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COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)
(2004-2005)

SECOND REPORT

(PRESENTED ON 3 DECEMBER, 2004)

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LOK SABHA SECRETARIAT

NEW DELHI

PRICE:

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- II. Extracts from the Minutes of the Eleventh sitting of the Committee held on 10 December, 2003.
- III. Extracts from the Minutes of the Second sitting of the Committee held on 26.8.2004.

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

1. Shri N.N. Krishnadas - Chairman
2. Shri Omar Abdullah
3. Shri Ajay Chakraborty
4. Shri Bikram Keshari Deo
5. Justice (Retd.) N.Y. Hanumanthappa
6. Shri Ram Singh Kaswan
7. Shri Vijay Khandelwal
8. Shri A. Venkatarami Reddy
9. Shri Chandra Shekhar Sahu
10. Shri Sitaram Singh
11. Shri Bhupendrasinh Solanki
12. Shri Ramji Lal Suman
13. Shri P.C. Thomas
14. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri John Joseph - Additional Secretary
2. Shri V.K.Sharma - Joint Secretary
3. Shri A. Louis Martin - Director
4. Shri Ashok Balwani - Under Secretary

INTRODUCTION

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

2. The matters covered by this Report were considered by the previous Committee on Subordinate Legislation of 2003-2004 at their sitting held on 10 December, 2003.

3. The Committee wish to place on record their appreciation of the valuable work done by the predecessor Committee (2003-2004).

4. The present Committee considered and adopted this Report at their sitting held on 26.8.2004. Extracts of relevant Minutes relating to the Report are incorporated in Appendix II.

5. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in consolidated form in Appendix I of the Report.

**NEW DELHI;
AUGUST, 2004**

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

I

The Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), (Store Superintendent and Senior Store Keeper) Group 'C' Non-Gazetted Posts Recruitment Rules, 2002.

The Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), (Store Superintendent and Senior Store Keeper) Group 'C' Non-Gazetted Posts Recruitment Rules, 2002 (SRO 244 of 2002) were published in the Gazette of India Part-II Section 4 dated 30 November, 2002. It was observed therefrom that the lower age limit prescribed for direct recruits for the post of Store Superintendent was 25 years and the educational and other qualifications required for direct recruits were (a) Bachelor's Degree or equivalent (b) certificate course in Material Management and (c) three years' experience in Store keeping/accountancy. It was felt that the qualification prescribed for the post could be achieved by a candidate well before the age of 25. The lower age limit prescribed for the post did not correspond to the minimum age by when one could achieve the prescribed qualification and therefore appeared unreasonable. The matter was, therefore, taken up with the Ministry of Defence to ascertain the rationale for fixing 25 years as the lower age limit for direct recruits.

1.2 The Ministry in their reply dated 27 February, 2003 have stated that the lower age limit of 25 years was prescribed on the premise that normally a candidate would reach around 25 years of age by the time he acquires the requisite qualifications/experience required for the post. However, the Ministry had no objection in suitably amending the

recruitment rules to remove this shortcoming. The Ministry have since amended the Rules by substituting the words “25 to 32 years” appended in the Column 7 of the said recruitment rules with the words “Not exceeding 32 years”. The amendment has been notified by SRO No. 56 dated 9th April, 2003.

1.3 The Committee observed from the Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), (Store Superintendent and Senior Store Keeper) Group ‘C’ Non-Gazetted Posts Recruitment Rules, 2002 that the lower age limit of 25 years prescribed for direct recruits for the post of Store Superintendent appeared to be restrictive. The qualification prescribed for the post could be achieved by a candidate well before the age of 25. The candidates with prescribed qualifications would have been ineligible to apply for the post until they attain the age of 25. The Committee are glad to note that, on being pointed out, the Ministry of Defence have amended the said Rules by removing the lower age limit prescribed for the post. According to the amended Rules the prescription regarding age limit for the post is “Not exceeding 32 years.”

II

The Border Roads Organisation (Senior Personal Assistant) Recruitment Rules, 2002.

The Border Roads Organisation (Senior Personal Assistant) Recruitment Rules, 2002 (GSR 435 of 2002) were published in the Gazette of India, Part-II, Section 3(i) dated 26 October, 2002. It was observed therefrom that Column 11 of the Schedule prescribed, the method of recruitment to the post of Senior Personal Assistant as “by promotion”. The column 12, however, contained provisions of filling up the post by “promotion” as well as by “deputation”. The Ministry of Road Transport and Highways were asked to clarify the position in this regard.

2.2 The Ministry vide their communication dated 26 March, 2003 have stated that the discrepancies appearing in Column 11 and 12 of the schedule to the Recruitment Rules have since been rectified and corrigendum published. According to the provision now amended, the Column 11 of the Schedule prescribes the method of recruitment to the post of senior personal assistant as “promotion failing which by deputation”. The grades from which deputation is to be made as indicated in Column 12 of the schedule have also been amended to read as “3 years service in the grade rendered after appointment thereto on regular basis in the scale of pay of 5500-9000 or equivalent in the parent cadre/deputation” instead of “3 years regular service in the pay scale of Rs. 5500-175-9000 or equivalent.” The amendments have been published in the Gazette of India, Part-II, Section 3(i) vide GSR 97, dated 1st March, 2003.

2.3 There were discrepancies in Column 11 and 12 of the schedule to the Border Road Organisation (Senior Personal Assistant) Recruitment Rules, 2002. Column 11 of the Schedule prescribed the method of recruitment to the post of Senior Personal Assistant as “by promotion”. Column 12, however, contained provisions for filling up the post by “promotion” as well as by “deputation”. The Committee note that on being pointed out, the Ministry have issued corrigenda rectifying the discrepancies. The Column 11 of the schedule to the now amended rules prescribes method of recruitment to the post of Senior Personal Assistant as “Promotion failing which by deputation”. The Column 12 which prescribes the grades from which deputation is to be made has been amended to read as “3 years service in the grade rendered after appointment thereto on regular basis in the scale of pay of 5500-9000 or equivalent in the parent cadre/deputation” in place of “3 years regular service in the pay scale of Rs. 5500-175-9000 or equivalent”. The Committee hope that the Ministry would ensure in future that no discrepancies creap into their rules.

III

- i) **The Indian Audit and Accounts Department, Supervisor (Accounts) Recruitment (Amendment) Rules, 2001 (GSR 551 of 2001)**
 - ii) **The Indian Audit and Accounts Department, Supervisor (Audit) Recruitment (Amendment) Rules, 2001 (GSR 552 of 2001)**
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The aforesaid Recruitment (Amendment) Rules were published in the Gazette of India, Part-II, Section 3(i) dated 6 October, 2001. It was observed that though the above rules were amending in nature, the particulars of publication of principle rules and the subsequent amendments made thereto were not indicated therein by way of a foot note as per the normal practice followed in this regard. The matter was, therefore, taken up with the Ministry concerned i.e. the Ministry of Finance to ascertain the reasons, if any, for deviation from the normal practice. The Ministry were also requested to state whether they had any objection in amending the regulations to the desired effect.

3.2 The Ministry of Finance in their reply dated 3 April, 2002 stated as under:-

“The principal rules for the post of Supervisor (Accounts) and Supervisor (Audit) were published in the Gazette of India, Part-II, Section 3(I) dated 2.8.86 vide GSR 570 dated 4.7.86 at pages 1853-56 and dated 30.6.90 vide GSR 395 dated 22.5.90 at pages 1475-79 respectively. No subsequent amendments have been made thereto. The foot-note to this effect, which is generally appended in such cases remained un-appended inadvertently. A corrigendum to this effect is now being issued.”

3.3 Subsequently, the Ministry furnished a copy each of the Gazette Notifications issued by them in this regard vide GSR 160 dated 11 May, 2002 and GSR 224 dated 22 June, 2002.

3.4 No foot-note giving particulars regarding publication of principal rules and subsequent amendments had been appended to the Indian Audit and Accounts Department, Supervisor (Accounts) Recruitment (Amendment) Rules, 2001 (GSR 551 of 2001) and the Indian Audit and Accounts Department, Supervisor (Audit) Recruitment (Amendment) Rules, 2001 (GSR 552 of 2001). The Committee note with satisfaction that on being pointed out, the Ministry of Finance have issued corrigenda vide GSRs 160 dated 11 May, 2002 and GSR 224 dated 22 June, 2002, appending the required foot-note. The Committee stress that it should be ensured that notifications issued by the Ministry in future are complete in all respects.

IV

The Income-tax (23rd Amendment) Rules, 2002.

The Income-tax (23rd Amendment) Rules, 2002 (SO 943-E of 2002) were published in the Gazette of India, Extraordinary, Part-II, Section 3 (ii) dated 6 September, 2002. The aforesaid amendment Rules had been given retrospective effect w.e.f. 1 April, 2002 but it was not accompanied by the explanatory memorandum which is required to be appended explaining the reasons for giving retrospect effect and certifying that no one would be adversely affected by such retrospection. The matter was therefore, taken up with the Ministry of Finance to ascertain the reasons for not appending the requisite explanatory note.

4.2 In their response dated 7th May, 2003, the Ministry of Finance have stated as under :

“Section 80-IA and Section 80-IB of the Income tax Act, provide for deduction from total income in case of certain activities including infrastructure development. The section requires furnishing of an audit report in the prescribed form in order to claim the deduction.

A revised format of the audit report in Form No. 10CCB was notified vide the Income tax (23rd Amendment) Rules, 2003 (SO 943-E of 2002) dated 6.9.2002. The notification was brought into effect retrospectively from 1.4.2002.

The intention behind the present notification was to make it effective from the date of issue of the said notification. However, inadvertently and through oversight, the date of effectivity of the same was wrongly given as 1.4.2002 instead of 6.9.2002.

This inadvertent mistake is regretted and the Ministry of Finance is amending this aforesaid notification so as to make it effective from 6.9.2002”.

4.3 In pursuance of the above reply, the Ministry issued an amendment [Income – Tax (9th Amendment) Rules, 2003 dated 18 June, 2003] making the aforesaid notification effective from 6.9.2002.

4.4 **The Income-tax (23rd Amendment) Rules 2002 notified on 6th September, 2002 were given retrospective effect from 1.4.2002. No explanatory memorandum as required was however, appended thereto explaining the reasons for giving retrospective effect and to certify that no one would be adversely affected by such retrospection. When the matter was taken up with the Ministry, it had been stated that the intention behind the notification was to make it effective from the date of issue and that inadvertently and through oversight the date of effect of the same was wrongly given as 1.4.2002 instead of 6.9.2002. The Ministry has regretted the mistake and has since amended the notification so as to make it effective from 6.9.2002 vide Gazette of India Notification No. SO 705-E dated 18 June, 2003. The Committee urge the Ministry to exercise sufficient care to obviate such mistakes in future.**

**NEW DELHI
AUGUST, 2004**

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

APPENDIX –I

(Vide Para 5 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF THE
COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1.	1.3	<p>The Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), (Store Superintendent and Senior Store Keeper) Group ‘C’ Non-Gazetted Posts Recruitment Rules, 2002.</p> <p>The Committee observed from the Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), (Store Superintendent and Senior Store Keeper) Group ‘C’ Non-Gazetted Posts Recruitment Rules, 2002 that the lower age limit of 25 years prescribed for direct recruits for the post of Store Superintendent appeared to be restrictive. The qualification prescribed for the post could be achieved by a candidate well before the age of 25. The candidates with prescribed qualifications would have been ineligible to apply for the post until they attain the age of 25. The Committee are glad to note that, on being pointed out, the Ministry of Defence have amended the said Rules by removing the lower age limit prescribed for the post. According to the amended Rules the prescription regarding age limit for the post is “Not exceeding 32 years.”</p>
2.	2.3	<p>The Border Roads Organisation (Senior Personal Assistant) Recruitment Rules, 2002.</p> <p>There were discrepancies in Column 11 and 12 of the schedule to the Border Road Organisation (Senior Personal Assistant) Recruitment Rules, 2002. Column 11 of the Schedule prescribed the method of recruitment to</p>

<p>3.</p>	<p>3.4</p>	<p>the post of Senior Personal Assistant as “by promotion”. Column 12, however, contained provisions for filling up the post by “promotion” as well as by “deputation”. The Committee note that on being pointed out, the Ministry have issued corrigenda rectifying the discrepancies. The Column 11 of the schedule to the now amended rules prescribes method of recruitment to the post of Senior Personal Assistant as “Promotion failing which by deputation”. The Column 12 which prescribes the grades from which deputation is to be made has been amended to read as “3 years service in the grade rendered after appointment thereto on regular basis in the scale of pay of 5500-9000 or equivalent in the parent cadre/deputation” in place of “3 years regular service in the pay scale of Rs. 5500-175-9000 or equivalent”. The Committee hope that the Ministry would ensure in future that no discrepancies creep into their rules.</p> <p>i) The Indian Audit and Accounts Department, Supervisor (Accounts) Recruitment (Amendment) Rules, 2001 (GSR 551 of 2001)</p> <p>ii) The Indian Audit and Accounts Department, Supervisor (Audit) Recruitment (Amendment) Rules, 2001 (GSR 552 of 2001)</p> <p>No foot-note giving particulars regarding publication of principal rules and subsequent amendments had been appended to the Indian Audit and Accounts Department, Supervisor (Accounts) Recruitment (Amendment) Rules, 2001 (GSR 551 of 2001) and the Indian Audit and Accounts Department, Supervisor (Audit) Recruitment (Amendment) Rules, 2001 (GSR 552 of 2001). The Committee note with satisfaction that on being pointed out, the Ministry of Finance have issued corrigenda vide GSRs 160 dated 11 May, 2002 and GSR 224 dated 22 June, 2002, appending the required foot-note. The Committee stress that it should be ensured that notifications issued by the Ministry in future are complete in all respects.</p> <p>The Income-tax (23rd Amendment) Rules, 2002.</p>
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4.	4.4.	<p>The Income-tax (23rd Amendment) Rules 2002 notified on 6th September, 2002 were given retrospective effect from 1.4.2002. No explanatory memorandum as required was however, appended thereto explaining the reasons for giving retrospective effect and to certify that no one would be adversely affected by such retrospection. When the matter was taken up with the Ministry, it had been stated that the intention behind the notification was to make it effective from the date of issue and that inadvertently and through oversight the date of effect of the same was wrongly given as 1.4.2002 instead of 6.9.2002. The Ministry has regretted the mistake and has since amended the notification so as to make it effective from 6.9.2002 vide Gazette of India Notification No. SO 705-E dated 18 June, 2003. The Committee urge the Ministry to exercise sufficient care to obviate such mistakes in future.</p>
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APPENDIX-II
(Vide para 4 of the Introduction of the Report)

CONFIDENTIAL

MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2003-2004)

**The Committee met on Wednesday, 10 December, 2003 from 15.30 to 16.00
hours in Committee Room No. '139', First Floor, Parliament House Annexe, New
Delhi.**

PRESENT

Dr. B.B. Ramaiah - Chairman

MEMBERS

2. Shri Talib Hussain Chowdhary
3. Dr. M. Jagannath
4. Shri Ram Singh Kaswan
5. Prof. I.G. Sanadi
6. Shri Tufani Saroj
7. Dr. N. Venkataswamy

SECRETARIAT

1. Shri A. Louis Martin - Director
2. Shri Ashok Balwani - Under Secretary

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2. XXX XXX XXX
3. XXX XXX XXX

4. The Committee then considered the following Memoranda and decided that these may be suitably commented upon in the report of the Committee:-

	Memo No.
(1) The Income Tax (23 rd Amendment) Rules, 2002 (SO 943-E of 2002)	71
(2) (i) The Indian Audit and Accounts Department, Supervisor (Accounts) Recruitment (Amendment) Rules, 2001 (GSR 551 of 2001).	72
(ii) The Indian Audit and Accounts Department, Supervisor (Audit) Recruitment (Amendment) Rules, 2001 (GSR 552 of 2001).	
(3) The Border Roads Organisation (Senior Personal Assistant) Recruitment Rules, 2002 (GSR 435 of 2002)	73
(4) The Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), (Store Superintendent and Senior Store Keeper) Group 'C' Non-Gazetted Posts Recruitment Rules, 2002. (SRO 244 of 2002)	74
5. XXX XXX XXX.	
The Committee then adjourned.	

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- Omitted portions of the Minutes are not included in this Report

APPENDIX-III

MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2004-2005)

The Committee met on Thursday, 26 August, 2004 from 1500 to 1600 hours in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Ajay Chakraborty
3. Justice (Retd.) N.Y. Hanumanthappa
4. Shri Ram Singh Kaswan
5. Shri Sitaram Singh
6. Shri Ramji Lal Suman
7. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri A. Louis Martin, Director
2. Shri Ashok Balwani, Under Secretary

2. The Committee took up for consideration the draft First and Second Reports and adopted the same without any modification. .

3. XX XX XX

The Committee then adjourned ..

* Omitted portion of the Minutes is not included in this Report.