

**COMMITTEE ON SUBORDINATE LEGISLATION
(ELEVENTH LOK SABHA)**

THIRD REPORT

[Presented on 11.3.1997]



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1997 Phalgun, 1918 (Saka)

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CORRIGENDA

TO

THE THIRD REPORT OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (ELEVENTH LOK SABHA)

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LATION (1996-97)

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3. Shri P.D.T. Achary —*Director*
4. Shri Ram Autar Ram —*Director*
5. Shri B.D. Swan —*Under Secretary*

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 3 October, 7 November, 1996 and 5 March, 1997.

3. The Committee considered and adopted this Report at their sitting held on 5 March, 1997. 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 consolidated form in Appendix I to the Report.

NEW DELHI;
March, 1997

Phalgun, 1918(S)

KRISHAN LAL SHARMA,
Chairman,
Committee on Subordinate Legislation.

REPORT

I

(THE VEGETABLE OIL PRODUCTS (STANDARDS OF QUALITY AMENDMENT ORDER, 1995 (GSR 139-E of 1995))

The Vegetable Oil Products (Standards of Quality) Amendment Order was published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 15 March, 1995. The proviso to clause 2 as substituted by the Amendment Order, read as under:—

No person shall manufacture, stock for sale, sell or offer for sale, any vegetable oil product, unless it conforms to the standards of quality and other requirements for vanaspati or bakery shortening or margarine or mixed fat spread and vegetable fat spread specified respectively in the First Schedule or Second Schedule or Third Schedule or Fourth Schedule to this Order and the premises in which the Vegetable Oil Products is being handled/ manufactured, conform to the stationary requirements and standards specified in the Fifth Schedule to this Order:

“Provided that where, for any special reason, any person finds it necessary to manufacture, stock or sale any variety of vegetable oil products not conforming to any or all of the requirements specified in the relevant Schedule, such manufacture may be undertaken or such stock may be kept or such sale may be made by him after obtaining prior permission thereof from the Vegetable Oil Product Controller for India, and the product shall be manufactured, stocked or sold by him in accordance with the instructions of the said Controller.”

1.2 It was felt that the aforesaid provision seemed to carry the effect of eroding the whole purpose of clause 2. The matter was, therefore, referred to the Ministry of Civil Supplies, Consumer Affairs and Public Distribution who were requested to state the necessity of incorporating such a provision in the Amendment Order. The Ministry were also requested to state the ‘special reasons’ mentioned in the provision under which a person could manufacture, stock or sale any variety of vegetable oil products not conforming to the requirements of the relevant schedule.

1.3 The Ministry *vide* reply dated 17 November, 1995 enclosed a copy of the Vegetable Oil Products (Standards of Quality) Order, 1975 as was originally notified by the Gazette Notification No. GSR 310-E dated

30 May, 1975 by the Ministry of Agriculture and Irrigation (Department of Food), and stated as under:—

“It may be observed that there has been no amendment of the particular proviso of clause 2 of the Vegetable Oil Products (Standards of Quality) Order, 1975 dated 30 May, 1975 as referred to by the Lok Sabha Secretariat in the amendment made *vide* Notification No. GSR 139-E, dated 15 March, 1995.”

1.4 The aforesaid reply of the Ministry was considered to be unsatisfactory and incomplete in the sense that the Ministry has neither stated the reasons for incorporating such a provision in the Vegetable Oil Products Order nor elaborated or specified the special reasons mentioned in the provision under which a person could be allowed to manufacture, stock or sale any variety of vegetable oil products even not conforming to the requirements of the relevant schedule, as was requested to them.

1.5 Accordingly, a further reference was made to the Ministry on 12 December, 1995 to elicit the desired information.

1.6 In their subsequent communication dated 22 December, 1995, the Ministry stated as under:—

“.....the enabling provision has not been introduced recently. It has been there right from the inception of the Vegetable Oil Products (Standards of Quality) Order, 1975. The basic objective of the provision has been to take care of unforeseen situations, such as to meet the different standards of the importing countries, to meet the special requirements of Defence for high altitude/ hostile environments, to facilitate the R&D work etc.

There has never been any compromise with the Quality of Vegetable Oil Products such as vanaspati. The production of Quality Vegetable Oil Products such as vanaspati etc. and health of the people have been the guiding principles of the Vegetable Oil Products (Standards of Quality) Order”.

1.7 The Committee note that the wording ‘for any special reasons’ occurring in the proviso to clause 2 of the aforesaid Order conferred unfettered discretionary power on the Controller in the matter of giving permission to any person for the manufacture, stock or sale of Vegetable Oil Products not conforming to the specified standards. The Committee feel that there must be some safeguards or checks to prevent the misuse of the discretionary power so conferred on the Controller and the best safeguard could be by making it obligatory for the Controller or record the reasons in writing while giving permission to any person under the enabling proviso. The Committee, therefore, recommend that the Ministry should amend the Vegetable Oil Products (Standards of Quality) Order so as to provide for the recording of reasons in writing by the Controller while granting permission to any person to manufacture, stock or sale any variety of Vegetable Oil Products not conforming to specified standards and that too subject to the approval of the higher authorities and further to provide that such reasons should not be prejudicial to public interest in any manner.

II

THE OFFICE OF THE DEVELOPMENT COMMISSIONER (HANDLOOMS) NATIONAL HANDICRAFTS AND HANDLOOMS MUSEUM GROUP 'C' (JUNIOR ACCOUNTANT) RECRUITMENT (AMENDMENT) RULES, 1995 (GSR 174 of 1995)

The Office of the Development Commissioner (Handlooms) National Handicrafts and Handlooms Museum Group "C" (Junior Accountant) Recruitment (Amendment) Rules, 1995 were published in the Gazette of India, Part II, Section 3(i), dated 8 April, 1995. Column 7 of S.No. 11 regarding the post of Dark Room Assistant, as amended, read as under:—

"Higher Secondary or Matriculation or equivalent. Two years experience in developing, printing, enlarging and finishing photo prints in a Government Department or first class studio."

2.2 It was felt that the term "first class studio" was vague and could be interpreted differently by different persons. The Committee on Subordinate Legislation have time and again emphasised that use of vague expressions should be avoided. The Ministry of Textiles were, therefore, requested to define the term 'first class studio'. In their reply dated 13 November, 1995, the Ministry defined the term as under:—

"First class studio represent a studio that can produce photographic work or professional quality which is acceptable for publishing in newspapers, periodicals and books."

2.3 The Committee note that the term 'first class studio' occurring in Col. 7 of the schedule against S.No. 11 of the aforesaid Rules was vague and could be interpreted differently by different persons. The Committee note that on being pointed out, the Ministry of Textiles defined the term 'first class studio' as a studio that can produce photographic work of professional quality which is acceptable for publishing in newspapers, periodicals and books. The Committee desire that Ministry should incorporate the term as defined by them in Col. 7 of S.No. 11 regarding the post of Dark Room Assistant so that this may not be interpreted differently by different persons.

III

THE COCHIN PORT TRUST EMPLOYEES' (EDUCATIONAL ASSISTANCE) REGULATION, 1993 (GSR 522-E OF 1993)

The Cochin Port Trust Employees' (Educational Assistance) Regulations, 1993, were published in the Gazette of India: Extraordinary, Part II, Section 3(i) dated 26 July, 1993. Regulation 29 of the above Regulation read as under:—

"29. Interpretation: Where any doubt arises as to the interpretation of these Regulations, it shall be referred to the Board and *its decision shall be final.*"

3.2 It was felt that the wordings "its decision shall be final" in the Regulations were apt to give an impression that the jurisdiction of the law courts was being ousted. The matter was referred to the Ministry of Surface Transport and their attention was invited to the following observation of the Committee made in para 18 of their Fourth Report (Third Lok Sabha):

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

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

3.3 The Committee felt that the wording 'its decision shall be final' occurring in Regulations 29 of the aforesaid Regulations were apt to give an impression that the jurisdiction of the law courts was being ousted. However, the Committee note that on being pointed out by them, the Ministry of surface Transport have amended the Cochin Port Employees' (Educational Assistance) Regulations, 1993 vide GSR 564-E dated 26 July, 1995 by deleting the words 'whose decision therein shall be final' and by substituting the words "the same shall be decided by the Board."

IV

THE CENTRAL RESERVE POLICE FORCE (COMBATISED PARA-MEDICAL POSTS) RECRUITMENT RULES, 1995 (GSR 223 OF 1995)

(A)

The Central Reserve Police Force (Combatised para-medical posts) Recruitment Rules, 1995 were published in the Gazette of India, Part II, Section 3(i) dated 6 May, 1995. It was observed that under column 12 of the schedule relating to the post of Subedar Major, the feeder grade for promotion to the post of Subedar Major was kept as Inspector (Ward Sister). However, the Ward Masters who were also in the same grade were not taken into account for consideration for promotion to the said post. The matter was taken up with the Ministry of Home Affairs to ascertain the special reasons if any for not considering the Ward Masters for promotion who were also in the same grade. In their reply dated 13 October, 1995, the Ministry stated as under:—

“The feeder grade for promotion to the post of Subedar Major (Assistant Matron/Sister incharge/Master Incharge) has been inadvertently shown as Inspectors (Ward Sisters) or non-combatised Ward Sisters because at present only females are stated to be admitted for the Nursing Courses. On verification with CRPF, it has transpired that there are two employees designated as Master Incharge and Ward Master. In order to safeguard the interests of these two employees in the matters of promotion, necessary amendment to the Rules is being carried out.”

4.2 The Committee note that on being pointed out the Ministry of Home Affairs agreed to amend the Central Reserve Police Force (Combatised para-Medical Posts) Recruitment Rules, 1995 so as to include the Ward Masters and Master Incharge also who are in the same grade as that of Inspector (Ward Sister) for consideration for the post of Subedar Major in order to safeguard the interests of the Ward Masters and Master Incharge. The Committee desire the Ministry to do the needful at the earliest.

(B)

4.3 Under column 1 of the schedule relating to the post of Lance Naik, the scale for the said post has been stated as Rs. 825-1200 with special pay. However, there was no mention of the amount of special pay so admissible. The matter was referred to the Ministry of Home Affairs to

- incorporate the same in the rules itself. In their reply dated 13 October, 1995, the Ministry of Home Affairs stated as under:—

“The amount of special pay for the post of Lance Naik (Nursing Assistant) has been inadvertently left out to be specified. Presently, this category of employees are entitled to a special pay of Rs. 15/- per month. Necessary amendment to specify the amount of special pay in the Rules is being carried out.”

4.4 The Committee note that on being pointed out, the Ministry of Home Affairs have mentioned the amount of special pay admissible to the persons working against the post of Lance Naik and have also agreed to make the necessary amendment in the rules by incorporating therein the amount of the special pay. The Committee desire that the Ministry of Home Affairs should do the needful at the earliest.

**THE BOMBAY PORT TRUST (FORM AND MANNER IN WHICH
CONTRACT SHALL BE MADE) REGULATIONS, 1994
(GSR 617-E OF 1994)**

The Bombay Port Trust (Form and Manner in which contract shall be made) Regulations, 1994, were published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 9 August, 1994. Regulation 7 of the Regulations relating to Interpretation clause read as under:—

“7. Interpretation: If any question arises as to the interpretation of these regulations it shall be referred to the Board whose decision therein shall be final.”

5.2 The wordings ‘whose decision shall be final’ in the Regulation were apt to give an impression that the jurisdiction of the law courts was being ousted. The matter was taken up with the concerned Ministry of Surface Transport to state whether they had any objection in amending the regulations in accordance with the following observations made by the Committee in their earlier reports:—

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

“If any question arises as to the interpretation of these regulations, the same will be decided by the Board.”

5.3 In their reply dated 26 July, 1995, the Ministry of Surface Transport stated as under:—

“...that the necessary amendments have been carried out and necessary notification has been sent to Press on 12-7-95 for Publication in Official Gazette.”

5.4 The Committee observe that Regulation 7 of the Bombay Port Trust (Form and Manner in which contract shall be made) Regulations, 1994 relating to interpretation clause were so worded as to give an impression of ousting the jurisdiction of the law courts.

5.5 The Committee note with satisfaction that on being pointed out, the Ministry of Surface Transport have since amended the Regulations vide GSR 545-E dated 12 July, 1995 by deleting the words “Whose decision thereon shall be final” and by substituting the words “the same shall be decided by the Board”.

VI

(I) THE MADRAS PORT TRUST EMPLOYEES' (GRANT OF ADVANCE FOR FESTIVAL AND NATURAL CALAMITIES REGULATIONS, 1994 (GSR 56 E OF 1994); AND (II) THE MADRAS PORT TRUST EMPLOYEES' (GRANT OF CONVEYANCE ADVANCE) REGULATIONS, 1994 (GSR 57 E OF 1994)

The Madras Port Trust Employees (Grant of Advance for Festival and Natural Calamities) Regulations 1994, and the Madras Port Trust Employees' (Grant of Conveyance Advance) Regulations, 1994 were published in the Gazette of India: Extraordinary, Part II, Section 3 (i), dated 2 February, 1994, Regulation 8 and Regulation 9 respectively of the above regulations relating to Interpretation clause read as under:—

“Interpretation: If any question arises as to the Interpretation of these regulations it shall be referred to the Board whose decision therein shall be final.”

6.2 The wordings ‘whose decision shall be final’ in the Regulations were apt to give an impression that the jurisdiction of the law courts was being ousted. The matter was taken up with the concerned Ministry of Surface Transport to state whether they had any objection in amending the regulations in accordance with the following observations made by the Committee in their earlier reports:—

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

“If any question arises as to the interpretation of these regulations, the same will be decided by the Board.”

6.3 In their reply dated 16 February, 1996, the Ministry of Surface Transport have forwarded a copy each of the amended notification carrying the amended version of the interpretation clause on the lines suggested by the Committee.

6.4 The Committee note with satisfaction that on being pointed out by them the Ministry of Surface Transport have amended the Regulations vide GSR 14-E and GSR 13-E respectively dated 16 February, 1996 by deleting the words “whose decision thereon shall be final” and by substituting the words “the same shall be decided by the Board” so as to do away with the notion that the jurisdiction of the law courts is being ousted.

VII

THE VISHAKAPATNAM PORT EMPLOYEES' (GENERAL PROVIDENT FUND) REGULATIONS, 1993 (GSR 704-E OF 1993)

The Vishakapatnam Port Employees' (General Provident Fund) Regulations, 1993 were published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 12 November, 1993. Regulation 32 of the Regulations relating to Interpretation clause read as under:—

32. Interpretation: If any question arises as to the Interpretation of these regulations it shall be referred to the Board whose decision therein shall be final.

7.2 The wordings 'whose decision shall be final' in the Regulation were apt to give an impression that the jurisdiction of the law courts was being ousted. The B matter was taken up with the concerned Ministry of Surface Transport to state whether they had any objection in amending the regulations in accordance with the following observations made by the Committee in their earlier reports:

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

"If any question arises as to the interpretation of these regulations, the same will be decided by the Board."

7.3 In their reply dated 22 February, 1996, the Ministry of Surface Transport have since forwarded a copy of the notification containing the amended version of the regulations as desired by the Committee.

7.4 The Committee observed that Regulation 32 of the Vishakapatnam Port Employees (General Provident Fund) Regulations, 1993 relating to interpretation clause were so worded as to give an impression of ousting the jurisdiction of the law courts. However, the Committee note that on being pointed out, the Ministry of Surface Transport have since amended the Regulations vide GSR 755-E dated 17 November, 1995 by deleting the words "whose decisions thereon shall be final" and by substituting the words "the same shall be decided by the Board."

VIII

THE SUGAR (PRICE DETERMINATION FOR 1995-96 PRODUCTION) ORDER, 1995 (GSR 731-E OF 1995)

The Sugar (Price Determination for 1995-96 Production) Order, 1995 was published in the Gazette of India Extraordinary, Part II, Section 3(i) dated 8 November, 1995. The Order was stated to have come into effect at once. Normally, the notifications are brought into force from the date of their publication in the official gazette or from a specific date as may be mentioned therein. The Ministry of Food (Department of Food) were therefore requested to state the specific reasons for deviation from the normal practice and also to state whether they had any objection in amending the rules so as to specify the date of coming into force of the order.

8.2 In their reply dated 2 May, 1996, the Ministry stated as under :—

“ . . . the Sugar (Price Determination for 1995-96 Production) Order, 1995 was published in the Gazette of India Extraordinary under the signature of Joint Secretary on 8 November, 1995. The date for publishing such notification in extraordinary Gazette is the date on which it is sent to the Press for favour of its publication so that these orders come into force at once. This is done in view of the fact that these notifications have a bearing on price changes and as such it is only desirable that they should come into force as soon as they are notified.

The Law Ministry at the time of vetting the order has also retained this sentence, perhaps taking into consideration the price factor involved and to give impetus to uninterrupted supply of levy sugar to the consumers under PDS.

It is, therefore, submitted that the practice of publishing the Sugar Determination Order in the Extraordinary Gazette should continue as per the way standing practice followed for more than last 20 years.”

8.3 The Committee observe that the Sugar (Price Determination for 1995-96 Production) Order, 1995 was stated to have come into effect at once. Normally, the notifications are brought into force from the date of their publication in the official gazette or from a specific date as may be mentioned therein.

8.4 The Committee feel that the wordings “it shall come into force at once” contained in the commencement clause were very vague and leave scope for speculation as to the actual date of coming into force of the Order.

In the case of Orders which involve financial matters as in the case of extant order which have a bearing on price changes, it becomes all the more important to specify the date of their commencement. The Committee feel that since the notification was intended to come into force from the date of its publication in the official gazette, the Ministry should have no difficulty in indicating the precise date.

8.5 In this connection, the Committee would like to draw the attention of the Ministry to the following recommendation of the Committee made in para 12 of their Second Report (Seventh Lok Sabha) namely:—

“ . . . the Committee feel that it would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. Accordingly the Committee recommend that a sub-rule regarding the date of coming into force should always be included in rules in future.”

8.6 The Committee, reiterating the above recommendation of the Committee, desire that the Ministry of Food should amend the Sugar (Price Determination for 1995-96 Production) Order so as to specify the date of coming into force of the order replacing the words “at once”.

IX

THE MINISTRY OF SURFACE TRANSPORT (ROADS WING) CENTRAL ENGINEERING SERVICE (ROADS) GROUP 'A' RULES, 1995 (GSR 487 OF 1995)

The Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' Rules, 1995 was published in the Gazette of India, Part II, Section 3 (i) dated 18 November, 1995. Rule 6(iii) therein read as under:—

“6(iii) If during the period of probation or any extension thereof, as the case may be, the Government is of the opinion that an officer is not fit for permanent appointment, such Government, may discharge the officer or revert to the post held by him prior to his appointment in the service under the Government, as the case may be.”

9.2 It was observed therefrom that the rule did not provide for recording of reasons in writing before the appointing authority discharged or reverted an officer to the post held by him prior to his appointment in the service, in case an officer was not found fit for permanent appointment. It was felt that before such discharge or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority. Further the reasons for such reversion or discharge from the service should be recorded in writing. The matter was therefore taken up with the concerned Ministry of Surface Transport for obtaining their comments on the matter. In their reply dated 18 April, 1996, the Ministry stated as under:—

- “(i) The Central Engineering Service (Roads) Rules, 1995 have been framed with the approval of Department of Personnel and Training and Union Public Service Commission and have been duly vetted by Ministry of Law and Justice.
- “(ii) The Provisions relating to probation have been made strictly in accordance with the “model provisions of probation for including in recruitment rules for organised services” as laid down by Department of Personnel and Training *vide* their O.M. No. AB 14017/5/83-ESTP(RR) dated 7-5-1984.

- (iii) The temporary Government servants are covered by the provisions of CES (Temporary Service) Rules, 1965. As per the Rule 5(1) (a) of these rules, the services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant. Thus even CCS(TS) rules do not provide for communication of reasons for reversion/discharge from service in writing.

In view of the above, it is felt that there is no need to amend the CES Rules, 1995. However, if the Committee on Subordinate Legislation still desire to amend the rules, this Ministry can do so only after the approval of Department of Personnel and Training and Union Public Service Commission and Ministry of Law and Justice to the said amendment."

9.3 The Committee observe that the Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' rules, 1995 did not provide for recording of reasons in writing before the appointing authority discharged or reverted an officer to the post held by him prior to his appointment in the service, in case an officer was not found fit for permanent appointment and feel that before such discharge or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority and the reasons for such reversion or discharge from the service should be recorded in writing.

9.4 The Committee note from the reply of the Ministry that the temporary Government servants are covered by the provisions of CES (Temporary Service) Rules, 1965 and under the rule 5(1) thereof the services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant. The Ministry had further stated that if the Committee on Subordinate Legislation still desire to amend the rules, this Ministry can do so only after the approval of Department of Personnel and Training and Union Public Service Commission and Ministry of Law and Justice to the said amendment.

9.5 The Committee feel that reversion of an officer on probation to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desire that the Ministry of Surface Transport should take up the matter with the Ministries concerned as stated by them in their reply at the earliest and amend rule

6(iii) so as to provide for recording of reasons for such reversion or termination as the case may be and also to communicate the reasons to the person concerned. The Committee also desire that while communicating the reasons care should be taken to see that the reasons communicated do not in any way adversely affect his carrer.

New Delhi;
March, 1997

Phalguna, 1918 (S)

KRISHAN LAL SHARMA,
Chairman,
Committee on Subordinate Legislation.

A P P E N D I C E S

APPENDIX I

(Vide Para 4 of the Introduction of the Report)

Summary of Recommendations made in the Report of the Committee on Subordinate Legislation

No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
		<i>The Vegetable Oil Products (Standards of Quality Amendment Order, 1995 (GSR 139-E of 1995)</i>
1.	1.7	<p>The Committee note that the wording 'for any special reasons' occurring in the proviso to clause 2 of the aforesaid order conferred unfettered discretionary power on the Controller in the matter of giving permission to any person for the manufacture, stock or sale of Vegetable Oil Products not conforming to the specified standards. The Committee feel that there must be some safeguards or checks to prevent the misuse of the discretionary power so conferred on the Controller and the best safeguard could be by making it obligatory for the Controller to record the reasons in writing while giving permission to any person under the enabling proviso. The Committee, therefore, recommend that the Ministry should amend the Vegetable Oil Products (standards of Quality) Order so as to provide for the recording of reasons in writing by the Controller while granting permission to any person to manufacture, stock or sale any variety of Vegetable Oil Products not conforming to specified standards and that too subject to the approval of the higher authorities and further to provide that such reasons should not be prejudicial to public interest in any manner.</p>

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		<p><i>The Office of the Development Commissioner (Handlooms) National Handicrafts and Handlooms Museum group 'C' (Junior Accountant) Recruitment (Amendment) Rules, 1995 (GSR 174 of 1995)</i></p>
2.	2.3	<p>The Committee note that the term 'first class studio' occurring in Col. 7 of the schedule against S.No. 11 of the aforesaid Rules was vague and could be interpreted differently by different persons. The Committee note that on being pointed out, the Ministry of Textiles defined the term 'first class studio' as a studio that can produce photographic work of professional quality which is acceptable for publishing in newspapers, periodicals and books. The Committee desire that Ministry should incorporate the term as defined by them in Col. 7 of S.No. 11 regarding the post of Dark Room Assistant so that this may not be interpreted differently by different persons.</p> <p><i>The Cochin Port Trust Employees, (Educational Assistance) Regulations, 1993 (GSR 522-E of 1993)</i></p>
3.	3.3	<p>The Committee felt that the wording 'its decision shall be final' occurring in regulations 29 of the aforesaid Regulations were apt to give an impression that the jurisdiction of the law courts was being ousted. However, the Committee note that on being pointed out by them, the Ministry of Surface Transport have amended the Cochin Port Employees (Educational Assistance) Regulations, 1993 <i>vide</i> GSR 564-E dated 26 July, 1995 by deleting the words 'whose decision therein shall be final' and by substituting the words "the same shall be decided by the Board".</p> <p><i>The Central Reserve Police Force (Combatised Para-Medical Posts) Recruitment Rules, 1995 (GSR 223 of 1995)</i></p>
4.	4.2 & 4.4	<p>(A)</p> <p>The Committee note that on being pointed out the Ministry of Home Affairs agreed to amend the Central Reserve Police Force (Combatised</p>

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Para-Medical Posts) Recruitment Rule, 1995 so as to include the Ward Masters and Master Incharge also who are in the same grade as that of Inspector (Ward sister) for consideration for the post of Subedar Major in order to safeguard the interests of the Ward Masters and Master Incharge. The Committee desire the Ministry to do the needful at the earliest.

(B)

The Committee note that on being pointed out, the Ministry of Home Affairs have mentioned the amount of special pay admissible to the persons working against the post of Lance Naik and have also agreed to make the necessary amendment in the rules by incorporating therein the amount of the special pay. The Committee desire that the Ministry of Home Affairs should do the needful at the earliest.

The Bombay Port Trust (Form and Manner in which Contract shall be made) Regulations, 1994, (GSR 617-E of 1994)

5. 5.4 & 5.5 The Committee observe that Regulation 7 of the Bombay Port Trust (Form and Manner in which contract shall be made) Regulations, 1994 relating to interpretation clause were so worded as to give an impression of ousting the jurisdiction of the law courts.

The Committee note with satisfaction that on being pointed out, the Ministry of Surface Transport have since amended the Regulations *vide* GSR 545-E dated 12 July, 1995 by deleting the words "whose decision thereon shall be final" and by substituting the words "the same shall be decided by the Board".

(I) The Madras Port Trust Employees' (Grant of Advance for Festival and Natural Calamities) Regulations, 1994 (GSR 56E of 1994); and (II) The Madras Port Trust Employees' (Grant of Conveyance Advance) Regulations, 1994 (GSR 57E of 1994.)

6. 6.4 The Committee note with satisfaction that on being pointed out by them: the Ministry of Surface Transport have amended the Regulations *vide* GSR

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14-E and GSR 13-E respectively dated 16 February, 1996 by deleting the words "whose decision thereon shall be final" and by substituting the words "the same shall be decided by the Board" so as to do away with the notion that the jurisdiction of the law courts is being ousted.

The Vishakhapatnam Port Employees' (General Provident Fund) Regulations, 1993 (GSR 704-E of 1993)

7. 7.4

The Committee observed that Regulation 32 of the Vishakhapatnam Port Employees' (General Provident Fund) Regulations, 1993 relating to interpretation clause were so worded as to give an impression of ousting the jurisdiction of the law courts. However, the Committee note that on being pointed out, the Ministry of Surface Transport have since amended the Regulations *vide* GSR 755-E dated 17 November, 1995 by deleting the words "whose decision thereon shall be final" and by substituting the words "the same shall be decided by the Board".

The Sugar (Price Determination for 1995-96 Production) Order, 1995 (GSR 731-E of 1995)

8. 8.3 to 8.6

The Committee observe that the Sugar (Price Determination for 1995-96 Production) Order, 1995 was stated to have come into effect at once. Normally, the notifications are brought into force from the date of their publication in the official gazette or from a specific date as may be mentioned therein.

The Committee feel that the wordings "it shall come into force at once" contained in the commencement clause were very vague and leave scope for speculation as to the actual date of coming into force of the Order. In the case of Orders which involve financial matters as in the case of extant order which have a bearing on price changes, it becomes all the more important to specify the date of their commencement. The Committee feel that since the

notification was intended to come into force from the date of its publication in the official gazette, the Ministry should have no difficulty in indicating the precise date.

In this connection, the Committee would like to draw the attention of the Ministry to the following recommendation of the Committee made in para 12 of their Second Report (Seventh Lok Sabha) namely:—

“...the Committee feel that it would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. Accordingly the Committee recommend that a sub-rule regarding the date of coming into force should always be included in rules in future.

The Committee, reiterating the above recommendation of the Committee, desire that the Ministry of Food should amend the Sugar (Price Determination for 1995-96 Production) Order so as to specify the date of coming into force of the order replacing the words “at once”.

The Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' Rules, 1995 (GSR 487 of 1995)

9. 9.3 to 9.5

The Committee observe that the Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' rules, 1995 did not provide for recording of reasons in writing before the appointing authority discharged or reverted an officer to the post held by him prior to his appointment in the service, in case an officer was not found fit for permanent appointment and feel that before such discharge or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority and the reasons for such reversion or discharge from the service should be recorded in writing.

The Committee note from the reply of the Ministry that the temporary Government servants are covered by the provisions of CES (Temporary Service) Rules, 1965 and under the rule 5(1) thereof the services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the Government servant. The Ministry had further stated that if the Committee on Subordinate Legislation still desire to amend the rules, this Ministry can do so only after the approval of Department of Personnel and Training and Union Public Service Commission and Ministry of Law and Justice to the said amendment.

The Committee feel that reversion of an officer on probation to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desire that the Ministry of Surface Transport should take up the matter with the Ministries concerned as stated by them in their reply at the earliest and amend rule 6(iii) so as to provide for recording of reasons for such reversion or termination as the case may be and also to communicate the reasons to the person concerned. The Committee also desire that while communicating the reasons care should be taken to see that the reasons communicated do not in any way adversely affect his career.

MINUTES

Appendix II
(Vide para 3 of the Introduction of the Report)

**MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (1996-97)**

The Committee met on Thursday, 3 October, 1996 from 15.00 to 15.45 hrs.

PRESENT

Shri Krishan Lal Sharma — *Chairman*

MEMBERS

2. Shri N. Dennis
3. Shri Bhupinder Singh Hooda
4. Shri Guman Mal Lodha
5. Shri K.H. Muniyappa

SECRETARIAT

- 1 Shri P.D.T Achary — *Director*
2. Shri Ram Autar Ram — *Deputy Secretary*
3. Shri B.D. Swan — *Assistant Director*

2. The Committee considered Memoranda No. 1 to 4 as follows:—

(i) *The Vegetable Oil Products (Standards of Quality Amendment Order, 1995 (GSR 139-E of 1995)—(Memorandum No. 1)*

The Committee noted that the wording 'for any special reasons' occurring in the proviso to clause 2 of the aforesaid Order conferred unfettered discretionary power on the Controller in the matter of giving permission to any person for the manufacture, stock or sale of Vegetable Oil Products not conforming to the specified standards. The Committee felt that there must be some safeguards or checks to prevent the misuse of the discretionary power so conferred on the Controller and the best safeguard could be by making it obligatory for the Controller to record the reasons in writing while giving permission to any person under the enabling proviso. The Committee, therefore, recommended that the Ministry should be asked to amend the Vegetable Oil Products (Standards of Quality) Order so as to provide for the recording of reasons in writing by the Controller while granting permission to any person to manufacture, stock or sale any variety of Vegetable Oil Products not conforming to specified standards and that too subject to the approval of the higher authorities and further to provide that such reasons should not be prejudicial to public interest in any manner.

(ii) *The Office of the Development Commissioner (Handlooms) National Handicrafts and Handlooms Museum Group 'C' (Junior Accountant) Recruitment (Amendment) Rules, 1995 (GSR 174 to 1995)—(Memorandum No. 2)*

The Committee noted that the term 'first class studio' occurring in Col. 7 of the schedule against S.No. 11 of the aforesaid Rules was vague and could be interpreted differently by different persons. On being pointed out the Ministry of Textiles defined the term 'first class studio' as a studio that can produce photographic work of professional quality which is acceptable for publishing in newspapers, periodicals and books. The Committee recommended that Ministry should incorporate the term as defined by them in Col. 7 of S.No. 11 regarding the post of Dark Room Assistant so that this may not be interpreted differently by different persons.

(iii) *The Cochin Port Trust Employees (Educational Assistance) Regulations, 1993 (GSR 522-E of 1993) — (Memorandum No. 3)*

The Committee noted that the working 'its decision shall be final' occurring in Regulations 29 of the aforesaid Regulations were apt to give an impression that the jurisdiction of the law courts was being ousted. On being pointed out, the Ministry of Surface Transport amended the Cochin Port Employees (Educational Assistance) Regulations, 1993 *vide* GSR 564-E dated 26 July, 1995 by deleting the words 'whose decision therein shall be final' and by substituting the words "the same shall be decided by the Board."

(iv) *The Central Reserve Police Force (Combatised Para-Medical Posts) Recruitment Rules, 1995 (GSR 223 of 1995) (Memorandum No. 4)*

(A)

The Committee observed that under Column 12 of the schedule relating to the post of Subedar Major, the feeder grade for promotion to the post of Subedar Major was kept as inspector (Ward Sister). However, the Ward Masters who were also in the same grade were not taken into account for consideration for promotion of the said post. On being pointed out the Ministry of Home Affairs agreed to amend the Central Reserve Police Force (Combatised para-Medical Posts) Recruitment Rules, 1995 so as to include the Ward Masters and Master Incharge also who were in the same grade as that of Inspector (Ward Sister) for consideration for the post of Subedar Major in order to safeguard the interests of the Ward Masters and Master Incharge. The Committee desired the Ministry to do the needful at the earliest.

(B)

The Committee observed that there was no mention of the amount of special pay so admissible under Col. 1 of the Schedule appended thereto. On being pointed out, the Ministry of Home Affairs had mentioned the

amount of special pay admissible to the persons working against the post of Lance Naik and also agreed to make the necessary amendment in the rules by incorporating therein the amount of the special pay. The Committee desired that Ministry to do the needful at the earliest.

3. Some members of the Committee suggested that the rules/regulations framed under the following subjects might also be taken up by the Committee for examination:—

- (i) Anti-Defection Law;
- (ii) Prevention of Corruption Act;
- (iii) Essential Commodities Act.

The Committee then adjourned.

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (ELEVENTH LOK SABHA)
(1996-97)

The Committee met on Thursday, 7 November, 1996 from 15.00 hours to 15.45 hours.

PRESENT

Shri Krishan Lal Sharma — *Chairman*

MEMBERS

2. Shri V. Alagirisamy
3. Shri N. Dennis
4. Shri Bhupinder Singh Hooda
5. Shri Vijay Kumar Khandelwal
6. Shri V. Dhananjaya Kumar
7. Shri Guman Mal Lodha
8. Shri K.H. Muniyappa
9. Shri M. Baga Reddy
10. Shri Balai Roy
11. Shri D.B. Roy
12. Shri Ram Kirpal Yadav

SECRETARIAT

1. Shri Ram Autar Ram— *Deputy Secretary*
2. Shri B.D. Swan — *Assistant Director*

2. The Committee considered Memoranda nos. 5 to 9 as follows:—

- (i) *The Bombay Port Trust (Form and Manner in which contract shall be made) Regulations, 1994 (GSR 617-E of 1994) (Memoranda No. 1)*

3. The Committee noted that Regulation 7 of the Bombay Port Trust (Form and Manner on which contract shall be made) Regulations, 1994 relating to interpretation clause were so worded as to give an impression of ousting the jurisdiction of the law courts. On being pointed out, the Ministry of Surface Transport have amended the Regulations *vide* GSR 545-E dated 12 July 1995 by deleting the words “whose decision thereon shall be final” and by substituting the words “the same shall be decided by the Board”.

(ii) *The Madras Port Trust Employees' (Grant of Advance for Festival and Natural Calamities) Regulations, 1994 (GSR 56(E) of 1994); and The Madras Port Trust Employees' (Grant of Conveyance Advance) Regulations, 1994 (GSR 57(E) of 1994) (Memoranda No. 6)*

4. The Committee noted that Regulations 8 & 9 of the above Regulations, 1994 relating to interpretation clause were so worded as to give an impression of ousting the jurisdiction of the law courts. On being pointed out, the Ministry of Surface Transport have amended the Regulations *vide* GSR 14-E and G.S.R. 13-E respectively dated 16 February, 1996 by deleting the words "whose decision thereon shall be final" and by substituting the words "the same shall be decided by the Board".

(iii) *The Vishakapatnam Port Employees' (General Provident Fund) Regulations, 1993 (GSR 704-E of 1993) (Memorandum No. 7)*

5. The Committee noted that Regulation 32 of the Vishakaptnam Port Employees (General Provident Fund) Regulations, 1993 relating to interpretation clause were so worded as to give an impression of ousting the jurisdiction of the law courts. On being pointed out, the Ministry of Surface Transport have amended the Regulations *vide* GSR 755-E dated 17 November, 1995 by deleting the words "whose decision thereon shall be final" and by substituting the words "the same shall be decided by the Board".

(iv) *The Sugar (Price Determination for 1995-96 Production) Order, 1995 (GSR 731-E of 1995) (Memorandum No. 8)*

6. The Committee observed that the Sugar (Price Determination for 1995-96 Production) Order, 1995 were stated to have come into effect at once. Normally, the notifications are brought into force from the date of their publication in the Official Gazette or from a specific date as may be mentioned therein. The Ministry of Food (Department of Food) when referred to state the specific reasons for deviation from the normal practice and to state whether they had any objection in amending the rules so as to specify the date of coming into force of the order replied that the date for publishing such notification in Extraordinary Gazette is the date on which it is sent to the press for favour of its publication so that these orders come into force at once and that this sentence has been retained by the Law Ministry also at the time of vetting.

7. The Committee felt that the wordings "it shall come into force at once" contained in the commencement clause were very vague and leave scope for speculation as to the actual date of coming into force of the Order. In the case of Orders which involve financial matters as in the case of extant order which have a bearing on price changes, it becomes all the

more important to specify the date of their commencement. The Committee felt that since the notification was intended to come into force from the date of its publication in the official gazette, the Ministry should have no difficulty in indicating the precise date.

8. In this connection, the Committee decided to draw the attention of the Ministry to the following recommendation of the Committee made in para 12 of their Second Report (Seventh Lok Sabha) namely:—

“...the Committee feel that it would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. Accordingly the Committee recommend that sub-rule regarding the date of coming into force should always be included in rules in future.”

9. Reiterating the above recommendation of the Committee, the Committee desired the Ministry of Food to amend the order so as to specify the date of coming into force of the order replacing the words “at once”.

(v) *The Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' Rules, 1995 (GSR 487 of 1995) (Memorandum No. 9)*

10. The Committee noted that Rules 6(iii) of the Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' Rules, 1995 read as under:—

“6(iii) If during the period of probation or any extension thereof, as the case may be, the Government is of the opinion that an officer is not fit for permanent appointment, such Government, may discharge the officer or revert to the post held by him prior to his appointment in the service under the Government, as the case may be.”

11. The Committee observed that the rule did not provide for recording of reasons in writing before the appointing authority discharged or reverted an officer to the post held by him prior to his appointment in the service, in case an officer was not found fit for permanent appointment and felt that before such discharge or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority and the reasons for such reversion or discharge from the service should be recorded in writing. The Committee noted from the reply of the Ministry that the temporary Government servants are covered by the provisions of CES (Temporary Service) Rules, 1965 and under the rule 5(1) thereof the services of a temporary government servant shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant. The Ministry had further stated that if the Committee on Subordinate legislation still desire to amend the rules,

this Ministry can do so only after the approval of Department of personnel and Training and Union Public Service Commission and Ministry of Law and Justice to the said amendment.

12. The Committee felt that reversion of an officer on probation to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desired that the Ministry of Surface Transport should take up the matter with the Ministries concerned as stated by them in their reply at the earliest and amend rule 6(iii) so as to provide for recording of reasons for such reversion or discharge as the case may be and also to communicate the reasons to the person concerned.

The Committee then adjourned.

**MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (ELEVENTH LOK SABHA)**

The Committee met on Wednesday, 5 March, 1997 from 15.00 to 15.30 hours.

PRESENT

Shri Krishan Lal Sharma — Chairman

MEMBERS

2. Shri V. Alagirisamy
3. Shri N. Dennis
4. Shri Bhupinder Singh Hooda
5. Shri Vijay Kumar Khandelwal
6. Shri V. Dhananjaya Kumar
7. Shri M. Baga Reddy
8. Shri Ram Kirpal Yadav

SECRETARIAT

1. Shri P.D.T. Achary — *Director*
2. Shri Ram Autar Ram — *Director*
3. Shri B.D. Swan — *Under Secretary*

2. The Committee considered and adopted the draft Third to Seventh Reports and decided to present them to the House on the 11th March, 1997.

3. The Committee thereafter decided to hold deliberations on the rules/regulations framed under the Citizenship Act, 1955, at their next sitting scheduled to be held on 13 March, 1997.

The Committee then adjourned.