

COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)

(2007-2008)

NINETEENTH REPORT

(PRESENTED IN LOK SABHA ON 30.4.2008)

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LOK SABHA SECRETARIAT

NEW DELHI

April, 2008/Vaisakha, 1930 (Saka)

COSL No. 3

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(2007-2008)

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1. Shri S.K. Sharma - Additional Secretary
2. Shri K. Jena - Deputy Secretary-I
3. Shri R.D. Silawat - Deputy Secretary-II
4. Ms. Miranda Ingudam - Committee Officer

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 22nd November, 2007.

3. The Committee considered and adopted this Report at their sitting held on 25th April, 2008.

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. Minutes of the Third sitting of the Committee (2007-08) held on 22nd November, 2007 and the Sixth sitting of the Committee (2007-08) held on 25th April, 2008 relevant to this Report are included in Appendices II and III respectively.

NEW DELHI;
April 25, 2008
Vaisakha 5, 1930 (SAKA)

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

I. NON-OBSERVANCE OF DEPARTMENT OF PERSONNEL & TRAINING GUIDELINES ON FRAMING OF RECRUITMENT RULES

The Department of Personnel & Training vide their O.M. No. 35034/7/97-Estt.(D) dated 8 February, 2002 issued revised instructions/guidelines (Annexure-A) regarding the procedure to be observed by Departmental Promotion Committees (DPCs). These guidelines inter-alia advised the Ministries/Departments in the Government of India to amend the Service Rules/Recruitment Rules of various services/ posts/grades, so as to appropriately incorporate the mode of promotion as 'Selection' in place of 'Selection by merit' and 'Selection-cum-Seniority'. However, on scrutiny of the following rules notified subsequently by different Ministries/Departments, it was seen that these guidelines of DOPT on the subject were not fully complied with and the entries like 'Selection by merit' and 'Selection-cum-Seniority' continued to be used :-

1. The Ministry of Shipping, Road Transport and Highways, Department of Shipping, Accountant (Group 'B' Non-Gazetted post) Recruitment Rules, 2004 (GSR 354 of 2004).
2. The Indian Air Force Group 'C' & 'D' Industrial Posts Recruitment (Amendment) Rules, 2003 (SRO 50 of 2003).
3. The National Cadet Corps Directorate Packers Recruitment Rules, 2003 (SRO 64 of 2003).
4. Army Ordnance Corps. (Group 'B'Gazetted) Ordnance Officer Civilian (Stores) Recruitment Rules, 2003 (SRO 71 of 2003).
5. The Navy Group 'C' (Instructional Staff) Posts Recruitment Rules, 2003 (SRO 62 of 2003).
6. The Ministry of Labour, Directorate General of Employment and Training (Group 'C' and 'D') Recruitment Rules, 2004 (GSR 344 of 2004).

1.2 Since the non-observance of the instructions issued by DOPT was persisting and in order to avoid repeated correspondence with the Ministries concerned, the matter was taken up with the DOPT to issue suitable instructions in this regard to all Ministries/Departments .

1.3 The DOPT vide their O.M. dated 15 September, 2005 instructed all the Ministries/Departments to follow the guidelines issued by them and also endorsed a copy thereof for information of the Committee. The instructions inter-alia state as under :-

“ The Rules notified by certain Ministries/Department after issue of O.M. dated 8.2.2002 are not fully in conformity with the provisions of the said Office Memorandum.

All Ministries/Departments are again requested to immediately review the existing Service Rules/Recruitment Rules, including those notified after 8th February, 2002, in respect of all Posts/Services in the Ministry/Department, and their attached and subordinate offices, to bring the provisions of the relevant Rules in conformity with the provisions of DOPT O.M. dated 8.2.2002.

A certificate to the effect that all the Service Rules/Recruitment Rules in respect of all Services/posts in the Ministry/Department concerned, including the attached/subordinate offices, have been reviewed and action has been initiated/completed to bring the provisions of the relevant Service Rules/Recruitment Rules in conformity with the requirements of DOPT O.M. dated 8.2.2002, may please be furnished to DOPT latest by **31st December, 2005.**”

1.4 The Committee note that the Department of Personnel and Training (DOPT) had issued certain revised guidelines in the year 2002 as to the procedure to be observed by Departmental Promotion Committees (DPCs). These guidelines, inter-alia, advised all the Ministries/Departments of the Government of India to amend their Service Rules/Recruitment Rules of various services/posts/grades so as to appropriately

incorporate the mode of promotion as 'Selection' in place of 'Selection by merit' and 'Selection-cum-Seniority'. However, on scrutiny of certain Recruitment Rules notified subsequent to issue of these guidelines by different Ministries, it was observed that the above mentioned guidelines had not been fully complied with and the entries such as 'Selection by merit' and 'Selection-cum-seniority' continued to appear in the Recruitment Rules. It was also felt that the non-observance of these guidelines issued by the Department of Personnel and Training was causing lack of uniformity in Recruitment Rules leaving scope for different interpretation of the rules. At the behest of the Committee, the DOPT accordingly, issued instructions on 15 September, 2005 to all the Ministries/Departments of the Government of India to immediately review their existing Service Rules including those notified after February, 2002 so as to bring them in conformity with the revised instructions of DOPT issued in 2002 and to furnish a certification to this effect to the DOPT by 31 December, 2005. At this stage, the Committee can only express the hope that DOPT would have vigorously pursued the matter with all the Ministries/Departments for undertaking a review of their existing Service Rules etc., so as to bring them in conformity with the provisions of revised guidelines issued in 2002. The Committee would also like the Department of Personnel and Training to furnish a status report to them highlighting the precise action taken by the Ministries/Departments of Government of India in this regard.

(Recommendation Sr.No. 1)

II DISCREPANCIES IN THE FORMATION HEADQUARTERS AND STATION STAFF OFFICER (CONSERVANCY STAFF) RECRUITMENT RULES, 2003 (SRO 158 OF 2003).

The Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules , 2003 (SRO 158 of 2003) were published in Gazette of India, Part –II, Section 4 dated 8 November, 2003. Scrutiny of these rules revealed certain infirmities which were referred to the Ministry of Defence for their comments. The infirmities pointed out and corrective measures taken by the Ministry of Defence are in succeeding paragraphs:

A. Closing date for receipt of applications.

2.2 The closing date for receipt of applications under the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules , 2003 was stated to be as under:-

“The crucial date for determining the age-limit shall in each case be the closing date for receipt of applications from candidates in India (other than those in the Andaman and Nicobar Islands and Lakshadweep).”

2.3 The closing date for receipt of applications from candidates in North-Eastern States and other specified areas is generally different from that of the date prescribed for those in other parts of the country on account of transport and communication bottlenecks. The attention of the Ministry of Defence was accordingly drawn to the specific guidelines issued by DOPT in this regard. On being pointed out, the Ministry of

Defence vide Notification No. SRO 133 dated 31 December, 2005, have amended the provision as under:-

“The crucial date for determining the age-limit shall be the closing date for receipt of applications from candidates in India, (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of J&K State, Lahaul & Spiti district and Pangi Sub Division of Chamba district of Himachal Pradesh, Andaman & Nicobar Islands or Lakshadweep).”

B. Vague Expressions

2.4 One of the qualifications prescribed for recruitment to the post of Conservancy Storekeeper under the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules was ‘Experience in storekeeping’. The expression was found to be vague as it neither prescribed the duration of experience nor specified the organizations from where experience would be recognized for this purpose. It was felt that the expression could be interpreted differently by different persons and would be liable to be misused. On being pointed out, the Ministry of Defence amended the rule vide Notification No. SRO 133 dated 31.12.2005 by omitting the contentious portion of the rule.

C. Discrepancy in the rule

2.5 The provision governing the post of Conservancy Storekeeper does not envisage ‘promotion’ as a method of recruitment for the post. The rules relating to the post, however, prescribed the grades from which promotion to the post of Conservancy Storekeeper will be made. When this discrepancy was brought to their notice, the

Ministry of Defence amended the rule to include 'Promotion' as a method of recruitment to the post of Conservancy Storekeeper.

2.6 The Committee note that the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003 (SRO 158 of 2003) did not provide for the relaxation normally extended in the matter of closing date of receipt of applications from candidates in North-Eastern States and other specified areas in terms of guidelines issued by Department of Personnel & Training in this regard. It was also noticed that the rules contained a vague expression in the column relating to the qualifications prescribed for the post of 'Conservancy Storekeeper'. The relevant column simply indicated 'Experience in Storekeeping' as a qualification without specifying the duration of experience or the recognizable organizations for the purpose. Undoubtedly, such vague expressions in the rules leave room for different interpretations by different persons and could lead to their abuse. Yet another discrepancy noticed in the Rules related to omission of the mode of 'promotion' as a method of recruitment for the post of Conservancy Storekeeper despite prescribing the grades from which promotion was envisaged to be made for the post. Although the Ministry of Defence brought out appropriate amendments to the Rules and rectified all the inadequacies after the same were pointed out to them, the Committee are distressed to observe that the Ministry did not exercise proper care while drafting the rules and thus allowed a number of flaws to creep in. While deploring the casual attitude displayed by the Ministry in the instant case, the Committee desire the Ministry to take stock of the recruitment rules governing

other posts under their administrative control and bring forth appropriate amendments wherever such flaws continue to exist.

(Recommendation Sr.No. 2)

2.7 What is still more astonishing is the fact that the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003 (SRO 158 of 2003) were vetted by the Legislative Department prior to their publication in the Gazette and yet the errors of the nature referred to in the preceding paragraph remained undetected. The Committee are of the strong view that the Legislative Department in the Ministry of Law and Justice have a specific role to play in detecting such errors/inaccuracies and rendering necessary advice to the administrative Ministries at the time of vetting the subordinate Legislation and they cannot escape from their assigned responsibility in this regard. The Committee expect the Legislative Department in the Ministry of Law and Justice to exercise due care so as to avoid recurrence of such lapses in future.

(Recommendation Sr.No. 3)

III. ABSENCE OF SAFEGUARDS TO PREVENT ARBITRARY EXERCISE OF POWERS IN THE ELECTRONIC FILING OF RETURNS OF TAX COLLECTED AT SOURCE SCHEME, 2005 (SO 453-E OF 2005).

.....

The Ministry of Finance notified the Electronic Filing of Returns of Tax Collected at Source Scheme 2005 (SO 453-E of 2005) in the Gazette of India, Extraordinary, Part-II, Section 3(ii) on 30 March, 2005. It was observed therefrom that para 8 of the Scheme provides that the Central Board of Direct Taxes may revoke the authorization of an e-filing Intermediary on grounds of improper conduct, misrepresentation, unethical practices, fraud or established lack of service to the e-collectors or such other ground as it may deem fit. However, the Scheme did not contain any provision on safeguards to prevent any arbitrary exercise of powers by the Board while revoking such authorization of an e-filing Intermediary. Accordingly, the Ministry of Finance were requested to state whether reasons are recorded in writing or any opportunity of being heard is given to the e-filing Intermediary before taking such action against the assessee and if so, whether they have any objection in incorporating such a provision in the scheme.

3.2 In their reply, the Ministry of Finance (Department of Revenue, Central Board of Direct Taxes, TPL Division) vide their OM dated 12 May, 2006 stated as under:-

“The Notification – SO 453 (E) dated 30.3.2005, publishing the Scheme ‘Electronic Filing of Returns of Tax Collected at Source Scheme, 2005’, referred to in the aforesaid OM of Lok Sabha Secretariat was published in the Official Gazette in accordance with the provisions of sub-section (5B) of section 206C of the Income-tax Act, 1961. The Scheme so published is further supplemented by a Memorandum of Understanding (MoU) entered into between the e-filing Administrator (designated by the Central Board of Direct Taxes for administration of the Scheme) and the e-filing Intermediary. The Memorandum of Understanding provides for an elaborate procedure relating to revocation or

termination of the contract entered into between the parties. Clause 14 of the MoU dealing with 'General Conditions of Contract' requires the purchaser to issue a written notice of termination of minimum 30 days to the vendor (e-filing Intermediary) for failure to discharge or perform any obligation under the contract. The 'General Conditions of Contract', in the MoU, at clause 18 further provide arbitration in terms of the Indian Arbitration Act, 1996 and the rules thereunder. Even for suspension of payments to the vendor, clause 25 requires the purchaser i.e. the e-filing Administrator to issue a written notice of suspension to the vendor i.e. e-filing Intermediary. The elaborate procedure, as laid down in the MoU, regarding suspension of payments to e-filing Intermediary or regarding termination of contract would show that there are proper safeguards to prevent any arbitrary exercise of powers keeping in view the arbitration clause in the Memorandum of Understanding (MoU) signed by the two parties. It is accordingly felt that there is no need for incorporation of an additional provision regarding the opportunity of being heard."

The Ministry's plea appeared to be that there is no need for incorporation of an additional provision regarding the opportunity of being heard to be given while revoking the authorization of an e-filing Intermediary by the Central Board of Direct Taxes as the Memorandum of Understanding (MoU) entered into between the e-filing Administrator and the e-filing Intermediary provides for an elaborate procedure relating to revocation or termination of the contract entered into between the parties, with proper safeguards to prevent any arbitrary exercise of powers. The reply was found to be unsatisfactory. It was felt that even though the MoU had adequate provisions to prevent any arbitrary exercise of powers, nevertheless provisions in MoU are no substitute for those in statutory orders. The attention of the Ministry was therefore drawn to the recommendation of the Committee on Subordinate Legislation, Lok Sabha made in paragraphs 12 and 41 of their 14th Report of 8th Lok Sabha wherein it had been emphasized that executive instructions/administrative guidelines are no substitute for statutory rules/regulations and minimum dependence should be made on them as they are neither published in the official gazette nor laid before the Legislature and thus escapes scrutiny by the

Committee. Since the relevant provision already existed in the MoU, the Ministry were requested to state whether they have any objection to incorporate the same in the Scheme itself.

3.3 The Ministry of Finance (Department of Revenue, Central Board of Direct Taxes, TPL Division) in their reply vide OM dated 7, December 2006 stated that:

“The recommendation of the Committee on Subordinate Legislation regarding incorporation of the reasons to be recorded in writing or opportunity of being heard to be given to the e-filing intermediary before revoking the authorization of an e-filing intermediary has been accepted and the same has been incorporated in the Electronic Filing of Returns of Tax Deducted at Source (Amendment) Scheme, 2006 and Electronic Filing of Returns of Tax Collected at Source (Amendment) Scheme, 2006. Both the notifications vide SO 1300-E dated 11.8.2006 and Notification SO 1301-E dated 11.8.2006 are enclosed for kind information of the Committee”.

3.4 The Committee observe that paragraph 8 of the Electronic Filing of Returns of Tax Collected at Source Scheme, 2005 provided for power to the Central Board of Direct Taxes to revoke the authorization of an e-filing Intermediary without any provision for safeguards to prevent arbitrary exercise of such powers by the Board. On being pointed out, the Ministry of Finance initially took the plea that the MoU (Memorandum of Understanding) entered into between the e-filing Administrator and the e-filing Intermediary provided for an elaborate procedure relating to revocation or termination of the contract entered into between the parties, with proper safeguards to prevent arbitrary exercise of powers. The Ministry also stated that the MoU provided that the Indian Arbitration Act, 1996 and the rules made thereunder and any statutory modification or re-enactment thereof, shall apply to the arbitration proceedings. The Committee however, felt that provisions in the MoU were no substitute to statutory orders and the attention of the Ministry was drawn to the recommendations made by the

Committee in paragraphs 12 and 41 of their 14th Report (8th Lok Sabha) wherein it was emphasized that executive instructions/administrative guidelines are no substitute for statutory rules/regulations and dependence on them should be the minimum as these are neither published in the official gazette nor laid before the Legislature and thus escape scrutiny by the Committee. On the matter being again referred to the Ministry to incorporate safeguards as contained in the MoU, in the Scheme itself, the Ministry subsequently amended paragraph 8 of the Scheme vide SO 1301-E dated 11.8.2006 to provide for 'recording of reasons in writing before revoking authorization', and a provision also inserted in the Scheme for giving reasonable opportunity of being 'heard' in the event of revocation of authorization of e-filing Intermediary. The Committee have further been informed that similar provisions have also been incorporated by the Ministry in yet another Scheme viz, the Electronic Filing of Return of Tax Deducted at Source Scheme, 2003 vide SO 1300-E dated 11.8.2006. Apparently, the Ministry initiated action to amend their another similar Scheme only after their attention was drawn to the inadequacies in the instant case and also earlier recommendations of the Committee on the subject. The Committee trust that the Ministry would at least now, evolve suitable procedural safeguards to ensure that the earlier recommendations of Committee on Subordinate Legislation are duly taken into account for strict compliance before finalizing and notifying the Rules/Regulations/Schemes etc., framed under various Acts.

(Recommendation Sr. No. 4)

NEW DELHI;
April 25, 2008
Vaisakha 5, 1930 (SAKA)

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

ANNEXURE A

(Vide Para 1.1. of Chapter-I)

F.No. 35034/7/97-Estt(I)

Government of India

Ministry of Personnel, Public Grievance and Pensions

Department of Personnel and Training

New Delhi – 110001

February 8, 2002

OFFICE MEMORANDUM

Subject:- Procedure to be observed by Departmental Promotion Committees (DPCs) - No supersession in 'selection' promotion - Revised Guidelines regarding.

(i) DoP&T O.M No.
22011/5/86-Estt(D)
dated 10.3.1989

(ii) DoP&T OM No.
22011/5/86-Estt(D)
dated 10.4.1989

(iii) DoP&T OM
No. 22011/5/91-
Estt(D) dated
27.3.1997

The undersigned is directed to invite reference to the Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) No. 22011/5/86-Estt(D) dated March 10, 1989 and O.M. of even number dated April 10, 1989 [as amended by O.M. No. 22011/5/91-Estt(D) dated March 27, 1997] which contain the instructions on the Departmental Promotion Committees (DPCs) and related matters. In regard to the 'selection' mode of promotion ('selection-cum-seniority' and 'selection by merit'), the aforesaid instructions prescribe the guidelines (as briefly discussed in paragraph 2 below) for overall 'grading' to be given by the DPC, 'bench-mark' for assessment of performance and the manner in which the 'select panel' has to be arranged for promotions to various levels of post/grade.

2. Existing Guidelines

2.1 As per the existing (aforementioned) instructions, promotions *up to and excluding* the level in the pay-scale of Rs.12,000-16,500 (excepting promotions to Group 'A' posts/services from the lower group), if the mode happens to be 'selection-cum-seniority', then the bench-mark prescribed is 'good' and officers obtaining the said bench-mark are arranged in the select panel in the order of their seniority in the lower (feeder) grade. Thus, there is no supersession among those who meet the said bench-mark. Officers getting a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.2 In the case of promotions from lower Groups to Group 'A', while the mode of promotion happens to be 'selection by merit', the bench-mark prescribed is 'good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per grading obtained. Thus, officers getting a superior grading supersede those getting lower grading. In other words, an officer graded as 'outstanding' supercedes those graded as 'very good' and an officer graded as 'very good' supercedes officers graded as 'good'. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.3 In promotion to the level in the pay-scale of Rs.12,000-16,500/- and above, while the mode of promotion is 'selection by merit', the bench-mark prescribed is 'very good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per the grading obtained, officers getting superior grading supersede those getting lower grading as explained in paragraph 2.2 above. Offices obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('very good') are not empanelled for promotion.

3. Revised Guidelines

The aforementioned guidelines which permit supersession in 'selection' promotion ('selection by merit') have been reviewed by the Government and after comprehensive/extensive examination of relevant issues it has been decided that there should be no supersession in matter of 'selection' (merit) promotion at any level. In keeping with the said decision, the following revised promotion norms/guidelines, in partial modification (to the extent relevant for the purpose of these instructions) of all existing instructions on the subject (as referred to in paragraph 1 above) are prescribed in the succeeding paragraphs for providing guidance to the Departmental Promotion Committees (DPCs).

3.1 Mode of Promotion

In the case of 'selection' (merit) promotions, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection-cum-seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The election of selectivity (higher or lower) shall be determined with reference to the relevant bench-mark ("Very Good" or "Good") prescribed for promotion.

3.2 'Bench-mark for promotion'

The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

3.2.1 Although among those who meet the prescribed bench-mark, inter-se seniority of the feeder grade shall remain intact, eligibility for promotion will no doubt be subject to fulfillment of all the conditions laid down in the relevant Recruitment/service Rules, including the conditions that one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility service in the feeder post.

3.3 Promotion to the revised pay-scale (grade) of Rs.12,000-16,500 and above

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'very-good'. This will ensure element of higher selectivity in comparison to selection promotions to the grade lower than the aforesaid level where the bench-mark, as indicated in the following paragraphs, shall be 'good' only.
- (iii) The DPC shall for promotions to said pay-scale (grade) and above, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'very good'

3.4 Promotion to grade below the revised pay-scale (grade) of Rs.12,000-16,500 (including promotions from lower Groups to Group 'A' posts/grades/services.

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'good'.
- (iii) The DPC shall for promotion to posts/grades/services in the aforesaid categories, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'good'.

3.5 Zone of consideration

DoP&T OM
No.
22011/1/90-
Estt(D) dated
12.10.1990

The guidelines relating to the 'zone of consideration' in its existing form (twice the number of vacancies plus four) shall continue to have general application. However, in view of the modifications in promotion norms indicated in paragraph 3.3 above, the following stipulation [as is already applicable in the case of promotion below the revised pay-scale (grade) of Rs.12,000-16,500 *vide* DoP&T O.M. No. 22011/8/98-Estt(D) dated November 6, 1998] is also made in the regard to the zone of consideration for promotion to the revised pay-scale (grade) of Rs.12,000-16,500/- and above:

"While the zone of consideration would remain as already prescribed, the DPC, in the aforesaid category of cases, may assess the suitability of eligible employees in the zone of consideration (in the descending order) for inclusion in the panel for promotion up to a number which is considered sufficient against the number of vacancies. With regard to the number of employees to be included in the panel, the DPC may also be required to keep in view the instructions issued vide Department of Personnel and Training Office Memorandum No. 22011/18/87-Estt(D) dated April 9, 1996 relating to norms for employees, the DPC may put a note in the minutes that "the assessment of the remaining employees in the zone of consideration is considered not necessary as sufficient number of employees with prescribed bench-mark have become available."

4. Provisions of the paragraphs 1 (vii) of the DoP&T O.M. NO. AB-14017/2/97-Estt(RR) dated May 25, 1998 stand modified in accordance with these revised instructions. In addition to this, if the guidelines contained in this Office Memorandum come in conflict with the provisions of any other executive instructions (O.M.) issued by DoP&T on this subject, the same shall be taken to be modified to the extent provided therein.

5. The instructions contained in this Office Memorandum shall come into force from the date of its issue.

6. Ministries/Departments are requested to give wide circulation to these revised instructions for general guidance in the matter so that immediate steps are taken to amend the Service Rules/Recruitment Rules of various services/posts/grades so as to appropriately incorporate the mode of promotion as 'selection' (in accordance with these instructions) in place of 'selection by merit' and 'selection-cum-seniority' (as was hitherto prescribed by the aforementioned O.M. dated March 27, 1997) as the case may be. The powers to amend Service Rules/Recruitment Rules in this regard as delegated to the Ministries/Departments. DoP&T need not be consulted to carry out the required amendments.

-Sig-
(ALOK SAXENA)
Deputy Secretary to the Government of India

To

All Ministries/Departments of the Government of India

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. The Cabinet Secretariat, New Delhi.
4. The Rajya Sabha Secretariat, New Delhi.
5. The Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Audit General of India, New Delhi.
7. The Union Public Service Commission, New Delhi with reference to this letter No. 10/7/2001-AU(C) dated 30.10.2001 (20 Copies)
8. The Staff Selection Commission, New Delhi.

9. All attached offices under the Ministry of Personnel, Public Grievances and Pensions
10. Establishment Officer & Secretary, ACC (10 copies) (Smt. Chitra Chopra).
11. All Officers and Sections in the Department of Personnel and Training.
12. Establishment (RR) Section, DoP&T (10 copies). They may also issue separate instructions in terms of the position indicated in paragraph 4 above.
13. Facilitation Centre, DoP&T – 20 spare copies.
14. NIC (DoP&T Branch) for placing this Office Memorandum on the website of DoP&T.
15. Establishment (D) Section, DoP&T (500 copies)

APPENDIX –I

(Vide Para 4 of the Introduction to the Report)

STATEMENT OF RECOMMENDATIONS MADE IN THE NINETEENTH
REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Recommendations/observations</u>
1	2	3
1.	1.4	<p><u>Non-observance of Department of Personnel & Training guidelines on framing of Recruitment Rules</u></p> <p>The Committee note that the Department of Personnel and Training (DOPT) had issued certain revised guidelines in the year 2002 as to the procedure to be observed by Departmental Promotion Committees (DPCs). These guidelines, <u>inter-alia</u>, advised all the Ministries/Departments of the Government of India to amend their Service Rules/Recruitment Rules of various services/posts/grades so as to appropriately incorporate the mode of promotion as ‘Selection’ in place of ‘Selection by merit’ and ‘Selection-cum-Seniority’. However, on scrutiny of certain Recruitment Rules notified subsequent to issue of these guidelines by different Ministries, it was observed that the above mentioned guidelines had not been fully complied with and the entries such as ‘Selection by merit’ and ‘Selection-cum-seniority’ continued to appear in the Recruitment Rules. It was also felt that the non-observance of these guidelines issued by the Department of Personnel and Training was causing lack of uniformity in Recruitment Rules leaving scope for different interpretation of the rules. At the behest of the Committee, the DOPT accordingly, issued instructions on 15 September, 2005 to all the Ministries/Departments of the Government of India to immediately review their existing Service Rules including those notified after February, 2002 so as to bring them in conformity with the revised instructions of DOPT issued in 2002 and to furnish a certification to this effect to the DOPT by 31 December, 2005. At this stage, the Committee can only express the hope that DOPT would have vigorously pursued the matter with all the Ministries/Departments for undertaking a review of their existing Service Rules etc., so as to bring them in conformity with the provisions of revised guidelines issued in 2002. The Committee</p>

		would also like the Department of Personnel and Training to furnish a status report to them highlighting the precise action taken by the Ministries/Departments of Government of India in this regard.
2.	2.6	<p><u>Discrepancies in the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003 (SRO 158 of 2003).</u></p> <p>The Committee note that the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003 (SRO 158 of 2003) did not provide for the relaxation normally extended in the matter of closing date of receipt of applications from candidates in North-Eastern States and other specified areas in terms of guidelines issued by Department of Personnel & Training in this regard. It was also noticed that the rules contained a vague expression in the column relating to the qualifications prescribed for the post of ‘Conservancy Storekeeper’. The relevant column simply indicated ‘Experience in Storekeeping’ as a qualification without specifying the duration of experience or the recognizable organizations for the purpose. Undoubtedly, such vague expressions in the rules leave room for different interpretations by different persons and could lead to their abuse. Yet another discrepancy noticed in the Rules related to omission of the mode of ‘promotion’ as a method of recruitment for the post of Conservancy Storekeeper despite prescribing the grades from which promotion was envisaged to be made for the post. Although the Ministry of Defence brought out appropriate amendments to the Rules and rectified all the inadequacies after the same were pointed out to them, the Committee are distressed to observe that the Ministry did not exercise proper care while drafting the rules and thus allowed a number of flaws to creep in. While deploring the casual attitude displayed by the Ministry in the instant case, the Committee desire the Ministry to take stock of the recruitment rules governing other posts under their administrative control and bring forth appropriate amendments wherever such flaws continue to exist.</p>
3.	2.7	<p>What is still more astonishing is the fact that the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003 (SRO 158 of 2003) were vetted by the Legislative Department prior to their publication in the Gazette and yet the errors of the nature referred to in the preceding paragraph remained undetected. The Committee are of the strong view that the Legislative Department in the Ministry of</p>

		<p>Law and Justice have a specific role to play in detecting such errors/inaccuracies and rendering necessary advice to the administrative Ministries at the time of vetting the subordinate Legislation and they cannot escape from their assigned responsibility in this regard. The Committee expect the Legislative Department in the Ministry of Law and Justice to exercise due care so as to avoid recurrence of such lapses in future.</p>
4.	3.4	<p><u>Absence of safeguards to prevent arbitrary exercise of powers in the Electronic Filing of Returns of Tax Collected at Source Scheme, 2005 (SO 453-E of 2005).</u></p> <p>The Committee observe that paragraph 8 of the Electronic Filing of Returns of Tax Collected at Source Scheme, 2005 provided for power to the Central Board of Direct Taxes to revoke the authorization of an e-filing Intermediary without any provision for safeguards to prevent arbitrary exercise of such powers by the Board. On being pointed out, the Ministry of Finance initially took the plea that the MoU (Memorandum of Understanding) entered into between the e-filing Administrator and the e-filing Intermediary provided for an elaborate procedure relating to revocation or termination of the contract entered into between the parties, with proper safeguards to prevent arbitrary exercise of powers. The Ministry also stated that the MoU provided that the Indian Arbitration Act, 1996 and the rules made thereunder and any statutory modification or re-enactment thereof, shall apply to the arbitration proceedings. The Committee however, felt that provisions in the MoU were no substitute to statutory orders and the attention of the Ministry was drawn to the recommendations made by the Committee in paragraphs 12 and 41 of their 14th Report (8th Lok Sabha) wherein it was emphasized that executive instructions/administrative guidelines are no substitute for statutory rules/regulations and dependence on them should be the minimum as these are neither published in the official gazette nor laid before the Legislature and thus escape scrutiny by the Committee. On the matter being again referred to the Ministry to incorporate safeguards as contained in the MoU, in the Scheme itself, the Ministry subsequently amended paragraph 8 of the Scheme <u>vide</u> SO 1301-E dated 11.8.2006 to provide for ‘recording of reasons in writing before revoking authorization’, and a provision also inserted in the Scheme for giving reasonable opportunity of being ‘heard’ in the event of revocation of authorization of e-filing Intermediary. The Committee have further been informed that similar provisions have also been incorporated by the Ministry in yet another Scheme viz, the</p>

		<p>Electronic Filing of Return of Tax Deducted at Source Scheme, 2003 <u>vide</u> SO 1300-E dated 11.8.2006. Apparently, the Ministry initiated action to amend their another similar Scheme only after their attention was drawn to the inadequacies in the instant case and also earlier recommendations of the Committee on the subject. The Committee trust that the Ministry would at least now, evolve suitable procedural safeguards to ensure that the earlier recommendations of Committee on Subordinate Legislation are duly taken into account for strict compliance before finalizing and notifying the Rules/Regulations/Schemes etc., framed under various Acts.</p>
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APPENDIX II
(Vide Para 5 of the Introduction to the Report)

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

The Committee met on Thursday, 22 November, 2007 from 1500 to 1530 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 Loganathan Ganesan, MP
4. Shri Faggan Singh Kulaste
5. Shri Dalpat Singh Paraste, MP
6. Shri Ramjilal Suman, MP
7. Shri A.K.S. Vijayan, MP

SECRETARIAT

Shri J. P. Sharma - Joint Secretary

Shri Rajeev Sharma - Director

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

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

- (i) **Memorandum No. 52** relating to Non-Observance of Department of Personnel & Training guidelines on framing of Recruitment Rules.
- (ii) **Memorandum No. 53** relating to the Discrepancies in the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003
- (iii). **Memorandum No. 54** relating to Absence of safeguards to prevent arbitrary exercise of powers in the Electronic Filing of Returns of Tax collected at Source Scheme, 2005

4. After deliberations, the Committee decided to incorporate the points raised in the aforesaid memoranda in their Report to be presented to the House.

The Committee then adjourned.

APPENDIX III

(Vide Para 5 of the Introduction to the Report)

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

The Committee met on Friday, 25 April, 2008 from 1030 to 1100 hours in
Chairman's Room No. 143, Third Floor, Parliament House, New Delhi

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Anandrao Vithoba Adsul
3. Shri Giridhar Gamang
4. Shri Faggan Singh Kulaste
5. Shri Ramji Lal Suman

SECRETARIAT

1. Shri Brahm Dutt - Joint Secretary
2. Shri R.K. Bajaj - Director
3. Shri K. Jena - Deputy Secretary
4. Shri R.D.Silawat - Deputy Secretary - II

2. The Committee took up for consideration the draft Nineteenth Report and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.
