

# COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

## SIXTH REPORT

*(Presented on 24 November, 1992)*



**LOK SABHA SECRETARIAT  
NEW DELHI**

*November, 1992/Kartika, 1914 (Saka)*

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LOK SABHA SECRETARIAT

CORRIGENDA  
TO

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

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1	4	28	the 10.10.1988	and on 10.10.1988
2	3	35	exceptional	exceptional
3	8	14	particulars	particulars
4	13	34	Tribunal	Tribunals
5	15	6	extent	extent
6	17	2-3	as a sound its Chairman and healthy practice.	as a sound and healthy practice.
7	19	21	transparency	transparency
8	21 (Col.3)	16	not	note
9	32	34	extent	extent
10	33	(i) 16	Rule 111	Rule 11 L
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COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION  
(1991-92)

- Shri Somnath Chatterjee — *Chairman*
2. Shri E. Ahamed
  3. Shri R. Dhanuskodi Athithan
  4. Shri Chetan P.S. Chauhan
  5. Shri Chhitubhai Gamit
  6. Dr. K.D. Jeswani
  7. Shri Ram Singh Kashwan
  8. Shri Guman Mal Lodha
  9. Shri Ram Niwas Mirdha
  10. Shri Shravan Kumar Patel
  11. Shri A. Venkata Reddy
  12. Shri Mohan Singh
  13. Shri Shivendra Bahadur Singh
  14. Shri Tara Singh
  15. Kumari Frida Topno

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 Sixth Report.

2. The matters covered by this Report were considered by the Committee (1991-92) at their sitting held on 2 November, 1992.

3. The Committee considered and adopted this Report at their sitting held on 12 November, 1992. 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 NON-FRAMING OF RULES IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

5. In a representation dated 24 January, 1992, addressed to the Chairman, Committee on Subordinate Legislation, Dr. R.C. Tyagi of Meerut, raised the following main points:—

“...the office of the CAT negated the judicial order by saying that rules for summoning witnesses in CAT had not yet been framed.

2. The explicit provisions of the CAT Act thus could not be followed and the proceedings could not take the course stipulated by CAT's own statutes. The judicial order by CAT was thwarted by its own office — a case of self-professed incapacity.

3. The Parliament had not authorised CAT to start functioning without framing rules nor did the Parliament wish that justice in CAT would be less rigorous or an applicant's evidence would be diluted in any way in such proceedings. No citizen can be forced to entrust his fundamental right to justice in the hands of a forum which suffers from any infirmity whatsoever.

4. Section 35(1) of the CAT Act specifically authorises the Government to make rules to carry out the provisions of the CAT Act. This all

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\* Reproduced at Appendix II.

prevailing provision of the CAT Act which can never be prejudiced as per Section 35(2) of the Act, is further supported by Section 35(2) (e) & (f) of the Act which stipulates framing of rules relating to the procedure, any additional matter in respect of which the Tribunal may exercise powers of a Civil Court and also any other matter in respect of which rules are required to be made.

5. Section 36(c) of the CAT Act provides for framing of rules even in those matters which are not provided for in Section 35 thereof.

6. Thus everything which could be a lacunae on CAT's functioning as a true civil court, would automatically be the subject matter of framing of rules by the Government.

7. In fact Section 22 of the CAT Act clearly specifies that the Tribunal shall not be bound by CPC and would be subject to rules made by the Government."

6. In a communication dated 3 August, 1992, the Department of Personnel and Training of the Ministry of Personnel, Public Grievances and Pensions furnished the following comments on the points raised in the said representation:—

".....Section 22(1) of the Administrative Tribunals Act, 1985 provides that 'A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have the power to regulate its own procedure, including the fixing of places and times of inquiry and deciding whether to sit in public or in private.'

Sub-section (2) of Section 22 provides that 'A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily, every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced.'

Sub-section (3) of Section 22 reads as follows:—

'A Tribunal shall have, for the purpose of [discharging its functions under this Act], the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely,—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public

- record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or, documents;
  - (f) reviewing its decisions;
  - (g) dismissing a representation for default or deciding it *ex parte*;
  - (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
  - (i) any other matter which may be prescribed by the Central Government.'

Section 35 of the Act deals with the power of the Central Government to make rules while Section 36 deals with the power of the appropriate Government to make rules. Section 35(2) (e) empowers the Central Government to make the rules subject to which a Tribunal shall have power to regulate its own procedure under Sub-section (1) of Section 22 and additional matters in respect of which a Tribunal may exercise the powers of a Civil Court under clause (i) of Sub-section (3) of that Section.

The cases arising for adjudication in the Tribunal are either original applications, or cases which stood transferred to it from the Civil Courts, including High Courts. The procedure which has been followed in the case of original applications, is akin to that of writ petitions filed in the High Courts. The cases are ordinarily, decided on the basis of the averments made by the parties and the documents produced by them. The same procedure is followed in the case of Transferred Applications. No doubt, the Tribunal has the same power as that of a Civil Court in the matter of summoning and enforcing the attendance of any person and examining him on oath. In such cases where the Tribunal feels that in the interest of justice, witnesses have to be summoned and their testimony should be recorded, the Tribunal can always exercise the powers of a Civil Court in this regard. Elaborate provisions regarding summoning and attendance of witnesses are contained in Order XVI of the Code of Civil Procedure, 1908. As sub-section (3) of Section 22 specifically empowers the Tribunal to exercise the same powers as that of a Civil Court under the Code of Civil Procedure, 1908 in the matter of summoning and enforcing the attendance of any person and examining him on oath, no separate rules have been made by the Tribunal in exercise of its rule-making power....."

**7. The Committee note from the reply of the Ministry of Personnel, Public Grievances and Pensions that sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985 specifically empowers the Tribunal to exercise the same powers as that of a Civil Court under the Code of Civil Procedure, 1908 in the matter of summoning and enforcing the attendance of any person and examining him on oath, and as such no separate rules**

have been made by the Tribunal in exercise of its rule-making power under the Act.

8. The Committee, however, find that sub-section (1) of section 22 of the Act clearly stipulates that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government. Since the Tribunal has to perform a variety of significant functions including taking evidence on affidavits and examining persons on oath, the Committee consider it very essential to have well-knit rules in exercise of the powers conferred upon them under sections 35 and 36 of the Administrative Tribunal Act, 1985 in order that no injustice is caused to any body for want of such rules. The Committee, therefore, desire the Ministry to do the needful at the earliest.

### III

#### THE DIRECTORATE OF MARINE ENGINEERING TRAINING (FOREMAN INSTRUCTOR AND SEAMANSHIP INSTRUCTOR) RECRUITMENT RULES, 1987 (GSR 10 OF 1991)

9. The corrigendum to the Directorate of Marine Engineering Training (Foreman Instructor and Seamanship Instructor) Recruitment Rules, 1987 was published in the Gazette of India, Part II, Section 3(i), dated 5 January, 1991 *vide* GSR 10 of 1991. It was observed the refrom that the Government had taken almost three years to issue a corrigendum. The matter was taken up with the concerned Ministry of Surface Transport for clarification. In their reply dated 24 March, 1992, the Ministry stated as under:—

“....that the said Recruitment Rules were got published in the Gazette in April, 1988 by the Director General of Shipping Bombay, under delegated powers, the 10.10.1988, the Director General of Shipping sent a requisition to UPSC for recruitment to the post of Foreman Instructor in the Directorate of Marine Engineering Training. The matter was under correspondence with UPSC till December, 1989, when the Commission pointed out certain minor discrepancies in the original Recruitment Rules of the Gazette. A corrigendum was sent to the Government of India Press New Delhi, by the Directorate General of Shipping, Bombay, under delegated powers, vide their letter dated 19.12.1990, for rectifying the discrepancies as suggested by UPSC. Director General of Shipping has regretted that the matter of issuing corrigendum to the Recruitment Rules could not be taken up by them immediately after UPSC's advice in December 1989, due to certain administrative problems in the Directorate. The corrigendum was ultimately published on 5.1.1991”.



10. The Committee note that the Directorate of Marine Engineering Training (Foreman Instructor and Seamanship Instructor) Recruitment Rules, 1987 were published in the official gazette dated 9 April, 1988. However, the corrigendum to rectify the errors in the original rules was published in the official gazette dated 5 January, 1991 after a lapse of about 33 months. The Ministry of Surface Transport have attributed the delay to certain administrative problems in the Directorate General of Shipping. In this connection, the Committee would like to refer to their following observations which were circulated to all Ministries/Departments of Government of India *vide* then Department of Parliamentary Affairs O.M. No. F.32 (4)/7/77/R&C dated November, 1978 namely—

“The corrigenda to statutory rules etc. should be published within 30 days of the publication of the rules.”

11. Committee note that the nature of the administrative problems has not been disclosed. The Committee cannot but reiterate their earlier recommendations as aforesaid and desire the Ministry to be more careful in future so that the errors which crept into the statutory rules, are rectified at the earliest and in any event within a period of 30 days from the publication of the rules.

#### IV

#### THE AIRCRAFT (THIRD AMENDMENT) RULES, 1991 (GSR 218 of 1991)

12. Sub-rule (1) of rule 1 of the Aircraft (Third Amendment) Rules, 1991 read as under:—

“These rules may be called the Aircraft (3rd Amendment) Rules, 1991.”

The aforesaid provisions indicated that it was the Third Amendment made to the Aircraft Rules during the year 1991 whereas in the foot-note to the notification, there was no mention of the publication of the First and second Amendments made to the rules in that year. The matter was referred to the concerned Ministry of Civil Aviation for clarification. In their reply dated 24 February, 1992 the Ministry stated as under:—

“With regard to the footnote, it is mentioned that the first and second amendments which carried out in the year 1991 in the Aircraft Rules, 1937 were in Rule No. 62 and Rule 28 of the said Rules.... Those amendment do not relate the Microlight Aircraft which was the subject matter of the Notification which appeared in the Gazette on 23 June, 1990.”

13. The Committee are not convinced with the reply of the Ministry of Civil Aviation that the first and second amendments did not relate to the subject-matter of the third amendment made to the Aircraft Rules. The Committee find that when the Ministry have already indicated in the short title to the notification that it is the third amendment to the principal rules

during the year it flowed therefrom that there were two more amendments made prior to the extant amendment. The Committee desire the Ministry to mention the particulars of the first and second amendments also in the foot-note below the amendment rules in the gazette notification, for information of all concerned.

## V

THE DELHI, ANDAMAN AND NICOBAR ISLANDS POLICE  
SERVICE (AMENDMENT) (RULES, 1991  
GSR 162 of 1991)

14. The Delhi; Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991 (GSR 162 of 1991) were published in the Gazette of India, Part II, Section 3 (i), dated 16 March, 1991. The foot-note appended to these rules read as under:—

“NOTE:— The Principal Rules were published *vide* notification No. 140 12/2/73 UTS dated 10th September, 1973 and subsequently amended *vide* No. 140 12/3/78-UTS dated 22nd April, 1978 and No. U. 140 12/9/89-UTS dated 16th November, 1987.”

15. It was noticed that in the foot-note, the reference to the original ‘Order’ and the subsequent amendments were given without indicating the G.S.R. numbers and the dates of their publication in the official gazette. For facility of reference normally the G.S.R. numbers and the dates of principal/subsequent amendments are indicated so that one can keep track of the amendments made in the principal rules from time to time. The matter was referred to the Ministry of Home Affairs to ascertain the reasons for departure from the normal practice in this respect. In their reply dated 9 April, 1992, the Ministry stated as under:—

“GSR numbers of principal/subsequent amendments to the rules could not be indicated in the present notification due to in advertent omission which is regretted.”

16. The Committee note that the Ministry of Home Affairs have expressed their regrets for the inadvertent omission on their part in not indicating the GSR numbers of the principal/subsequent amendments in the foot-note appended to the notification. The Committee desire the Ministry to be more careful in future and take necessary remedial measures to ensure that reference to the original ‘Order’ and the subsequent amendments thereto should always be in terms of the GSR numbers and the dates of publication in the official gazette rather than the ministerial file numbers and their dates which have little relevance for the purpose of keeping track of the amendments made to the principal rules from time to time.

## VI

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

## (A)

17. Sub-rules 3(iii) and 3 (v) of Rule 11L, as inserted by the Income-tax (First Amendment) Rules, 1992, read as under:—

“11L. *Application for approval of an association or institution or for recommendation of a project or scheme by the National Committee.*

\* \* \* \*

(3) The application for approval of an association or institution should contain the following particulars and be accompanied, with relevant documents.

\* \* \* \*

(iii) Names and addresses of the persons managing the affairs of the association or institution, including those who had, at any time during the three year preceding the date of application, managed the affairs of the association or institution;

\* \* \* \*

(v) Brief particulars of the activities of the association or institution during three years preceding the date of application.”

18. The Ministry of Finance were requested to clarify how the cases were dealt with by the National Committee with regard to the applications received from the newly formed associations/institutions with less than three years standing which obviously could not furnish the requisite particulars of the three preceding years. In their reply dated 15 October, 1992, the Ministry stated as under:—

“The requirement of filing details for three years has been kept with the intention that only organisations with a proven record of service in socio-economic infrastructure development are allowed the concession and the concession is not misused. In fact, the Committee has recently taken a decision at its meeting on 22.8.1992 that it will consider the cases of organisations which have a proven track record. New organisations which are less than one year old are generally requested to apply after the lapse of one year indicating the work done by them since their inception. There may be cases where an organisation may be new but the office bearers and the executives may have a proven track record. In such exceptional cases, the Committee may take note of the stature of the persons managing the affairs of the organisations.”

19. The Committee note from the reply of the Ministry of Finance that the requirement of filing details for three years has been kept with the intention that only organisations with a proven record of service of socio-economic infrastructure development are allowed the concession. New Organisations less than one year old are generally advised to apply after the lapse of one year indicating the work done by them since their inception. In exceptional cases, where an organisation may be new but the office bearers and the executive have a proven track record, the National Committee for promotion of Social and Economic Welfare may take note of the Stature of the persons managing the affairs of the organisations.

20. The Committee, however, feel that the statutory provisions as they stand, are apt to give an impression that the new organisation with less than three years standing are obviously handicapped as such organisations will not be in a position to furnish requisite particulars of the three years preceding the date of application. In the absence of the clear-cut provisions in the statutory rules, the new organisations howsoever deserving ones, may not get the benefit of the Government sponsored concessions despite the best intentions of the authorities. The Committee, therefore, desire the Ministry to fortify the statutory rules with all relevant provisions so as to make them reflect the true and actual practice for the information and guidance of the concerned public.

(B)

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

“11G. *Composition of the National Committee:*—

(3) One of the members of the National Committee shall be appointed as Chairman by the Central Government. In the event of vacancy of the office of Chairman for any reason, and until a new Chairman is appointed, any other member may be elected by the National Committee to fill the vacancy. If, for any meeting, the Chairman is absent, the members present for the meeting may elect one amongst themselves to preside over the day's sitting:”

22. Normally, the power for appointment of the Chairman rests with the Central Government. However, sub-rule (3) of rule 11G provided that until a new Chairman was appointed, any other member might be elected by the National Committee to fill the vacancy. The position seemed to be anomalous inasmuch as the power which was to be exercised by the Central Government itself, could as well be exercised by the National Committee. The matter was taken up with the Ministry of Finance (Central Board of Direct Taxes) for eliciting their comments. In their reply dated 15 October, 1992, the Ministry stated as under:—

“.....there is no anomaly in this rule. The power to appoint the Chairman vests in the Central Government. If a vacancy arises (on

account of the resignation etc. of the Chairman), as an interim measure, the Committee has been vested with the power to elect a Chairman. Likewise, if the Chairman is absent the Members present have been vested with the powers to elect a Member who may preside over the day's sitting. As there is no overlap between the situations, there does not appear to be any anomaly in this rule."

23. The Committee note from the reply of the Ministry of Finance that one of the members of the National Committee is to be appointed as Chairman by the Central Government In the event of vacancy of the office of Chairman for any reason, a new Chairman is again to be appointed by the Central Government. However, until the new Chairman is so appointed, any other member might be elected by the National Committee to fill the vacancy. In this connection, the Committee observe that once a member is so elected to act as Chairman by the National Committee, he assumed all the powers and functions of the office of the Chairman for all purposes and for all time to come without the concurrence of the Central Government. Thus, the National Committee could function with its elected Chairman so long as the Central Government refrain from exercise of their power. This way, the Central Government have passed on their power to the National Committee in the matter of appointment of its Chairman which cannot be termed as a sound and healthy practice.

24. The Committee feel that the position of the elected Chairman of the National Committee cannot be equated with that of the member elected to preside over a particular sitting in the absence of the Chairman. The Committee are of the view that in any case, the power to appoint/elect a Chairman ought not be simultaneously vested in two agencies, viz., the Central Government and the National Committee, in the event of vacancy of the office of the Chairman for any reason. The Committee, therefore, desire the Ministry to amend the Income-tax Rules to the necessary effect at an early date.

## VII

### ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE

25. 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 93 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 appended to this Report (Appendix III), in several cases, Government have taken about 20 months in implementation of their recommendations. 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;  
*November, 1992*

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*Kartika, 1914 (Saka)*

SOMNATH CHATTERJEE,  
*Chairman,*  
*Committee on Subordinate Legislation.*

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## APPENDICES

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## APPENDIX I

[Vide para 4 of the Report]

### Summary of main Recommendations/Observations made by the Committee

Sl. No.	Para No.	Summary
(1)	(2)	(3)
1(i)	7	<p><i>Representation regarding non-framing of Rules in the Central Administrative Tribunal</i></p> <p>The Committee note from the reply of the Ministry of Personnel, Public Grievances and Pensions that sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985 specifically empowers the Tribunal to exercise the same powers as that of a Civil Court under the Code of Civil Procedure, 1908 in the matter of summoning and enforcing the attendance of any person and examining him on oath, and as such no separate rules have been made by the Tribunal in exercise of its rule-making power under the Act.</p>
1(ii)	8	<p>The Committee, however, find that sub-section (1) of section 22 of the Act clearly stipulates that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government. Since the Tribunal has to perform a variety of significant functions including taking evidence on affidavits and examining persons on oath, the Committee consider it very essential to have well-knit rules in exercise of the powers conferred upon them under sections 35 and 36 of the Administrative Tribunal Act, 1985 in order that no injustice is caused to any body for want of such rules. The Committee, therefore, desire the Ministry to do the needful at the earliest.</p>



(1)	(2)	(3)
2(i)	10	<p><i>The Directorate of Marine Engineering Training (Foreman Instructor and Seamanship Instructor) Recruitment Rules, 1987 (GSR 10 of 1991)</i></p> <p>The Committee note that the Directorate of Marine Engineering Training (Foreman Instructor and Seamanship Instructor) Recruitment Rules, 1987 were published in the official gazette dated 9 April, 1988. However, the corrigendum to rectify the errors in the original rules was published in the official gazette dated 5 January, 1991 after a lapse of about 33 months. The Ministry of Surface Transport have attributed the delay to certain administrative problems in the Directorate General of Shipping. In this connection, the Committee would like to refer to their following observations which were circulated to all Ministries/Departments of Government of India <i>Vide</i> then Department of Parliamentary Affairs O.M. No. F. 32 (4)/7/77/R&amp;C dated 6 November, 1978, namely—</p> <p>“The corrigenda to statutory rules etc. should be published within 30 days of the publication of the rules.”</p>
2(ii)	11	<p>The Committee note that the nature of the administrative problems has not been disclosed. The Committee cannot but reiterate their earlier recommendations as aforesaid and desire the Ministry to be more careful in future so that the errors which crept into the statutory rules, are rectified at the earliest and in any event within a period of 30 days from the publication of the rules.</p> <p><i>The Aircraft (Third Amendment) Rules, 1991 (GSR 218 of 1991)</i></p>
3.	13	<p>The Committee are not convinced with the reply of the Ministry of Civil Aviation that the first and second amendments did not relate to the subject-matter of the third amendment made to the Aircraft Rules. The Committee find that when the Ministry have already indicated in the short title to the</p>

(1)	(2)	(3)
		<p>notification that it is the third amendment to the principal rules during the year, it flowed therefrom that there were two more amendments made prior to the extent amendment. The Committee desire the Ministry to mention the particulars of the first and second amendments also in the foot-note below the amendment rules in the gazette notification, for information of all concerned.</p> <p><i>The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991 (GSR 162 of 1991)</i></p>
4.	16	<p>The Committee note that the Ministry of Home Affairs have expressed their regrets for the inadvertent omission on their part in not indicating the GSR numbers of the principal/ subsequent amendments in the foot-note appended to the notification. The Committee desire the Ministry to be more careful in future and take necessary remedial measures to ensure that reference to the original 'Order' and the subsequent amendments thereto should always be in terms of the GSR numbers and the dates of publication in the official gazette rather than the ministerial file numbers and their dates which have little relevance for the purpose of keeping track of the amendments made to the principal rules from time to time.</p> <p><i>The Income-tax (First Amendment) Rules, 1992 (S.O. 4-E of 1992)</i></p>
5(i)	18	<p>The Committee note from the reply of the Ministry of Finance that the requirement of filing details for three years has been kept with the intention that only organisations with a proven record of service of socio-economic infrastructure development are allowed the concession. New Organisations less than one year old are generally advised to apply after the lapse of one year indicating the work done by them since their inception. In exceptional cases, where an organisation may be new but the office bearers and the executive have a proven</p>

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(1)	(2)	(3)
5(ii)	20	<p>track record, the National Committee for promotion of Social and Economic Welfare may take note of the stature of the persons managing the affairs of the organisations.</p>
5(iii)	23	<p>The Committee, however, feel that the statutory provisions as they stand, are apt to give an impression that the new organisation with less than three years standing are obviously handicapped as such organisations will not be in a position to furnish requisite particulars of the three years preceding the date of application. In the absence of the clear-cut provisions in the statutory rules, the new organisations howsoever deserving ones, may not get the benefit of the Government sponsored concessions despite the best intentions of the authorities. The Committee, therefore, desire the Ministry to fortify the statutory rules with all relevant provisions so as to make them reflect the true and actual practice for the information and guidance of the concerned public.</p> <p>The Committee note from the reply of the Ministry of Finance that one of the members of the National Committee is to be appointed as Chairman by the Central Government. In the event of vacancy of the office of Chairman for any reason, a new Chairman is again to be appointed by the Central Government. However, until the new Chairman is so appointed, any other member might be elected by the National Committee to fill the vacancy. In this connection, the Committee observe that once a member is so elected to act as Chairman by the National Committee, he assumed all the powers and functions of the office of the Chairman for all purposes and for all time to come without the concurrence of the Central Government. Thus, the National Committee could function with its elected Chairman so long as the Central Government refrain from exercise of their power. This way, the Central Government have passed on their power to the National Committee in the matter of appointment of</p>

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(1)	(2)	(3)
	24	<p>its chairman which cannot be termed as a sound its Chairman and healthy practice.</p> <p>The Committee feel that the position of the elected Chairman of the National Committee cannot be equated with that of the member elected to preside over a particular sitting in the absence of the Chairman. The Committee are of the view that in any case, the power to appoint/elect a Chairman ought not be simultaneously vested in two agencies viz., the Central Government and the National Committee, in the event of vacancy of the office of the Chairman for any reason. The Committee, therefore, desire the Ministry to amend the Income-tax Rules to the necessary effect at an early date.</p>

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## APPENDIX II

[Vide Para 5 of the Report]

Dr. R.C. Tyagi  
26 Budhana Gate, Meerut 250002  
Jan. 25, 1992

The Chairman  
Committee on Subordinate Legislation  
Lok Sabha.

Sub : Non-framing of Rules in Central Administrative Tribunal, New Delhi.

Sir,

On 2-6-88, in my service matter case No. OA-915/86, a Division Bench of the Tribunal ordered the summoning of my witnesses as per Sec. 22 of the CAT Act. However, on 7-7-88, the office of CAT negated the judicial order by saying that rules for summoning witnesses in CAT had not yet been framed. \*Copies of these proceedings in CAT are annexed herein for your kind perusal.

2. The explicit provisions of the CAT Act thus could not be followed and the proceedings could not take the course stipulated by CAT's own statutes. The judicial order of CAT was thwarted by its own office—a case of self-professed incapacity.

3. The Parliament had not authorised CAT to state functioning without framing rules nor did the Parliament wish that justice in CAT would be less rigorous or an applicant's evidence would be diluted in any way in such proceedings. No citizen can be forced to entrust his fundamental right to justice in the hands of a forum which suffers from any infirmity whatsoever.

4. Sec. 35(1) of the CAT Act specifically authorises the Govt. to make rules to carry out the provisions of the CAT Act. This all prevailing provision of the CAT Act which can never be prejudiced as per Sec. 35(2) of the Act, is further supported by Sec. 35(2) (e) & (f) of the Act which stipulates framing of rules relating to the procedure, any additional matter in respect of which the Tribunal may exercise powers of a Civil Court and

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\* Not reproduced.

also any other matter in respect of which rules are required to be made.

5. Sec. 36(c) of the CAT Act provides for framing of rules even in those matters which are not provided for in Sec. 35 thereof.

6. Thus every thing which could be a lacunae on CAT's functioning as a true Civil Court, would automatically be the subject matter of framing of rules by the Govt.

7. In fact Sec. 22 of the CAT Act clearly specifies that the "Tribunal shall not be bound by CPC and would be subject to rules made by the Govt."

8. Eventually, when my efforts to adduce evidence failed, I sought declaration through suit 13/90, that in the absence of rules to enforce specific provisions of the CAT Act itself, the CAT was not yet functional. The Department of Personnel and Administrative Reforms, in its written statement squarely claimed that only CAT was answerable to the specific points made in the Plaint. However, the CAT has not filed any reply before the court so far.

9. On the contrary, the CAT closed my cases without pronouncing any judgement on merit by inventing an alibi that I was persuing the same service matter in Tis Hazari Court as was before the CAT. The transparency of such a logic can be seen from the fact that the impugned orders before CAT were passed in Defence Ministry in 1977 and 1981 while the cause of action in suit 13/90 was against CAT which arose on 7-7-88 when CAT professed non-framing of rules.

10. The Misc. Petition, the Contempt Petitions and even the non-compoundable perjury matters were closed. No norms exist in CAT which would bind it to pass the mandatory interim orders, communicate any orders passed on any petition or even list the case of 1978 priority for hearing despite orders obtained from any bench. Such a miscarriage of justice could take place only because Govt. failed to take remedial steps once the lacunae had come to its notice. Meanwhile oath-less entities are performing the functions of High Court Judges in CAT.

11. Deprived of my right to lead evidence out-right stands denied to me as no other court can entertain a service matter. In fact, the constitution stands withered under such circumstances.

12. The following specific queries from CAT/Dept. of Personnel would help clarify the situation before this Hon'ble Committee:

(A) Whether it is true that the order dated 2-6-88 passed by a

D.B. of CAT for summoning of witnesses in my aforesaid case, had remained uncompiled due to the specific plea taken by CAT's own office that rules for depositing the diet money for summoning the witnesses had not yet been framed?

- (B) If the rules in this regard were not required to be framed, then how petitioner's witnesses had remained unsummoned?
- (C) Had the rules for issuing Commissions been framed?
- (D) Were the rules for issuing Commissions been framed without considering the need to frame rules for summoning witnesses?
- (E) On what dates the orders passed in any Misc./Contempt./Perjury Petitions on record in many cases were sent to me when they had been filed long before the self-professed incapacity of rules in CAT had come to light?

I request this Hon'ble Committee to kindly see that Justice is put back on the rails in CAT. Simultaneous examination of myself, the Department of Personnel Administrative Reforms, the Law Ministry and the Registrar of CAT would help bring out the truth.

Yours faithfully

Sd/  
Dr. R.C. Tyagi

**APPENDIX III**  
**(Vide Paragraph 25 of the Report)**  
**Statement showing the action taken by Government on the recommendations of the Committee**

S. No.	Reference to Para Nos. 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 (Lost Property) Regulations, 1974.</i>	
1.	First Report (Ninth Lok Sabha) 22.5.1990  16	<p>The Committee note that the Ministry have agreed to clarify the expression 'best price that can reasonably be obtained'. The Committee desire that the Ministry should expedite amendment of the said regulation accordingly.</p>	<p>The words "the best price that can reasonably be obtained" have been substituted by the words "a reasonable price determined in consultation with the Government Assessor" vide Notification No. 1 (7/74-BM published in the Gazette of India, Part III, Section 4, dated 21 February, 1992.</p>
2.	20	<p>The Committee note that the Ministry have agreed to amend the regulation with a view to specify the term 'reasonable manner'. The Committee desire that action to incorporate the necessary amendment in the said regulation may be completed at an early date. The Committee also desire that the details of the lost property should be notified in the Gazette for the information of all concerned.</p>	<p>Sub-regulation (3) of Regulation 7 of the International Airports Authority of India (Lost Property) Regulations, 1974 has been amended to the desired effect vide Notification No. 1(7)74-BM published in the Gazette of India: Extraordinary, Part II, Section 4, dated 21 February, 1992.</p>



*The International Airports Authority of India (Lost Property) Regulations, 1974.*

The expression 'reasonable expenses incurred' has since been substituted by the words 'reasonable expenses which shall not exceed 10% of the sale proceeds of the item found and auctioned vide Notification No. 1(7) 74-BM published in the Gazette of India: Extraordinary, Part III, Section 4, dated 21 February, 1992.

The Committee note that the Ministry have agreed to define suitably the expression 'reasonable expenses incurred by the Authority in connection with the sale' referred to in the regulation. The Committee recommend that the above expression should be spelt out clearly and the Ministry should expedite the amendment of the said regulation accordingly.

*The International Airports Authority of India (Management of Airports) Regulations, 1982.*

Sub-regulation (2.0) of Regulation 4 of the International Airports Authority of India (Management of Airports) Regulations, 1982 has since been amended to the desired effect vide Notification No. Sectt. 101/5/82, published in the Gazette of India: Extraordinary, Part III, Section 4, dated 15 January, 1992.

The Committee are of the view that the words 'reasonably practicable' used in the regulation do not convey the exact meaning. The Committee, therefore, recommend that with a view to pinpointing responsibility for reporting the occurrence of an accident, the expression 'reasonably practicable' should be made more specific and the regulation amended suitably at an early date.

1	2	3	4
5.	<p>First Report (Ninth Lok Sabha) 22.5.1990</p> <p>48</p>	<p>The Committee note that the Ministry have agreed to define the expression 'at reasonable times'. The Committee desire that the Ministry should expedite section to amend the regulation at an early date.</p>	<p>Sub-regulation (8) of Regulation 13 of the International Airports Authority of India (Management of Airports) Regulations, 1982 has been amended accordingly vide Notification No. Sectt. 1017/5/82, published in the Gazette of India: Extraordinary, Part III, Section 4, dated 15 January, 1992.</p>
6.	51	<p><i>Consolidation of Rules and Regulations by the International Airports Authority of India.</i></p>	<p>All the Rules and Regulations framed in pursuance of the International Airports Authority Act, 1971 have since been consolidated into one volume for facility of reference [Ministry of Civil Aviation and Tourism (Department of Civil Aviation) O.M. No. H-1 1013/2/90. AA (F-II) dated 10 February, 1992.]</p>

*The Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981*

The observations of the Committee have been noted for compliance by the Ministry of Urban Development vide their O.M. No. K-11011/9/81-DDIIB/IA dated 14 February, 1992.

In view of the clarification given and the reasons advanced by the representatives of the Ministries of Urban Development and Law during the course of their evidence, the Committee do not wish to pursue the matter further. They would, however, like to emphasise that proper care and caution should be exercised and it should be ensured that even in the matter of temporary allotment of Nazul Land, the applications are disposed of expeditiously on merits and without causing harassment to any one.

*The National Sugar Institute, Kanpur (Junior Translator) Recruitment Rules, 1983*

The Committee find that the Junior Translators in the National Sugar Institute, Kanpur have been given the revised pay-scales of Rs. 1400-2300 with effect from 1 January, 1986 in pursuance of the recommendations of the Fourth Central Pay Commission. However, while amending the relevant recruitment rules to this end, the notification issued by the Ministry of Food provided that these would come into force from the date of publication of the notification in the Official Gazette i.e. 24 August, 1991. Consequently the recruitment rules were

7. First Report  
(Ninth Lok Sabha)  
22.5.1990 63

8. Second Report  
(Tenth Lok Sabha)  
11.5.1992 17

made to reflect a grossly deceptive version of things with regard to the pay-scale of the Junior Translators during the intervening period from 1 January, 1986 to 23 August, 1991. In this connection, the Committee are constrained to observe that even when a reference was made to the Ministry in this regard, they had shown no inclination to rectify the error that had crept in the recruitment rules while issuing the amendment notification in August, 1991. The Committee recommend that the Ministry should amend the National Sugar Institute, Kanpur (Junior Translator) Recruitment Rules so as to make them in conformity with the actual facts. The amendment notification should as well be accompanied by the requisite explanatory note indicating the reasons for such lapse. The Committee further desire the Ministry to take stock of the recruitment rules governing other posts under their administrative control and bring forth similar amendments wherever such lacunae exist, making it clear that the revised pay-scales had come into force from 1 January, 1986.

(i) The National Sugar Institute, Kanpur (Junior Translator) Recruitment Rules have accordingly been amended *vide* G.S.R. 393 dated 29 August, 1992.

(ii) Recruitment Rules of the various posts in the Ministry of Food and its attached and subordinate offices were being reviewed and necessary amendments would be carried out in consultation with the Ministry of Law etc. [Ministry of Food O.M. No. A-12018/692-AC dated 27 October, 1992].

GSR 475 of 1991 was duly vetted by the Ministry of Law and Justice before its publication. However, observations of the Committee have been brought to the notice of the Ministry of Law and Justice (Legislative Department) [Ministry of Food O.M. No. A-12018/191-Sugar Desk-I dated September, 1992]

1	2	3	4
9.	18	<p>The Committee are not aware whether the extant piece of amendment was got vetted from the Legislative Department prior to its publication in the gazette. They, however, feel that the Legislative Department in the Ministry of Law and Justice have a definite role to play in detecting such inaccuracies and rendering the necessary advice to the administrative Ministries at the time of vetting of the subordinate legislation.</p> <p><i>The All India Services (Death Cum-Retirement Benefits) Amendment Rules, 1991</i></p>	<p>The observations of the Committee have been noted by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide their O.M. No. 28020/6/92-AIS(II) dated 8 September, 1992.</p>
10.	<p>Fifth Report (Tenth Lok Sabha) 19.8.1992</p> <p>23-24</p>	<p>The Committee note with concern that while carrying out an amendment in sub-rule (2) of rule 22-B of the All India Services (Death-cum-Retirement Benefits) Rules in the year 1987 in the wake of recommendations of the Fourth Central Pay Commission, the Department of Personnel and Training Missed the amendment to sub-rule (8) of rule</p>	

22-B due to 'oversight'. As no State Government/Accountant General, who actually disbursed pension/family pension, had pointed it out, the Department remained unaware of the omission all along. The omission came to the notice of the Department towards the end of 1988 when a representation was received by them urging that the limit of two pensions prescribed under sub-rule (8) might be removed. Then, in May, 1989, the Department circulated the amendment in sub-rule (8) to the State Governments. On receipt of the comments/concurrence of the majority of States, the Departments finalised and notified the amendment in January, 1991. The Department is also not aware of any case where this rule might have been applied during the intervening period. The Committee are surprised to find that once an error has crept into the rules, it continues and there is virtually no mechanism or procedure in the Department of Personnel and Training to detect it at any point of time. The Committee are constrained to observe that even when the error came to

the notice of the Department of Personnel and Training towards the end of 1988, the amendment seeking to revise the limit in sub-rule (8) of rule 22-B was circulated to State Government in May, 1989, that is, after a gap of 5 months or so. Again, the Department has taken another 20 months in processing and finally notifying the amendment on 26 January, 1991. The Department has not advanced any reasons for such inordinate delay in finalisation of an amendment to the All India Services Rules. Besides the Department has not taken care to ascertain whether any beneficiaries were adversely affected due to lapse on its part in not carrying out the required amendment in sub-rule (8) of rule 22-B at the appropriate time despite the fact that the Committee asked for such information. On the other hand, the Department seemed to be content with mere presumption of certain things. The Committee strongly deprecate the lackadaisical manner adopted by the Department of Personnel and Training in dealing with the important statutory rules governing the All India Services. The Committee desire the Ministry to ensure that the delay in notifying the amendment did not adversely affect any beneficiary.

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## MINUTES



## APPENDIX IV

[Vide Paragraph 3 of the Report]

### XII

#### MINUTES OF THE TWELFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee met on Monday, 2 November, 1992 from 15.00 to 16.00 hours.

#### PRESENT

Shri Somnath Chatterjee—*Chairman*

#### MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Shri Chhitubhai Gamit
4. Shri Ram Niwas Mirdha
5. Shri Shravan Kumar Patel
6. Shri A. Venkata Reddy
7. Shri Mohan Singh
8. Shri Tara Singh

#### SECRETARIAT

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

2. The Committee considered Memoranda Nos. 31 to 39 on the following subjects:—

(i) *Representation regarding non-framing of rules in the Central Administrative Tribunal. (Memorandum No. 31)*

3. The Committee considered the representation received from Dr. R.C. Tyagi, Meerut that the office of the CAT had negated the judicial order by saying that the rules for summoning witnesses in CAT had not yet been framed.

4. The Committee noted from the reply of the Ministry of Personnel, Public Grievances and Pension that sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985 specifically empowered the Tribunal to exercise the same powers as that of a civil court under the Code of Civil Procedure, 1908 in the matter of summoning and enforcing the attendance

of any person and examining him on oath, and as such no separate rules had been made by the Tribunal in exercise of its rule-making power under the Act.

5. The Committee, however, noted that sub-section (1) of Section 22 of the Act clearly stipulated that the Tribunal should not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but should be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government. Since the Tribunal had to perform a variety of significant functions including taking evidence on affidavits and examining persons on oath, the Committee considered it very essential to have well-knit rules in exercise of the powers conferred upon them under Sections 35 and 36 of the Administrative Tribunal Act, 1985 in order that no injustice was caused to any body for want of such rules. The Committee, therefore, desired the Ministry to do the needful at the earliest.

(ii) *The Directorate of Marine Engineering Training (Foreman Instructor and Seamanship Instructor) Recruitment Rules, 1987 (GSR 10 of 1991)—*  
*Corrigendum to (Memorandum No. 32)*

6. The Committee noted from the reply of the Ministry of Surface Transport that the nature of the administrative problems had not been disclosed. The Committee, therefore, decided to recommend the Ministry to be more careful, in future so that the errors which crept into the statutory rules, were rectified at the earliest and in any event within a period of 30 days from the publication of the rules.

(iii) *The Aircraft (Third Amendment) Rules, 1991 (GSR 218 of 1991)*  
*(Memorandum No. 33)*

7. The Committee were not convinced with the reply of the Ministry of Civil Aviation that the first and second amendments did not relate to the subject matter of the Third Amendment made to the Aircraft Rules. When the Ministry had already indicated in the short title to the notification that it was the third amendment to the principal rules during the years, it flowed therefrom that there were two more amendments made prior to the extent amendment. The Committee, therefore, recommended the Ministry to mention the particulars of the first and second amendments also in the foot-note below the amendment rules in the gazette notification, for information of all concerned.

8. \* \* \*

(vii) *The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991—Footnote Regarding Notification of principal Rules and any Amendments thereto (Memorandum No. 36)*

9. The Committee considered the above memorandum and noted that the Ministry of Home Affairs had expressed their regrets for the inadvertent omission on their part in not indicating the G.S.R. Numbers of the principal/subsequent amendments in the footnote appended to the notification. The Committee recommended the Ministry to be more careful in future and take necessary remedial measures to ensure that reference to the original 'order' and the subsequent amendments thereto should always be in terms of the GSR numbers and the dates of publication in the official gazette rather than the ministerial file numbers and their dates which had little relevance for the purpose of keeping track of the amendments made to the principal rules from time to time.

(viii) *The Income-Tax (First Amendment) Rules, 1992 (S.O. 4-E of 1992) — Sub-rules 3(iii) and 3(v) of Rule III regarding Application for approval of an association or institution or for recommendation of a project or scheme by the National Committee - (Memorandum No. 38)*

10. The Committee noted from the reply of the Ministry of Finance that the provisions of rule III of the Income-Tax (First Amendment) gave an impression that the new organisations with less than three years standing were obviously handicapped as such organisations would not be in a position to furnish requisite particulars of the three years preceding the date of application. In the absence of the clear-out provisions in the statutory rules, the new organisation howsoever deserving ones, might not get the benefit of the Government sponsored concessions despite the best intentions of the authorities. The Committee, therefore, recommended the Ministry to fortify the statutory rules with all relevant provisions so as to make them reflect the true and actual practice for the information and guidance of the concerned public.

(ix) *The Income-Tax (First Amendment) Rules, 1992 (S.O. 4-E of 1992) — Sub-rule (3) of Rule 11G Regarding Composition of the National Committee (Memorandum No. 39)*

11. The Committee did not agree with the Ministry's contention as the position of the elected Chairman of the National Committee could not be equated with that of the member elected to preside over a particular sitting in the absence of the Chairman. The Committee were of the view that in any case, the power to appoint/elect a Chairman ought not be simultaneously vested in two agencies viz., the Central Government and the National Committee, in the event of vacancy of the office of the Chairman for any reason. The Committee therefore, recommended the Ministry to amend the Income-tax Rules to the necessary effect at an early date.

12. The Committee then adjourned to meet again on 12 November, 1992.

### 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*

#### MEMBER

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. The Committee considered the draft sixth Report and adopted it.
3. The Committee authorised the Chairman and in his absence, Shri Tara Singh, M.P. to present the Report to the House on 24 November, 1992.

(i) to (vii)

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*The Committee then adjourned.*

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