

COMMITTEE ON SUBORDINATE LEGISLATION

(EIGHTH LOK SABHA)

(1988-89)

TWENTY-THIRD REPORT

(Presented on 5, May, 1989)



LOK SABHA SECRETARIAT
NEW DELHI

May, 1989/Vaisakha, 1911 (Saka)

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LOK SABHA SECRETARIAT

CORRIGENDA TO THE 23RD REPORT OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(EIGHTH LOK SABHA) PRESENTED ON 5 MAY, 1989

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1988-89)**

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2. **Shri K.J. Abbasi**
3. **Shri G.S. Basavaraju**
4. **Shri Parasram Bhardwaj**
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- *11. **Shri Ebrahim Sualiman Sait**
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15. **Shri Vijay Kumar Yadav**

SECRETARIAT

1. **Shri K.C. Rastogi—*Joint Secretary***
2. **Shri G.S. Bhasin—*Deputy Secretary***
3. **Shri Swarn Singh – *Officer on Special Duty***

+ Nominated w.e.f. 28 June, 1988.

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 27 January, 1989.

3. The Report was considered and adopted by the Committee at their sitting held on 2 May, 1989. The Minutes of the sittings relevant to the Report are appended thereto.

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 consolidated form in Appendix I to the Report.

NEW DELHI ;
May 2, 1989

Vaisakha 12, 1911 (Saka)

ZAINUL BASHER
Chairman

*Committee on Subordinate
Legislation*

RAILWAY PROTECTION FORCE RULES, 1987

1.1 The Committee on Subordinate Legislation at their sitting held on 6 July, 1988 selected Railway Protection Force Rules, 1987 for detailed scrutiny. The Railway Protection Force Rules, 1987 were notified on 3rd December, 1987. These rules have been framed after repealing the Railway Protection Force Rules, 1959 and the Railway Protection Force Regulations, 1966.

1.2 The Committee desired to know whether the Railway Protection Force Rules, 1987 were published in draft form in the Gazette for inviting suggestions and objections from the affected interests and if not, the reasons therefor. In reply, a representative of the Ministry of Railway (Railway Board) stated during evidence :

“There is no provision in the Act that while we notify them in Gazette, we should ask for suggestions/objections. But departmentally this was done by the Railways, I mean in the Department itself this was done but since there is no requirement under the Act that it should be done, this was not done.”

1.3 Another representative of the Ministry of Railways (Railway Board) stated ;

“After the rules were prepared and finalised they were gazetted on 3rd December, 1987. These were scrutinised by the Legislative Department of the Government of India and we did not think it wise to make such a publication.”

1.4 The Committee enquired whether any modifications/amendments were suggested when the Railway Protection Force Rules were laid in both Houses of Parliament in terms of Section 21(3) of the Railway Protection Force Act, 1957. In a note, the Ministry have stated :

“The RPF Rules, 1987 were laid on the Table of Rajya Sabha on 9th December, 1987 and of Lok Sabha on 10th December, 1987. Though a motion No. 2164 was tabled in Lok Sabha by Shri P.R. Kumaramangalam, M.P. and 10 other M.Ps. on 16-3-88, yet till date no suggestion/modification has been received from either House of Parliament.”

1.5 The Committee desired to be apprised of the important changes/modifications made in the latest Rules *vis-a-vis* the Railway Protection Force Rules, 1959 and the Railway Protection Force Regulations, 1966 and the rationale thereof. In a note, the Ministry have stated :

"Salient features of the RPF Rules, 1987 are :

- (i) All the rules have been made keeping in view that the RPF is to be constituted and maintained as an Armed Force of the Union so as to make the Force structurally competent, operationally cohesive and functionally independent.
- (ii) Uninterrupted chain of command for the unitary Force flowing from the Central Government through the Director General down to the lowest rank as recommended by the High Powered Committee of Parliament, 1966-68 (Para 529) has been provided.
- (iii) Director General has been empowered to issue 'Directives' for the enforcement and furtherance of the provisions of the RPF Act and Rules (Rule 28).
- (iv) Director General has been made accountable for providing better security and protection to railway property (Rule 26).
- (v) Powers and responsibilities of all ranks have been defined (Chapter IV) keeping in view the spirit of the modified RPF Act.
- (vi) A new concept of promotion through Limited Departmental Competition to the rank of Hd. Constable/Asstt. Sub-Inspector has been provided (Rule 72).
- (vii) A new procedure for redressal of grievances of members of the Force has been provided (Rules 109-114).
- (viii) Provisions regarding uniform and equipment have been made more specific and in conformity with the practices in other armed forces. (Chapter X).
- (ix) Grounds for placing a member under suspension have been made wider as recommended by the National Police Commission (Rule 134).

- (x) Description of punishments and procedure for inflicting the same has been rationalised in conformity with the recommendations of the National Police Commission (Chapter XII).
- (xi) Provision regarding investigation and prosecution of criminals prying on railway property has been made self-contained (Chapter XIV).
- (xii) Three new Chapters (No. XVI-Aid to Civil Powers), (No. XVII-Plaints and Protections) and (No. XIX-Special Welfare Measures) have been inserted.
- (xiii) Holding of Court of Inquiry in certain situations has been made compulsory (Rule 265)."

1.6 As to the rationale for changes made in the RPF Rules, 1987, a representative of the Ministry of Railways (Railway Board) stated in evidence :

"The rules of 1987 flow out the act and this act gives RPF a new character in that it made it an armed force of the Union. Because of that, many of the provisions in the Act had to be in conformity with this changed character of force, and that is the main rationale for the changes in the 1987 Rules and the earlier Rules."

1.7 The Committee pointed out that if RPF was to function as an armed force of the Union, it should be placed under the Ministry of Defence rather than under the Ministry of Railways. A representative of the Ministry of Railways (Railway Board) replied :

"There is nothing as such that it cannot work. But under the Allocation of Business Rules of the Government of India, there is no such restriction."

Another witness added :

"Before this Bill was presented to Parliament, this question was discussed both in the Law Ministry and in the Home Ministry and it was cleared that since this is primarily meant for the protection of railway property, this armed force can work under the Ministry of Railways."

1.8 The Committee were informed that a writ petition had been filed in the High Court of Calcutta in connection with RPF Rules. In this connec-

tion a representative of the Ministry of Railway (Railway Board) stated in evidence :

“While framing rules, we have confined ourselves within the framework of the RPF Act.”

1.9 The Committee find that pursuant to Railway Protection Force (Amendment) Act, 1985, the Railway Protection Force has been declared as an ‘armed force’ of the Union. The Railway Protection Force Rules, 1959 and the Railway Protection Force Regulations, 1966 have been repealed and a new set of rules called Railway Protection Force Rules, 1987 have been enforced with effect from 30 December, 1987. In the absence of a provision in the relevant Act, the draft Rules, 1987 were not published for inviting suggestions and objections from the affected interests and only final rules were notified in the Gazette on 3rd December, 1987. The Committee consider that since the rules were framed after a basic change was made in the character of the Force in the relevant Act and involved changes of fundamental nature in the service conditions of the officers and members of the RPF, it was only appropriate that they should have been published first in draft form for inviting suggestions and objections. It is regrettable that this was not done. The Committee are of the view that in such cases the draft rules should in future be invariably published in draft form and finalised only after inviting suggestions and objections from the effected interests.

1.10 The Committee have been informed that the Rules have been challenged in the High Court of Calcutta. The Committee would like to be apprised of the outcome in due course.

Rules Relating to Recruitment/Promotion Policy in R.P.F.

1.11 In terms of Railway Protection Force Regulations, 1966, promotions to the grade of Senior Security Officers were to be made in such a way that 50% of the posts were to be filled by officers taken on deputation from the State Police or the Army. However, Rule 54.2 of the new RPF Rules, 1987 provides as under :

“The strength of the cadre and its composition shall be such as may be determined by the Central Government from time to time :

Provided that for achieving the objectives stated in rule 76, eighty percent of the posts of the Chief Security Commissioners and fifty percent of the remaining posts in and above the selection grade

shall be filled by deputation of officers from services mentioned in sub-rule (1)(c) above."

1.12 During evidence, the Committee desired to know how the Chief Security Commissioners, who acted as head of the force in a zonal railway, were appointed. A representative of the Ministry of Railways (Railway Board) explained :

"They are heads of Zonal Railway RPF. We have six posts in the rank of I.G. and 3 in the rank of DIG. 80% of the posts will be filled by deputation and 20% by promotion from the cadre of RPF. At this moment, we have 4 DIGs from the RPF and the other officers are from deputation. Previously also the position was 50% of the posts of DIGs from promotion and 50% from deputation since eligibility was not there, within the RPF. We created 3 posts of IGs in 1983. Since RPF officers were not having eligibility conditions, deputationists were taken."

1.13 The Committee enquired about circumstances in which the percentage of deputationists from outside had been increased from 50 to 80. A representative of the Ministry of Railway (Railway Board) stated :

"80% was in the grade of DIGs, when subsequently the post of CSO was upgraded to the level of IG. This problem has arisen because of the eligibility requirement."

1.14 When the Committee pointed out that this implied that promotional opportunities for the departmental candidates were not adequate, the witness replied; "It is a slow process". On being pointed out by the Committee that against six sanctioned posts of Inspectors General, three Railway Zones were being manned by DIGs only, the witness stated :

"Review is done periodically. Upgradations in the recent cadre review were made in 1986. We had three Inspectors General. We had sought for more in the cadre review and ultimately the Government agreed only to another three. That is why, we have six posts. Otherwise, we will be of the opinion that all the nine posts should be I.G."

1.15 The Committee enquired about the reasons for upgrading the post of the Chief Security Officer to the level of IG. A representative of the Ministry of Railways (Railway Board) explained :

"It is necessary to fall in line with the systems. One is the railway system where an upgradation has taken place and the other is the system in the States with whom we have to liaise where also a large number of posts in the IG rank had come up.

The witness further added :

"The Chief Security Officer is required to liaise with the civil authorities of the States. During the last few years, the post of DIG (Railways) has been progressively upgraded to IG (Railways). Similarly, on the railways, the CSO has to function in coordination with the departmental heads of the railway whose scale has also become equivalent to IG scale. It was felt that the CSO should be effective. But, on one side there is railway officer and on the other side is the State Police Officer. They are at a much higher level. He is not able to coordinate effectively. This was the thinking."

1.16 The Committee desired to know the reasons for having officers on deputation if departmental officers were available for promotion to higher posts. A representative of the Ministry of Railways (Railway Board) stated :

"It is not a new thing. IPS officers have come on deputation earlier also even at the lower level. Slowly, we have replaced them. Now, we are taking them at the higher level. Obviously, officers from the State Government functioning as Chief Security Commissioners are able to liaise effectively, with their State Government counterparts. This is one reason. We get officers of that level and they are fit for promotion. This has to be on par with the other armed forces like the BSF and CRPF."

1.17 The Committee pointed out that departmental candidates should first be considered and only in case of non-availability of departmental officers, deputationists should be called. To this the witness replied :

"Today, we do not have any officer with eligibility according to our rules... We will promote them to the extent they are eligible. If they are inadequate in number, to that extent we will have to get officers on deputation."

1.18 In reply to a further question as to why people from outside were being taken on deputation when Railways' own officers were doing well, the witness stated :

"I think they have not yet become eligible to be promoted to the level of IGs."

Another witness added :

“Those who are on regular posts and those who were promoted prior to 1981, become DIGs. Today they should have five years of experience in the junior Administrative Grade and five years experience at the senior scale level. I think no one is eligible there.

1.19 When the Committee pointed out that the provision regarding promotion of departmental candidates should be strictly enforced, the representative of the Ministry of Railways (Railway Board) stated :

“No where it is laid down that it is beyond eligibility. Always, eligibility is a factor and it is a necessity. As far as we are concerned, to promote an officer to the level of DIG, one must have obtained junior administrative grade prior to 1984. At present, we do not have any officer like that. That is the problem. It is not that we have not given promotion to an officer to become junior grade officer. Even recently, we have promoted two officers as DIGs on *ad hoc* basis. The reason is that they do not have eligibility. We cannot promote them on a regular basis unless we get relaxation. That is the position. It is not that we like the officers to wait to be promoted. We are not preventing their promotion. No persons are eligible for that post.”

1.20 The Committee note that in terms of Railway Protection Force Regulations, 1966, promotions to the grade of senior Security Officers were regulated in such a manner that 50% of the posts were reserved for departmental candidates and the rest of the 50 per cent were filled by officers taken on deputation from the State Police or the Army. Under the revised Rules, 1987 80% of the posts of the Chief Security Commissioners are being reserved for being filled by deputation of officers from other services. This would mean that only 20% of the promotions to these posts will be from the permanent cadre of Railway Protection Force. The career prospects of the senior officers borne on the permanent cadre of Railway Protection Force are thus adversely affected and to that extent the change in the rule would appear to be arbitrary and unreasonable.

1.21 It has been pleaded that in a situation when the members of the Force do not come within the range of eligibility for promotion to the senior positions, outsiders have to be inducted for filling up those posts. There could be no dispute on this point. But to make a provision in the rules that 80% of the posts in the senior positions would be filled in only by officers on deputation does not appear to be justified. The Committee are of the view that a provision

which reserves only 20% of the posts to be filled by officers of the Force can only lead to stagnation and disaffection among senior officers for want of promotional avenues in their own cadre. The Committee, therefore, recommend that the rules may be amended suitably to provide that adequate opportunities for promotion to the higher posts are available to the members of the Force in the interest of maintaining their moral and a high standard of efficiency. Only when suitable departmental officers are not available, some posts might be filled up by taking officers on deputation from outside.

Rules regarding right to form Service Associations

1.22 Rules 33 and 34 of the Railway Protection Force (Rule 1959 read as under :—

“33. Right to form Service Associations —

- (1) No superior officer or member of the Force shall enrol himself as a member of, or work for or make any contribution, directly or indirectly, to any trade union.
- (2) A superior officer of the Force may, however, be a member of an association composed entirely of members of the service to which he belongs or of gazetted officers of Railway services of the same class. A member of the Force may, however, be a member of an association composed of members of the service to which he belongs or an association composed entirely of members of the Force.
- (3) Any such association as is mentioned in sub-rule (2) shall not, however, be an association that may affiliate itself to any union or other association whatsoever.

34. Recognition of associations—

The Central Government may, from time to time specify the authority competent to recognise associations, the conditions for their recognition and the privileges of such recognised associations and also provide for withdrawal of such recognition.”

1.23 The Committee drew attention to rules 33 and 34 of the Railway Protection Force Rules, 1959 which provide for the right to form associations and pointed out that in the new rules framed in 1987 there was no corresponding provision. Explaining the position, the Ministry have in a note stated :

"The old RPF Act, 1957 was silent on the subject and hence some provision was made through Rules 33 and 34 of RPF Rules, 1959. But the RPF (Amendment) Act, 1985 (which came into force from 20th September, 1985) making RPF as an armed force of the Union itself inserted a new provision as Section 15A for placing restrictions, respecting right to form associations, etc. Nevertheless, to make this provision self-contained, Rules 115 of the RPF Rules, 1987 was framed and the Chief Security Commissioner was authorised to grant recognition for his Zonal Railway and the Director General to do so for the entries force."

1.24 During evidence, a representative of the Ministry of Railways (Railway Board) stated :

"Even today, if I may be permitted to read Section 15 (a) which says :

"No member of the Force shall without the previous sanction in writing of the Central Government or of the prescribed authority ; (a) be a member of, or be associated in any way with, any trade union, labour union, political association ; or with any class of trade unions, labour unions or political associations; or (b) a member of, or be associated in any way with any other society, institution, association or organisation that is not of a purely social, recreational or religious nature."

There is thus a provision that associations can be formed subject to the permission of the prescribed authority and the prescribed authority is the Chief Security Commissioner of the Zonal Railway and the DGRPF."

1.25 Asked whether permission had been given in any case for forming associations, the witness replied :

"No association has come up for approval and the old associations are fighting for the existing law."

1.26 Asked why the question of recognition of associations should be referred to the Ministry of Home Affairs, since the authorities who could grant permission for forming associations had been prescribed in the Act the witness stated :

"It is a policy matter. But that issue will come up when somebody applied for it."

1.27 The Committee enquired whether circumstances in which the prescribed authority would grant permission for formation of associations or the circumstances under which it might refuse permission, had been laid down for the guidance of the prescribed authority. In reply the representative of the Ministry of Railways (Railway Board) stated :

"Even in the previous RPF regulation, there was a provision that permission had to be sought. It was not that anyone could form association. Similarly, in the present situation, if some persons want to form an association, obviously it will have to be examined at the central level."

1.28 The Committee desired to know whether any mechanism, had been provided for redressal of the grievances of the employees of the force. A representative of the Ministry replied :

"We have made provision under Rules 109 to 114 of the present rules. There are provisions to redress the new grievances and also there is a machinery for redressal of collective grievances in the shape of staff Counsel which is to be formed and it has to have dialogue with the senior officials as well as with the Government."

1.29 The Committee note that Rules 33 and 34 of the Railway Protection Force Rules, 1959 provided for right to form associations of superior officers and members of the Railway Protection Force. Under rule 34 of the Railway Protection Force Rules, 1959, the authority competent to recognise associations, the conditions for their recognition, the privileges of such recognised associations as also the procedure for withdrawal of such recognition were prescribed. In the new rules framed in 1987 no corresponding provisions have been made. In fact Section 15(a) of the amended Railway Protection Force Act, 1985, has imposed a restriction on the formation of such associations without the previous sanction in writing of the prescribed authority,

The Committee are of the view that this curb on the right of the officers and members of the Force to form associations is not desirable. The Committee are also concerned to note that no guidelines have been laid down for the guidance of the prescribed authority for granting or refusing recognition to the associations formed by the members of the Force. The Committee desire that

suitable guidelines should be laid down in this behalf and the same may be incorporated in the rules for the information of all concerned.

Rules relating to recruitment of Sub-Inspectors and Rakshaks.

1.30 In the Railway Protection Force Rules, 1959, the age for the post of Sub-Inspector Grade II was prescribed as 'not less than 19 years and not more than 24 years ; but under the Railway Protection Force Rules, 1987, the minimum age for the post has been raised to 20 years and the maximum reduced to 23 years. Similarly, in the Railway Protection Force Rules, 1959, the qualification laid down for the post of Sub-Inspector Grade II was 'Intermediate Examination from a recognised Institution' whereas under the new rules framed in 1987 it has been raised to a Bachelor's degree or equivalent from a recognised University. In the Railway Protection Force Rules, 1959 the age for Rakshak was prescribed as not less than 18 years and not more than 25 years. Under the new Railway Protection Force Rules, 1987 the maximum age for this post has been reduced to 21 years. Under the Railway Protection Force Rules, 1959 the qualification for the post of a Rakshak was prescribed as "ability to read and write with ease the Official/Regional Language". Under the Railway protection Force Rules, 1987, the qualification for a constable has now been raised to the standard of High School Examination or its equivalent from recognised Board or University.

1.31 When asked about the reasons for changes in the requirements of age and qualifications for recruitment to the post of Sub-Inspectors and Rakshaks, the Ministry, in a note, stated :

"The RPF Rules, 1959 were framed when the 'Watch and Ward Department' was redesignated as Railway Protection Force and the Force constituted as per the provisions of RPF Act, 1957. Starting with 'Chowkidari' role, the Force was asked to collect intelligence about objectionable activities affecting the security and functioning of the railways. In 1968, the Force was asked to enquire into the charges against a person caught in unlawful possession of railway property as provided under the Railway Property (Unlawful Possession) Act, 1966. Now the RPF (Amendment) Act, 1985 through its preamble expects the Force to handle all matters connected with the protection and security of railway property. Thus an officer of the Force who is to

- (i) arrest, search, conduct enquiry/investigation against criminals and organise their prosecution
- (ii) Collect intelligence affecting the security and functioning of the railways ; and

(iii) perform other functions of an armed force of the Union.

has to be better qualified and trained than his counter-part of yore. The IVth Pay Commission also recognised this fact and while sanctioning special pay scale for the Force it recommended enhancement of educational qualification (Para 10.441).

Even the Constable was placed in Group 'C' as against Group 'D'. Hence, the educational qualifications had to be enhanced to match with the callings which was also recommended by the Railway Reform Committee of the Parliament under recommendation No. 74 of their Report No. VII (Security) in June, 1983.

For the above consideration, the age had to be readjusted so as to catch the candidates young and train them to the requirements of the Force by undergoing training in the subjects mentioned in Rule 61 of the RPF Rules, 1987. Further, the age and educational qualification were prescribed as recommended by the National Police Commission (1978-82) in para 35.10 and 35.24 in their Report No. V.

Since the nature of duties and consequential requirements of age and educational qualifications are different for RPF and are based on the recommendation of the Expert Committees and the National Police Commission, a comparison cannot be made with any other Force as their rules are age old."

1.32 The Committee find that while framing Railway Protection Force Rules, 1987, several provisions contained in Railway Protection Force Rules, 1959 have been changed or modified apparently without justification. One glaring case that has come to the notice of the Committee is the changes made in the requirement regarding educational qualifications and age of recruitment of sub-Inspectors and Rakshaks. In the case of Sub-Inspectors, the minimum educational qualification has been raised from 'Intermediate examination' to a 'Bachelor's degree'. Similarly, the educational qualification required for the post of a Rakshak has been raised to the standard of High School Examination instead of "ability to read and write", which was prescribed earlier under old rules, similar changes have been made in age requirement for different categories of posts. In justification for these changes it has been stated that the National Police Commission and the Fourth Pay Commission had recommended enhancement of educational qualifications etc.

1.33 The Committee feel that while making these changes the realities of the situation or ground have been ignored. With the level of literacy being

what it is, the requirement of a matriculation certificate for the post of Rakshak appears to be totally unjustified. It can only debar persons belonging to poorer and weaker sections of society from seeking entry into the Force. The Committee recommend that the educational qualifications for Rakshaks and Sub-Inspectors as laid down in the 1959 Rules, should be restored and in-service facilities may be provided to enable the new recruits to acquire the requisite educational standards alongwith other training.

Rules relating to Suspension :

1.34 Rule 133 of the Railway Protection Rules, 1987 reads as under :

"The enrolled members of the Force who may be placed under suspension and the authorities by whom they may be placed, shall be as specified in Schedule III.

Provided that in exceptional circumstances an Assistant Security Commissioner may place a Sub-Inspector under suspension and an Inspector may place any member of and below the rank of under officer under suspension :

Provided further that where any action is taken under the foregoing proviso, the authority suspending an enrolled member of the Force shall forthwith report to the authority competent to place such enrolled member under suspension, the circumstances under which the order was made and obtain his approval and where approval is not granted, the suspension order shall become void and in-operative *ab-initio*."

1.35 During evidence, the Committee pointed out that the exceptional circumstances under which even a junior officer of the rank of Inspector could place another member of the Force under suspension should have been spelt out, to check arbitrary exercise of these powers. In this connection, the Ministry have in a note stated :

"The special powers given under rule 133 to Junior Officers i.e. Inspectors to place RPF personnel of and below the rank of under officer, under suspension, is to be used only in exceptional circumstances about which he shall forthwith inform the competent authority and give details of circumstances under which order was made for obtaining his approval. This has been done to cover unforeseen situations, where it becomes necessary to place the force personnel under suspension. However, the condition that the Junior

Officer is required to immediately inform the competent authority about the circumstances of the suspension and the condition that the force personnel has to be furnished charges, on which he has been placed under suspension, within a period of 30 days from the date of suspension are considered sufficient safeguards to ensure that this power is not exercised in an arbitrary manner."

1.36 The Committee are of the view that the power to suspend a junior member of the Force granted to an officer of the rank of an Inspector under rule 133 is unreasonable and is liable to be misused to the disadvantage of RPF personnel. Further the safeguards against arbitrary use of such power provided in the provisos to rule 133 are not adequate as no time limit has been laid down within which the authority competent to place such enrolled member under suspension, has to give its approval in case a suspension order has been made. The Committee desire that the rule may be suitably amended in the light of above observations.

Rules relating to Members of the Force on Sick List

1.37 Rule 272.1 of the Railway Protection Force Rules, 1987 provides :
 "Notwithstanding anything contained in these rules, no members of the Force shall be taken on sick list by any Railway Medical Officer unless such member comes with a written reference known as 'Sick Memo from his controlling officer :

Provided that in case of any emergency, a member may be given necessary treatment but Railway Medical Certificate (RMC) shall be issued only after receiving the Sick Memo."

1.38 The Committee drew attention to the above rule and pointed out that this Rule placed unnecessary restrictions on the employees and officers of the force as well as the Railway Medical Officers as it was for the medical officer only to determine and decide whether any member of the force should or should not be taken on sick list. In a note, the Ministry have explained :

"Rules 272 only puts restriction on taking a RPF personnel on Sick List but it does not prevent his treatment. RPF personnel, as members of an Armed Force, are required to perform duties at a very short notice in any part of the country. Therefore, in order to curb malingering and to maintain a high standard of discipline in the force such restrictions are necessary. However, this rule does not in any way prevent either railway medical officer from treating the patient or the RPF personnel from getting the treatment as and when required."

1.39 The Committee feel that the rule as framed gives an impression that even if a member of the Force is sick and the medical officer is satisfied about it, the medical officer would not be in a position to issue a 'sick memo' unless a written reference is received from the controlling officer. *Prima facie* this appears to be unreasonable and the authority given to the controlling officer appears to be arbitrary. The Committee desire that the restrictions placed on the powers of the Medical Officers in the matter of issue of 'sick memo' should be done away with and the rule should be suitably amended.

General

1.40 Under the new rules framed in 1987, it was noticed that in a number of rules a reference has been made to the application of "Extent Railway Rules" to various categories of officers and employees of the Railway Protection Force. This amounts to legislation by reference. The Committee enquired whether it would not be desirable to reproduce the "Extent Railway Rules" below the respective rules themselves in order to make every rule self-contained and more informative.

1.41 In a note, the Ministry of Railways (Railway Board) have stated :

"We were conscious of the fact that by making reference to application of "Extent Railway Rules" the problems of legislation by reference would crop up. But this could not be avoided as Section 10 of the RPF Act itself declares that all members of the RPF shall be deemed to be regarded as railway servants. Hence, unless otherwise provided in the RPF Rules, 1987 these members are automatically governed by the "Extent Railway Rules" as also stipulated in Rule 117 of the RPF Rules, 1987 to avoid any ambiguity. Nevertheless, the word "Extent Railway Rule" was defined in Rule 2 (k) of the RPF Rules, 1987.

Further the Railway Rules may have to be changed from time to time and in case these rules have to be specifically mentioned in RPF Rules, a corresponding amendment in these rules will also become necessary. This has been avoided by the present, provision."

1.42 The Committee also noticed that terms such as "highest grade", "proper", "reasonably", "sufficient cause" and "reasonable cause" used in rules 23.2, 41 (2) (xvii), 44 and 147 (vi) had not been clearly expressed and did not convey a precise meaning. The Committee pointed out that since such terms could be interpreted differently by different persons, it was desirable that these terms should be suitably defined so that there was no scope of ambiguity in their interpretation. In this connection, the Ministry of Railways (Railway Board) have in a note stated :

"It is possible that the words under reference may be interpreted by different persons differently. But all such terms which have been used in some special context have been defined in Section 2 of the RPF Act, 1957 as well as under Rule 2 of the RPF Rules, 1987. Rest of the terms have been used in ordinary context and convey the meaning as assigned to them by any standard dictionary. This was probably why while using the term "reasonable cause" in Section 17 (i) of the RPF Act, 1957, the Parliament did not find it necessary to define it in the Act,

in any case, any rules framed can never serve the purpose for all times to come and a constant development of rules is natural phenomenon in all cases. As such in case any difficulty in the interpretation of rules is ever felt while working on them, the D.G. can use his power to lay down interpretation through his directives issued under Rule 28."

1.43 The Committee note that the Ministry of Railways are quite conscious of the problems of legislation by reference. But still no effort has been made to avoid this and the expression 'Extant Railway Rules' occur in several places in the Railway Protection Rules, 1987. The reason given for not reproducing the relevant Railway Rules, wherever necessary, is that the Railway Rules may have to be changed from time to time and this may require a corresponding amendment in the RPF Rules. This is hardly convincing and the Committee feel that the relevant Railway Rule should be suitably incorporated in the RPF Rules and the RPF Rules made self-contained so that they are more informative and useful.

1.44 The Committee cannot but emphasise that the language used in the Rules should be clear and unambiguous. The construction should be such as to leave no scope of its being interpreted differently by different persons. The Committee therefore, recommend that the use of expressions and words referred to above may be avoided as far as possible.

NEW DELHI
May 2, 1989

ZAINUL BASHER
Chairman,

Vaisakha, 12, 1911 (Saka)

Committee on Subordinate Legislation

APPENDIX

APPENDIX-1

(Vide paragraph 4 of the Report)

Consolidated statement of recommendations/observations made by the Committee

S. No.	Para No.	Recommendations/observations
(1)	(2)	(3)
1.	1.9	<p>The Committee find that pursuant to Railway Protection Force (Amendment) Act, 1985, the Railway Protection Force has been declared as an 'armed force' of the Union. The Railway Protection Force Rules, 1959 and the Railway Protection Force Regulations, 1966 have been repealed and a new set of rules called Railway Protection Force Rules, 1987 have been enforced with effect from 30 December, 1987. In the absence of a provision in the relevant Act, the draft Rules, 1987 were not published for inviting suggestions and objections from the affected interests and only final rules were notified in the Gazette on 3rd December, 1987. The Committee consider that since the rules were framed after a basic change was made in the character of the force in the relevant Act and involved changes of fundamental nature in the service conditions of the officers and members of the RPF, it was only appropriate that they should have been published first in draft form for inviting suggestions and objections. It is regrettable that this was not done. The Committee are of the view that in such cases the draft rules should in future be invariably published in draft form and finalised only after inviting suggestions and objections from the affected interests.</p>
2.	1.10	<p>The Committee have been informed that the Rules have been challenged in the High Court of Calcutta. The Committee would like to be apprised of the outcome in due course.</p>

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The Committee note that in terms of Railway Protection Force Regulations, 1966, promotions to the grade of Senior Security Officers were regulated in such a manner that 50% of the posts were reserved for departmental candidates and the rest of the 50 per cent were filled by officers taken on deputation from the State Police or the Army. Under the revised Rules, 1987 80% of the posts of the Chief Security Commissioners are being reserved for being filled by deputation of officers from other services. This would mean that only 20% of the promotions to these posts will be from the permanent cadre of Railway Protection Force. The career prospects of the senior officers borne on the permanent cadre of Railway Protection Force are thus adversely affected and to that extent the change in the rule would appear to be arbitrary and unreasonable.

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1.21

It has been pleaded that in a situation when the members of the Force do not come within the range of eligibility for promotion to the senior positions, outsiders have to be inducted for filling up those posts. There could be no dispute on this point. But to make a provision in the rules that 80% of the posts in the senior positions would be filled in only by officers on deputation does not appear to be justified. The Committee are of the view that a provision which reserves only 20% of the posts to be filled by officers of the Force can only lead to stagnation and disaffection among senior officers for want of promotional avenues in their own cadre. The Committee, therefore, recommend that the rules may be amended suitably to provide that adequate opportunities for promotion to the higher posts are available to the members of the Force in the interest of maintaining their morale and a high standard of efficiency. Only when suitable departmental officers are not available, some posts might be filled up by taking officers on deputation from outside.

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5 1.29 The Committee note that Rules 33 and 34 of the Railway Protection Force Rules, 1959 provided for right to form associations and recognition of associations of superior officers and members of the Railway Protection Force. Under rule 34 of the Railway Protection Force Rules, 1959, the authority competent to recognise associations, the conditions for their recognition, the privileges of such recognised associations as also the procedure for withdrawal of such recognition were prescribed. In the new rules framed in 1987 no corresponding provisions have been made. In fact Section 15 (a) of the amended Railway Protection Act, 1985, has imposed a restriction on the formation of such associations without the previous sanction in writing of the prescribed authority. The Committee are of the view that this curb on the right of the officers and members of the Force to form associations is not desirable. The Committee are also concerned to note that no guidelines have been laid down for the guidance of the prescribed authority for granting or refusing recognition to the associations formed by the members of the Force. The Committee desire that suitable guidelines in this behalf should be laid down in this behalf and the same may be incorporated in the rules for the information of all concerned.

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1.32

The Committee find that while framing Railway Protection Force Rules, 1987, several provisions contained in Railway Protection Force Rules, 1959 have been changed or modified apparently without justification. One glaring case that has come to the notice of the Committee is the changes made in the requirement regarding educational qualifications and age of recruitment of sub-Inspectors and Rakshaks. In the case of Sub-Inspectors, the minimum educational qualification has been raised from 'Intermediate examination' to a 'Bachelor's degree'. Similarly, the educational qualification required for

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the post of a Rakshak has been raised to the standard of High School Examination instead of "ability to read and write", which was prescribed earlier under old rules. Similar changes have been made in age requirement for different categories of posts. In justification for these changes it has been stated that the National Police Commission and the Fourth Pay Commission had recommended enhancement of educational qualifications etc.

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The Committee feel that while making these changes the realities of the situation or ground have been ignored. With the level of literacy being what it is, the requirement of a matriculation certificate for the post of Rakshak appears to be totally unjustified. It can only debar persons belonging to poorer and weaker sections of society from seeking entry into the Force. The Committee recommend that the educational qualifications for Rakshaks and Sub-Inspectors as laid down in the 1959 Rules, should be restored and in-service facilities may be provided to enable the new recruits to acquire the requisite educational standards alongwith other training.

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1.36

The Committee are of the view that the power to suspend a junior member of the force granted to an officer of the rank of an inspector under rule 133 is unreasonable and is liable to be misused to the disadvantage of RPF personnel. Further the safeguards against arbitrary use of such power provided in the provisios to rule 133 are not adequate as no time limit has been laid down within which the authority competent to place such enrolled member under suspension, has to give its approval in case a suspension order has been made. The Committee desire that the rule may be suitably amended in the light of above observations.

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The Committee feel that the rule as framed gives an impression that even if a member of the

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force is sick and the medical officer is satisfied about it, the medical officer would not be in a position to issue a 'sick memo' unless a written reference is received from the controlling officer, *prima facie* this appears to be unreasonable and the authority given to the controlling Officer appears to be arbitrary. The Committee desire that the restrictions placed on the powers of the Medical Officers in the matter of issue of 'sick memo' should be done away with and the rule should be suitably amended.

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1.43

The Committee note that the Ministry of Railways are quite conscious of the problems of legislation by reference. But still no effort has been made to avoid this and the expression 'Extant Railway Rules' occur in several places in the Railway Protection Rules, 1987. The reason given for not reproducing the relevant Railway Rule in the RPF Rules, wherever necessary, is that the Railway Rules may have to be changed from time to time and this may require a corresponding amendment in the RPF Rules. This is hardly convincing and the Committee feel that the relevant Railway Rule should be suitably incorporated in the RPF Rules and the RPF Rules made self-contained so that they are more informative and useful.

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1.44

The Committee cannot but emphasise that the language used in the Rules should be clear and unambiguous. The construction should be such as to have no scope of its being interpreted differently by different persons. The Committee therefore, recommend that the use of expressions and words referred to above may be avoided as far as possible.

MINUTES

LXXIV

MINUTES OF THE SEVENTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA) (1988-89)

The Committee met on Friday, the 27th January, 1989 from 15.00 to 16.30 hours.

PRESENT

Shri Zainul Basher — *Chairman*

MEMBERS

2. Shri K.J. Abbasi
3. Shri G.S. Basavaraju
4. Shri Parasram Bhardwaj
5. Shri Satyendra Chandra Guria
6. Shri A. Jayamohan
7. Shri R.S. Khirhar
8. Shri Mullapally Ramachandran
9. Shri Natavarsinh Solanki
10. Shri Katuri Narayana Swamy
11. Shri Vijay Kumar Yadav

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri Ranjit Mathur, Officer on Special Duty
2. Shri Raja Sreedharan, Director General/RPF
3. Shri Mukund Kaushal, IG/HQ
4. Shri D.V. Mehta, IG/RPF

SECRETARIAT

1. Shri G.S. Bhasin — *Deputy Secretary*
2. Shri Swarn Singh — *Officer on Special Duty*

2. Before the Committee proceeded to take evidence, the Chairman, while welcoming the witnesses, drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

3. In reply to a question, the representative of the Ministry stated that suggestions and objections on draft rules of the RPF were not invited as

there was no provision in this regard in the Act. However, the rules as finally approved were published in the Gazette of India on 3 December, 1987 and copies thereof were placed on the Table of both Houses of Parliament. No modifications were suggested by Parliament.

4. When asked to state the rationale behind the important changes/modifications made in the rules framed in 1987 *vis-a-vis* the RPF Rules, 1959 and RPF Regulations, 1966, the representative of the Ministry explained that after RPF had been declared as an Armed Force of the Union, it became necessary to modify certain rules and regulations to bring them in conformity with the changed character of the force.

5. When pointed out by the Committee that RPF being an Armed Force of the Union should appropriately work under the Ministry of Defence, the representative of the Ministry stated that this question had been discussed both in Law and Home Ministries and it was decided that since the Force was primarily meant for the protection of the Railway property and not for maintaining the law and order or to fight enemy on the border, it could work under the Ministry of Railways.

6. The representative of the Ministry also gave a gist of principal features of the RPF Bill and the RPF rules framed thereunder in 1987.

7. On being asked about the procedure followed for appointment of Chief Security Commissioners, the representative of the Ministry gave an account of the procedure followed for recruitment and promotion of officers in the Railway Protection Force. It was explained that the Force had six posts in the rank of I.Gs. and 3 in the rank of D.I.Gs. 80% of these posts were filled up by deputation and the rest of 20% on the basis of promotion from the cadre of RPF. As at present since RPF Officers did not fulfil eligibility conditions, deputationists had been taken. To a question as to how 50% of the posts had been given to deputationists, the representative of the Ministry replied that as per provision already in existence, 50% had to be filled up by promotion. He added that the recruitment rules specified certain eligibility conditions for promotion from one rank to the next one. It was also explained that an Officer of the rank of Divisional Security Commissioner required 5 years experience of continuous service in that rank to be considered eligible for Senior Commandant and another five years in the rank of Senior Commandant to be considered eligible for D.I.G.

8. The Committee pointed out that there were efficient Officers in the Force and right from 1981 selection for promotion of any of these Officers, had not been made. To this the representative of the Ministry replied that after 1981 direct recruitment was made to Class I through UPSC and as far

at promotions were concerned there had been delay because of certain dispute with regard to regulation of seniority of Assistant Commandants. The representative of the Ministry further added that earlier it was done on railway basis and now this was being done on All India basis.

9. On being pointed out that frustration in the minds of Officers of the RPF with regard to promotion policy was having demoralising effect on the existing staff, the representative of the Ministry stated that the process of regularisation of departmental officers promoted on *ad hoc* basis was being followed with the concurrence of UPSC.

10. To a question whether it might be suggested to Government to take the departmental candidates into consideration first and in case of non-availability of eligible Officers, Railways should go for deputationists, the representative of the Ministry replied that they did not have any Officer having eligibility requirements.

11. To a question as to whether Railways own Officers would be promoted or IPS Officers would be taken on deputation, the representative of the Ministry stated that the Officers would be promoted to the extent they were eligible and in case they were inadequate in number they would have to get Officers on deputation.

12. The Committee pointed out that the Act provided for 50 per cent promotion for Departmental candidates but the percentage was now being reduced to 20. In this connection the representative of the Ministry replied that nowhere it was laid down that it would be beyond eligibility. He added that for promotion to the level of DIG, an officer must have obtained junior administrative grade prior to 1984 but no officer in the force did have eligibility like that.

13. When asked about the restriction imposed in regard to the right to form association under the RPF rules, 1987, the representative of the Ministry explained that the associations could be formed subject to the grant of permission by the prescribed authority. He added that no association had come up for permission/recognition. As to the procedure followed, the Committee were informed that in case some associations approached the authorities for grant of permission to form associations in the Force, the matter would be examined on its merits at the Central Level. It was explained that under the new rules, provision had been made for redressal of collective grievances in the shape of Staff Councils which could have dialogue with the senior officials as well as the Government.

14. Under the 1987 rules the minimum age for the recruitment as sub-inspector had been raised from 19 years to 20 years and the maximum age

had been reduced from 24 to 23 years. In the case of Rakshak maximum age had been reduced from 25 to 21 years and educational qualifications for both the posts had been changed. Explaining the reasons for these changes the representative of the Ministry stated that the Railway-Reforms Committee and the National Police Commission, set up in 1978, had gone through that question and recommended that all officers who were to be recruited as sub-Inspectors, should be of the age of 20 to 23. He added that the National Police Commission also had recommended that educational qualifications for Constables should be raised to high school level and for the sub-Inspectors to a Bachelor degree. The witness informed the Committee that the recommendations made in that regard had been accepted. He also added that the Fourth Pay Commission, while recommending different scales, had also recommended graduation qualification for the post of sub-Inspector.

15. The Committee drew attention to the fact that in several rules reference had been made to the "Extant Railway Rules" which was tantamount to legislation by reference. Explaining the position the representative of the Ministry stated that under Section 10 of the RPF Act, members of RPF were regarded as railway servants for all practical purposes and as and when changes were contemplated in the general rules the same had been incorporated in RPF rules also.

16. The Committee pointed out that some of the terms used in the new rules had not been clearly expressed and thus did not convey the exact meaning. The representative of the Ministry stated that most of the terms had been clearly defined but if there were any cases where clarification was needed, the same would be done.

17. When asked whether any officer of the Force had challenged the validity of the RPF Rules, 1987 in a Court of Law, the representative of the Ministry replied in affirmative and stated that a writ against most of the provisions of these rules was pending in Calcutta High Court.

18. When asked to explain the exceptional circumstances referred to in Rule 133 under which junior officers of the rank of Inspector were empowered to place RPF personnel under suspension, the representative of the Ministry replied that the suspension was required to be approved by the competent authority within one month, otherwise it was inoperative.

19. The Committee drew attention of witness to the provision made in Rule 272 and asked to state the reasons why procurement of "sick Memo" by a member of the force from his controlling officer was necessary before being taken on sick list by Railway Medical Officer. The representative of the Ministry explained that they were not preventing any member of the Force

from getting treatment. The intention was that anybody in need of treatment should first report to the Controlling Officer, who was supposed to know about the welfare of Jawans. He added that this provision in the rule was considered necessary to keep a watch on the Jawans working under the Controlling Officer.

20. When asked about the reasons for not making any provision in the new rules with regard to relaxation in physical standards beyond the prescribed standards for recruitment of Rakshaks by the Chief Security Officer, the representative of the Ministry explained that the National Police Commission had *inter-alia* recommended that any relaxation in the physical qualifications would have an adverse impact on the performance of the force as a whole. In the light of this recommendation, the power to make relaxation had not been provided for in the rules.

The Chairman then directed the representatives of the Ministry to furnish detailed replies of all the questions, in writing which was agreed to.

The meeting then adjourned to meet again on 30 January, 1989.

MINUTES OF THE EIGHTIETH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)
(1988-89)

The Committee met on Tuesday, the 2nd May, 1989 from 16.00 to 16.30 hours.

PRESENT

Shri Zainul Basher—*Chairman*

MEMBERS

2. Shri K.J. Abbasi
3. Shri G.S. Basavaraju
4. Shri Satendra Chandra Guria
5. Shri Mullappally Ramachandran
6. Shri Ebrahim Sulaiman Sait

SECRETARIAT

1. Shri K.C. Rastogi—*Joint Secretary*
2. Shri G.S. Bhasin—*Deputy Secretary*
3. Shri Swarn Singh—*Officer on Special Duty*

2. The Committee considered the draft Twenty-third and ***Reports and adopted the same.

3. The Committee authorised the Chairman and in his absence, Shri K.J. Abbasi, M.P. to present the Reports to the House on 5th and** May, 1989, respectively.

The Committee then adjourned

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