pilotage and Other Services (Fees) Order, 1992 was published in the Gazette of India: Extraordinary dated 22 June, 1992. It was observed from the Preamble to the notification that the

Order was made in supersession of the earlier Order of 1989 and the subsequent Amendment Order of 1991 on the subject. Ordinarily, only the principal Order was required to be superseded as any further amendments were simply part of the original Order and, therefore, those were not required to be superseded separately. The matter was taken up with the concerned Ministry of Surface Transport for ascertaining the special reasons, if any, for departure from the normal practice in this regard and whether they had any objection to amending the Preamble to the desired effect. In their reply dated 13 April, 1993, the Ministry stated as under:—

“.....this Ministry has no objection to carry out the necessary amendment. Necessary action is being taken to make the required amendment.”

17. The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend the Preamble to the Port of New Mangalore Pilotage and Other Services (Fees) Order, 1992 so as to omit the reference to the supersession of the Amendment Order of 1991 which was redundant. The Committee desire the Ministry to expedite the process of finalisation of the proposed amendment and notify it at the earliest.

VI

THE PORT OF MORMUGAO PILOTAGE AND OTHER SERVICES (FEES) AMENDMENT ORDER, 1992 (GSR 579-E OF 1992)

18. The Port of Mormugao Pilotage and Other Services (Fees) Amendment Order, 1992 was published in the Gazette of India: Extraordinary dated 3 June, 1992. It was observed therefrom that the Preamble to the notification did not indicate the name of the principal Order to which the amendments had been made. the matter was taken up with the concerned Ministry of Surface Transport for eliciting their comments. In their reply dated 18 February, 1993, the Ministry stated as under:—

“.....the Ministry has no objection to amend the Preamble to the notification to indicate the name of the principal Order to which the amendments have been made. Necessary action in this regard is being taken separately.”

19. The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend the Preamble to the Port of Mormugao Pilotage and Other Services (Fees) Amendment Order, 1992 so as to indicate the short title of the principal Order to which the amendments had been made for information of all concerned. The Committee desire the Ministry to expedite the action to rectify the error at the earliest and also to evolve suitable procedural safeguards against recurrence of such lapses in future.

VII

THE PORT OF TUTICORIN PILOTAGE AND OTHER SERVICES (FEES) ORDER, 1992 (GSR 571-E OF 1992)

20. The Port of Tuticorin Pilotage and Other Services (Fees) Order, 1992 was published in the Gazette of India: Extraordinary dated 1 June, 1992. Preamble to the said Order read as under:—

“In exercise of the powers conferred by Sub-Section 1 of Section 35 of the Indian Port Act, 1908 (15 of 1908) and *in continuation* of the Port of Tuticorin Pilotage and Other Services (Fees) Order, 1991 published in the Notification of the Government of India, MOST (Ports Wing) G.S.R. No. 103 (E) dated 18-2-1992, the Central Government hereby makes the following order for regulating the levy of fees for pilotage and other services in the Port of Tuticorin namely.”

21. It was noticed from the Preamble that the Order had been promulgated for regulating the levy of fees for pilotage and other services in the Port of Tuticorin *in continuation* of an earlier Order, namely, the Port of Tuticorin Pilotage and Other Services (Fees) Order, 1991 on the subject. It was felt that since the Order of 1991 was already in vogue, any further fees could have been prescribed by way of an amendment to that Order instead of issuing a fresh Order for the identical purpose. The Ministry of Surface Transport were requested to state the reasons for issuing yet another Order on the identical subject-matter rather than effecting an amendment to the existing Order as was the normal practice. In their reply dated 4 March, 1993, the Ministry stated as under:—

“.....the necessary amendment is being carried out to replace the words ‘in continuation’ by the words ‘in supersession’ as the order issued on 1-6-92 vide GSR 571-E of the Ministry replaces the previous notification issued on 1-2-92 vide GSR No. 103(E).”

22. The Committee note from the reply of the Ministry of Surface Transport that the Port of Tuticorin Pilotage and Other Services (Fees) Order, 1992 (GSR 571-E of 1992) was made to replace the previous Order of 1991 and not ‘in continuation’ of that Order. The Ministry have, therefore, proposed to rectify the error by issuance of an amendment notification substituting the words ‘in continuation’ by the words ‘in supersession’ in the Preamble. The Committee desire the Ministry to expedite the Process of finalisation of the proposed amendment in consultation with the Ministry of Law and Justice and notify it so as not to allow further prolongation of the infirmities that have crept into it. The Committee need hardly point out that such mistakes are simply indicative of the gross negligene with which the important statutory instruments are being dealt with in the Ministry.

VIII

THE VETERINARY COUNCIL OF INDIA (REGISTRATION) REGULATIONS, 1992 (GSR 119-E of 1992)

23. The Veterinary Council of India (Registration) Regulations, 1992, were published in the Gazette of India: Extraordinary dated 24 February, 1992. Regulation 4 (2)(c) of these Regulations read as under:—

"4. Direct Registration in the Register.—

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(2) Every application in form 'A' shall be accompanied by:—

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(c) service charge of Rs. 100/- (Rupees one hundred only) by a crossed postal order or bank draft in the name of Veterinary Council of India, New Delhi, towards service charges, the cost of certificate etc."

24. In this connection, the concerned Ministry of Agriculture were asked to state the precise authority in the parent statute, namely, the Indian Veterinary Council Act, 1984, authorising the Veterinary Council of India to impose the 'service charge' etc. In their reply dated 17 February, 1993, the Ministry stated as under:—

"....the Veterinary Council of India has been advised to make necessary amendment in the Veterinary Council of India (Registration) Regulations, 1992 (GSR 119-E of 1992), by deleting Clause 4(2)(c). The amendment after publication in the gazette will be sent for placing on the table of the Lok Sabha."

25. The Committee note that on being pointed out by them the Ministry of Agriculture (Department of Animal Husbandry and Dairying) have advised the Veterinary Council of India to delete regulation 4(2)(c) from the Veterinary Council of India (Registration) Regulations, 1992 for which no explicit powers are conferred by the parent statute, namely, the Indian Veterinary Council Act, 1984. The Committee desire the Ministry to notify the proposed amendment expeditiously.

26. The Committee further observe that regulation 12 of the regulations similarly provides for recovery of 'service charges' to be specified by Executive Committee from time to time. In this connection, the Committee need hardly point out that the Ministry should undertake a re-appraisal of the entire regulations with a view to identify all such provisions as provide for levy of fees, service charges etc. of either description without due legal authority in the parent statute, and to take urgent steps for their omission from the statute book in consultation with the Ministry of Law and Justice.

IX

THE ATOMIC ENERGY (CONTROL OF IRRADIATION OF FOOD) RULES, 1990 (GSR 129 OF 1991)

27. The Atomic Energy (Control of Irradiation of Food) Rules, 1990 were published in the Gazette of India dated 2 March, 1991. It was observed that the rules were published in the official gazette in 1991 whereas the short title thereto indicated the year as 1990. Normally, the year in the short title should correspond to the year of publication of the rules in the official gazette. The matter was referred to the concerned Department of Atomic Energy for clarification. In their reply dated 26 March, 1993, the Department stated as under:—

“The draft was prepared in the year 1990 and the draft reflected this date. Copies of the Rules were placed on the table of the Lok Sabha and Rajya Sabha on 17.7.1991 and 18.7.1991 as per sub-section 4 of section 30 of the Atomic Energy Act, 1962. The Gazette Notification was issued vide GSR No. 129 dated 2nd March, 1991. Therefore, suggestions of the Committee to change the date in the short title to 1991 is appropriate. There is no specific reason for putting the date as 1990.”

28. The Committee find that the draft of the Atomic Energy (Control of Irradiation of Food) Rules was prepared in the year 1990 and the draft reflected that year in its short title. However, when the final rules were sent for publication in the official gazette in the year 1991, the corresponding change in the year was not so reflected in the short title thereto. However, on being pointed out by the Committee, the Department of Atomic Energy has agreed to carry out the change in the year to the short title to 1991. The Committee are constrained to observe that if the Department would have been a little more vigilant, the error could have been averted. It is a well accepted practice that the short title of rules should bear the year in which they are published and not some other year. Still the error in indication of correct year in short title of the rules continues to occur time and again. The Committee trust the Department would do the needful in the instant case and take adequate precautionary measures for future.

X

THE COIR BOARD GENERAL PROVIDENT FUND (AMENDMENT) BYE-LAWS, 1992 (S.O. 306-E OF 1992)

29. The Coir Board General Provident Fund (Amendment) Bye-laws, 1992 were published in the Gazette of India: Extraordinary dated 30 April, 1992. It was observed therefrom that the notification did not contain the usual foot-note indicating the particulars of the principal bye-laws and the subsequent amendments made thereto, for facility of reference. The matter was referred to the concerned Ministry of Industry

for ascertaining their comments. In their reply dated 12 April, 1993, the Ministry stated as under:—

“.....necessary amendments/corrigendum is being issued in consultation with Ministry of Law to add the usual foot-note below the Notification dated the 29th April, 1992 indicating the particulars of the principal bye-laws.”

30. The Committee note that on being pointed out by them the Ministry of Industry (Department of Small Scale Industries and Agro Rural Industries) have agreed to issue a corrigendum in consultation with the Ministry of Law and Justice so as to incorporate the usual foot-note indicating the particulars of the principal by-laws and subsequent amendments made thereto for facility of reference. The Committee desire the Ministry to do the needful at an early date and also to evolve necessary procedural safeguards against recurrence of such lapses in future.

XI

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE

31. Under Direction 108(1) by the Speaker, the Ministries are required to furnish from time to time statements of action taken or proposed to be taken by them on the recommendations made by the Committee in their reports. With a view to ensure speedy implementation of their recommendations, the Committee, in paragraph as of their Sixteenth Report (Fifth Lok Sabha), had fixed a time-limit of six months within which the Ministries/Departments should implement their recommendations. If in any particular case it had not been possible to adhere to this time-limit, they should ask for extension of time from the Committee after explaining the difficulties in implementing the recommendation. Still the cases of delay continue to occur. As would be seen from the statement in Appendix II, the International Airports Authority of India have taken more than 29 months in amending the Medical Attendance and Treatment Regulations. Likewise, the Ministry of Labour have taken more than 9 months to give affect to the recommendation of the Committee. The Committee cannot but again stress that the Ministries concerned should evolve suitable measures to streamline their procedure in order that the recommendations emanating from the Committee are implemented within the maximum time-limit of six months laid down by them.

NEW DELHI;
May, 1993

Vaisakha, 1915 (Saka)

ANIL DATTA
Chairman,

Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(vide Para 4 of the Report)

Summary of recommendations made in the Ninth Report of the committee on Subordinate Legislation (Tenth Lok Sabha)

Sl. No.	Reference to para No. in the Report	Summary of Recommendations
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1	6-9	<i>The Cantonment Fund Servants (Amendment Rules, 1991 (SRO 52 of 1992).</i>
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The Committee note that rule 5-C, as inserted in 1983, of the Cantonment Fund Servants Rules, 1937 provided, *inter-alia*, for transfer of employees from one Cantonment Board to another and for determining their seniority and service conditions upon such transfer. The rule was later declared *ultra-vires* by the Supreme Court of India in Civil Appeal No. 754 of 1988. In the wake of Court Judgement, the Ministry of Defence notified draft public notice for eliciting public opinion on their proposal to delete the said rule, in compliance with the provisions of Section 280(1) of the Cantonments Act, 1924 which provided for previous publication of the rules. Even though no suggestion or objection had been received, the Ministry took more than 27 months in notifying the final rules.

The Committee are astonished to note that the Ministry had resorted to eliciting public opinion on the proposal to delete rule 5-C despite its having been declared *ultra-vires* by the highest Court of the land. In all fairness, the said rule could have been deleted straight away from the statute book following the Court orders.

The Committee further note that the delay has been attributed mainly to the fact that the Ministry had acted on the suggestions from certain quarters

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for repatriating the employees to their parent Cantonment Boards prior to issuance of the final notification. However, the Ministry have not revealed the identity of such 'quarters' which made the suggestions. In the opinion of the Committee, the Ministry seem to have laboured under some mistaken notion that the transfer of the employees could be effected under the provisions which had been quashed by the court so long as these were not removed from the statute book. In all fairness, the best course, for the Ministry would have been to turn to the Ministry of Law etc. for advice in determining their further course of action which they had unfortunately not done.

The Committee cannot but express their strong dissatisfaction over the manner in which the whole matter has been dealt with in the Ministry of Defence. The Committee feel that had the Ministry taken up the matter with the seriousness it deserved, the delay in final notification of the rules could have been averted. The Committee need hardly emphasize that the Ministry should evolve suitable procedural safeguards to keep under check any undue delays in finalisation of the statutory rules in order that the infirmities that creep into the rules, are not allowed to remain incorporated even for a day. In fact, the Ministry could have taken extra care to give effect to the judgement of the Court. Hence there was no justification for such delay in implementing the Supreme Court judgement declaring the rules *ultra vires*.

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The Visakhapatnam Port Employees (Festival Advances Regulations, 1989 (GSR 130-E of 1991)

The Committee observe that the expressions like '*all rules corresponding to these regulations*' or '*any orders issued in this regard from time to time*' are quite vague and too general and their use in the statutory formulations should be avoided. The Committee do expect the Ministries/Departments to exercise the rule-making power delegated to them with utmost caution, precision and full measure of knowledge of facts leaving practically no scope for any speculation there about. With the objective of making

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the statutory formulations precise, specific and free from ambiguities and uncertainties, they should not be too general, vaguely worded or otherwise illusory. While repealing or superseding any existing 'Orders', those should be enumerated in the repeal and savings clause or in the preamble, as the case may be. In the absence of the full facts, this Committee would not be able to evaluate the propriety or otherwise of such formulations. The Committee, therefore, desire the Ministry of Surface Transport to recast the provisions in regulation 12 regarding repeal and savings to indicate the regulations/orders which are sought to be repealed in the instant case, for the information of all concerned.

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The Port of Visakhapatnam Pilotage and Other Services (Fees) Order, 1992 (GSR 578-E of 1992)

The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend the Preamble to the Port of Visakhapatnam Pilotage and Other Services (Fees) Order, 1992 so as to specify the exact nomenclatures of the Orders sought to be superseded. The Committee desire the Ministry to do the needful at the earliest in consultation with the Ministry of Law and Justice.

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The Port of new Mangalore Pilotage and Other Services (Fees) Order, 1992 (GSR 631-E of 1992)

The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend the Preamble to the Port of New Mangalore Pilotage and Other Services (Fees) Order, 1992 so as to omit the reference to the supersession of the Amendment Order of 1991 which was redundant. The Committee desire the Ministry to expedite the process of finalisation of the proposed amendment and notify it at the earliest.

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19

The Port of Mormugao Pilotage and Other Services (Fees) Amendment Order, 1992 (GSR 579-E of 1992)

The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend the Preamble to the Port of Mormugao Pilotage and Other Services (Fees) Amendment

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		<p>Order, 1992 so as to indicate the short title of the principal Order to which the amendments had been made for information of all concerned. The Committee desire the Ministry to expedite the action to rectify the error at the earliest and also to evolve suitable procedural safeguards against recurrence of such lapses in future.</p>
6	22	<p><i>The Port of Tuticorin Pilotage and Other Services (Fees) Order, 1992 (GSR 571-E of 1992)</i></p> <p>The Committee note from the reply of the Ministry of Surface Transport that the Port of Tuticorin Pilotage and Other Services (Fees) Order, 1992 (GSR 571-E of 1992) was made to replace the previous Order of 1991 and not 'in continuation' of that Order. The Ministry have, therefore, proposed to rectify the error by issuance of an amendment notification substituting the words '<i>in continuation</i>' by the words '<i>in supersession</i>' in the Preamble. The Committee desire the Ministry to expedite the process of finalisation of the proposed amendment in consultation with the Ministry of Law and Justice and notify it so as not to allow further prolongation of the infirmities that have crept into it. The Committee need hardly point out that such mistakes are simply indicative of the gross negligence with which the important statutory instruments are being dealt with in the Ministry.</p>
7	25-26	<p><i>The Veterinary Council of India (Registration) Regulations, 1992 (GSR 119-E of 1992)</i></p> <p>The Committee note that on being pointed out by them the Ministry of Agriculture (Department of Animal Husbandry and Dairying) have advised the Veterinary Council of India to delete regulation 4(2)(c) from the Veterinary Council of India (Registration) Regulations, 1992 for which no explicit powers are conferred by the parent statute, namely, the Indian Veterinary Council Act, 1984. The Committee desire the Ministry to notify the proposed amendment expeditiously.</p> <p>The Committee further observe that regulation 12 of the regulations <i>ibid</i> similarly provides for recovery</p>

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of 'service charges' to be specified by Executive Committee from time to time. In this connection, the Committee need hardly point out that the Ministry should undertake a re-appraisal of the entire regulations with a view to identify all such provisions as provide for levy of fees, service charges etc. of either description without due legal authority in the parent statute, and to take urgent steps for their omission from the statute book in consultation with the Ministry of Law and Justice.

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28

The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (GSR 129 of 1991)

The Committee find that the draft of the Atomic Energy (Control of Irradiation of Food) Rules was prepared in the year 1990 and the draft reflected that year in its short title. However, when the final rules were sent for publication in the official gazette in the year 1991, the corresponding change in the year was not so reflected in the short title thereto. However, on being pointed out by the Committee, the Department of Atomic Energy has agreed to carry out the change in the year to the short title to 1991. The Committee are constrained to observe that if the Department would have been a 'little more vigilant, the error could have been averted. It is a well accepted practice that the short title of rules should bear the year in which they are published and not some other year. Still the error in indication of correct year in short title of the rules continues to occur time and again. The Committee trust the Department would do the needful in the instant case and take adequate precautionary measures for future.

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The Coir Board General Provident Fund (Amendment) Bye-laws, 1992 (S.O. 306-E of 1992)

The Committee note that on being pointed out by them the Ministry of Industry (Department of Small Scale Industries and Agro Rural Industries) have agreed to issue a corrigendum in consultation with the Ministry of Law and Justice so as to incorporate the usual foot-note indicating the particulars of the

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principal bye-laws and subsequent amendments made thereto for facility of reference. The Committee desire the Ministry to do the needful at an early date and also to evolve necessary procedural safeguards against recurrence of such lapses in future.

APPENDIX II

Statement showing the action taken by Government on the Recommendations of the Committee (vide Paragraph 31 of the Report)

S. Reference to Para Nos. No. of Report and date of its presentation	Summary of Recommendation/ Observation	Gist of Government reply
(1)	(2)	(3)
	(4)	
<i>The International Airports Authority of India (Medical Attendance and Treatment) Regulations</i>		
1. First Report (Ninth Lok Sabha) 22-5-1990 28	The Committee recommend that the term 'deserving cases' used in the regulation should be specified suitably. The Committee desire that the actual procedure being followed in this regard should be reflected in the regulation itself and the regulation amended accordingly.	Regulation 8 of the International Airports Authority of India (Medical Attendance & Treatment) Regulations has since been amended to the desired effect vide IAAI Notification No. Sectt. 122/76-Misc. dated 13 October, 1992 published in the Gazette of India: Extraordinary, Part III, Section 4, dated 2 November, 1992.

(1)	(2)	(3)	(4)
<p>2 Second Report (Tenth Lok Sabha) 11-5-1992</p> <p style="text-align: center;">4</p>		<p><i>The Contract Labour (Regulation and Abolition) Central Rules</i></p>	<p>All Legislative Sections in the Ministry are requested to take utmost care in the handling of all papers relating to legislative matters and ensure that recurrence of such lapses do not occur in future.</p> <p>[Ministry of Labour Note No. S-16011/2/92-LW dated 22 February, 1993.]</p>
		<p>The Committee note with concern that even when no comments were received on the draft rules, it has taken the Ministry of Labour more than 19 months to notify the final rules in the gazette after the expiry of the last date for receipt of comments from public. The delay has been attributed to the misplacement of the relevant file which is stated to have remained untraced for quite some time. It only indicates carelessness on the part of the Ministry in handling the important files on legislative matters of general public interest. The Committee hope that the Ministry would take corrective measures to plug any loopholes in the procedure to avoid recurrence of such lapses.</p>	

(1)	(2)	(3)	(4)
3 Fourth Report (Tenth Lok Sabha) 14-7-1992 6	<i>The Rubber Board of India Financial Adviser and Project Officer Recruitment Rules</i> The Committee note that on being pointed out, the Ministry of commerce have agreed to provide the requisite foot-note in indicating the details of the original notification dated 16th October, 1990. The Ministry have also expressed regrets for the omission on their part for not doing so at the time of issue of the amendment notification. The Committee desire the Ministry to finalise the requisite corrigendum expeditiously and notify the same at the earliest.	Corrigendum inserting the requisite foot-note has accordingly been issued vide G.S.R. 549 dated 5 December, 1992.	

(1)	(2)	(3)	(4)
		<p><i>The Ministry of Home Affairs, Department of official Language. Central Hindi Training Institute (Accounts Officer) Recruitment Rules</i></p>	
4	12	<p>The Committee note that in accordance with the guidelines issued by the Department of Personnel and Training in March, 1988, such of the Armed forces personnel as are due to retire or to be transferred to reserve within a period of one year and having requisite experience and qualifications, can also be considered for appointment to Group 'A' and 'B' posts required to be filled up by transfer on deputation of Government servants belonging to more than one service. However, the Committee find that the extant recruitment rules do not lay down the minimum qualifications and experience in accounts which the armed forces personnel ought to possess to become eligible for the post of Accounts Officer. Consequently, all the candidates irrespective of their rank or qualifications but having some experience in accounts might claim eligibility for a civilian post in the grade of Rs. 2000-3500, which can not be the intention of these guidelines. The</p>	<p>Relevant provisions in Column 12 in the Schedule to the Ministry of Home Affairs, Department of Official Language, Central Hindi Training Institute (Accounts Officer) Recruitment Rules have accordingly been amended <i>vide G.S.R. 54 dated 30 January, 1993.</i></p>

(1)	(2)	(3)	(4)
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Committee, therefore, desire the Ministry of Home Affairs to review the provisions in the recruitment rules and prescribe the minimum conditions of eligibility for the armed forces personnel as well in more specific terms so as to make the rules self-contained and to do away with any element of uncertainty in these respects.

The Paradip Port Employees (General Provident Fund) Regulations

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The Committee note that the Ministry of Surface Transport have agreed to issue corrigendum to describe the regulations as of 1991 instead of 1989. The Committee desire the Ministry to do the needful without further delay. In this connection, the Committee cannot but re-stress that the responsibility of the Ministry/Department does not cease with the sending of a notification to the Press. After the rules, regulations are published in the gazette, the Ministry/Department should take immediate steps to examine whether the same have been correctly printed and if necessary, to issue a corrigendum thereto. The observations of the Committee were

(i) Corrigendum to describe the Paradip Port Employees (General Provident Fund) Regulations as of 1991 has since been issued vide G.S.R. 858 (E) dated 6 November, 1992.

(ii) The recommendations of the Committee regarding avoiding recurrence of such lapses have also been noted for compliance. [Ministry of Surface Transport O.M. No. H-11011/4/92-PE-I dated 31 December, 1992.]

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circulated to all Ministries/Departments by the then Department of Parliamentary Affairs *vide* O.M. No. F. 32-40/72-R&C dated 28 February, 1973. Despite these standing instructions, the Ministry had not taken any action after publication of the notification in March, 1991 till the error was pointed out by the Committee. The Committee desire the Ministry to devise suitable measures so that such lapses do not recur in future.

The Employees' Provident Funds Scheme

6 Seventh Report
(Tenth Lok Sabha)
2-3-1993

Observations of the Committee have been noted for future compliance.
[Ministry of Labour O.M. No. H-11020/3/91-SS.II-dated 13 April, 1993.

The Committee note that the Employees' Provident Funds (Amendment) Scheme, 1991 was brought into force retrospectively from 1 April, 1991 but it was not accompanied with the usual explanatory memorandum stating the reasons for such retrospective operation and also certifying that the interests of nobody would be adversely affected thereby. When so pointed out by the Committee the Ministry of Labour brought out yet another notification (GSR 293 of 1992) in June, 1992

(1)	(2)	(3)	(4)
7	7	<p>repeating the same amendment with effect from 1 May, 1990 instead of 1 April, 1991, extending the period of retrospective application by further 11 months. The explanatory memorandum appended to the later notification indicated that the retrospective effect had become necessary as the proposal for amendment had been received late and its processing had also taken some time. But it did not explain the reasons for upward shifting the date of retrospective application from 1 April, 1991 to 1 May, 1990.</p>	<p>The Committee regret to observe that the Ministry of Labour had not taken up the matter connected with the amendment to the statutory 'Orders' with the urgency and seriousness it deserved as would reveal from the lackadaisical manner in which the two notifications have been dealt with. The Committee do expect the Ministry to be careful enough in processing the vital matters which may affect quite a large number of Employees' Provident Fund</p>

(1)	(2)	(3)	(4)
8	23	<p>beneficiaries and desire them to evolve suitable measures to plug any loopholes in the system so as to cut short the procedural delays to the minimum. The Committee would further like to observe that the Ministry should as well be prompt in replying to the references made by the Parliamentary Committee, for in the instant case, they had taken more than six months in furnishing the information to the Committee.</p> <p><i>The Central Water Commission (Non-Ministerial Group 'C' Posts) Recruitment Rules</i></p>	<p>Suitable safeguards are being evolved with a view to avoid recurrence of such a lapse.</p> <p>[Ministry of Water Resources O.M. No. 39/12/87-Estt. I dated 15 April, 1993]</p>
8	23	<p>The Committee note that on being pointed out, the Ministry of Water Resources have since issued the requisite corrigendum with a view to identify the Central Water Commission (Non-Ministerial Group 'C' Posts) Recruitment Rules, 1992 as an amendment to the principal recruitment rules of 1982. However, the fact remains that the Ministry moved in the matter only when the error was so pointed out to them by the Committee. The Committee cannot but</p>	

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observe that such a state of affairs reflects poorly on the functioning of the Ministry and that scant attention was being paid to the formulation of amendments to the statutory rules. The Committee, therefore, desire the Ministry to evolve suitable safeguards with a view to avoid recurrence of such a lapse in future.

The Central Industrial Security Rules

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The Committee find that the error in the short title to the Central Industrial Security Force (fourth Amendment) Rules had crept in due to the fact that the notification was sent by the Ministry of Home Affairs for printing towards the end of the year 1990 and whereas it was subsequently published in the gazette in the year 1991. The Ministry have, however, assured that due care would be taken by them in future to avoid this kind of error while sending rules to the press in the last month of the year. The Committee trust the Ministry would keep up their assurance to the Committee in this regard.

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Care will be taken in future to avoid this kind of error.

[Ministry of Home Affairs O.M. No. E.320123/90-L&R/Pers. I dated 6 April, 1993.]

MINUTES

APPENDIX III

(Vide Para 3 of the Report)

XIX

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1992-93)

The Committee met on Thursday, 22 April, 1993 from 15.00 to 15.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*
MEMBERS

2. Shri Chhitubhai Gamit
3. Dr. K.D. Jeswani
4. Shri Shrvan Kumar Patel
5. Shri A. Venkata Reddy
6. Shri Mohan Singh
7. Shri Tara Singh
8. Kumari Frida Topno

SECRETARIAT

1. Shri R.K. Chatterjee—*Deputy Secretary*
2. Shri Ram Kumar—*Under Secretary*

2. The Committee considered Memoranda Nos. 63—70 as under:—

(i) *The Port of New Mangalore Pilotage and other Services (Fees) Order, 1992 (GSR 631-E of 1992)—(Memorandum No. 63)*

3. The Committee noted that the Ministry of Surface Transport had agreed to amend the Preamble to the Port of New Mangalore Pilotage and other Services (Fees) Order, 1992 so as to omit the reference to the supersession of the Amendment order of 1991 being redundant. The Committee desired the Ministry to expedite the finalisation of the proposed amendment and notify it at the earliest.

(ii) *The Port of Visakhapatnam Pilotage and Other Services (Fees) Order, 1992 (GSR 578-E of 1992)—(Memorandum No. 64)*

4. The Committee noted that the Ministry of Surface Transport had agreed to amend the Preamble to the Port of Visakhapatnam Pilotage and Other Services (Fees) Order, 1992 so as to specify the exact nomenclatures of the orders sought to be superseded. The Committee desired the Ministry to do the needful at the earliest in consultation with the Ministry of Law and Justice.

(iii) *The Port of Mormugao Pilotage and other Services (Fees) Amendment Order, 1992 (GSR 579-E of 1992)—(Memorandum No. 65)*

5. The Committee noted that the Ministry of Surface Transport had agreed to amend the Preamble to the Port of Mormugao Pilotage and

Other Services (Fees) Amendment Order 1992 so as to indicate the short title of the principal order to which the amendments had been made. The Committee desired the Ministry to expedite the action to rectify the error at the earliest and also evolve suitable procedural safeguards against recurrence of such lapses.

(iv) *The Visakhapatnam Port Employees (Festival Advances) Regulations, 1989 (GSR 130-E of 1991)*—(Memorandum No. 66)

6. The Committee observed that the expressions like '*all rules corresponding to these regulations*' or any '*orders issued in this regard from time to time*' were quite vague and too general and their use in the statutory formulations should be avoided. The Committee expected the Ministries/ Departments to exercise the rule-making power delegated to them with utmost caution, precision and full measure of knowledge of facts leaving practically no scope for any speculation thereabout. While repealing or superseding any existing 'Orders', those should be enumerated in the repeal and savings clause or in the Preamble, as the case might be. In the absence of the full facts, the Committee would not be able to evaluate the propriety of such formulations. The Committee, therefore, desired the Ministry of Surface Transport to recast the provisions in regulation 12 regarding repeal and savings to indicate the exact regulations/orders which were sought to be repealed.

(v) *The Port of Tuticorin Pilotage and Other Services (Fees) Order, 1992 (GSR 571-E of 1992)*—(Memorandum No. 67)

7. The Committee noted that the Ministry of Surface Transport had proposed to rectify the error by issuance of an amendment notification substituting the words '*in continuation*' by the words '*in supersession*' in the Preamble. The Committee desired the Ministry to expedite the finalisation of the proposed amendment in consultation with the Ministry of Law and Justice and to notify it so as not to allow further prolongation of the infirmities. The Committee pointed out that such mistakes were simply indicative of the gross negligence with which the important statutory instruments were dealt with in the Ministry.

(vi) *The Cantonment Fund Servants (Amendment) Rules, 1991 (SRO 52 of 1992)*—(Memorandum No. 68)

8. The Committee decided to express their strong dissatisfaction over them in which the whole matter had been dealt with in the Ministry of Defence. The Committee felt that had the Ministry taken up the matter with the seriousness it deserved, the delay in final notification of the rules could have been averted. The Committee decided to emphasize that the Ministry should evolve suitable procedural safeguards to keep under check any undue delay in finalisation of the statutory rules in order that the infirmities that crept into the rules, were not allowed to remain incorporated even for a day. The Committee opined that the Ministry could have taken extra care to give effect to the judgement of the Court and there was no justification for such delay in implementing the Supreme Court judgement declaring the rules *ultra vires*.

(vii) The Veterinary Council of India (Registration) Regulations, 1992 (GSR 119-E of 1992)—(Memorandum No. 69)

9. The Committee noted that the Ministry of Agriculture (Department of Animal Husbandry and Dairying) had already advised the Veterinary Council of India to delete regulation 4(2)(c) from the Veterinary Council of India (Registration) Regulations, 1992 for which no explicit powers were conferred by the parent statute, namely, the Indian Veterinary Council Act, 1984. The Committee desired the Ministry to notify the proposed amendment expeditiously.

10. The Committee further observed that regulation 12 of the regulations *ibid* similarly provided for recovery of 'service charges' to be specified by Executive Committee from time to time. The Committee desired that the Ministry should undertake a re-appraisal of the entire regulations with a view to identify all such provisions as provided for levy of fees, service charges etc. of either description without due legal authority in the parent statute, and to take urgent steps for their omission from the statute book in consultation with the Ministry of Law and Justice.

(viii) The Coir Board Provident Fund (Amendment) Bye-laws, 1992 (S.O. 306-E of 1992)—(Memorandum No. 70)

The Committee noted that the Ministry of Industry (Department of Small Scale Industries and Agro Rural Industries) had agreed to issue a corrigendum in consultation with the Ministry of Law and Justice so as to incorporate the usual foot-note indicating the particulars of the principal by-laws and subsequent amendments made thereto. The Committee desired the Ministry to do the needful at an early date and also to evolve necessary procedural safeguards against recurrence of such lapses.

(ix) The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (GSR 129 of 1991)—Rule 1(1) thereto—(Memorandum No. 71)

The Committee noted that the Department of Atomic Energy had agreed to carry out the change in the year of the short title of read as 1991. The Committee observed that if the Department would have been a little more vigilant, the error could have been averted. The Committee hoped the Department would do the needful in the instant case and take adequate precautionary measures for future.

The Committee then adjourned.

XXI

MINUTES OF THE TWENTY-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1992-93)

The Committee met on Monday, 31 May, 1993 from 15.00 to 16.00 hours.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Shri Ram Singh Kashwan
4. Shri Guman Mal Lodha
5. Shri A. Venkata Reddy
6. Shri Mohan Singh
7. Shri Tara Singh
8. Kumari Frida Topno
9. Shri Ratilal Kalidas Varma

SECRETARIAT

1. Shri R.K. Chatterjee— *Deputy Secretary*
2. Shri Ram Kumar — *Under Secretary*

2. The Committee considered the draft Ninth Report and adopted it with certain verbal modifications.

3. The Committee also decided to undertake the proposed Study Tour of the Committee to Bangalore, Cochin and Bombay during June, 1993.

4. The Committee further decided to hold their next sitting on Wednesday, 9 June, 1993.

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The Committee then adjourned.