

COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2010-2011)

THIRTEENTH REPORT

**[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS
/OBSERVATIONS CONTAINED IN NINETEENTH REPORT (2007-2008) (FOURTEENTH
LOK SABHA)]**

(PRESENTED ON 2.12.2010)

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LOK SABHA SECRETARIAT

NEW DELHI

December, 2010/ Agrahayana, 1932

COSL No.22

PRICE: Rs.

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Twelfth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2010-2011)

1. **Shri P. Karunakaran** **Chairman**
2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri D.B. Chandre Gowda
5. Shrimati Paramjit Kaur Gulshan
6. Shri Jitender Singh Malik
7. Shri Mangani Lal Mandal
8. Shri Pinaki Misra
9. Dr. Sanjeev Ganesh Naik
10. Shri Rajaram Pal
11. Shri Anantha Venkatarami Reddy
12. Shri Hamdullah Sayeed
13. Shri Adhalrao Patil Shivaji
14. Dr. Rajan Sushant
15. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri J.S. Chauhan - Director

INTRODUCTION

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

2. This Report relates to the action taken on the recommendations of the Committee contained in the Nineteenth Report (2007-2008) (Fourteenth Lok Sabha) which was presented to Lok Sabha on 30.4.2008.

3. The Committee also wish to place on record their appreciation of the valuable work done by the predecessor Committee.

4. The Committee considered and adopted this Report at their sitting held on 4.10.2010.

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

6. Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.

7. An analysis of the action taken by Government on the recommendations contained in the Nineteenth Report of the Committee (14th Lok Sabha) is given in Appendix III.

**New Delhi;
December, 2010 Agrahayana, 1932**

**P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION**

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Nineteenth Report (Fourteenth Lok Sabha) which was presented to Lok Sabha on 30.4.2008. The Nineteenth Report dealt with the following Chapters: -

- I. Non-observance of Department of Personnel & Training guidelines on framing of Recruitment Rules.
- II. Discrepancies in the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003 (SRO 158 of 2003).
- 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).

2. The Committee note with satisfaction that the Ministries concerned have taken action on all the recommendations contained in the Nineteenth Report except Para 1.4. A statement showing the action taken by the Government on the recommendations contained in the Nineteenth Report (14th Lok Sabha) is given in Appendix-I.

3. As regards para 1.4 relating to non-observance of DOPT guidelines on framing of recruitment rule, the Department of Personnel and Training stated that they issued OM to all the Ministries/Departments to furnish the Status Report.

4. The Committee on Subordinate Legislation (2007-2008) in their Nineteenth Report (14th LS) had recommended in this connection as follows:-

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.

Explaining the status report in regard to the amendment of the Recruitemnt Rules, the Department of Personnel & Training stated as under:-

“The status report highlighting action taken on DoPT’s OM dated 8.2.2002 has not been received from a number of Ministries/Departments till date despite several reminders. All the defaulting Ministries/Departments have once again been reminded to send the requisite status report to this Department immediately and latest by 15.9.2010. As soon as the same is received from all concerned, a report to that effect would be furnished to the Lok Sabha Secretariat.”

5. The Committee note that the DOPT had issued OM on 08.02.2002 and many subsequent reminders to all the Ministries/Departments of Government of India to furnish the status report in regard to the amendment of the Recruitment Rules in conformity with the provisions of the revised guidelines of the Department. However, the Committee regret to find that all the Ministries/Departments have not furnished the required status report to DOPT, so far. The Committee have been informed that all the defaulting Ministries/Departments have once again been reminded by the DOPT to send the requisite status report to the Department immediately and latest by 15.09.2010. The Committee desire the Department to keep track of the stipulated period to ascertain the requisite status report. The Committee also desire that they may be apprised of the latest position in this regard without further delay.

New Delhi;
December, 2010 Agrahayana, 1932

**P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION**

APPENDIX – I

(vide Para 5 of Introduction of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE NINETEENTH REPORT OF THE COMMITTEE (14th LOK SABHA)

I. **Non-observance of Department of Personnel & Training guidelines on framing of Recruitment Rules.**

Recommendation (Para 1.4)

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.

Reply of the Ministry

The status report highlighting action taken on DoPT's OM dated 8.2.2008 has not been received from a number of Ministries/Departments till date despite several reminders. All the defaulting Ministries/Departments have once again been reminded to send the requisite status report to this Department immediately and latest by 15.9.2010. As soon as the same is received from all concerned, a report to that effect would be furnished to the Lok Sabha Secretariat.

[Ministry of Personnel, P.G & Pensions (Department of Personnel & Training)
OM No. 35034/7/97-Estt.D dated 10.6.2010]

II. Discrepancies in the Formation Headquarters and Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003 (SRO 158 of 2003).

Recommendation (Para 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.

Reply of the Ministry

The discrepancies pointed out by Committee on Subordinate Legislation have been rectified by issuing necessary amendment vide SRO 133 dated 20 December, 2005, which had been published in Government Gazette on 31 December, 2005. The Ministry has taken steps to ensure that such mistakes do not occur in drafting the Recruitment Rules. Instructions have again been issued to Service Headquarters to take utmost care while drafting the Recruitment Rules.

[Ministry of Defence OM No. H-11013/14/2008/D(Parl) dated 29.5.2009]

Recommendation (Para 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.

Reply of the Ministry

The observations of the Hon'ble Committee in its Report have been circulated to all ILS officers of this Department dealing with the vetting of subordinate legislation for updation and future compliance.

[Ministry of Law and Justice (Legislative Department) O.M. No. F.No. 4(1)/08 L-1 dated 28th July, 2008]

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).

Recommendation (Para 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.

Reply of the Ministry

The recommendation of the Committee on Subordinate Legislation, made through para 3.4 of its 19th Report (14th Lok Sabha) has been noted for compliance. The Department of Revenue carefully goes through every recommendation of the Committee on Subordinate Legislation and wherever any suggestion is acceptable, prompt action is instituted by the Department to implement such recommendation. Further, detailed consultation are held with the Law Ministry and it is only after vetting by the Law Ministry that any changes in Rules/Regulations/Schemes etc. are incorporated.

[Ministry of Finance (Department of Revenue) OM No. 149/83/2008-TPL
dated 6 June, 2008]

APPENDIX-II
(vide Para 6 of Introduction of the Report)

MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2010-2011)

The Committee sat on Monday, 4th October, 2010 from 1200 to 1300 hours in
Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

1. Shri Adhalrao Shivaji Patil - In the Chair

MEMBERS

LOK SABHA

2. Shri Rajen Gohain
3. Shri Mangani Lal Mandal
4. Shri Pinaki Misra
5. Dr. Sanjeev Ganesh Naik
6. Shri Anantha Venkata Rami Reddy

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri J.S. Chauhan - Director
3. Shri S.C. Kaliraman - Additional Director

2. In the absence of Chairman, members of the Committee chose Shri Adhalrao Patil Shivaji, MP to act as Chairman for the sitting of the Committee in terms of Rule 258(3) of Rules of Procedure and Conduct of Business in Lok Sabha.
3. At the outset, the Chairman welcomed the members to the first sitting of the re-constituted Committee (2010-11).
4. The Committee, thereafter, took up for consideration of the draft Thirteenth Action Taken 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.

APPENDIX-III

(vide para 7 of Introduction of the Report)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE NINETEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	4
II.	Recommendations that have been accepted by the Government [<u>vide</u> recommendations at Sl. Nos. 2.6, 2.7 and 3.4]	3
III.	No. of recommendations which the Committee want to pursue in view of Government reply	1
IV.	Percentage of recommendations accepted	85%

