

COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)

(2007-2008)

EIGHTEENTH REPORT

(PRESENTED ON 7.9.2007)

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LOK SABHA SECRETARIAT

NEW DELHI

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2007-2008)

1. Shri N. N. Krishnadas - Chairman

Members

2. Shri Anandrao Vithoba Adsul
3. Shri Giridhar Gamang
4. Shri Loganathan Ganesan
5. Shri N. Y. Hanumanthappa
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15. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri J. P.Sharma - Joint Secretary
2. Shri Rajeev Sharma - Director
3. Shri R.D.Silawat - Deputy Secretary-II

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 25.9.2006, 14.12.2006 and 2.8.2007.

3. The Committee considered and adopted this Report at their sitting held on 6.9.2007.

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 Appendix I of the Report.

5. Extracts from the Minutes of the First, Third & Sixth sitting of the Committee (2006-07) held on 25.9.2006, 14.12.2006 & 2.8.2007 and the Second sitting of the Committee (2007-08) held on 6.9.2007 relevant to this Report are included in Appendix-II.

NEW DELHI;
6 September, 2007

N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

SHORTCOMINGS IN THE AIRPORTS AUTHORITY OF INDIA (LOST PROPERTY) REGULATIONS, 2003 (SO 28-E OF 2003)

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The Airports Authority of India (Lost Property) Regulations, 2003 were published in the Gazette of India, Extraordinary, Part-II, Section 3(ii) on 10th January, 2003.

A. Deficiency of information in the notification

1.2. Though the Airports Authority of India Act was legislated in the year 1994, the Airports Authority of India (Lost Property) Regulations were notified only in the year 2003. The Ministry of Civil Aviation were therefore asked to state how in the absence of these regulations, these matters were governed since 1994. In response, the Ministry of Civil Aviation stated (O.M. dated 19 January, 2004) as under: -

“Earlier, the issue was governed by the two Gazette Notifications as under: (a) International Airport Authority of India (Lost Property) Regulation, 1974 and (b) National Airports Authority (Lost Property) Regulation, 1998. The present Regulations superseded the aforesaid two regulations.”

1.3. The Committee are surprised to note that the issue concerning lost property is governed simultaneously by three sets of Regulations viz. (i) International Airport Authority of India (Lost Property) Regulations, 1974; (ii) National Airports Authority (Lost Property) Regulations, 1998 and (iii) the Airports Authority of India (Lost Property) Regulations, 2003. The Ministry of Civil Aviation have since clarified that the regulations mentioned at (iii) have superseded the regulations mentioned at (i) and (ii) above. The preamble to the Airports Authority of India (Lost Property) Regulations, 2003, however, does not reflect this position and will cause confusion in the minds of the general public. It is not clear as to why the

Ministry of Civil Aviation failed to make the preamble to the said regulations complete and self contained. The Committee desire the Ministry of Civil Aviation to amend the preamble to the regulations so as to reflect the factual position regarding supersession of the earlier regulations on the subject.

B. Absence of provision for informing the owner of the lost property

1.4. Regulation 5 of the Airports Authority of India (Lost Property) Regulations, 2003 reads as under :-

“5. Recording and safe custody of Lost property - Any lost property delivered to the Lost Property Office shall be retained in safe custody by the Incharge of the Airport or Civil Enclave until claimed by the owner thereof or disposed of in accordance with regulation 7, and the Incharge of the Airport or Civil Enclave shall keep, for a period of not less than three months after the disposal of the property, a record showing the particulars of the lost property (whether delivered to the Lost Property Office or returned to the owner under proviso of regulation (4), the circumstances in which it was found and its ultimate disposal;

Provided that where the name and address of the owner of the lost property, other than the documents referred to in regulation 7(3)(iii) are readily ascertainable, the Incharge of the Airport or Civil Enclave shall forthwith notify him that the lost property is in his possession and may be claimed in accordance with these regulations”.

Further, Regulation 7(3)(iii) relating to disposal of lost property reads as under :-

“7 (3)(iii) “Official documents including licences, passports and aliens identity books shall, wherever practicable, be returned to the appropriate Government Department, Local Authority or other body or person responsible for issuing them or for controlling or dealing with them”.

1.5. It was noticed that the proviso to Regulation 5 appeared to prohibit official documents (listed in Regulation 7(3)(iii) viz. licenses, passports, etc.) being handed over to owner of the lost property. Instead, it prescribed that these documents be passed on

to the office concerned. Such an arrangement will put the owner of the documents to avoidable inconvenience. The Ministry of Civil Aviation stated in this connection (19.1.2004) as under: -

“The lost and found Regulations do not prohibit handing over the documents listed in Regulation 7(3)(iii) viz. licenses, passport, etc. to the owner of the lost property in case the owner approaches the Lost Property Office for claiming the same. However, as per proviso to Regulation 5, read with Regulation 7(3)(iii), the lost property office shall not notify to the owner that the said documents are in the lost property office, and that the said documents shall be handed over to the issuing authority. Airports Authority of India shall have no objection in notifying the owners that the official documents like licenses, passport etc. are in the lost property office and handing over the same to the bonafide owner on establishment of his/her identity. For doing so suitable amendment of the Regulation is being proposed.”

1.6. Subsequently, the Ministry made necessary amendments in the Col. 5 of the Schedule of the regulations, 2003 by substituting the words “ Provided that where the name and address of the owner of the Lost Property is” instead of “Provided that where the name and address of the owner of the lost property, other than the documents referred to in regulation 7 (3) (iii) are” vide Gazette of India Notification No. SO 1731-E dated 9.12.2005.

1.7. The Committee observe that proviso to Regulation 5 of the Airports Authority of India (Lost Property) Regulations, 2003 prohibited official documents such as license, passport, etc. being handed over to the owner of the lost property. It was, therefore, felt that proviso to regulation 5 when read with regulation 7 (3) (iii) had the effect of putting the owner of the lost property viz. license, passport, identity books etc. to avoidable inconvenience. On being pointed out, the Ministry of Civil Aviation conveyed that Airports Authority of India shall have no objection in notifying the owners that the official documents like licenses, passports etc. are in

the lost property office and handing over the same to the bonafide owner on establishment of his/her identity. The Committee note with satisfaction that the Ministry have since notified the requisite amendments in the proviso to regulation 5 and Regulation 7 (3) (iii) to the above effect vide Gazette of India Notification No. S.O 1731 (E) dated 9 December, 2005.

II

CONTRADICTION BETWEEN RULE 7(1) AND RULE 7(2)(B) OF THE ALL INDIA SERVICES (LEAVE) AMENDMENT RULES, 2004 (GSR 373 OF 2004).

The All India Services (Leave) Amendment Rules, 2004 (GSR 373 of 2004) published in the Gazette of India, Part-II, Section 3(i) dated 30 October, 2004, notified amendment to sub-rule (2) of Rule 7.

Prior to amendment, the sub-rules (1) and (2) of Rule 7 of the All India Services (Leave) Rules, 1955 read as follows:-

- “(1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.
- (2) Unless the Central Government, in view of the special circumstances of the case, determines otherwise, a member of the Service who remains absent from duty for a continuous period exceeding five years other than on foreign service, whether with or without leave, shall be deemed to have resigned from the service.

Note: Provided that a reasonable opportunity to explain the reason for such absence shall be given to the member of the Service before the provisions of sub rule (2) are invoked.”

After issuance of notification on 30 October, 2004 sub-rule (2) of Rule 7 as amended read as under:-

- “(2) A member of the Service shall be deemed to have resigned from the service if he-
- (a) is absent without authorization for a period of one year; or
 - (b) remains absent from duty for a continuous period of five years, with or without leave; or
 - (c) continues on foreign service beyond the period approved by the Central Government:

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the

member of the Service before the provisions of this sub-rule are invoked.”

On scrutiny of the rules notified on 30 October, 2004, it was observed that the amended sub-rule 7(2)(b) provided that a member of the All India Service shall be deemed to have resigned from the service if he remained absent from duty for a continuous period of five years, with or without leave. The sub-rule did not make any distinction between absence with leave and absence without leave and as such it could mean that in both cases, a member of the service shall be deemed to have resigned from the service if he remained absent from duty for a continuous period of five years. The Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) were requested to clarify the true purport of the amended sub-rule. Incidentally, the amended sub-rule 7(2)(b) was in contradiction with Rule 7 (1) according to which “No member of the service shall be granted leave of any kind for a continuous period exceeding five years.”

2.2 The Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) *vide* their reply dated 14 December, 2005 had clarified that the sub-rule 7 (2)(b), as amended, was “meant for situations when the unauthorized absence may be for less than one year but the member of the service has been absent from duty for a continuous period of five years including the period of unauthorized absence. This means that if a member of the service is on leave duly sanctioned by the Government for a period of 4 years and 11 months, even the absence of one month would result in deemed resignation. The intent was that no officer should be allowed to stay away from

duty for over 5 years whatever may be the justification.” The Ministry further stated that “the initial proposal was to provide for deemed resignation for absence from duty for a continuous period **exceeding** 5 years with or without leave. This was consistent with Rule 7(1) of the All India Service (Leave) Rules, 1955 which stipulates that no member of the service shall be granted leave of any kind for a continuous period exceeding 5 years. However the word ‘**exceeding**’ got deleted inadvertently in the process of vetting of the draft by the Legislative Department resulting in a contradiction between Rule 7(1) and Rule 7(2)(b).” The Department further stated that it has now been proposed to restore the word ‘exceeding’ in Sub-rule (2)(b) through an amendment.

2.3 The Department of Personnel and Training also stated that the words ‘if absent without authorization for a period of one year’, in the amended sub-rule (2)(a) did not indicate the specific date or period from which the absence of one year shall be reckoned. The Department therefore, proposed to clarify this also for which a draft notification proposing amendment in Rule 7(2) on the following lines has reportedly been sent to the Ministry of Law for vetting:

- “(a) is absent without authorization for a period of one year from the date of expiry of sanctioned leave/permission;
- (b) is absent from duty for a continuous period exceeding five years even if the period of the unauthorized absence is for less than a year;

Explanation:- For the purpose of sub-rule 2(a), the terms “unauthorized absence” and “without authorization” shall mean and include the period of such absence from duty from the day immediately after the day, the MoS last reported for duty or up to which leave or permission for absence was granted by competent authority, as the case may be, and shall include the period of absence as on the date of coming into force of this amendment.”

2.4 The Department of Personnel & Training subsequently notified the following amended rules in the Gazette vide GSR 207(E) dated 19th March, 2007:-

2. In all All India Services (Leave) Rules, 1955, in rule 7, in sub-rule(2),-

(i) for clause (a), the following shall be substituted, namely:-

“(a) is absent without authorization for a period exceeding one year from the date of expiry of sanctioned leave or permission, or”

(ii) for clause (b), the following shall be substituted, namely:-

“(b) is absent from duty for a continuous period exceeding five years even if the period of the unauthorized absence is for less than a year, or”

2.5 The Committee note that as per the amended provision of the All India Service (Leave) Amendment Rules, 2004 notified vide GSR 373 in the Gazette published on 30 October, 2004, a member of the All India Service shall be deemed to have resigned from the service if he remains absent from duty for a continuous period of five years, with or without leave. The Rule did not make any distinction between absence with leave and absence without leave and as such it could mean that in both the cases, a member of the service shall be deemed to have resigned from the service if he remained absent from duty for a continuous period of five years. This provision was also found to be in contradiction with the preceding rule 7(1) which enables grant of leave of any kind to a member of the service for a continuous period not exceeding five years. On the matter being taken up, the Department of Personnel and Training clarified that the initial proposal to provide for deemed resignation for absence from duty for a continuous period exceeding five years with or without leave has not been properly reflected in the amended rules as the word `exceeding` got deleted inadvertently in the process of vetting of the draft by the Legislative Department. According to Department of Personnel and Training, this omission also resulted in contradiction between Rule 7(1) and 7(2) *ibid*. The Department intimated that they proposed to bring in consequential

amendments to the rules to remove the anomalies pointed out by the Committee. Subsequently, the Department of Personnel and Training notified revised amendments to Rule 7(2) vide GSR 207-E dated 19.03.2007 incorporating the requisite changes in the rules. While taking due note of the consequential corrective steps taken by the Department of Personnel and Training, the Committee express their displeasure over the manner in which the matter relating to amendments to these rules was taken up both by the Department of Personnel and Training and Legislative Department with an amount of laxity and the omission regrettably remained undetected till it was pointed out to them . The Committee trust that with a view to obviating recurrence of such lapses, the Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training) as well as the Ministry of Law & Justice (Legislative Department) would exercise due care and ensure proper checks at sufficiently higher level of officers so as to leave no room for laxity in the matter of drafting the amendments and rules in future.

III

NON-LAYING OF THE RULES AND OTHER SHORTCOMINGS IN THE PULSES GRADING AND MARKING RULES, 2003 (GSR 129 OF 2004).

The Pulses Grading and Marking Rules, 2003 (GSR 129 of 2004) were notified in the Gazette of India , Part-II, Section 3(i) dated 17 April, 2004. On scrutiny, it was observed that (i) the said Rules were not laid on the Table of the House within the stipulated time ;(ii) there was a gap of 22 months in publication of the draft and final Rules; and (iii) there were discrepancies in the short title. These points were referred to the Ministry of Agriculture (Department of Agriculture & Cooperation) for their comments in the matter. The points raised and replies of the Ministry thereto are brought out below :-

A. NON-LAYING OF THE RULES

3.2 Section 3(3) of the Agricultural Produce (Grading and Marking) Act, 1937 (Act No. 1 of 1937) provides that every rule made by the Central Government under the Act is required to be laid before each House of the Parliament as soon as may be after it is made. The Committee on Subordinate Legislation have also reiterated in the past that the rules made under an Act should be laid within a period of 15 days after their publication in the Gazette if the House is in session, and if the House is not in session, the rules should be laid on the Table of the House as soon as possible (but within 15 days) after the commencement of the following session. The Pulses Grading and Marking Rules, 2003

published on 17 April, 2004 were however, not laid on the Table of the House within the stipulated time.

3.3 When asked about the reasons for not laying the Rules on the Table of the House, the Ministry of Agriculture (Department of Agriculture & Cooperation) vide their communication dated 13 December, 2004 stated as under :-

“The above rules have not been laid in Parliament. The reason for delay is due to the fact that the printed and bound copies of the final notification were received from the Government of India Printing Press after two months from the date of publication. Thereafter, the proposal was received from the Directorate of Marketing and Inspection, Faridabad, who are implementing the Agricultural Produce (Grading and Marking) Act, for laying these papers in Parliament and hence the delay. The delay in laying down the above rules in Parliament is regretted and it would be ensured that all rules notified under the APMG Act are laid down in Parliament within the prescribed time limit.”.

3.4 Subsequently, the Ministry laid the Pulses Grading and Marking Rules, 2003 on the Table of the House on 20.12.2004 during the Winter Session i.e., after a period of over eight months from the date these rules were notified in the Gazette of India.

3.5 Section 3(3) of the Agricultural Produce (Grading and Marking) Act, 1937 provides that every rule made by Central Government under the Act should be laid before each House of Parliament as soon as may be after it is made. The Pulses Grading and Marking Rules, 2003 notified by the Ministry of Agriculture in the Gazette dated 17 April, 2004 were, however, not laid in Parliament within the specified period. It was only after the matter was brought to their notice that the Ministry initiated action and laid the relevant notifications in Parliament on 20th December, 2004 i.e. after a period of over eight months from the date of publication

of the notification. The reason adduced for delay by the Ministry that the copies of the final notification were received from the Government of India Printing Press after two months from the date of publication and that the proposal for laying the papers was thereafter processed in the Directorate of Marketing and Inspection before being forwarded to the Ministry clearly indicates that there has been complete lack of monitoring in the Ministry in ensuring timely laying of the notification in the House. While expressing their concern over the casual approach displayed by the Ministry in the instant case, the Committee are of the firm view that the responsibility of the Ministry/Department does not cease with the sending of the notification to the Printing Press and that they should take appropriate and timely steps to obtain the printed copies from the Press followed by prompt action for laying the notification in the Parliament within the stipulated period. The Committee trust that the Ministry would now gear up their system so as to avoid recurrence of such cases in future.

B. DELAY IN PUBLICATION OF THE FINAL RULES

3.6 In terms of section 3(1) of the Agricultural Procedure (Grading and Marking Act, 1937 as amended upto 1986, the draft of Pulses Grading and Marking Rules, 2002 was published under the notification number GSR 231 dated the 5th June, 2002 inviting objections and suggestions from all persons likely to be affected thereby before the expiry of a period of forty-five days from the date on which the copies of the Gazette containing the aforesaid notification were made available to the public. The copies of the relevant Gazette containing the draft of the Pulses Grading and Marking Rules, 2002 were made available to the public on 8 July, 2002 and the final rules published on 17

April, 2004 i.e., after a gap of 22 months from the date the rules were made available. The Committee have time and again emphasised that the final rules should be notified within three months after publication of draft rules in cases where no objections and suggestions were received on the draft rules and six months in cases where a large number of objections/suggestions were received. When asked to explain the reasons for inordinate delay in notification of final rules, the Ministry of Agriculture (Department of Agriculture & Cooperation) vide their communication dated 13 December, 2004 stated as under:-

“The publication of final notification of Pulses Grading & Marking Rules, 2003 is voluminous. The process of final notification from publication of preliminary draft notification involves a number of steps viz.

- Legal vetting of final notification by the Law Ministry.
- Submission of fair copies to the Ministry after incorporating the suggestions prescribed by Law Ministry.
- Hindi translation of duly vetted final notification by Official Language Bureau.
- Ensuring the correctness, proper translation and preparation of fair copies.
- Submission of fair copies (Hindi and English) of final notification to the Ministry.
- Approval of Minister on the final notification.
- Publication of final notification by the Government of India Printing Press, Mayapuri as per the priority assigned to the notification.

The time taken/delay occurred at each stage is indicated below in detail:-

- (i) The draft Notification was sent to Government of India Press on 5th June, 2002 and copy endorsed to Directorate of Marketing and Inspection, Faridabad for collecting copies of the notification. The draft rules were published on 22nd June, 2002, The draft rules were circulated to the general public, traders and their organisations etc. inviting comments/suggestions. The comments/suggestions received were examined by Directorate of Marketing and Inspection, Faridabad, an attached office of this Department. The draft final notification was drafted by incorporating suggestions/comments which were found suitable.

- (ii) The draft final notification of Pulses Grading and Marking Rules was then submitted by Directorate of Marketing and Inspection, Faridabad to the Department on 18.2.2003 for approval.
- (iii) The draft final Notification was sent to Ministry of Law for vetting on 1.4.2003.
- (iv) The draft final notification was received back from Ministry of Law on 17.10.03.
- (v) Fair copies sought from Directorate of Marketing and Inspection, Faridabad on 21.10.2003. Fair copies received back from Directorate of Marketing and Inspection, Faridabad on 19.11.2003.
- (vi) The draft final notification of the rules was sent to Official Language Wing on 27.11.2003.
- (vii) The Hindi translation was received back on 29.1.2004.
- (viii) Directorate of Marketing and Inspection, Faridabad was requested to supply fair copies of Hindi translation on 3.2.2004.
- (ix) Directorate of Marketing and Inspection, Faridabad sent the fair typed copies on 20.3.2004.
- (x) Approval of Agriculture Minister sought on 22.3.2004.
- (xi) Sent to Government of India Press on 7.4.2004.
- (xii) Published in the Gazette on 17.4.2004.

3.7 The Ministry were further asked to state the nature and number of suggestions/comments received from the Public and stakeholders on the draft of the Pulses Grading and Marking Rules, 2003. In their communication dated 2nd August, 2005, the Ministry stated that only one suggestion was received from the Assistant Agricultural Marketing Officer (AAMO), (Government of Uttar Pradesh) Faizabad, stating that expiry date be mentioned so that sub-standard pulses may not be sold to the consumer. The Ministry further stated that the suggestion made by AAMO has already been taken care of in the final notification of Pulses Grading and Marking Rules, 2002 [published in Gazette of India Part-II, Section 3, Sub-section (1) vide GSR 231 dated 5 June, 2002] vide item No. 7 (Method of Marking) under section (ii).

3.8 With a view to minimize the gap between the publication of draft rules and their final notification, the Committee on Subordinate Legislation have prescribed guidelines stipulating that the final rules should be notified within a period of

three months after publication of draft rules in all such cases where no objections/suggestions are received on the draft rules and the gap should not be more than six months in cases where a large number of objections/suggestions are received. The Committee's scrutiny however, revealed that these guidelines were not observed by the Ministry in the instant case where the gap between publication of draft rules and notification of the final rules was over 22 months despite the fact that only one suggestion was received for incorporating expiry date in the draft rules. Clearly, no sense of urgency prevailed in the Ministry and the matter was allowed to linger on in a routine manner as is evident from the facts that it took the Directorate concerned a period of over seven months to prepare the draft of final notification; over six months were taken by Ministry of Law for vetting the draft; and four and a half months were spent on getting Hindi translation and obtaining fair typed copies of the final notification. Undoubtedly, the matter relating to finalisation of draft rules and notification of the same by the Ministry in this case was dealt with in a casual manner in utter disregard to the recommendations of the Committee made in their earlier reports. While expressing their displeasure over the extraordinary delay in notifying the final rules, the Committee recommend that the Ministry should devise appropriate mechanism to ensure timely framing of rules in future in strict compliance with the stipulations made in this regard.

C. DISCREPANCIES IN THE SHORT TITLE

3.9 The Committee also noticed that the short title of the rules read as ‘The Pulses Grading and Marking, 2003’ and the word “Rules” after the word Marking was missing. The year in the short title also did not conform to the year of publication of the rules. The Committee have time and again emphasised that for easy referencing, the year in the Short title should also conform to the year of publication of the gazette notification. The matter was, therefore, taken up with the Ministry concerned. The Ministry of Agriculture (Department of Agriculture & Cooperation) vide their communication dated 13 December, 2004 responded in this regard as under :-

“The title ‘These rules may be called Pulses Grading and Marking Rules 2003’ has been vetted by the Law Ministry. The year not conforming to the year of publication of rules i.e. 2004, is due to typographical error and took place at the stage of publication. The process of issuing amendment has been started”.

3.10 The Committee noted that the year in the short-title of the Pulses, Grading and Marking Rules 2003 was not in conformity with the year of publication i.e., 2004. On being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) issued a corrigendum vide GSR 422 published in the Gazette of India dated 08.12.2005 substituting the year 2003 with 2004 in the short-title so as to make it in conformity with the year in which the Rules were notified. However, the word ‘Rules’ which was found originally missing in the short title has still not been appropriately inserted. The Committee, therefore, desire the Ministry to incorporate the word ‘Rules’, at the appropriate place in the short-title and issue necessary corrigendum at the earliest. The Committee would also like to express

their displeasure that such small mistakes/omissions continue to occur despite vetting by the Ministry of Law and Justice.

**NEW DELHI;
6 September, 2007**

**N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION**

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| <p>2.</p> | <p>2.5</p> | <p>are in the lost property office and handing over the same to the bonafide owner on establishment of his/her identity. The Committee note with satisfaction that the Ministry have since notified the requisite amendments in the proviso to regulation 5 and Regulation 7 (3) (iii) to the above effect <u>vide</u> Gazette of India Notification No. S.O 1731 (E) dated 9 December, 2005.</p> <p><u>Contradiction between Rule 7 (1) and Rule 7 (2) (b) of the All India Services (Leave) Amendment Rules, 2004 (GSR 373 of 2004).</u></p> <p>The Committee note that as per the amended provision of the All India Service (Leave) Amendment Rules, 2004 notified <u>vide</u> GSR 373 in the Gazette published on 30 October, 2004, a member of the All India Service shall be deemed to have resigned from the service if he remains absent from duty for a continuous period of five years, with or without leave. The Rule did not make any distinction between absence with leave and absence without leave and as such it could mean that in both the cases, a member of the service shall be deemed to have resigned from the service if he remained absent from duty for a continuous period of five years. This provision was also found to be in contradiction with the preceding rule 7(1) which enables grant of leave of any kind to a member of the service for a continuous period not exceeding five years. On the matter being taken up, the Department of Personnel and Training clarified that the initial proposal to provide for deemed resignation for absence from duty for a continuous period exceeding five years with or without leave has not been properly reflected in the amended rules as the word 'exceeding' got deleted inadvertently in the process of vetting of the draft by the Legislative Department. According to Department of Personnel and Training, this omission also resulted in contradiction between Rule 7(1) and 7(2) <i>ibid</i>. The Department intimated that they proposed to bring in consequential amendments to the rules to remove the anomalies pointed out by the Committee. Subsequently, the Department of Personnel and Training notified revised amendments to Rule 7(2) <u>vide</u> GSR 207-E dated 19.03.2007 incorporating the requisite changes in the rules. While taking due note of the consequential corrective steps taken by the Department of Personnel and Training, the Committee express their displeasure over the manner in which the matter relating to amendments to these rules was taken up both by the Department of Personnel and Training and Legislative Department with an amount of laxity and the omission regrettably remained undetected till it was pointed out to them . The</p> |
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| <p>3.</p> | <p>3.5</p> <p>3.8</p> | <p>Committee trust that with a view to obviating recurrence of such lapses, the Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training) as well as the Ministry of Law & Justice (Legislative Department) would exercise due care and ensure proper checks at sufficiently higher level of officers so as to leave no room for laxity in the matter of drafting the amendments and rules in future.</p> <p><u>Non-laying of the Rules and other shortcomings in the Pulses Grading and Marking Rules, 2003 (GSR 129 of 2004).</u></p> <p>Section 3(3) of the Agricultural Produce (Grading and Marking) Act, 1937 provides that every rule made by Central Government under the Act should be laid before each House of Parliament as soon as may be after it is made. The Pulses Grading and Marking Rules, 2003 notified by the Ministry of Agriculture in the Gazette dated 17 April, 2004 were, however, not laid in Parliament within the specified period. It was only after the matter was brought to their notice that the Ministry initiated action and laid the relevant notifications in Parliament on 20th December, 2004 i.e. after a period of over eight months from the date of publication of the notification. The reason adduced for delay by the Ministry that the copies of the final notification were received from the Government of India Printing Press after two months from the date of publication and that the proposal for laying the papers was thereafter processed in the Directorate of Marketing and Inspection before being forwarded to the Ministry clearly indicates that there has been complete lack of monitoring in the Ministry in ensuring timely laying of the notification in the House. While expressing their concern over the casual approach displayed by the Ministry in the instant case, the Committee are of the firm view that the responsibility of the Ministry/Department does not cease with the sending of the notification to the Printing Press and that they should take appropriate and timely steps to obtain the printed copies from the Press followed by prompt action for laying the notification in the Parliament within the stipulated period. The Committee trust that the Ministry would now gear up their system so as to avoid recurrence of such cases in future.</p> <p>With a view to minimize the gap between the publication of draft rules and their final notification, the Committee on Subordinate Legislation have prescribed guidelines stipulating that the final rules should be notified within a period of three months after</p> |
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| | <p style="text-align: center;">3.10</p> | <p>publication of draft rules in all such cases where no objections/suggestions are received on the draft rules and the gap should not be more than six months in cases where a large number of objections/suggestions are received. The Committee's scrutiny however, revealed that these guidelines were not observed by the Ministry in the instant case where the gap between publication of draft rules and notification of the final rules was over 22 months despite the fact that only one suggestion was received for incorporating expiry date in the draft rules. Clearly, no sense of urgency prevailed in the Ministry and the matter was allowed to linger on in a routine manner as is evident from the facts that it took the Directorate concerned a period of over seven months to prepare the draft of final notification; over six months were taken by Ministry of Law for vetting the draft; and four and a half months were spent on getting Hindi translation and obtaining fair typed copies of the final notification. Undoubtedly, the matter relating to finalisation of draft rules and notification of the same by the Ministry in this case was dealt with in a casual manner in utter disregard to the recommendations of the Committee made in their earlier reports. While expressing their displeasure over the extraordinary delay in notifying the final rules, the Committee recommend that the Ministry should devise appropriate mechanism to ensure timely framing of rules in future in strict compliance with the stipulations made in this regard.</p> <p>The Committee noted that the year in the short-title of the Pulses, Grading and Marking Rules 2003 was not in conformity with the year of publication i.e., 2004. On being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) issued a corrigendum vide GSR 422 published in the Gazette of India dated 08.12.2005 substituting the year 2003 with 2004 in the short-title so as to make it in conformity with the year in which the Rules were notified. However, the word 'Rules' which was found originally missing in the short title has still not been appropriately inserted. The Committee, therefore, desire the Ministry to incorporate the word 'Rules', at the appropriate place in the short-title and issue necessary corrigendum at the earliest. The Committee would also like to express their displeasure that such small mistakes/omissions continue to occur despite vetting by the Ministry of Law and Justice.</p> |
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APPENDIX-II

(vide Para 5 of the Introduction of the Report)

EXTRACTS FROM MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2006-2007)

The Committee met on Monday, 25 September, 2006 from 1500 to 1600 hours in Committee Room No. '53', Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - C hairman

MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Giridhar Gamang
4. Shri Ram Singh Kaswan
5. Shri Lal Mani Prasad
6. Shri Bhupendrasinh Solanki
7. Shri Ramjilal Suman

SECRETARIAT

Shri J. P. Sharma - Joint Secretary

Shri A. Louis Martin - Director

Shri R. K. Bajaj - Deputy Secretary

Shri K. Jena - Under Secretary

2. At the outset, the Chairman welcomed the Members of the Committee to their inaugural sitting and apprised them of the origin, scope, functions and working of the Committee.

3. XX XX XX XX

4. Thereafter, the Committee considered the following memoranda:-

(1) XX XX XX XX

(2) XX XX XX XX

(3) XX XX XX XX

(4) Memorandum No. 37 regarding non-laying of the rules and shortcomings in the Pulses Grading and Marking Rules, 2003 (GSR 129 of 2004).

In regard to memoranda mentioned at Sl. No. 2, 3, and 4 above, the Committee considered the memoranda and decided to include them suitably in the next Report. As regards memorandum mentioned at Sl. No. 1, the Committee noted that the Medical Termination of Pregnancy Rules 2003 have not specified the periodicity of inspection of the places where MTP is conducted and that the Rules have dealt with a substantive matter, which should have ordinarily been covered by an enactment. The Committee therefore decided to discuss the issue with the representatives of the Ministry of Health and Family Welfare (Department of Health).

The Committee then adjourned.

**EXTRACTS FROM MINUTES OF THE THIRD SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (2006-2007)**

The Committee met on Monday, 14 December, 2006 from 1500 to 1545 hours in
Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Giridhar Gamang
4. Shri Lognathan Ganesan
5. Shri Faggan Singh Kulaste
6. Shri Ramjilal Suman

SECRETARIAT

Shri A. Louis Martin - Director
Shri R. K. Bajaj - Deputy Secretary
Shri K. Jena - Under Secretary

3. Thereafter, the Committee took up for consideration the following memoranda:-

- (i) XX XX XX
- (ii) Memorandum No. 40 regarding the shortcomings in the Airports Authority of India (Lost Property) Regulations, 2003.
- (iii) XX XX XX.
- (iv) XX XX XX

4. Having considered the above Memoranda, the Committee decided to suitably include them in their report to the House.

The Committee then adjourned.

**EXTRACTS FROM MINUTES OF THE SIXTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (2006-2007)**

The Committee met on Thursday, 2 August, 2007 from 1500 to 1545 hours in
Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Giridhar Gamang
4. Shri N.Y. Hanumanthappa
5. Shri Ram Singh Kaswan
6. Shri Bhupendrasinh Solanki
7. Shri Ramji Lal Suman

SECRETARIAT

1. Shri J. P. Sharma - Joint Secretary
2. Shri Rajeev Sharma - Director
3. Shri R.D. Silawat - Deputy Secretary

2. XX XX XX

3. Thereafter, the Committee took up for consideration the following memoranda :-

1. XX XX XX

2. XX XX XX

3. XX XX XX

4. **Memorandum No. 50** : Contradiction between Rule 7 (1) and Rule 7 (2) (b) of the All India Services (Leave) Amendment Rules, 2004 (GSR 373 of 2004).

5. XX XX XX

4. After deliberations, the Committee decided to incorporate the points raised in memorandum nos. 47, 49, 50 & 51 in their Reports to be presented to the House in the ensuing Session. As regards, memorandum no. 48 on the Citizenship (Amendment) Rules, 2005, the Committee decided to call the representatives of the Ministry of Home Affairs and the Ministry of Law & Justice for oral evidence.

The Committee then adjourned.

**MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2007-2008)**

The Committee met on Thursday, 6 September, 2007 from 1500 to 1545 hours in Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Anandrao Vithoba Adsul, MP
3. Shri Giridhar Gamang, MP
4. Shri Loganathan Ganesan, MP
5. Shri Ram Singh Kaswan, MP
6. Shri Dalpat Singh Paraste, MP
7. Shri Lal Mani Prasad, MP
8. Shri Anantha Venkata Rami Reddy, MP
9. Shri Ramjilal Suman, MP
10. Shri A.K.S. Vijayan, MP

SECRETARIAT

Shri J. P. Sharma - Joint Secretary
Shri Rajeev Sharma - Director
Shri R. D. Silawat - Deputy Secretary-II

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

3. The Committee took up for consideration the draft 18th Report and adopted the same without any modifications/corrections. The Committee also authorised the Chairman to present the same to the House.

The Committee then adjourned.