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COMMITTEE ON SUBORDINATE LEGISLATION
(TENTH LOK SABHA)

EIGHTH REPORT

[Presented on 31 March, 1993]



LOK SABHA SECRETARIAT
NEW DELHI

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LOK SABHA SECRETARIAT

CORRIGENDA
TO

THE EIGHTH REPORT OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (TENTH LOK SABHA)

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

Shri Somnath Chatterjee — *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>

REPORT

I

INTRODUCTION

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

2. The matters covered by the Report were considered by the Committee at their sittings held on 12 November, 1992, 22 January, 26 February, and 15 March, 1993.

3. The Committee considered and adopted this Report at their sitting held on 30 March, 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

REPRESENTATION REGARDING THE MERCHANT SHIPPING ACT, 1958

5. In a representation dated 9 November, 1992, addressed to the Chairman, Committee on Subordinate Legislation, one Shri Anil Agrawal of Bombay has stated as under:

".....under section 100 of the (Merchant Shipping) Act, every shipowner is required to employ seamen registered with the Seamen's Employment Exchange by a method called as "opening of Articles" in the presence of Shipping Master. It is a statutory requirement so that the interests of crew in matters of wages and amenities (including provident fund, gratuity, bonus, medical treatment and compensation etc.) are safeguarded. The other over-riding consideration in employing them (who are trained and registered) is to ensure safety of life and property at sea.

Over the period of years, the Directorate General of Shipping has been granting exemption to various shipowners from opening of Articles under section 100 of the said Act, thus enabling them to operate ships by employing crew of their choice resulting in exploitation and endangering safety. It is submitted that the use of

* To be appended at the time of printing of the Report.

** Side-lined in the cyclostyled copy of the Report.

discretion to grant exemption in circumstances obtaining at a given time is a one time event. When this exemption is continued over the years without securing conscious compliance with the provisions of the Act, it can safely be assumed that the authorities are exercising powers which the Act and the subordinate legislation never intended to confer upon them. Granting of exemption, as a matter of rule rather than as an exception, amounts to subtly circumventing the law.....”

6. The matter was referred to the Ministry of Surface Transport for their comments. In their reply dated 22 December, 1992, the Ministry stated as under:—

“.....In terms of section 100 of Merchant Shipping Act, 1958 (44 of 1958) the master of every Indian ship, except a home trade ship of less than two hundred tons gross, shall enter into agreement in accordance with this Act with every seamen whom he engages in, and carries to sea as one of his crew from any port in India. Director General of Shipping in exercise of the powers conferred under subsection (1) of section 456 of the Merchant Shipping Act 1958 (44 of 1958) read with the order of the Government of India in the then Ministry of Transport and Communication S.O. No. 3144 dt. 17-12-1960, has been granting exemption from opening articles of agreement only in deserving cases, considering the difficulties faced by the owners of the vessel in signing on and signing off due to operational problems.

However, after careful consideration of the matter Director General (Shipping) has decided to withdraw the exemption granted to all home trade vessels vide order dt. 12-11-92.

The question of granting exemption to various types of vessels from opening Articles of Agreement under section 100 of the Merchant Shipping Act, 1958 was referred to the Seamen's Employment Board (Foreign Going) Bombay, a statutory advisory body, for its advice.

This item was considered by the Seamen's Employment Board (Foreign Going) at its meeting held on 25.11.1991. After discussion it was agreed that exemption from opening of Articles of Agreement may be granted by the authorities concerned subject to the following norms:—

- (i) The authorities should be convinced that the vessel in question cannot open Articles of Agreement in the normal course of trade.
- (ii) The manpower employed on board the vessel is covered by an approved agreement in respect of service conditions.

- (iii) The company should submit quarterly returns to the officer(s) authorised by the Director General of Shipping in respect of:—
- (a) The number of vessels exempted from Articles of Agreement;
 - (b) The number of seamen with names employed on vessels mentioned in para (a) above.
- (iv) The officer(s) authorised by the Director General (Shipping) shall be empowered to visit any vessel at any time for which the ONGC/BPT shall issue necessary entry permits.
- (v) The following types of vessels may be considered for exempting from opening Articles of Agreement:
1. Off Shore vessels
 2. Multi Support vessels
 3. Diving Support vessels
 4. Mobile Off-shore Drilling vessels
 5. Small Research Vessels on selective basis
 6. Derrick and Pipe Laying Barges
 7. Tugs
 8. Ferries
 9. Light House ships
 10. Dredgers
 11. Crew Boats (To be included when introduced)
 12. Such other ships as may be decided by the DGS from time to time.
- (vi) The Shipping companies seeking grant of exemption from opening of Articles of Agreement should apply to the D.G. of Shipping in the following format:
1. Name of the Shipping Co.
 2. Name of ship
 3. Type of ship
 4. Port of Registry
 5. Official Registration No.
 6. Gross Tonnage
 7. Area of operation
 8. Complement of Officers/Crew (Rank/Cateogy wise)
 - (i) officers (ii) crew
 9. Method of recruitment
 10. Terms and conditions of service (copies of approved agreement to be attached).
 11. Nature and period of training imparted.
 12. Reasons for seeking exemption.
 13. The Shipping Company seeking exemption should also submit an undertaking for compliance of the approved agreement signed by them with the unions regarding wages, service conditions and social security. Where the

Shipping Company is seeking exemption due to non-availability of required personnel from the Seamen's Employment Office, "NOC" from the Director, Seamen's Employment Office should also be submitted along with the application for exemption.

The Director General (Shipping) has accepted the above recommendations of the SEB (FG) Bombay and the same have come into force with effect from 12-11-92....."

7. The Committee note from the reply that the Director General of Shipping had been granting exemptions from opening articles of agreement in certain cases, considering the difficulties faced by the owners of the vessels in signing on and signing off due to operational problems. However, the Director General has since decided to withdraw the exemptions granted to all home trade vessels *vide* Order dated 12 November, 1992. The entire matter was considered by the Seamen's Employment Board (Foreign Going), Bombay, on 25 November, 1991. The recommendations made by the Board were accepted by the Director General and given effect to from 12 November, 1992. The recommendations of the Board broadly envisaged that the authorities should be convinced before grant of exemption that the vessel could not open the articles of agreement in normal course of trade and the man-power employed on it was covered by an approved agreement in respect of service conditions.

8. The Committee find that the parent statute *viz.*, the Merchant Shipping Act conferred wide discretion upon the Central Government in the matter of granting exemptions from operation of the various provisions of the enactment. The Committee are, therefore, inclined to observe that the Government should exercise the powers of exemption with utmost caution. Ordinarily, exemptions should not be granted unless absolutely necessary. As a safeguard against any arbitrary use of the wide discretion, there should be a provision for recording of reasons in writing in each case of such exemption. Besides ensuring that the vessel could not open the articles of agreement in the normal course of trade and the man-power employed on it was covered by an approved agreement in respect of service conditions, insistence should also be placed on obtaining a 'No Objection Certificate' from the Seamen's Employment Office about non-availability of the required personnel in order that the interests of the registered seamen are not jeopardised in any manner.

9. The Committee further note that the recommendations made by the Seamen's Employment Board (Foreign Going), Bombay have since been considered by the Government and given effect to from 12 November, 1992. However, such executive or administrative instructions are not ordinarily published in the official gazette and as such these escape notice of this Committee. Since the Government have already issued a set of guidelines, there could be no difficulty in placing them on a statutory footing by an

amendment of the relevant rules, for the information of all concerned. The Committee desire the Ministry of Surface Transport to do the needful at an early date.

III

(1) THE DEPARTMENT OF ATOMIC ENERGY ASSISTANT DIRECTOR (OL) RECRUITMENT RULES, 1991 (GSR 3 OF 1992); AND

(2) THE DEPARTMENT OF ATOMIC ENERGY SENIOR HINDI TRANSLATOR RECRUITMENT RULES, 1991 (GSR 4 OF 1992)

10. The Department of Atomic Energy Assistant Director (OL) Recruitment Rules, 1991 were published in the Gazette of India, Part II, Section 3(i), dated 4 January, 1992. Column 11 of the Schedule appended thereto laid down the method of recruitment as "By promotion/failing which by deputation or direct recruitment." It was, however, not made clear as to which of the two alternate methods, viz., deputation or direct recruitment would be adopted first for making recruitment in case the method of recruitment by promotion failed. Identical provisions were found in the recruitment rules for the post of senior Hindi Translator in the Department of Atomic Energy. The matter was taken up with the concerned Department of Atomic Energy for clarification. In their reply dated 1 January, 1993, the Department stated as under:—

".....the posts will be filled up in the order in which the methods are mentioned in the Recruitment Rules *i.e.* by promotion failing which by deputation failing which by direct recruitment."

11. The Committee note from the reply of the Department of Atomic Energy that the posts of Assistant Director (OL) and the Senior Hindi Translator in the Department would be filled up by promotion, failing which by deputation and failing both, by direct recruitment. However, the Committee find that the intention was not fully borne out by the existing provisions in the respective recruitment rules for the two posts. With a view to render the statutory provisions unambiguous, the Committee direct the Department of Atomic Energy to recast the provisions in column 11 of the Schedules prescribing the method of recruitment to the said posts on the following pattern, namely—

By promotion, failing which by deputation and failing both, by direct recruitment.

IV

THE DEPARTMENT OF ATOMIC ENERGY (LABOUR-CUM-WELFARE OFFICER/WELFARE OFFICER) RECRUITMENT RULES, 1991 (GSR 211 OF 1991)

12. The Department of Atomic Energy (Labour-cum-Welfare Officer/Welfare Officer) Recruitment Rules, 1991 were published in the Gazette of

India, Part II, Section 3 (i), dated 30 March, 1991. Column 11 of the Schedule appended thereto prescribed the method of recruitment to the posts of Labour-cum-Welfare Officer/Welfare Officer by means of 'transfer/promotion failing which on deputation'. However, the percentage of the posts to be filled by the each method viz., transfer/promotion had not been indicated therein. The concerned Department of Atomic Energy were requested to state whether they had any objection to amending the recruitment rules so as to prescribe the requisite percentage. In their reply dated 25 March, 1992, the Department stated as under:—

“As regards amendment to column 11 of the schedule, no percentage has been fixed for transfer and promotion so as to enable the Constituent Units to have wider choice of candidates, and hence amendment has not been proposed in the Rules.”

13. The Committee note that appointment to the posts of Labour-cum-Welfare Officer/Welfare Officer in the Department of Atomic Energy is to be made by transfer and/or promotion and failing both, by transfer on deputation, but no percentage has been fixed for transfer and promotion. According to the Department, this has been done to enable the Constituent Units to have wider choice of candidates. The Committee are of the view that there is substantial difference between 'transfer' and 'promotion' and the two terms are in no way synonymous. The method of recruitment is usually prescribed depending upon a judicious blending of several considerations, like nature of duties, qualifications, experience, availability of candidates etc. When more than one method is prescribed, the ratio of vacancies to be filled by each method is essentially indicated. In the absence of such a ratio, the provisions are likely to be interpreted differently by different persons. With a view to make the statutory rules unambiguous and self-contained, the Committee would like the Department of Atomic Energy to lay down the fixed ratio or percentage of vacancies to be filled by each method. The Committee trust that with the experience gained over the years, it would not be difficult for the Department to arrive at a suitable ratio. The Committee, therefore, desire the Department to amend the provisions in column 11 of the schedule to the Recruitment Rules accordingly.

V

THE VISAKHAPATNAM PORT TRUST EMPLOYEES' (CONTRIBUTORY OUTDOOR AND INDOOR MEDICAL BENEFIT AFTER RETIREMENT) REGULATIONS, 1992 (GSR 398-E OF 1992)

14. The Visakhapatnam Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after Retirement) Regulations, 1992 were

published in the Gazette of India: Extraordinary, Part II, Section 3(i) dated 2 April, 1992. Regulation 10 of the Regulations read as under:-

“10. *Interpretation:* when a doubt arises as to the interpretation of these Regulations, the matter will be referred to the Chairman, Visakhapatnam Port Trust, whose decision shall be final.”

15. The wordings ‘*whose decision shall be final*’ in the regulation were apt to give an impression that the jurisdiction of the law courts was being ousted. The matter was taken up with the concerned Ministry of Surface Transport inviting their attention to the following observations made by the Committee in para 18 of their Fourth Report (third Lok Sabha):-

“The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be worded on the lines of regulation 24 of the Kandla Port Employees’ (Allotment of Residences) Regulation, 1964 which reads as under:-

24. *Interpretation of regulations:-* If any question arises as to the interpretation of these regulations, the same will be decided by the Board.”

16. In their reply dated 2 December, 1992, the Ministry stated as under:-

“Ministry of Surface Transport has no objection to amend the regulation as suggested by the Lok Sabha Secretariat. Visakhapatnam Port Trust is being asked to place the matter before their Board of trustees and amend the regulations accordingly. A corrigendum will be issued in due course.”

17. The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend regulation 10 of the Visakhapatnam Port Trust Employees’ (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1992 on the lines of regulation 24 of the Kandla Port Employees’ (Allotment of Residences) Regulations, 1964 so as to do away with the probable notion that the jurisdiction of the law courts was being ousted. The Committee desire the Ministry to expedite the process of finalisation and notify the requisite amendment at an early date.

VI

THE INCOME-TAX (FIRST AMENDMENT) RULES, 1992

(S.O. 4-E of 1992)

(A)

18. Sub-rule (3) of rule 11M, as inserted by First Amendment of 1992, of the Income-tax Rules, 1962 read as under:—

“11M. *Procedure before the National Committee:—*

(3) The quorum for taking a decision on an application shall be at least five members, including Chairman. If a meeting is adjourned

without taking a decision, for lack of quorum, the decision at the adjourned meeting may be taken by the members present, even without the requisite quorum.”

19. The pharascology ‘if a meeting is adjourned without taking a decision for lack of quorum, the decision at the adjourned meeting may be taken by the members present, even without the requisite quorum’ was seemingly not proper. The concerned Ministry of Finance were, therefore, requested to clarify how could the decisions taken at a sitting without quorum be valid and whether fresh notices were being issued to all the members to reconvene the adjourned meeting subsequently. In their reply dated 15 October, 1992, the Ministry Stated as under:—

“.....the decision taken by Members when the quorum is not complete refers to the decision to adjourn the meeting. We may, perhaps, make this clearer by substituting “decision at the adjourned meeting” by “decision to adjourn the meeting.”

“So far as the second limb of this point is concerned, it may be mentioned that so far such a situation has not arisen. The general practice is to record minutes of every meeting and to send copies of the minutes to all Members of the Committee irrespective of whether the meeting was attended by them or not. Thus, in case, a meeting is adjourned for lack of quorum and is fixed for another day, this would be duly recorded in the minutes which would be endorsed to all Members of the Committee for their information.”

20. According to the Ministry of Finance, the decision taken at a meeting without quorum did, in fact, refer to the decision to adjourn the meeting. So as to make the underlying intention amply clear, the Ministry have now proposed to substitute the words ‘decision at the adjourned meeting’ by the words ‘decision to adjourn the meeting’. The Committee desire the Ministry to do the needful at the earliest.

21. With regard to issuing notices for re-convening the adjourned meeting, the Ministry have stated that such a situation had not arisen so far. However, as a general practice, in case a meeting was adjourned for lack of quorum and re-fixed for another day, the fact would be recorded in the minutes which would be endorsed to all the members of the Committee, the Committee find that there is no specific provision for giving notices to the absentee members of the National Committee about the time, place and date fixed for holding the adjourned meeting. The Committee feel that the practice to endorse the minutes of the adjourned sitting cannot serve the purpose of a proper notice. The Ministry would do well if the notices for the next sitting are issued afresh. The Committee desire the Ministry to amend the Income-tax Rules suitably so as to incorporate a specific provision for giving notices to all the members of the National Committee about re-convening an adjourned meeting.

(B)

22. Sub-rule (2) of Rule 11N, as substituted by First Amendment of 1992, of the Income-tax Rules, 1962 read as under:—

“11N *Other provisions:*—

(2) The members may be paid sitting fee upto Rs. 250 for each meeting of the National Committee attended by a member. In addition, they shall be entitled to reimbursement of actual cost of travel by air, rail or road as well as actual cost of boarding and local transport subject to the limits provided by the Central Government in respect of such expenditure by members of High Level Committee.”

23. The expression ‘sitting fee upto Rs. 250’ appeared to carry an element of uncertainty inasmuch as it did not specify an exact amount of fee. The matter was taken up with the concerned Ministry of Finance for clarification and also to ascertain the limits laid down by the Central Government for purposes of travelling allowances etc. by the Members of the so called High Level Committee and whether these limits could be incorporated in the rules for information of all concerned. In their reply dated 8 September, 1992, the Ministry Stated as under:—

“.....the expression ‘upto Rs. 250’, specifies the upper limit. Some members may not like to take any fee or may take a reduced sitting fee. That is why ‘upto Rs. 250’, has been used.

The limit of allowance etc. to be paid to members of High Level Committee is governed by the provisions contained in Appendix 10(A) of the supplementary Rules, vide O.M. No. 19020/1/84-E. IV dated 23 June, 1986 issued by the Department of Expenditure, Ministry of Finance it has been clarified that for Class ‘A’ cities the daily allowance admissible for out station non-official members of High Powered Committee, for stay in the Hotel is Rs. 300 (to be reduced by Rs. 50 in case the out station non-official members does not stay in hotel). The same O.M. also clarifies that the conveyance allowance in such cases is the actual conveyance hire subject to a ceiling of Rs. 75 per day.

It is submitted that the above rules apply to all High Powered Committees set up by the Government of India and these rules are changed from time to time by the Department of Expenditure. If the rules are incorporated in the Income-tax Rules 1962 the consequential changes would have to be carried out from time to time. The balance of convenience lies in incorporating the general rules in this regard by reference rather than by incorporation. It is, therefore, submitted that it would not be desirable to incorporate the rules in the Income-tax Rules 1962.”

24. The Committee note that the Ministry of Finance have prescribed an upper limit of 'upto Rs. 250' to take care of such members as may not like to take any fee or may take a reduced sitting fee. In the opinion of the Committee, even if some members prefer to avail or not to avail, it should not detract from prescribing an exact amount of the fee. With a view to do away with any uncertainty in the matter, the Committee desire the Ministry to amend the relevant provisions of the Income-tax Rules laying down the correct fee.

25. The Committee further note that the Ministry have not prescribed any limit with regard to entitlement for re-imbusement of cost of travel, board, transport etc. but instead subjected it to the limit provided by the Central Government in respect of the expenditure incurred by the High Level Committee members. In this connection, the Committee cannot but reiterate their earlier observations made in para 13 of First Report (Fourth Lok Sabha), that rules should, as far as possible, be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing. The Committee have also emphasized that the rules should be self-explanatory and legislation by reference should be scrupulously avoided. The Committee observe that the parent statute viz., the Income-tax Act confers all the necessary powers upon the Government, and they should have no difficulty in setting forth whatever entitlements are considered essential. The Committee, therefore, desire the Ministry to amend the Income-tax rules so as to make them self-contained for information of all concerned.

VII

THE INCOME-TAX (FIRST/SECOND AMENDMENT) RULES, 1992 (S.O. 4-E/33-E OF 1992)

26. The Income-tax (First Amendment) Rules, 1992 were published in the Gazette of India: Extraordinary, Part II, Section 3(ii), dated 2 January, 1992. The foot-note given at the end of the notification read as under:—

“The principal rule viz., Income-tax Rules, 1962 was made vide S.O. 969 dated 26-3-1962.”

27. Normally, references to the subsequent amendments made to the principal rules were also given for facility of reference. The matter was taken up with the concerned Ministry of Finance to ascertain the reasons, if any, for departure from the normal practice in this regard. In their reply dated 8 September, 1992, the Ministry stated as under:—

“In view of large number of amendments carried out in the Income-tax Rules, 1962, primarily as a result of changes made by the Finance Acts, it would not be practicable to refer to the earlier amendments. The normal practice followed in respect of the Income-tax Rules is to give the S.O. No. of the original rule only.

It may be mentioned in this regard that Income-tax Rules, 1962 as amended from time to time is widely published every year,

incorporating the changes made in the rule from year to year. Thus the facility of reference to all subsequent amendments already exists. This is a time-tested method with which the tax payers and the departmental officers are thoroughly familiar. It is, therefore, submitted that the objection may kindly be dropped."

28. The Income-tax (Second Amendment) Rules, 1992 were published in the Gazette of India; Extraordinary, Part II, Section 3(ii), dated 14 January, 1992. It was noticed that the notification did not contain the usual foot-note indicating the particulars of the principal rules and the subsequent amendments made thereto, for facility of reference. The matter was taken up with the concerned Ministry of Finance for eliciting their comments. In their reply dated 24 September, 1992, the Ministry stated as under:—

".....in view of the large number of amendments carried out to the Income-tax Rules, 1962 from year to year, it would not be practicable to mention the number of all the earlier notifications. As such, there has been no practice of including a foot-note to this effect. There is, therefore, no ground for observing that the notification under examination 'does not contain the usual foot-note'.

It may be mentioned that the requirement of facility of reference is met by yearly publication of the Income-tax Rules, 1962 as amended from time to time in which all changes made are incorporated and the notification number as well as the earlier position in the rule is indicated in the foot-note on the respective pages of the publication. This is a time tested method with which both the Departmental Officers, the assessee (*i.e.*, the public) and their representatives are thoroughly familiar. Representative bodies of tax-payers have not indicated that there is any difficulty in terms of referencing so far as notifications amending the rules are concerned. It is, therefore, submitted that this objection may kindly be dropped.

This issues with the approval of Member (IT) and *Ex-officio* Additional Secretary to the Government of India."

29. To overcome the difficulty in tracing back the amendments made in rules in the past, the Committee, in their Third Report (First Lok Sabha), presented on 3 May, 1955, recommended that whenever any amendment in the rules was made, the S.R.O. numbers of the previous amendments or the original rules should be cited in a foot-note. If the number of previous amendments was large, reference in the foot-note might be given only to the last amendment. Further, in their Sixth Report (Seventh Lok Sabha), presented on 21 April, 1981, the Committee called upon the Ministry of Law (Legislative Department) to ensure that the practice was followed by all Ministries/Departments in letter and spirit. The Committee are constrained to note that despite their categorical findings in this regard, the Ministry of Finance have failed to indicate the S.R.O. numbers of the principal rules or

the previous amendments by way of a foot-note to the Income-tax (Second Amendment) Ruels, 1992. It is also not known whether the amendment notification in question was at all got vetted from the Ministry of Law or whether that Ministry had also failed to take notice of Committee's requirements in this matter.

30. The Committee are inclined to observe that even if the number of amendments was very large and it was not practicable to mention S.R.O. numbers of all the earlier notifications, the Ministry could have at least indicated the particulars of the last amendment in a foot-note as recommended by them earlier. The Committee cannot but reiterate their earlier recommendations in this regard and direct the Ministry to evolve adequate procedural safeguards against recurrence of such lapses in future.

VIII

THE INDIA DEVELOPMENT BONDS (AMENDMENT) SCHEME, 1992 (GSR 70-E OF 1992)

31. The India Development Bonds (Amendment) Scheme, 1992 was published in the Gazette of India: Extraordinary, Part II, Section 3 (i), dated 30 January, 1992. It was noticed that the notification did not contain the usual foot-note indicating the particulars of the Principal Scheme and the subsequent amendments made thereto, for facility of reference. The matter was taken up with the Reserve Bank of India for elucidation. In their reply dated 3 October, 1992, the Reserve Bank of India have stated as under:—

“.....we have no objection to amending the Notification to the desired effect.....”

32. The Committee note that on being pointed out by them, the Reserve Bank of India has agreed to amend the notification containing the India Development Bonds (Amendment) Scheme, 1992 so as to provide the requisite foot-note indicating the particulars of publication of previous amendments, for facility of reference. The Committee desire the concerned authorities to do the needful at an early date and further evolve suitable measures to prevent recurrence of such a lapse.

IX

THE INDIAN RAILWAYS (ASSISTANT SPORTS OFFICER) RECRUITMENT AMENDMENT RULES, 1991 (GSR 30 OF 1992)

33. The Indian Railways (Assistant Sports Officer) Recruitment Amendment Rules, 1991 (GSR 30 of 1992) were published in the Gazette of India, Part II, Section 3(i), Dated 18 January, 1992. It was noticed that the notification did not contain the usual foot-note indicating the particulars of the principal rules and the subsequent amendment made thereto, for facility of reference. The matter was taken up with the

concerned Ministry of Railways (Railway Board) for elucidation. In their reply dated 29 September, 1992, the Ministry stated as under:—

“.....Principal Recruitment Rules for the post of Assistant Sports Officer were published *vide* GSR 445 Dated 1.4.1980 in the Gazette of India, Part II, Section 3(i) issue dated 19.4.1980. Thereafter, no amendment was made and these Recruitment Rules have now been re-notified *vide* GSR No. 30 of 1992. The Ministry of Railways have no objection if the following foot-note is incorporated in GSR 30 of 1992.

FOOT NOTE:

GSR No. 445 dated 1.4.1980 Issue dated 19.4.1980.

34. The Committee note that the Principal Recruitment Rules for the post of Assistant Sports Officer in the Ministry of Railways were notified in the Gazette of India in April, 1980. As no other amendment had been made to the principal rules, the Ministry have no objection to indicating the particulars of publication of the principal rules in the Amendment Notification of 1992 by way of a foot-note. The Committee desire the Ministry to do the needful at the earliest and further evolve suitable procedural safeguards against recurrence of such lapses in future. In this connection, the Committee cannot but reiterate their earlier observations made in para 87 of Sixth Report (Seventh Lok Sabha), presented to the House on 21 April, 1981, namely:—

“The Committee are unhappy to note that their recommendation regarding giving of foot-notes to the amending Rules indicating the particulars of earlier amendments had not been uniformly followed in all cases. The Committee desire the Ministry of Law (Legislative Department) that while vetting the Rules, they should also see that the practice is followed by all Ministries/Departments in letter and spirit.”

NEW DELHI;
March, 1993

Chaitra, 1915 (Saka)

SOMNATH CHATTERJEE.
Chairman,

Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(Vide para 4 of the Report)

Summary of main Recommendations/Observations made by the Committee

S.No	Para No.	Summary
1	2	3
		<i>Representation regarding the Merchant Shipping Act, 1958.</i>
1(i)	7	The Committee note from the reply that the Director General of shipping had been granting exemptions from opening articles of agreement in certain cases, considering the difficulties faced by the owners of the vessels in signing on and signing off due to operational problems. However, the Director General has since decided to withdraw the exemption granted to all home trade vessels <i>vide</i> Order dated 12 November, 1992. The entire matter was considered by the Seamen's Employment Board (Foreign Going), Bombay on 25 November, 1991. The recommendations made by the Board were accepted by the Director General and given effect to from 12 November, 1992. The recommendations of the Board broadly envisaged that the authorities should be convinced before grant of exemption that the vessel could not open the articles of agreement in normal course of trade and the man-power employed on it was covered by an approved agreement in respect of service conditions.
1 (ii)	8	The Committee find that the parent statute <i>viz.</i> , the Merchant Shipping Act conferred wide discretion upon the Central Government in the matter of granting exemptions from operation of the various provisions of the enactment. The Committee are, therefore, inclined to observe that the Government should exercise the powers of exemption with utmost caution. Ordinarily, exemptions should not be granted unless absolutely necessary. As a safeguard

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against any arbitrary use of the wide discretion, there should be a provision for recording of reasons in writing in each case of such exemption. Besides ensuring that the vessel could not open the articles of agreement in the normal course of trade and the man-power employed on it was covered by an approved agreement in respect of service conditions, insistence should also be placed on obtaining a 'No Objection Certificate' from the Seamen's Employment Office about non-availability of the required personnel in order that the interests of the registered seamen are not jeopardised in any manner.

1 (iii)

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The Committee further note that the recommendations made by the Seamen's Employment Board (Foreign Going), Bombay have since been considered by the Government and given effect to from 12 November, 1992. However, such executive or administrative instructions are not ordinarily published in the official gazette and as such these escape notice of this Committee. Since the Government have already issued a set of guidelines, there could be no difficulty in placing them on a statutory footing by an amendment of the relevant rules, for the information of all concerned. The Committee desire the Ministry of Surface Transport to do the needful at an early date.

(i) *The Department of Atomic Energy Assistant Director (OL) Recruitment Rules, 1991 (GSR 3 of 1992); and*

(ii) *The Department of Atomic Energy Senior Hindi Translator Recruitment Rules, 1991 (GSR 4 of 1992).*

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The Committee note from the reply of the Department of Atomic Energy that the posts of Assistant Director (OL) and the Senior Hindi Translator in the Department would be filled up by promotion, failing which by deputation and failing both, by direct recruitment. However, the Committee find that the intention was not fully borne out by the existing provisions in the respective recruitment rules for the two posts. With a view to render the statutory

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provisions unambiguous, the Committee direct the Department of Atomic Energy to recast the provisions in column 11 of the Schedules prescribing the method of recruitment to the said posts on the following pattern, namely: —

By promotion, failing which any deputation and failing both, by direct recruitment.

The Department of Atomic Energy (Labour-cum-Welfare Officer/Welfare Officer) Recruitment Rules, 1991
(GSR 211 of 1991).

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The Committee note that appointment to the posts of Labour-cum-Welfare Officer/Welfare Officer in the Department of Atomic Energy is to be made by transfer and / of promotion and failing both, by transfer on deputation, but no percentage has been fixed for transfer and promotion. According to the Department, this has been done to enable the Constituent Units to have wider choice of candidates. The Committee are of the view that there is substantial difference between 'transfer' and 'promotion' and the two terms are in no way synonymous. The method of recruitment is usually prescribed depending upon a judicious blending of several considerations, like nature of duties, qualifications, experience, availability of candidates etc. When more than one method is prescribed, the ratio of vacancies to be filled by each method is essentially indicated. In the absence of such a ratio, the provisions are likely to be interpreted differently by different persons. With a view to make the statutory rules unambiguous and self-contained, the Committee would like the Department of Atomic Energy to lay down the fixed ratio or percentage of vacancies to be filled by each method. The Committee trust that with the experience gained over the years, it would not be difficult for the Department to arrive at a suitable ratio. The Committee, therefore, desire the Department to amend the provisions in column 11 of the schedule to the Recruitment Rules accordingly.

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*The Visakhapatnam Port Trust Employees'
(Contributory Outdoor and Indoor Medical Benefit
after retirement) Regulations, 1992
(GSR 398-E of 1992)*

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The Committee note that on being pointed out by them, the Ministry of Surface Transport have agreed to amend regulation 10 of the Visakhapatnam Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1992 on the lines of regulation 24 of the Kandla Port Employees' (Allotment of Residences) Regulations, 1964 so as to do away with the probable notion that the jurisdiction of the law courts was being ousted. The Committee desire the Ministry to expedite the process of finalisation and notify the requisite amendment at an early date.

*The Income-Tax (First Amendment) Rules, 1992
(S.O 4-E of 1992)*

(A)

5 (i)

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According to the Ministry of Finance, the decision taken at a meeting without quorum did, in fact, refer to the decision to adjourn the meeting. So as to make the underlying intention amply clear, the Ministry have now proposed to substitute the words 'decision at the adjourned meeting' by the words 'decision to adjourn the meeting'. The Committee desire the Ministry to do the needful at the earliest.

5 (ii)

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With regard to issuing notices for re-convening the adjourned meeting, the Ministry have stated that such a situation had not arisen so far. However, as a general practice, in case a meeting was adjourned for lack of quorum and re-fixed for another day, the fact would be recorded in the minutes which would be endorsed to all the members of the Committee. The Committee find that there is no specific provision for giving notices to the absentee members of the National Committee about the time, place and date fixed for holding the adjourned meeting. The Committee feel that the practice to endorse the minutes of the adjourned sitting cannot serve the purpose of a proper notice. The Ministry would do

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well if the notices for the next sitting are issued afresh. The Committee desire the Ministry to amend the Income-tax Rules suitably so as to incorporate a specific provision for giving notices to all the members of the National Committee about reconvening an adjourned meeting.

(B)

5(iii)

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The Committee note that the Ministry of Finance have prescribed an upper limit of 'upto Rs. 250' to take care of such members as may not like to take any fee or may take a reduced sitting fee. In the opinion of the Committee, even if some members prefer to avail or not to avail, it should not detract from prescribing an exact amount of the fee. With a view to do away with any uncertainty in the matter, the Committee desire the Ministry to amend the relevant provisions of the Income-tax Rules laying down the correct fee.

5(iv)

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The Committee further note that the Ministry have not prescribed any limit with regard to entitlement for-re-imbusement of cost of travel, board, transport etc. but instead subjected it to the limit provided by the Central Government in respect of the expenditure incurred by the High Level Committee members. In this connection, the Committee cannot but reiterate their earlier observations made in para 13 of First Report (Fourth Lok Sabha), that rules should, as far as possible, be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing. The Committee have also emphasized that the rules should be self-contained, self-explanatory and legislation by reference should be scrupulously avoided. The Committee observe that the parent statute viz., the Income-tax Act confers all the necessary powers upon the Government, and they should have no difficulty in setting forth whatever entitlements are considered essential. The Committee, therefore, desire the Ministry to amend the Income-tax rules so as to make them self-contained for information of all concerned.

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*The Income-tax (First/Second Amendment)
Rules, 1992*

(S.O. 4-E/33-E of 1992)

6(i) 29 To overcome the difficulty in racing back the amendments made in rules in the past, the Committee, in their Third Report (First Lok Sabha), presented on 3 May, 1955, recommended that whenever any amendment in the rules was made, the S.R.O. numbers of the previous amendments or the original rules should be cited in a foot-note. If the number of previous amendments was large, reference in the foot-note might be given only to the last amendment. Further, in their Sixth Report (Seventh Lok Sabha), presented on 21 April, 1981, the Committee called upon the Ministry of Law (Legislative Department) to ensure that the practice was followed by all Ministries/Departments in letter and spirit. The Committee are constrained to note that despite their categorical findings in this regard, the Ministry of Finance have failed to indicate the S.R.O. numbers of the principal rules or the previous amendments by way of a foot-note to the Income-tax (Second Amendment) Rules, 1992. It is also not known whether the amendment notification in question was at all got vetted from the Ministry of Law or whether the Ministry had also failed to take notice of Committee's requirements in this matter.

6(ii) 30 The Committee are inclined to observe that even if the number of amendments was very large and it was not practicable to mention S.R.O. numbers of all the earlier notifications, the Ministry could have at least indicated the particulars of the last amendment in a foot-note as recommended by them earlier. The Committee cannot but reiterate their earlier recommendations in this regard and direct the Ministry to evolve adequate procedural safeguards against recurrence of such lapses in future.

*The India Development Bonds (Amendment) Scheme,
1992*

(GSR 70-E of 1992)

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The Committee note that on being pointed out by them, the Reserve Bank of India has agreed to

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amend the notification containing the India Development Bonds (Amendment) Scheme, 1992 so as to provide the requisite foot-note indicating the particulars of publication of previous amendments, for facility of reference. The Committee desire the concerned authorities to do the needful at an early date and further evolve suitable measures to prevent recurrence of such a lapse.

*The Indian Railways (Assistant Sports Officer) Recruitment Amendment Rules, 1991
(GSR 30 of 1992)*

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The Committee note that the principal Recruitment Rules for the post of Assistant Sports Officer in the Ministry of Railways were notified in the Gazette of India in April, 1980. As no other amendment had been made to the principal rules, the Ministry have no objection to indicating the particulars of publication of the principal rules in the Amendment Notification of 1992 by way of a foot-note. The Committee desire the Ministry to do the needful at the earliest and further evolve suitable procedural safeguards against recurrence of such lapses in future. In this connection, the Committee cannot but reiterate their earlier observations made in para 87 of Sixth Report (Seventh Lok Sabha), presented to the House on 21 April, 1981, namely—

“The Committee are unhappy to note that their recommendation regarding giving of foot-notes to the amending Rules indicating the particulars of earlier amendments had not been uniformly followed in all cases. The Committee desire the Ministry of Law (Legislative Department) that while vetting the Rules, they should also see that the practice is followed by all Ministries/Departments in letter and spirit.”

MINUTES

APPENDIX II

[vide Para 3 of the Report]

XIII

MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1991-92)

The Committee met on Thursday, 12 November, 1992 from 15.15 hours to 15.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Shri Chetan P.S. Chauhan
4. Shri A. Venkata Reddy
5. Shri Tara Singh

SECRETARIAT

Shri Ram Kumar—*Under Secretary*

2. and 3. *** *** ***

4. The Committee then considered Memoranda Nos. 40 to 46 as follows.

(i) to (iii) *** *** ***

(iv) *The Income-tax (Second Amendment) Rules, 1992 (S.O. 33-E of 1992)—(Memorandum No. 43)*

The Committee noted that despite their categorical findings the Ministry of Finance had failed to indicate the S.R.O. numbers of the principal rules or the previous amendments by way of a foot-note to the Income-tax (Second Amendment) Rules, 1992. It was also not known whether the amendment notification in question had been got vetted from the Ministry of Law or whether that Ministry had also failed to take notice of Committee's requirements in this matter. The Committee were inclined to observe that even if the number of amendments was very large and it was not practicable to mention S.R.O. numbers of all the earlier notifications, the Ministry could have at least indicated the particulars of the last amendment in a foot-note as recommended by them earlier. The Committee decided to reiterate their earlier

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

recommendations in this regard and to direct the Ministry to evolve adequate procedural safeguards against recurrence of such lapses.

(v) *** *** ***

(vi) *The Indian Railways (Assistant Sports Officer) Recruitment Amendment Rules, 1991 (GSR 30 of 1992)—(Memorandum No. 45)*

The Committee noted that the Ministry of Railways has no objection to indicating the particulars of publication of the principal rules in the Amendment Notification of 1992 by way of a foot-note. The Committee desired the Ministry to do the needful at the earliest and further evolve suitable procedural safeguards against recurrence of such lapses. The Committee also decided to reiterate their earlier observations made in para 87 of Sixth Report (Seventh Lok Sabha), presented to the House on 21 April, 1981.

(vii) *** *** ***

The Chairman thanked the Members of the Committee for extending their fullest co-operation and keen participation in the proceedings of the Committee at all times and maintain most congenial atmosphere for the deliberations of the Committee.

The Committee then adjourned.

XIV

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

The Committee met on Friday, 22 January, 1993 from 15.00 to 15.35 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Frank Anthony
3. Shri R. Dhanuskodi Athithan
4. Shri Ram Singh Kashwan
5. Shri Guman Mal Lodha
6. Shri Ram Niwas Mirdha
7. Shri Shravan Kumar Patel
8. Shri Mohan Singh
9. Shri Tara Singh

SECRETARIAT

1. Shri S.C. Gupta—*Joint Secretary*
2. Shri R.K. Chatterjee—*Deputy Secretary*
3. Shri Ram Kumar—*Under Secretary*

2. The Chairman, in his inaugural address (*Annexure*) welcomed the members of the Committee and explained to them broadly the scope and functions of the Committee.

3. The Committee then considered the memoranda Nos. 47—54 as follows:—

4 to 6 *** *** ***

(iv) *The Income-tax (First Amendment) Rules, 1992-Sub-rule 2 of Rule 11-N regarding other provisions (S.O. 4-E of 1992)—(Memorandum No. 50)*

7. The Committee opined that even if some members preferred to avail or not to avail, it should not detract from prescribing an exact amount of the fee. The Committee desired the Ministry to amend the relevant provisions of the Income-tax Rules laying down the correct fee. As the Income-tax Rules did not prescribed any limit with regard to entitlement for re-imbusement of cost of travel, board, transport etc. but instead

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

subjected it to the limit provided by the Central Government in respect of the expenditure incurred by the High Level Committee members, the Committee decided to reiterate their earlier observations made in para 13 of First Report (Fourth Lok Sabha), that rules should, as far as possible, be self-contained and drafted in a manner that no difficulty was caused to the public in locating and referencing. The Committee also emphasized that the rules should be self-contained, self-explanatory and legislation by reference should be scrupulously avoided. The Committee, therefore, desired the Ministry of Finance to amend the Income-tax rules so as to make them self-contained.

(v) *The Income-tax (First Amendment) Rules, 1992—Sub-rule (3) of rule 11-M regarding procedure before the National Committee (S.O. 4-E of 1992)—(Memorandum No. 51)*

8. The Committee further noted that there was no specific provision for giving notices to the absentee members of the National Committee about the time, place and date fixed for holding the adjourned meeting. The Committee felt that the practice to endorse the minutes of the adjourned sitting did not serve the purpose of a proper notice. The Committee desired the Ministry to amend the Income-tax Rules suitably so as to incorporate a specific provision for giving notices to all the members of the National Committee about re-convening an adjourned meeting.

(vi) *The Income-tax (First Amendment) Rules, 1992 (S.O. 4-E of 1992)—Foot note regarding notification of principal rules and any amendments thereto (Memorandum No. 52).*

9. The Committee noted that despite their categorical findings, the Ministry of Finance had failed to indicate the S.R.O. numbers of the principal rules or the previous amendments by way of a foot-note to the Income-tax (Second Amendment) Rules, 1992. It was also not known whether the amendment notification in question had been got vetted from the Ministry of Law and whether that Ministry had also failed to take notice of Committee's requirements in this matter. The Committee were inclined to observe that even if the number of amendments was very large and it was not practicable to mention S.R.O. numbers of all the earlier notifications, the Ministry could have at least indicated the particulars of the last amendment in a foot-note as recommended by them earlier. The Committee decided to reiterate their earlier recommendations in this regard and to direct the Ministry to evolve adequate procedural safeguards against recurrence of such lapses.

10. *** *** ***

(viii) *The India Development Bonds (Amendment) Scheme, 1992 (GSR 70-E of 1990)—(Memorandum No. 54)*

11. The Committee noted that the Reserve Bank of India agreed to amend the notification containing the India Development Bonds

(Amendment) Scheme, 1992 so as to provide the requisite foot-note indicating the particulars of publication of previous amendments. The Committee desired the concerned authorities to do the needful at an early date and further evolve suitable measures to prevent recurrence of such a lapse.

(vide Para 2 of the Minutes dt. 22-1-93)

**ADDRESS BY THE CHAIRMAN TO THE MEMBERS OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(1992-93)**

(22 January, 1993)

Hon'ble Members,

It gives me great pleasure to welcome you to this first sitting of the Committee on Subordinate Legislation (1992-93). I extend my heartiest welcome to all the hon'ble Members appointed on this Committee.

2. As you are aware, with the growing range and complexity of the governmental activity in a welfare state like ours, legislation is no longer a simple affair and the laws which are enacted necessarily relate to different subjects and matters which concern the citizens, even in their day to day lives. Hence, the legislation that has to be approved by the Legislature is today so vast and varied that it has become almost impossible for any body of legislators to deliberate upon, discuss and approve in minute detail the legislation that may be necessary for proper administration. Apart from the pressure on Parliamentary time, the factors like the technicality of the subject-matter, the need to meet unforeseen contingencies, the requirement of flexibility, etc. compel the sovereign Legislature to resort to delegation of legislative power to a subordinate authority. Parliament can at best, lay down the broad policy, and principles of an enactment, leaving the details to be worked out by the executive in the form of rules, regulations, bye-laws etc. within those parameters.

3. Delegation of legislative power, inevitable and indispensable as it is, has certain risks inherent in it. Often, Parliamentary statutes tend to become skeletal, containing only the barest principles. Sometimes, such delegated powers may be so wide as to subject the citizen to a harsh or unreasonable action by the administration or may be open to a restrictive construction limiting the rights of the intended beneficiaries or the powers may so loosely defined that the intended areas of operation may not be vividly known. As Members of this Committee, a responsibility is cast upon us to evolve suitable safeguards against all such risks.

4. As a safeguard against assumption of the arbitrary powers by the executive through the instrument of subordinate legislation, this Committee has consistently maintained that all rules, regulations, etc. framed in exercise of the authority conferred by Parliament, should necessarily be laid before the Houses of Parliament who should have the

power to annul or modify them. To this end, the Committee had in 1971 approved a standard formula for incorporation in all Acts/Bills providing for delegation of legislative power *vide* their Second Report (SLS), paras 33-34.

5. As hon'ble Members might be aware that, at the instance of the Committee, Parliament has already enacted two comprehensive pieces of legislation *viz.*, the Delegated Legislation Provisions (Amendment) Act, 1983 and 1986 incorporating the requisite laying provisions in more than 140 old Acts which did not previously contain them. Whenever a new Bill is introduced in the Lok Sabha or transmitted from the Rajya Sabha, which contain provision regarding making of rules, it is examined by the Secretariat whether it includes suitable provisions for laying of such rules etc. if the delegate happens to be the Central Government or any other agency subordinate to it. Under Direction 103A, the hon'ble Speaker may also refer a Bill involving delegation of legislative power, to the Committee to examine the extent of power sought to be delegated. If the provisions of the Bill seeking to delegate legislative power are found to be not in order and need to be annulled wholly or in part or amended in any respect, the Committee may report that opinion and the grounds thereof to the House before the Bill is taken up for consideration. A special responsibility is thus cast upon the Members of this Committee to be ever watchful. If they find that any Bill seeks to make excessive or abnormal delegation of legislative power, they may raise the matter in the House or approach the hon'ble Speaker for referring it to this Committee.

6. Another important function of the Committee is "to scrutinise and report to the House whether the powers to make regulations, rules, sub-rules byc-laws, etc. conferred by the Constitution or delegated by Parliament are being properly exercised within such delegation". The broad principles governing their examination are contained in Rule 320. The initial scrutiny of these rules etc. is carried out by the Lok Sabha Secretariat soon after these are published in the official Gazette, irrespective of whether these have been laid on the Table of the House or not. Important points are culled out and sent for eliciting comments of the administrative Ministry concerned. If any point or points are considered worth reporting to the Committee, self-contained memoranda are prepared and, after approval of the Chairman, placed before the Committee. The procedure does not preclude the Members from examining the 'Orders' *suo motu* and making suggestions of their own. For this purpose, copies of all 'Orders' that are laid on the Table of the House are circulated to the Members of the Committee from time to time in convenient batches. Members might study those 'Orders' and bring to the notice of the Chairman or the Secretariat any cases where they feel the executive has gone beyond the powers delegated to it by the parent statute or overthrown the canons of natural justice or it causes unnecessary hardship, harassment or inconvenience to the public at large or where there may be

any other infirmity in the Rules which requires to be considered by the Committee.

7. In its approach, the Committee is not content merely with the legality of the 'Orders'. It aims for beyond for the ultimate goal of legislation (including subordinate legislation) is the maximum public good. As the general public consists mainly of laymen, it is considered imperative that the intention behind the subordinate legislation is expressed in simple language which can easily be understood by the common man without much difficulty. To achieve this objective, the Committee always upholds the need that the statutory 'Orders' should be precise free from ambiguity and not cryptic, sketchy or skeletal. It further ensures that such legislation does not come in conflict with the general objects of the Constitution or the statute pursuant to which it is made.

8. It is well known that the parties which are affected by a given set of rules are always in a better position to say how the rules work in actual operation. Like-wise, persons who have to deal with the working of rules in their professional capacity, such as lawyers, accountants, actuaries, etc. have some special knowledge that can be profitably made use of by the Committee. The Committee, therefore, welcome comments/suggestions from the non-official organisations in regard to the subject selected by them for examination.

9. Since its inception in December, 1953, the Committee has presented 134 Reports to the House covering a varied range of subjects. The Committee has been able to make a distinct impact on administration in that it has always to keep in mind the possible reactions of Parliament and the Committee while drafting a rule. Before I conclude, I would like to emphasize that the decisions of the Committee are unanimous and party considerations do not enter into its deliberations. Also, in the discharge of our duties in the Committee, we shall not be acting in hostility to the executive. Our aim is to implement the will of Parliament as expressed through its statutes and our efforts in this direction should be complementary to those of the executive. I am confident that the above traditions will be followed by the Members of the present Committee also.

10. Hon'ble Members, I look forward to you for your earnest cooperation and active participation in the proceedings of the Committee and for your valuable suggestions to make our collective efforts more effective and purposive.

Thank you.

considered by the Seamen's Employment Board (Foreign Going), Bombay on 25 November, 1991. The recommendations made by the Board had been accepted by the Director-General and given effect to from 12 November, 1992.

5. The Committee felt that the Government should exercise the powers of exemption with utmost caution. Ordinarily, exemptions should not be granted unless absolutely necessary. As a safeguard against any arbitrary use of the wide discretion, there should be a provision for recording of reasons in writing in each case of such exemption. Besides ensuring that the vessel could not open the articles of agreement in the normal course of trade and the manpower employed on it was covered by an approved agreement in respect of service conditions, insistence should also be placed on obtaining a 'No Objection Certificate' from the Seamen's Employment Office about non-availability of the required personnel in order that the interests of the registered seamen were not jeopardised in any manner.

6. The Committee further observed that since the Government had already issued a set of guidelines, there could be no difficulty in placing them on a statutory footing by an amendment of the relevant rules, for the information of all concerned. The Committee, therefore, desired the Ministry of Surface Transport to do the needful at an early date.

The Committee then adjourned to meet again on 15 March, 1993.

XVII

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

The Committee met on Monday, 15 March, 1993 from 15.00 to 15.30 hours.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

2. Dr. K.D. Jeswani
3. Shri Ram Singh Kashwan
4. Shri Guman Mal Lodha
5. Km. Frida Topno
6. Shri Ratilal Kalidas Varma

SECRETARIAT

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

2. The Committee took up for consideration Memoranda Nos. 56 to 62 as follows:—

- (i) *The Department of Atomic Energy (Labour-cum-Welfare Officer/Welfare Officer) Recruitment Rules, 1991 (GSR 211 of 1991) — (Memorandum No. 56).*

3. The Committee considered the above memorandum and noted that appointment to the posts of Labour-cum-Welfare Officer/Welfare Officer in the Department of Atomic energy were to be made by transfer and/or promotion and failing both, by transfer on deputation, but no percentage had been fixed for transfer and promotion. According to the Department, this had been done to enable Constituent Unites to have wider choice of candidates. The Committee were of the view that there were substantial difference between 'transfer' and 'promotion' and the two terms were in no

way synonymous. The method of recruitment was usually prescribed depending upon a judicious blending of several considerations, like nature of duties, qualifications, experience, availability of candidates etc. When more than one method was prescribed, the ratio of vacancies to be filled by each method was essentially indicated. In the absence of such a ratio, the provisions were likely to be interpreted differently by different persons. With a view to make the statutory rules unambiguous and self-contained the Committee desired the Department of Atomic Energy to lay down the fixed ratio or percentage of vacancies to be filled by each method. The Committee hoped that with the experience gained over the years, it would not be difficult for the Department to arrive at a suitable ratio. The Committee, therefore, desired the Department to amend the provisions in column 11 of the schedule to the Recruitment Rules accordingly.

(ii) (1) *The Department of Atomic Energy Assistant Director (OL) Recruitment Rules, 1991 (GSR 3 of 1992); and*

(2) *The Department of Atomic Energy Senior Hindi Translator Recruitment Rules, 1991 (GSR 4 of 1992) — (Memorandum No. 57).*

4. The Committee considered the above Memorandum and noted from the reply of the Department of Atomic Energy that the posts of Assistant Director (OL) and the Senior Hindi Translator in the Department would be filled up by promotion, failing which by deputation and failing both, by direct recruitment. The Committee, however, found that the intention was not fully borne out by the existing provisions in the respective recruitment rules for the two posts. With a view to render the statutory provisions unambiguous, the Committee directed the Department of Atomic Energy to recast the provisions in column 11 of the Schedules on the pattern namely, "By promotion, failing which by deputation, and failing both, direct recruitment."

(iii) *The Visakhapatnam Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after Retirement) Regulations, 1992 (GSR 398-E of 1992) — Rule 10 regarding interpretation — (Memorandum No. 58).*

5. The Committee considered the above memorandum and noted that on being pointed out to them, the Ministry of Surface Transport had agreed

to amend regulation 10 of the Visakhapatnam Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after Retirement) Regulations, 1992 on the lines of regulation 24 of the Kndla Port Employees' (Allotment of Residences) Regulations, 1964 so as to do away with the probable notion that the jurisdiction of the law courts was being ousted. The Committee desired the Ministry to expedite the process of finalisation and notify the requisite amendment at an early date.

6 to 9

The Committee then adjourned.

XVIII

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

The Committee met on Tuesday, 30 March, 1993 from 15.00 to 15.45 hours.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

2. Dr. K.D. Jeswani
3. Shri Shraavan Kumar Patel
4. Shri Mohan Singh
5. Shri Tara Singh
6. Kumari Frida Topno
7. Shri Ratilal KalidasVarma

SECRETARIAT

1. Shri Ram Kumar — *Under Secretary*

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

3. The Committee authorised the Chairman, and in his absence, Shri Shraavan Kumar Patel, M.P. to present the Report to the House on 31 March, 1993.

The Committee then adjourned.