

COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)
(2005-2006)

ELEVENTH REPORT

**[ACTION TAKEN REPORT OF THE COMMITTEE ON THE
RECOMMENDATIONS /OBSERVATIONS CONTAINED IN FIFTH REPORT
(2001-2002) (THIRTEENTH LOK SABHA)]**

(PRESENTED ON 2.8.2006)

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LOK SABHA SECRETARIAT

NEW DELHI

June 2006, Jyaishta, 1928 (Saka)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2005-2006)

- | | | | |
|-----|---------------------------------|---|------------------------|
| 1. | Shri N.N. Krishnadas | - | <u>Chairman</u> |
| 2. | Shri Omar Abdullah | | |
| 3. | Shri Ajoy Chakraborty | | |
| 4. | Shri Bikram Keshari Deo | | |
| 5. | Shri N.Y. Hanumanthappa | | |
| 6. | Shri Ram Singh Kaswan | | |
| 7. | Shri Vijaykumar Khandelwal | | |
| 8. | Shri Sudam Marandi | | |
| 9. | Shri Anantha Venkata Rami Reddy | | |
| 10. | Shri Chandra Shekhar Sahu* | | |
| 11. | Shri Sitaram Singh | | |
| 12. | Shri Bhupendrasinh Solanki | | |
| 13. | Shri Ramjilal Suman | | |
| 14. | Shri P.C. Thomas | | |
| 15. | Shri Madhu Goud Yaskhi | | |

SECRETARIAT

- | | | | |
|----|-----------------|---|------------------|
| 1. | Shri R.C. Ahuja | - | Joint Secretary |
| 2. | Shri R.K. Bajaj | - | Deputy Secretary |
| 3. | Shri K. Jena | - | Under Secretary |

*Ceased to be a member of the Committee on appointment as Minister on
29.1.2006

INTRODUCTION

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

2. This Report relates to the action taken on the recommendations of the Committee contained in the Fifth Report (2001 – 2002) (Thirteenth Lok Sabha) which was presented to Lok Sabha on 10.12.2001.

3. The Committee considered and adopted this Report at their sitting held on 6 June, 2006.

4. The summary of recommendations contained in the Fifth Report and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.

5. The extracts from the Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

6. An analysis of the action taken by Government on the recommendations contained in the Fifth Report of the Committee (13th Lok Sabha) is given in Appendix III.

New Delhi;
June, 2006
Jyaistha, 1928 (SAKA)

N.N. KRISHNADAS
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Fifth Report (Thirteenth Lok Sabha) which was presented to Lok Sabha on 10.12.2001. The Fifth Report dealt with the following chapters: -

- (i) Implementation of recommendations contained in paragraphs 1.19-1.21 of the Second Report (Thirteenth Lok Sabha) of the Committee on Subordinate Legislation re: Representation on behalf of All Contract Employees of M/S Engineers India Limited
- (ii) The Drugs and Cosmetics (IVth Amendment) Rules, 1996 (GSR 231-E of 1996)
- (iii) The Indian Navy Senior Translation Officer (Russian/English) Group 'A' Posts Recruitment Rules, 1995 (SRO 230 Of 1995)
- (iv) The Central Excise (Fourth Amendment) Rules, 1996 (GSR 340-E of 1996)
- (v) The Central Leprosy Teaching and Research Institute, Chengalpattu (Data Entry Operator Grade 'A') Recruitment Rules, 1995. (GSR 217 of 1996)
- (vi) The Ministry of Urban Affairs and Employment, Directorate of Printing, the Government of India Presses Stenographers Grade II, Group 'C' Posts Recruitment Rules, 1996 (GSR 333 of 1996)
- (vii) The Contract Labour (Regulation and Abolition) (Central Amendment) Rules, 1999 (GSR 41-E of 1999).

2. The shortcomings observed during scrutiny of the rules mentioned in chapters (iii) and (v) above were brought to the notice of the concerned Ministries for their comments/necessary corrective action. The Ministries concerned accepted those shortcomings and amended the relevant rules to rectify the same. Therefore, the recommendations of the Committee in para nos. 3.8 of chapter (iii), and 5.3 & 5.4 of chapter (v) of their Fifth Report have taken note of the satisfactory action taken by the Government in this regard. As such, no action was pending on the part of the Government with regard to recommendations of the Committee contained in these chapters.

3. As regards recommendations contained in chapters (ii), (iv), (vi) and (vii), the Government have implemented the same. A statement showing the action taken by the Government on these recommendations contained in the Fifth Report (13th Lok Sabha) is given in Appendix-I.

4. With regard to recommendations contained in para no. 1.21 of chapter (i) above, the reply of the Ministry of Petroleum & Natural Gas and the view of the Committee thereon is stated as under. The Committee in para 1.21 recommended as under: -

“1.21. The Committee note with concern that the Ministry in their Action taken reply have again proposed to fill up only 50% of the vacant posts from the Contract Engineers instead of 100% as recommended by the Committee in their recommendations contained in paras 1.19-1.21 of the Second Report of the Committee on Subordinate Legislation (13th Lok Sabha). The Committee also note that the Ministry have again insisted upon to fill up these 50% posts by subjecting the candidates to written test/ interview whereas the Committee had recommended that the requirement of written test/ interview should be dispensed with as such Contract Employees had already proved their merit and suitability during their tenure in the company and thus the selection should be made on the basis of their seniority, satisfactory performance and annual performance appraisal report etc. The Ministry have even not agreed to regularise the services of the non-technical contract employees and have taken the view that such persons are recruited from areas located around the projects specifically for that project and it takes care of the welfare of local people.’ The Committee do not agree with the Action Taken Reply of the Government and, therefore, strongly reiterate their recommendations contained in paras 1.19-1.21 of the Second Report of the Committee on Subordinate Legislation (13th Lok Sabha).”

The Ministry of Petroleum and Natural Gas in their action taken reply dated 20th February, 2002 submitted as under: -

“Why proposal to fill 50% of post of Management Trainees instead of 100%”

(i) Engineers India Limited is a consultancy organization providing services to its clients from concept to commissioning in the field of refineries, petrochemical, off-shore, on-shore, oil and gas production system, product pipelines and non-ferrous metallurgy projects etc. These services involve preparation of feasibility reports for projects, process design, detailed engineering, project management, procurement & inspection services and construction supervision. To provide these services, the Company has following major divisions/departments:

- Process Design and Development
- Heat and Mass Transfer
- Environment Engineering
- Research and Development
- Engineering – handling electrical, mechanical, civil & structural engineering jobs etc.
- Project Management
- Procurement and Inspection including shipping & transport of Materials

- Construction Supervision and Contracts Management
- Finance & Accounts
- HR/Personnel Management

(ii) The Company deploys manpower in various disciplines in the above mentioned divisions. The Construction Supervision where contract engineers were engaged to assist core group of regular employees is only one of the divisions of the Company. Accordingly, the requirement of manpower in the Company for its Construction Division is a small percentage of its total requirement.

(iii) The contract engineers deployed to assist core group of regular employees engaged in construction supervision are having experience only in construction supervision and cannot be placed in other divisions as the job descriptions, specifications and requirement of experience for employees in other divisions of the Company are entirely different than that of the construction supervision. As such the contract engineers cannot fit into these positions.

(iv) Notwithstanding the above position, a provision has been made to fill up 50% of Management Trainees who are recruited against entry level positions of engineers, from contract engineers. In the light of the position explained above, the provision of 50% of vacancies to be filled through contract engineers seems justified.

Why written test and interview is necessary for regularizing contract engineers.

(v) The contract engineers were recruited through press advertisement clearly specifying that these were short-term requirement for specified period. Thus, candidates applied for these positions knowing fully well that these were temporary. Had it been indicated in the advertisement that they will be regularized later, the position would have been totally different, attracting large number of candidates with high academic records and relevant experience. Regularizing the contract engineers without written test and interview, thus, will be against natural justice, as it will tantamount to back-door entry of these candidates.

(vi) Further, the contract engineers having experience in construction supervision only cannot be straightway placed in other divisions of the Company such as Process Design, Engineering, Procurement and Inspection etc. Therefore, the written test/interview for selection for regularization of such contract engineers is essential.

(vii) Since the contract engineers were recruited against temporary requirement for specified period, they were recruited on relaxed standards mostly through walk-in-interviews in order to have sufficient number of personnel willing to

work on contract basis. Thus, their suitability for regularization has to be ascertained through written test/interview.

Regularization of non-technical contract employees

(viii) As regards regularization of non-technical contract employees, it is stated that their recruitment is on contract for the project duration and is generally made from local employment exchange(s) from the areas around the project location. They are engaged for duration of the project and are released on its completion. This philosophy takes care of interest of the local people of the States where projects are located and needs to be continued.

(ix) On completion of various projects, the requirement of technical personnel on contract reduces and they are released accordingly. Thus regularizing the non-technical personnel who are recruited to provide support services in these projects will amount to carrying large number of employees without requirement which will not be in the interest of the Company and will entail heavy financial burden to the Company. Moreover, since EIL is working for the clients at these projects, it does not have any permanent establishment at project sites. Therefore, continuing the non-technical contract employees at project sites will not be possible and will create serious administrative problems for the Company.

Business Scenario

(x) With the economic reforms, the business scenario has totally changed and EIL is facing new challenges. The Company has to get business in global competition. The quantum of business with the Company has drastically reduced as new projects related to establishing refineries and large petrochemical projects are not coming up. The Company has been making all out efforts to diversify and get business in other fields of operations.

(xi) To remain competitive and to be in tune with the changed business scenario, EIL has to control its manpower. Accordingly, the Company introduced Voluntary Retirement Scheme for its regular employees to reduce the strength. About 350 employees have already availed the Voluntary Retirement Scheme. In view of the quantum of work-load/business in hand, there has been no recruitment of employees in the Company since the year 2000 barring a few employees in the specialized fields.

(xii) Unless the business scenario changes drastically in the near future and EIL is able to get sufficient business, as was the case in the year 1992-93 when it was awarded a large number of projects simultaneously, requiring recruitment of contract engineers, no bulk recruitment is envisaged in the Company in the next two – three years except of few personnel in the specialized fields.

(xiii) It may also be noted that: -

- (a) The contract employees formed an Association and the office bearers of the Association filed a writ petition in the High Court of Gujarat at Ahmedabad for, inter alia, regularization of their service. The petition is pending disposal and, therefore, the matter is sub-judice.
- (b) Three ex-employees along with an Accountant on contract had filed writ petition challenging their non-continuation of service in the Company on expiry of period of their contractual appointment. Their writ petitions were dismissed by the High Courts and appeal against this order was also dismissed by the Division bench of the Court. Subsequently, all the four individuals filed Special Leave Petition (SLP) in the Supreme Court. The Supreme Court by its order dated 13.7.99 held that there is no merit in the case of three employees. Since the notice was issued in the fourth SLP by another bench of the Court, it was directed that the SLPs of three employees be listed before the same bench hearing the SLP of fourth employees. When the matter came up for hearing before this bench on 1.10.99, the petitioner requested for withdrawal of his SLP and it was dismissed as withdrawn by the Supreme Court.
- (c) In a recent judgement, Delhi High Court has also dismissed a writ petition filed by an employee of the Company, engaged on contract basis, for continuation/ regularization of his services in the Company as being without merit.
- (d) Thus, the High Court and the Supreme Court did not find merit in the writ petitions of contract employees for continued service/regularization of their service.”

5. The aforesaid action taken reply of the Ministry was circulated to the Committee in the form of a draft Memorandum. The Committee at their sitting held on 11th March, 2003 desired that the Chairman of the Committee might hold an informal discussion with the Secretary of the Ministry of Petroleum and Natural Gas to resolve the issue. Accordingly, the said discussion between the Chairman of the Committee and the Secretary of the Ministry of Petroleum and Natural Gas took place on 29.4.2003. Few members of the Committee also attended the said discussion. Explaining the difficulties in implementing the recommendations of the Committee, the Secretary, Ministry of Petroleum and Natural Gas submitted that during the last three years no recruitment of engineers as management trainees was made and hence the question of filling up 50%

Contract Employees did not arise. He explained that most of Contract Engineers had specialisation in certain fields and could not be adjusted in the Headquarter. They had been taken only for contract period on the basis of walk in interview. If absorbed, they would be violating the rights of others. He further added that the quantum of business of the Company had considerably reduced due to entry of new companies in the field and requirement of engineers in EIL has gone down. The net profit of EIL had also reportedly come down from 185 crores to 100 crores. Further, in the current economic scenario, EIL was planning for disinvestment which was expected to be completed in a couple of months. Chairman, EIL stated that in order to cope up with the situation, they had introduced Voluntary Retirement Scheme for the employees.

6. The Chairman of the Committee pointed out that the Contract Employees should not be left on the road and that the Ministry should help them. He also emphasised that since the Petroleum Ministry had so many organizations under their administrative control, they should explore the possibility of absorbing them in those organizations.

7. The Secretary of the Ministry while appreciating the above suggestions assured that the same would be examined. He stated that since most of the contract employees were over-aged, the Ministry, would try and see in consultation with the Department of Personnel and Training whether they could be given any relaxation. He also assured that they would circulate the bio-data of the EIL Contract Employees to their sister concerns and see whether they could be accommodated.

8. Taking into consideration the discussion with the Secretary, Petroleum & Natural Gas, the Committee trust and hope that the Ministry would honour their commitment and most of the EIL contract employees would be accommodated in their sister concerns.

New Delhi:
June, 2006
Jyaistha, 1928 (SAKA)

N.N. KRISHNADAS
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX – I

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE FIFTH REPORT OF THE COMMITTEE (13th LOK SABHA) (*vide Para 3 of the Report*)

I. The Drugs and Cosmetics (IVth Amendment) Rules, 1996 (GSR 231-E of 1996)

Recommendation (Para No. 2.4)

The Committee note that the Ministry of Health and Family Welfare took 20 months in publication of their final rules. The Committee are not satisfied with the reply of the Ministry of Health and Family Welfare in justifying a gap of 20 months between publication of the draft rules and final rules as the reasons attributed by the Ministry for delay in publication of the final rules are of the routine procedures generally followed during the finalisation of any statutory 'Order'. The Committee view with displeasure the lack of seriousness shown by the Ministry. The Committee decide to invite the attention of the Ministry to their earlier recommendation contained in para 68 of their twenty-fourth Report (7th Lok Sabha) wherein the Committee had recommended that the gap between publication of the draft and final rules should not be more than six months. The Committee desire that the Ministry should ensure that such instances of inordinate delays do not recur and the time-limit of six months fixed by the Committee is adhered to. The Committee also desire that henceforth Ministry should maintain a progress chart in respect of finalisation of rules framed by them.

Reply of the Ministry

“This Ministry has noted the recommendations/observations made under para 2.4 for future compliance.”

[Ministry of Health and Family Welfare's File No.
X.11035/1/2002– DMS and PFA dated 9.01.2002]

Recommendation (Para Nos. 4.2 & 4.3)

The Committee found that there was no foot-note appended to the aforesaid amendment rules to indicate the particulars of the Principal Rules and the subsequent amendments made thereto to facilitate easy referencing.

The Committee are happy that on being pointed out, the Ministry of Finance, have amended the aforesaid Rules, which were deficient in foot-note, vide Gazette Notification No. GSR 355-E dated 1 July, 1997. The Committee desire that the Ministry should evolve suitable safeguards against possible recurrence of such lapse in future.

Reply of the Ministry

“As directed by the Committee, concerned officers in the Central Board of Excise & Customs have been advised to keep suitable safeguards while amending the Central Excise Rules and other rules, so that suitable foot-note containing the particulars of the Principal Rules and subsequent amendments made thereto, are inserted, to the amending rules, for facility of reference”

[Ministry of Finance (Deptt. of Revenue)’s
OM No. 354/31/97- TRU dated 10.01.2002

Recommendation (Para No. 6.6)

The Committee note that the aforesaid Recruitment Rules provided a longer probation period for promotees as compared to that of direct recruits. The Committee also note that on being drawn the attention of the Ministry to the guidelines instruction issued by the Department of Personnel and Training regarding prescribing probation period for direct recruit/promotees the Ministry of Urban Affairs have amended the Recruitment Rules vide Gazette of India notification No. GSR 307 dated 9 August, 1997 prescribing two years probation period for direct recruits and ‘Nil’ for promotees. The Committee desire that the Ministry should be more careful in future in following the guidelines issued by DOP&T correctly while framing the Recruitment Rules.

Reply of the Ministry

“The recommendations of the Committee on Subordinate Legislation has been noted for strict compliance in future.”

[Ministry of Urban Affairs and Employment, Directorate of
Printing’s OM No. 22/7/91-AI dated 21.01.2002

Recommendation (Para No. 7.5)

The Committee observe that in the above rules certain powers were conferred on the Dy. Chief Labour Commissioner which were earlier exercised by Chief Labour Commissioner, but the corresponding amendments were not made in the Forms annexed to the Rules. The Committee note with satisfaction that on being pointed out, the Ministry have now notified the necessary amendment in the rules by affecting the desired changes in the annexed Forms. The Committee, however, impress upon the Ministry that they should ensure that whenever any amendments are made in the rules, they must check whether any consequential changes are also required to be made in some other parts of the rules so as to avoid this type of lapse in future.

Reply of the Ministry

“The observations of the Committee that whenever any amendments are made to the rules, consequential changes required to be made in other parts of the rules must also be checked, in order to avoid lapses of the nature that had occurred, have been noted for strict compliance in future.”

[Ministry of Labour’s OM No. H
11021/4/99-LW dated 16.08.2002]

APPENDIX-II

CONFIDENTIAL

EXTRACTS FROM THE MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2005-2006)

The Committee met on Tuesday, 6 June, 2006 from 1500 to 1545 hours in Committee Room No. '62', Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Omar Abdullah
3. Shri Ajoy Chakraborty
4. Shri Bikram Keshari Deo
5. Shri Ram Singh Kaswan
6. Shri Sitaram Singh
7. Shri Ramjilal Suman
8. Shri P.C. Thomas
9. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri R.K. Bajaj Deputy Secretary
2. Shri K. Jena Under Secretary

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2. At the outset, the Chairman, Committee on Subordinate Legislation welcomed the members to the sitting of the Committee.

3. Thereafter, the Committee took up for consideration on the draft Eleventh Action Taken Report. The Chairman invited the Members to offer their suggestions, if any, for incorporation. After considering the report at length, the Committee desired that modifications suggested by the members be suitably incorporated in the body of the report. Amendments as suggested by the Committee are annexed at Appendix.

4. XX XX XX

5. Further, the Committee also authorised the Chairman to present the Eleventh and Twelfth Reports in the House.

The Committee then adjourned.

Appendix

(See para 3 of the Minutes)

Proposed recommendation (Para 8 of the Report):

“ Taking into consideration the discussion with the Secretary, Petroleum & Natural Gas, the Committee feel that this matter may not be pursued further.”

Modified recommendation:

“Taking into consideration the discussion with the Secretary, Petroleum & Natural Gas, the Committee trust and hope that the Ministry would honour their commitment and most of the EIL contract employees would be accommodated in their sister concerns.”

APPENDIX-III

(vide para 6 of the introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE
RECOMMENDATIONS CONTAINED IN THE FIFTH REPORT OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(THIRTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	9
II.	Recommendations that have been accepted by the Government [vide recommendations at Sl. Nos. 2.4, 3.8, 4.2-4.3, 5.3-5.4, 6.6 and 7.5]	8
III.	No. of recommendations which the Committee do not want to pursue in view of Government reply [recommendation at Sl. No. 1.21]	1
IV.	Percentage of recommendations accepted	90% (approx.)