

COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)

(2008-2009)

TWENTY FOURTH REPORT

(PRESENTED ON 24/02/2009)

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LOK SABHA SECRETARIAT

NEW DELHI

February 2009/ Magha, 1930 (Saka)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2008-2009)

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
6. Shri Ram Singh Kaswan
7. Shri Faggan Singh Kulaste
8. Shri Dalpat Singh Paraste
9. Shri Jaysingrao Gaikwad Patil
10. Shri Lalmani Prasad
11. Shri Anantha Venkata Rami Reddy
12. Shri Bhupendrasinh Solanki
13. Shri Ramjilal Suman
14. Shri A.K.S. Vijayan
15. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri R.K. Bajaj - Director
3. Shri Raju Srivastava - 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 Twenty Fourth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 17th December, 2008.

3. The Committee considered and adopted this Report at their sitting held on 22nd January, 2009.

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 Fourth sitting of the Committee (2008-09) held on 17th December, 2008 and Extracts from Minutes of the Fifth sitting of the Committee (2008-09) held on 22nd January, 2009 relevant to this Report are included in Appendix-II.

NEW DELHI;
February, 2009
Magha, 1930 (SAKA)

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

I

Infirmities in the Employees' Provident Fund (Amendment) Scheme, 2004 (SO 45-E of 2006)

The Employees' Provident Fund (Amendment) Scheme, 2004 was published in the Gazette of India, Extraordinary, Part-II, Section 3(ii) dated 17 January, 2006. On scrutiny of the scheme, the following shortcomings have been noticed:-

A. Year in the Short Title

1.2 It was observed that the year in the Short Title did not tally with the year of publication of Gazette Notification. The Short Title to the Scheme denotes the year as '2004' whereas the scheme was published in the year '2006'. Normally, for facilitating easy referencing, the year in the Short Title to the rules/regulations/schemes should conform to the year of their publication in the Gazette Notification.

B. Non-appending of Foot-note

1.3 It was observed that the foot-note was not appended to the Employees' Provident Fund (Amendment) Scheme, 2004 to indicate the particulars of Principal Schemes and the subsequent schemes made thereto for facility of reference. As per the oft-repeated recommendations of the Committee to facilitate easy referencing, all amending rules/regulations/schemes should contain a foot-note to indicate the particulars of publication of the principal rules/regulations/schemes and the subsequent amendment made thereto.

C. Non-laying of the Scheme

1.4 As per Section 21(3) of the Employees' Provident Funds Miscellaneous Provisions Act, 1952, all the schemes made thereunder are required to be laid before Parliament. In terms of the Committee's recommendation, the rules/regulations/schemes are required to 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/regulations/schemes should be laid on the Table of the House as soon as possible (but within 15 days) after the commencement of the following session. Though the Employees' Provident Fund (Amendment) Scheme, 2004 was published on 17 January, 2006, the scheme had not been laid on the Table of the House after a lapse of more than 2 ½ years.

1.5 These infirmities were referred to the Ministry of Labour and Employment for their comments. The Ministry was also asked to state whether they have any objection in amending the scheme to the desired effect.

1.6 In response to the aforesaid queries posed by the Committee, the Ministry of Labour and Employment vide their OM dated 3 April, 2008 have stated as under:-

“...that non-insertion of the foot-note in the said Notification and non laying the same on the Table of the House was an unintentional oversight which is sincerely regretted. However, this Ministry is issuing a corrigendum inserting foot- note as well as the corrigendum of the short title to the scheme denoting the year as 2006 in the said notification. It is hereby informed that a corrigendum would be issued after vetting from the Legislative Department, Ministry of Law and Justice. Thereafter, the same would be published in the Gazette of India. The GSR No. of the said notification will be communicated to Lok Sabha Secretariat as soon as it is published in the Gazette”

1.7 The Committee note that the year in the Short Title to the rules did not tally with the year of its publication. On being pointed out, the Ministry of Labour and Employment agreed to rectify the discrepancy and stated that a corrigendum would be issued after its vetting by the Ministry of Law and Justice. The Committee desire that the Ministry to rectify the error in the Short Title at the earliest and furnish them a copy of the corrigendum after its publication in the Gazette.

(Recommendation No. 1)

1.8 The Committee note that there was no foot-note appended to the Employees' Provident Fund (Amendment) Scheme, 2004 to indicate the particulars of Principal Schemes and the subsequent amendments made thereto for facility of reference. On being pointed out, the Ministry of Labour and Employment agreed to issue a corrigendum to insert the required foot-note to indicate the particulars of publication of the principal schemes and the subsequent amendments made to these schemes. The Committee desire that the requisite corrigendum may be issued at the earliest and a copy thereof furnished to them after its publication in the Gazette. The Committee also desire that the Ministry should be more vigilant in future so that such minor errors do not recur.

(Recommendation No. 2)

1.9 The Committee note that Section 21(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for laying of the Employees' Provident Fund (Amendment) Scheme, 2004. The said amendment scheme has however, had not been laid on the Table of the House even after a lapse of more

than 2½ years after its publication in the Gazette of India. In terms of the Committee's recommendations, the rules/regulations/schemes are required to 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 Committee observe that while the Ministry's reply did not contain any reason for non-laying of the Scheme, it however simply stated that the Scheme would be laid on the Table of the House after publication of the requisite corrigendum in the Gazette of India by rectifying the lacunae in the Short Title and foot-note to the Scheme of 2006. The aforesaid reply of the Ministry appeared to indicate that they were either not aware of the statutory provision for laying ingrained in Section 21(3) of the Employees' Provident Funds Miscellaneous Provisions Act and the recommendation of the Committee in this regard or were not taking these stipulations with seriousness it deserved, resulting in such avoidable lapse on their part. Subsequently, the Ministry have laid the scheme on the Table of the House on 15 December, 2008 but no delay statement has been appended. The Committee take serious note of the delayed laying of the amendment Scheme on the Table of the House which has deprived them from timely scrutiny of such notification. Further, the Committee note that even after delayed laying of the scheme no delay statement had been appended. The Committee desire that the Ministry should strictly adhere to the time limit stipulated by the Committee in this regard so that such lapses do not recur in future.

(Recommendation No. 3)

II

Infirmities in the Drugs and Cosmetics (IV Amendment) Rules, 2005 (GSR 174-E of 2005).

.....

The Drugs and Cosmetics (IV Amendment) Rules, 2005 (GSR 174-E of 2005) were published in the Gazette of India, Extraordinary, Part-II Section 3(i) dated 16 March, 2005. While scrutinizing the Rules, it was observed that there were certain infirmities in the Rules which were referred to the Ministry of Health and Family Welfare (Department of Health) for their comments. The infirmities and the comments of the Ministry thereon are brought out in the following paragraphs:-

A. Delay in publication of the final rules.

2.2 The draft of the Drugs and Cosmetics (IV Amendment) Rules, 2005 were published on 23 August, 2004 inviting objections/suggestions from the public within 45 days whereas the final rules were notified on 16 March, 2005 i.e. after a gap of about 7 months. The Committee on Subordinate Legislation have stipulated that final rules should be published within a period of 3 months where no objections/suggestions on the draft rules are received and in cases where a large number of comments are received, the gap should not exceed 6 months. The matter was, therefore, referred to the Ministry of Health and Family Welfare (Deptt. of Health) for seeking clarification in the matter. In response thereto, the Ministry of Health and Family Welfare (Deptt. of Health) vide their OM dated 21 February, 2006 have stated as under:-

“.... The draft notification was circulated to all State Drugs Controllers, CDSCO, Manufacturers Association for furnishing comments by 28.10.2004. After consolidation of the requisite comments, the draft of the finalised notification was submitted for approval of HFM on 30.11.2004. After approval of HFM, the final draft was sent for vetting to Ministry of Law on 16.12.2004. The Ministry of Law has completed the vetting and Hindi translation by 4.2.2005 and it has been published on 16.3.2005.”

2.3 The Committee note that the Ministry of Health and Family Welfare (Dept of Health) took about seven months to finally notify the Drugs and Cosmetics (IV Amendment) Rules, 2005 after their publication in the draft form. The Committee on Subordinate Legislation have stipulated a maximum period of six months for publishing the final rules after taking into consideration all relevant aspects. On being pointed out, the Ministry simply cited the chronology of events that led to the final notification on the aforesaid draft rules. The reply furnished by the Ministry was not satisfactory and it revealed that the whole matter had been treated with an amount of laxity and no serious attention or importance had been paid to expedite the process for timely publication of rules. The Committee reiterate their earlier recommendation that the final rules should be published within a period of 3 months where no objections/suggestions are received on the draft rules and in cases where a large number of objections/suggestions are received, the gap between the notification of draft and final rules should not exceed six months. The Committee, therefore, urge the Ministry to take specific steps to streamline their procedure so as to avoid such delays in publication in future.

(Recommendation No. 4)

B. DELAY IN LAYING OF RULES

2.4 Although the final rules [The Drugs and Cosmetics (IV Amendment) Rules, 2005] were published in the Gazette of India on 16 March, 2005, these were laid on the Table of the House only on 27 July, 2005 i.e. after a delay of more than 4 months. The Committee on Subordinate Legislation in Para 66 of their 4th Report, 3rd Lok Sabha emphasized that all Rules or Orders are required to be laid before the House 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 Orders should be laid on the Table of the House as soon as possible (but in any case within 15 days) after the commencement of the following session. The matter was accordingly referred to the Ministry of Health & Family Welfare for their comments in the matter.

2.5 Responding to the query, the Ministry vide their OM dated 21 February, 2006 have stated as under:-

“It was issued on 19.4.2005 for laying in Lok Sabha/Rajya Sabha. Rajya Sabha Secretariat laid it in the same session but Lok Sabha Secretariat returned it and asked for 41 copies of the notification. Due to paucity of time, the same could not be laid in last session. Again on 25.7.2005 the requisite no. of copies were sent for laying the notification in Lok Sabha.”

2.6 The Committee note that the Drugs and Cosmetics (IV Amendment) Rules, 2005 were published in the Gazette of India on 16 March, 2005 but were laid on the Table of the House only on 27 July, 2005, after a delay of more than 4 months. On being pointed out, the Ministry of Health & Family Welfare contended that the rules were sent on 19 April, 2005 for laying in both the Houses of Parliament and were laid in Rajya Sabha in the same session. However, these could not be laid in

Lok Sabha as the number of copies of the notification were not enough as informed by Lok Sabha Secretariat and later due to paucity of time they could not be sent to the Secretariat for laying. Subsequently, the rules were laid in Lok Sabha on 27 July, 2005 entailing a delay of more than 4 months after the stipulated time of 15 days. The Committee observe that since the Budget Session concluded on 13 May, 2005, the Ministry's contention of paucity of time is hardly convincing as they had almost one month's time at their disposal to send the requisite number of copies. It appears that the Ministry did not put in extra efforts to send the same expeditiously. The Committee also observe that such lapse on the part of the Ministry to provide the requisite number of copies of the rules to Lok Sabha Secretariat expeditiously before the end of the Budget Session shows that there was no check in the Ministry on these matters to ensure timely laying of the notification in the House thereby depriving them from timely scrutiny of such notifications. The Committee, therefore, urge the Ministry to gear up their system so as to avoid recurrence of such cases in future.

(Recommendation No. 5)

C. LEGISLATION BY REFERENCE

2.7 Rule 2(b) provides the conditions of storage of "Adrenaline for Injection" as "As prescribed in Indian Pharmacopoeia" which amounts to legislation by reference. On being referred, the Ministry of Health and Family Welfare (Deptt. of Health) vide their OM dated 21 February, 2006 stated that "Indian Pharmacopoeia is the official book of standards of identity, purity and strength of the drugs mentioned therein under the Second Schedule to the Act. The standards of the drugs are revised from time to time in

accordance to the current scientific knowledge. In view of this, the conditions of storage for Adrenaline for Injection has been prescribed as given in the Indian Pharmacopoeia so that it remains compatible with the Pharmacopoeia standards.”

2.8 The Committee note that the provisions in Rule 2(b) of the Drugs and Cosmetics (IV Amendment) Rules, 2005 providing the conditions of storage for ‘Adrenaline for Injection’ as “As prescribed in Indian Pharmacopoeia” amounts to legislation by reference. The Committee have time and again emphasized that rules should as far as possible be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing the rules and that legislation by reference should be avoided. On being pointed out, the Ministry clarified that the standards of drugs are revised from time to time in accordance to the current scientific knowledge and no such provision has been made so that the conditions for storage remains compatible with the Pharmacopoeia standards. The Committee, therefore, accept the clarification tendered by the Ministry in this regard to be bonafide and reasonable.

(Recommendation No. 6)

D. DISCREPANCY IN THE FOOT-NOTE

2.9 The footnote to the Drugs and Cosmetics (IV Amendment) Rules, 2005 provides that the rules had been last amended vide GSR 32-E dated 20.1.2005 which corresponds to the Drugs and Cosmetics (II Amendment) Rules, 2005. As such, it appeared that there was a discrepancy in the chronology of the numbers of amendment and the present

amendment should have been the III Amendment instead of IV Amendment as contained in the short title to the rules. On being referred to the Ministry of Health & Family Welfare (Department of AYUSH), a copy of the Drugs & Cosmetics (III Amendment) Rules, 2005 dated 18.2.2005 was furnished. It revealed that the footnote to the III Amendment Rules (GSR 79-E dated 14.2.2005) states that the rules was last amended vide GSR 32-E dated 20.1.2005 which pertains to the II Amendment Rules. Thus, as far as the numbering of amendments is concerned, GSR 174-E of 2005 has been correctly numbered as the IV Amendment Rules. The lacunae is in the foot-note to the rules, which should have reflected that the rules were last amended vide GSR 79-E dated 14.2.2005 which pertains to the III Amendment Rules. The aforesaid anomaly in the footnote have since been rectified by the Ministry of Health & Family Welfare (Department of Health) vide GSR 589-E dated 13.9.2007.

2.10 The Committee have noticed a discrepancy in the chronological order of the numbering of amendments to the Drugs and Cosmetics Rules, 2005. On the matter being pursued with the Department of AYUSH as well as the Department of Health in the Ministry of Health & Family Welfare, it revealed that the discrepancy was actually in the footnote to the III Amendment Rules and that the chronology of the numbering of amendments to the Rules was found to be correct. The Committee, however, observe that the Ministry of Health and Family Welfare (Department of Health) have issued the necessary corrigendum vide GSR 589-E dated 13 September, 2007 to rectify the anomaly in the footnote after persistent pursuance by them. The Committee, therefore, express their displeasure over such small

mistakes/omissions despite being vetted by the Ministry of Law and Justice. The Committee urge the Ministry to be more vigilant to avoid such types of mistakes/omissions.

(Recommendation No. 7)

III

Infirmities in the Coast Guard Organisation Group ‘C’ and Group ‘D’ Fire Fighting Staff Recruitment Rules, 2006 (SRO 78 of 2006).

The Coast Guard Organisation Group ‘C’ and Group ‘D’ Fire Fighting Staff Recruitment Rules, 2006 (SRO 78 of 2006) were published in the Gazette of India Part-II, Section 4 dated 17 June, 2006. On scrutiny of the aforesaid rules, the following infirmities were observed:

- (i) In the schedule, in item 2 (Fire Engine Driver) under col. 8, in entry (b), the words “ at least three years experience of driving heavy vehicles” was found to be vague as it does not specify the fact that experience from which type of organization/institution will be considered.
- (ii) In the schedule, in item 4 (Fireman Grade-II) under col. 8, in entries (b) & (c), the words “Height with shoes” and “ Strenuous duties” appeared to be vague as they lack specificity and are likely to be interpreted differently by different persons.

The Ministry of Defence were requested to furnish their comments regarding these infirmities.

3.2 The Ministry of Defence vide their communication dated 9th February, 2008 had forwarded a draft amendment notification rectifying the infirmities pointed out.

Subsequently, the Ministry published the amendment notification in the Gazette of India vide SRO 59 dated 6th October, 2007.

3.3 In the schedule, in item 2 (Fire Engine Driver), the entry (b) under col. 8, is given below:-

“(b) Must be possessing heavy vehicle driving license with at least three years experience of driving heavy vehicles”

It was observed that the words “at least three years experience of driving heavy vehicles” in the above entry was vague, as it did not specify from which type of organization/institution the experience will be considered. On being pointed out, the Ministry of Defence vide their notification SRO 59 dated 6th October, 2007 have substituted the aforesaid entry with the following:-

“(b) Must be possessing heavy vehicle driving license with at least three years experience of driving heavy vehicles in any of private or Government organization/Institute.”

3.4 In the schedule, in item 4 (Fireman Grade-II), the entry (b) (i) under col. 8 is given below :

“(b) Must have the following physical standard:
(i) Height with shoes-165cms. Provided that a concession of 2.5 cms in height shall be allowed for members of the Scheduled Tribes and candidates of hilly areas.”

In the aforesaid entry, the words “Height with shoes” was vague as the height could vary with types of shoes and same is likely to be interpreted variedly. On being brought to their notice, the Ministry have amended the entry vide their notification SRO 59 dated 6th October, 2007 and the amended entry is as follows:

“(b) Must have the following physical standard:
(i) Height without shoes-165cms. Provided that a concession of 2.5 cms in height shall be allowed for members of the Scheduled Tribes and candidates of hilly areas.”

3.5 Further, in the schedule, in item 4 (Fireman Grade-II), the entry (c) under col. 8 is given below:

“(c) Must be physically fit and capable of performing strenuous duties.”

The words “ Strenuous duties” in the aforesaid entry was vague as it lacks specificity and is likely to be interpreted differently by different persons. When pointed out, the Ministry vide their notification SRO 59 dated 6th October, 2007 have omitted the entry from the rules.

3.6 The Committee note that various entries in the Coast Guard Organization Group ‘C’ and Group ‘D’ Fire Fighting Staff Recruitment Rules, 2006 contained vague terms/words which were likely to be interpreted differently by different persons. The vague expression ‘height with shoes’ used in the rules could be used to alter the height of the candidates as the height would vary depending on the type of shoes used. Thus, it may lead to different interpretations by individuals in order to suit their requirements. Similarly the expression ‘strenuous duties’ was vague as it lacked specificity. The duties which are strenuous in nature will obviously depend on the individual interpretations and the same may be defined differently by different persons. Thus, in the absence of specificity, the interpretations could vary as per individual needs and requirements.

Further, the words ‘Must be possessing heavy vehicle driving license with atleast three years experience of driving heavy vehicles’ was devoid of the clarity as to the nature of organization from where experience was to be obtained.

3.7 The Committee note with satisfaction that the infirmities pointed out were rectified by the Ministry of Defence vide their amendment notification SRO 59 dated 6th October, 2007. The Committee desire that in future, the Ministry should be careful in using the expressions in the rules and should avoid expressions which are vague in nature or which are liable to be interpreted differently. The Committee also take the view that the Ministry of Law and Justice (Legislative Department) on whom rests the onus of vetting the recruitment rules, should be vigilant in filtering such vague expressions in order to make the rules error free.

(Recommendation No. 8)

IV

Infirmities in the Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 (GSR 481-E of 2006).

.....

The Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 (GSR 481-E of 2006) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 17 August, 2006. On scrutiny, it was observed that these Rules were framed in exercise of the powers conferred by the Electricity Act, 2003 and were required to be laid in Parliament as per the laying provision contained in Section 179 of the Act. However, the rules had not been laid on the Table of the House. In terms of the recommendations made by the Committee on Subordinate Legislation in Para 66 of their 4th Report (3rd Lok Sabha), all rules or 'Orders' required to be laid before the House should be so 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 'Orders' should be laid on the Table of the House as soon as possible (but in any case within 15 days) after the commencement of the following session.

4.2 The Ministry of Power was, therefore, asked to state the reasons for not laying the rules on the Table of the House in terms of the Electricity Act, 2003 and recommendations made by the Committee. The Ministry vide their reply dated 2 March, 2007 inter alia advanced the following reasons:-

“.....The Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 could not be laid down. The concerned official, who were asked to explain this lapse, have submitted that this happened due to oversight on account of pressure of work of Parliament Questions. The concerned officials have been directed to strictly adhere to the prescribed time-frame and to avoid any such delay in future. The delay may kindly be condoned by the

Committee on Subordinate Legislation. These Rules are being laid on the tables of the Lok House and Rajya Sabha in the current session”.

4.3 Subsequently, the Ministry laid the Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 on the Table of the House on 16 March, 2007 i.e. after a gap of about 7 months from the date of notification of the rules in the Gazette of India and that too without appending the explanatory note giving the reasons for such delay.

4.4 **The Committee note that the Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 were notified in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 17 August, 2006 in exercise of the powers delegated by the Electricity Act, 2003. These Rules were required to be laid in Parliament as per the laying provision contained in Section 179 of the Electricity Act, 2003 which 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. However, the same were not laid on the Table of the House as required. On being pointed out, the Ministry submitted that the lapse was due to oversight on account of pressure of work due to Parliament Questions. Subsequently, the rules were laid on the Table of the House on 16 March, 2007 after a delay of about 7 months. The requisite explanatory note giving the reasons for such delay was, however, not appended to the Rules at the time of laying the rules. The Committee in Para 66 of their 4th Report (3rd Lok Sabha) had recommended that all rules or ‘Orders’ required to be laid before the House should be so 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 'Order' should be laid on the Table of the House as soon as possible (but in any case within 15 days) after the commencement of the following session. The Committee observe that the explanation tendered by the Ministry for their lapse is hardly found to be convincing. The rules were notified on 17th August, 2006 and hence the Ministry appeared to have had ample available time for laying the rules on the Table of the House which could have been laid during the Winter Session of 2007. The Committee note that the Ministry initiated steps for laying only after it was pointed out to them. Delay in laying of rules in the House deprives the Parliament of timely scrutiny of such rules. The Committee, therefore, desire the Ministry to take their statutory obligation of laying of rules seriously and adhere to the recommendation of the Committee in this regard. The Committee also desire that the Ministry should at least now gear up their system so as to avoid recurrence of such lapses in future.

(Recommendation No. 9)

NEW DELHI;
February , 2009

N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION
Magha, 1930(SAKA)

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

**SUMMARY OF RECOMMENDATIONS MADE IN THE TWENTY FOURTH
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.	1.7	<p data-bbox="621 747 1557 814"><u>Infirmities in the Employees' Provident Fund (Amendment) Scheme, 2004 (SO 45-E of 2006)</u></p> <p data-bbox="621 856 1557 1146">The Committee note that the year in the Short Title to the rules did not tally with the year of its publication. On being pointed out, the Ministry of Labour and Employment agreed to rectify the discrepancy and stated that a corrigendum would be issued after its vetting by the Ministry of Law and Justice. The Committee desire that the Ministry to rectify the error in the Short Title at the earliest and furnish them a copy of the corrigendum after its publication in the Gazette.</p>
	1.8	<p data-bbox="621 1220 1557 1654">The Committee note that there was no foot-note appended to the Employees' Provident Fund (Amendment) Scheme, 2004 to indicate the particulars of Principal Schemes and the subsequent amendments made thereto for facility of reference. On being pointed out, the Ministry of Labour and Employment agreed to issue a corrigendum to insert the required foot-note to indicate the particulars of publication of the principal schemes and the subsequent amendments made to these schemes. The Committee desire that the requisite corrigendum may be issued at the earliest and a copy thereof furnished to them after its publication in the Gazette. The Committee also desire that the Ministry should be more vigilant in future so that such minor errors do not recur.</p>
	1.9	<p data-bbox="621 1696 1557 1871">The Committee note that Section 21(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for laying of the Employees' Provident Fund (Amendment) Scheme, 2004. The said amendment scheme has however, had not been laid on the Table of the House even after a lapse of more</p>

2.	2.3	<p>than 2½ years after its publication in the Gazette of India. In terms of the Committee's recommendations, the rules/regulations/schemes are required to 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 Committee observe that while the Ministry's reply did not contain any reason for non-laying of the Scheme, it however simply stated that the Scheme would be laid on the Table of the House after publication of the requisite corrigendum in the Gazette of India by rectifying the lacunae in the Short Title and foot-note to the Scheme of 2006. The aforesaid reply of the Ministry appeared to indicate that they were either not aware of the statutory provision for laying ingrained in Section 21(3) of the Employees' Provident Funds Miscellaneous Provisions Act and the recommendation of the Committee in this regard or were not taking these stipulations with seriousness it deserved, resulting in such avoidable lapse on their part. Subsequently, the Ministry have laid the scheme on the Table of the House on 15 December, 2008 but no delay statement has been appended. The Committee take serious note of the delayed laying of the amendment Scheme on the Table of the House which has deprived them from timely scrutiny of such notification. Further, the Committee note that even after delayed laying of the scheme no delay statement had been appended. The Committee desire that the Ministry should strictly adhere to the time limit stipulated by the Committee in this regard so that such lapses do not recur in future.</p> <p><u>Infirmities in the Drugs and Cosmetics (IV Amendment) Rules, 2005 (GSR 174-E of 2005)</u></p> <p>The Committee note that the Ministry of Health and Family Welfare (Deptt of Health) took about seven months to finally notify the Drugs and Cosmetics (IV Amendment) Rules, 2005 after their publication in the draft form. The Committee on Subordinate Legislation have stipulated a maximum period of six months for publishing the final rules after taking into consideration all relevant aspects. On being pointed out, the Ministry simply cited the chronology of events that led to the final notification on the aforesaid draft rules. The reply furnished by the Ministry was not satisfactory and it revealed that the whole matter had been treated with an amount of laxity and no serious attention or importance had been paid to expedite the process for timely publication of rules. The Committee reiterate their earlier</p>
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		<p>recommendation that the final rules should be published within a period of 3 months where no objections/suggestions are received on the draft rules and in cases where a large number of objections/suggestions are received, the gap between the notification of draft and final rules should not exceed six months. The Committee, therefore, urge the Ministry to take specific steps to streamline their procedure so as to avoid such delays in publication in future.</p>
	2.6	<p>The Committee note that the Drugs and Cosmetics (IV Amendment) Rules, 2005 were published in the Gazette of India on 16 March, 2005 but were laid on the Table of the House only on 27 July, 2005, after a delay of more than 4 months. On being pointed out, the Ministry of Health & Family Welfare contended that the rules were sent on 19 April, 2005 for laying in both the Houses of Parliament and were laid in Rajya Sabha in the same session. However, these could not be laid in Lok Sabha as the number of copies of the notification were not enough as informed by Lok Sabha Secretariat and later due to paucity of time they could not be sent to the Secretariat for laying. Subsequently, the rules were laid in Lok Sabha on 27 July, 2005 entailing a delay of more than 4 months after the stipulated time of 15 days. The Committee observe that since the Budget Session concluded on 13 May, 2005, the Ministry's contention of paucity of time is hardly convincing as they had almost one month's time at their disposal to send the requisite number of copies. It appears that the Ministry did not put in extra efforts to send the same expeditiously. The Committee also observe that such lapse on the part of the Ministry to provide the requisite number of copies of the rules to Lok Sabha Secretariat expeditiously before the end of the Budget Session shows that there was no check in the Ministry on these matters to ensure timely laying of the notification in the House thereby depriving them from timely scrutiny of such notifications. The Committee, therefore, urge the Ministry to gear up their system so as to avoid recurrence of such cases in future.</p>
	2.8	<p>The Committee note that the provisions in Rule 2(b) of the Drugs and Cosmetics (IV Amendment) Rules, 2005 providing the conditions of storage for 'Adrenaline for Injection' as "As prescribed in Indian Pharmacopoeia" amounts to legislation by reference. The Committee have time and again emphasized that rules should as far as possible be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing the rules and that legislation by reference should be avoided. On being pointed out, the Ministry clarified that the standards of drugs are revised from time to time in accordance to</p>

		<p>the current scientific knowledge and no such provision has been made so that the conditions for storage remains compatible with the Pharmacopoeia standards. The Committee, therefore, accept the clarification tendered by the Ministry in this regard to be bonafide and reasonable.</p>
	2.10	<p>The Committee have noticed a discrepancy in the chronological order of the numbering of amendments to the Drugs and Cosmetics Rules, 2005. On the matter being pursued with the Department of AYUSH as well as the Department of Health in the Ministry of Health & Family Welfare, it revealed that the discrepancy was actually in the footnote to the III Amendment Rules and that the chronology of the numbering of amendments to the Rules was found to be correct. The Committee, however, observe that the Ministry of Health and Family Welfare (Department of Health) have issued the necessary corrigendum <u>vide</u> GSR 589-E dated 13 September, 2007 to rectify the anomaly in the footnote after persistent pursuance by them. The Committee, therefore, express their displeasure over such small mistakes/omissions despite being vetted by the Ministry of Law and Justice. The Committee urge the Ministry to be more vigilant to avoid such types of mistakes/omissions.</p>
3.		<p><u>Infirmities in the Coast Guard Organisation Group ‘C’ and Group ‘D’ Fire Fighting Staff Recruitment Rules, 2006 (SRO 78 of 2006).</u></p>
	3.7	<p>The Committee note with satisfaction that the infirmities pointed out were rectified by the Ministry of Defence <u>vide</u> their amendment notification SRO 59 dated 6th October, 2007. The Committee desire that in future, the Ministry should be careful in using the expressions in the rules and should avoid expressions which are vague in nature or which are liable to be interpreted differently. The Committee also take the view that the Ministry of Law and Justice (Legislative Department) on whom rests the onus of vetting the recruitment rules, should be vigilant in filtering such vague expressions in order to make the rules error free.</p>
4.		<p><u>Infirmities in the Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 (GSR 481-E of 2006).</u></p>
	4.4	<p>The Committee note that the Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors</p>

		<p>Rules, 2006 were notified in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 17 August, 2006 in exercise of the powers delegated by the Electricity Act, 2003. These Rules were required to be laid in Parliament as per the laying provision contained in Section 179 of the Electricity Act, 2003 which 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. However, the same were not laid on the Table of the House as required. On being pointed out, the Ministry submitted that the lapse was due to oversight on account of pressure of work due to Parliament Questions. Subsequently, the rules were laid on the Table of the House on 16 March, 2007 after a delay of about 7 months. The requisite explanatory note giving the reasons for such delay was, however, not appended to the Rules at the time of laying the rules. The Committee in Para 66 of their 4th Report (3rd Lok Sabha) had recommended that all rules or 'Orders' required to be laid before the House should be so 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 'Order' should be laid on the Table of the House as soon as possible (but in any case within 15 days) after the commencement of the following session. The Committee observe that the explanation tendered by the Ministry for their lapse is hardly found to be convincing. The rules were notified on 17th August, 2006 and hence the Ministry appeared to have had ample available time for laying the rules on the Table of the House which could have been laid during the Winter Session of 2007. The Committee note that the Ministry initiated steps for laying only after it was pointed out to them. Delay in laying of rules in the House deprives the Parliament of timely scrutiny of such rules. The Committee, therefore, desire the Ministry to take their statutory obligation of laying of rules seriously and adhere to the recommendation of the Committee in this regard. The Committee also desire that the Ministry should at least now gear up their system so as to avoid recurrence of such lapses in future.</p>
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APPENDIX –II

(Vide Para 5 of the Introduction of the Report)

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2008-2009)

The Committee met on Wednesday, 17th December, 2008 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 L. Ganesan
5. Shri N.Y. Hanumanthappa
6. Shri Ram Singh Kaswan
7. Shri Dalpat Singh Paraste
8. Shri Anantha Venkatarami Reddy
9. Shri Bhupendrasinh Solanki
10. Shri Ramji Lal Suman
11. Shri A.K.S. Vijayan
12. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri Raj Kumar - Deputy Secretary-I
2. Shri R.D. Silawat - Deputy Secretary-II

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 :-

1. **Memorandum No. 69** : Infirmities in the Employees' Provident Fund (Amendment) Scheme, 2004 (GSR 45-E of 2006).
2. **Memorandum No. 70** : Infirmities in the Drugs & Cosmetics (IV Amendment) Rules, 2005 (GSR 174-E of 2005).
3. **Memorandum No. 71**: Infirmities in the Coast Guard Organisation Group 'C' and Group 'D' Fire Fighting Staff Recruitment Rules, 2006 (SRO 78 of 2006); and
4. **Memorandum No. 72** : Non-laying of the Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 and non-appending the delay statement to the Rules when laid subsequently (GSR 481-E of 2006).

4. After deliberations, the Committee decided to incorporate suitably the points raised in Memoranda Nos. 69 to 72 in their Report to be presented to the House.

The Committee then adjourned.

**EXTRACTS FROM MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2008-2009)**

The Committee met on Thursday, 22nd January, 2009 from 1500 to 1545 hours
in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Giridhar Gamang
3. Shri Jaisingrao Gaikwad Patil
4. Shri Anantha Venkatarami Reddy
5. Shri Ramji Lal Suman
6. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri R.K. Bajaj - Director
3. Shri R.K.Bhatnagar - Under Secretary

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

3. The Committee then took up for consideration the draft 24th Report and adopted the same with some modifications/corrections. The Committee also authorized the Chairman to finalise the above report and present the same to the House.

4. XX XX XX

5. XX XX XX

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report.