

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

SEVENTEENTH REPORT

(PRESENTED ON 3.8.2011)

S

E

A

L

LOK SABHA SECRETARIAT

NEW DELHI

August, 2011/Sravana, 1933

COSL No. 26

PRICE: Rs.

(C) 2010 BY LOK SABHA SECRETARIAT

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

CONTENTS

	<u>Para No.</u>	<u>Page No.</u>
COMPOSITION OF THE COMMITTEE		(iii)
INTRODUCTION		(iv)
REPORT		
I. The Railway Services (Revised Pay) Rules, 2008 (GSR 643-E of 2008).		6-7
II. Infirmities in the Ministry of Water Resources, Ganga Flood Control Commission (Group 'C' posts) Recruitment Rules, 2008 (GSR 149 of 2008).		8-12
III. The Jaggery Grading and Marking Rules, 2008 (GSR 810-E of 2008).		13-14

APPENDICES

I. Summary of main recommendations/observations made by the Committee	15-17
II. Minutes of the Second sitting of the Committee (2010-11) held on 3.11.2010 and extracts from Minutes of the Seventh sitting of the Committee (2010-11) held on 10.5.2011.	18-21

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 Raj Sekhar Sharma | - | Joint Secretary |
| 2. | Shri S.C. Kaliraman | - | Additional Director |
| 3. | Smt. Hema Joshi | - | Committee Officer |

*Ceased to be a member of the Committee on being appointed as Minister in Union Cabinet on 12 July, 2011

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 3.11.2010.

3. The Committee considered and adopted this Report at their sitting held on 10.5.2011.

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 Second sitting of the Committee (2010-11) held on 3.11.2010 and the extracts from Minutes of the Seventh sitting of the Committee (2010-11) held on 10.5.2011 relevant to this Report are included in Appendix-II.

**New Delhi;
August, 2011/ Sravana,1933**

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

THE RAILWAY SERVICES (REVISED PAY) RULES, 2008 (GSR 643-E OF 2008).

The Railway Services (Revised Pay) Rules, 2008 (GSR 643-E of 2008) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 4th September, 2008. On scrutiny, it was observed that the rules have been given retrospective effect from 1.1.2006. As per Committee's recommendations, if in any particular case, the 'order' has to be given retrospective effect in view of any unavoidable circumstances, the retrospection having otherwise legal validity, a clarification is required to be given, either by way of an explanation in the 'order' or in the form of a foot-note to the relevant 'order' to the effect that no one will be adversely affected as result of retrospective effect being given to such 'order'. However, no such explanatory Memorandum or foot-note was appended in this regard.

1.2 On being pointed out, the Ministry of Railways vide their OM dated 22.5.2009 has furnished the following comments in this regard:-

"As regards certification/clarification regarding no adverse effect due to retrospective effect given to the rules, it is mentioned that Sixth Central Pay Commission had recommended in para 6.5.2. of their report that "The Commission has devised the revised scheme of pay bands and grade pay on the basis of price index as on 1/1/2006. Consequently, the revised structure of pay bands and grade pay being recommended in this Report would need to be implemented from 1/1/2006. The Government will have to pay arrears of salary on account of fixation of pay in revised pay bands and grade pay retrospectively with effect from 1/1/2006. Consequent upon acceptance of recommendations of the Commission by the Government, Central Civil Services (Revised Pay) Rules, 2008 have been notified by the Ministry of Finance to implement the recommendations of Sixth Central Pay Commission and based thereon Railway Services (Revised Pay) Rules, 2008 have been notified by Ministry of Railways. Even in CCS (RP) Rules, 2008 there is no such certification. As the RS (RP) Rules, 2008 are based on CCS (RP) Rules, 2008, any amendment in RS (RP) Rules, 2008 has to be processed after such an amendment/certification has been notified in CCS (RP) Rules, 2008. While implementing the rules, the Principles of natural justice will always be given its due place."

1.3 The Committee note that the Railway Services (Revised Pay) Rules, 2008 were published in the Gazette of India on 4.9.2008. However, these Service Rules were given retrospective effect from 01.01.2006. The Committee on Subordinate Legislation have time and again recommended that the rules should be given retrospective effect only under unavoidable circumstances and in such cases an explanation in the rules itself or by way of a foot-note to the relevant rules is required to be given, indicating that no one would be adversely affected when these rules are implemented retrospectively. However, the Committee observe that such a note is not appended to the above said Rules. The Committee are not convinced by the reasons given by the Ministry that the Railway Services (Revised Pay) Rules, 2008, are based on the Central Civil Services (Revised Pay) Rules, 2008, where there is no such certification and any amendment in Railway Services (Revised Pay) Rules, 2008 has to be processed after such an amendment/certification has been notified in CCS(RP) Rules, 2008. The Committee while not endorsing the plea of the Ministry of Railways are at a loss to find any justification for not appending the explanatory note to the Railway Services (Revised Pay) Rules, 2008 when they were notified separately vide GSR 643-E dated 4.9.2008. The Committee trust that the Ministry of Railways will comply with the recommendation contained in paragraph 10 of their Second Report (Fourth Lok Sabha) by appending an Explanatory Memorandum or a foot-note to the effect that interests of no one would be adversely affected by giving retrospective effect to the said Rules. The Committee would also like to emphasise that the Ministry should evolve suitable procedural safeguards to avoid recurrence of such lapses in future.

(Recommendation No.1)

II

INFIRMITIES IN THE MINISTRY OF WATER RESOURCES, GANGA FLOOD CONTROL COMMISSION (GROUP 'C' POSTS) RECRUITMENT RULES, 2008 (GSR 149 OF 2008).

The Ministry of Water Resources, Ganga Flood Control Commission (Group 'C' posts) Recruitment Rules, 2008 (GSR 149 of 2008) were published in the Gazette of India, Part – II, Section 3(i) dated 9.8.2008. There were various infirmities in the Rules, which were referred to the Ministry of Water Resources. The Ministry of Water Resources were requested to furnish their comments in the matter and to state whether they have any objection to amend the Rules.

2.2 On being pointed out, the Ministry of Water Resources vide their O.Ms. dated 26.5.09 & 17.11.09 informed that the Ministry has agreed to amend the said Recruitment Rules, as pointed out by this Secretariat (Annexure enclosed).

2.3 The Committee note that there were glaring infirmities relating to age limit, educational qualifications, mode of selection, method of recruitment, experience, period of probation etc. in the Ganga Flood Control Commission (Group 'C' posts) Recruitment Rules, 2008 of the Ministry of Water Resources. They observe that on being pointed out by them, the Ministry has taken steps to rectify these infirmities in the said Recruitment Rules as per the enclosed Annexure. The Committee further note that despite repeated emphasis of the Committee in their recommendations that vague expressions should not be used in the rules and the terms and expressions should be well-defined, number of discrepancies have been noticed. Had this not been pointed out by the Committee, the entire formulation of the Rules would have gone awry and at the same time raised doubts in the minds of

prospective candidates applying for consideration for appointment to different posts. The various provisions should, therefore, be precise, self-contained and conform to the guidelines formulated by Department of Personnel & Training in this regard. Further, the Committee also recommend that the Ministry should take initiative in rectifying routine, procedural and typographical errors on their own as soon as the rules are published in the Gazette and should not wait for the Committee to point out such deficiencies.

(Recommendation No. 2)

2.4 The Committee, however, note that on being pointed out by them, the Ministry of Water Resources have agreed to amend the aforesaid rules. The Committee, therefore, urge the Ministry to be more vigilant and adhere to the recommendation of the Committee to prevent recurrence of such large-scale errors in future. They accordingly, recommend that the requisite amendments to the rules be carried out at the earliest, as assured by the Ministry and the Committee be apprised of the action taken in this regard.

(Recommendation No. 3)

III

THE JAGGERY GRADING AND MARKING RULES, 2008 (GSR 810-E OF 2008).

The Jaggery Grading and Marking Rules, 2008 (GSR 810-E of 2008) were published in the Gazette of India, Extraordinary, Part-II Section 3, Sub-section (i) dated 21 November, 2008. On scrutiny, it was observed that in rule 7(1), the words 'with or without suitable inner lining of food grade material' lacks specificity as the jute containers for packing of jaggery with suitable inner lining of food grade material has been kept optional. As a result, no packer will prefer to have inner lining in jute containers as it would incur additional cost. The Ministry of Agriculture (Department of Agriculture & Cooperation) were requested to furnish their comments.

3.2 The Ministry vide their OM dated 22.9.2009 has furnished the following reply :-

“Jaggery is manufactured commercially at cottage industry level. Packing material with or without inner lining is used as per prevalent trade practices and commercial viability for better transportation, increasing shelf life, to retain intrinsic quality of jaggery keeping in mind the environmental factors. Hence, under Rule 7(1) the provision has been made for both type of packing material.”

3.3 The words 'with or without suitable inner lining of food grade material' used in rule 7(1) of the aforesaid rules were devoid of specificity as the jute containers with suitable inner lining of food grade material has been kept as optional. Therefore, it would result in discouraging the packers to have inner lining in jute containers as additional cost would be involved in providing for inner lining in packages. The Ministry's contention that packing material with or without inner lining is used as per prevalent trade practices and commercial viability for better transportation, increasing shelf life, to retain intrinsic quality of jaggery keeping in mind the environmental factors and therefore, under rule 7(1) the provision has been made for both type of packing material, is far from satisfactory as it provides for packing with suitable inner lining as an optional method. Therefore, rules are ambiguous as far as packaging with inner lining is concerned. Further, packing of jaggery in jute containers without suitable inner lining may lead to contamination of the product which may prove to be a health hazard to the consumers.

3.4 The Committee note that the words 'with or without suitable inner lining of food grade material' in rule 7(1) of the aforesaid rules lacked clarity. The words used in the Rules appeared to give an impression that jute containers for packing of jaggery with suitable inner lining of food grade material has been kept as optional. The Committee take serious note of the health hazard involved in the event of packaging of containers without suitable inner lining of food grade material. In the absence of specificity, the packers will opt for packing of jaggery without the inner lining due to additional cost involved in packaging with inner lining. The Committee desire that in the light of lack of clarity in the Rules, the Ministry should make suitable amendments in the Rules in order to make the packaging with inner lining of food grade material mandatory. As the health risks are also involved due to the lack of clarity in the rules regarding packaging, the Committee, therefore recommend that the terms and expressions should be clearly specified to make the Rules unambiguous and oriented towards welfare of consumers.

(Recommendation No. 4)

New Delhi;
August, 2011/ Sravana, 1933

P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

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

(FIFTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1.	1.3	<p><u>The Railway Services (Revised Pay) Rules, 2008 (GSR 643-E of 2008).</u></p> <p>The Committee note that the Railway Services (Revised Pay) Rules, 2008 were published in the Gazette of India on 4.9.2008. However, these Service Rules were given retrospective effect from 01.01.2006. The Committee on Subordinate Legislation have time and again recommended that the rules should be given retrospective effect only under unavoidable circumstances and in such cases an explanation in the rules itself or by way of a foot-note to the relevant rules is required to be given, indicating that no one would be adversely affected when these rules are implemented retrospectively. However, the Committee observe that such a note is not appended to the above said Rules. The Committee are not convinced by the reasons given by the Ministry that the Railway Services (Revised Pay) Rules, 2008, are based on the Central Civil Services (Revised Pay) Rules, 2008, where there is no such certification and any amendment in Railway Services (Revised Pay) Rules, 2008 has to be processed after such an amendment/certification has been notified in CCS(RP) Rules, 2008. The Committee while not endorsing the plea of the Ministry of Railways are at a loss to find any justification for not appending the explanatory note to the Railway Service (Revised Pay) Rules, 2008 when they were notified separately vide GSR 643-E dated 4.9.2008. The Committee trust that the Ministry of Railways will comply with the recommendation contained in paragraph 10 of their Second Report (Fourth Lok Sabha) by appending an Explanatory Memorandum or a foot-note to the effect that interests of no one would be adversely affected by giving retrospective effect to the said Rules. The Committee would also like to</p>

2.		<p>emphasise that the Ministry should evolve suitable procedural safeguards to avoid recurrence of such lapses in future.</p> <p><u>Infirmities in the Ministry of Water Resources, Ganga Flood Control Commission (Group 'C' posts) Recruitment Rules, 2008 (GSR 149 of 2008)</u></p> <p>2.3 The Committee note that there were glaring infirmities relating to age limit, educational qualifications, mode of selection, method of recruitment, experience, period of probation etc. in the Ganga Flood Control Commission (Group 'C' posts) Recruitment Rules, 2008 of the Ministry of Water Resources. They observe that on being pointed out by them, the Ministry has taken steps to rectify these infirmities in the said Recruitment Rules as per the enclosed Annexure. The Committee further note that despite repeated emphasis of the Committee in their recommendations that vague expressions should not be used in the rules and the terms and expressions should be well-defined, number of discrepancies have been noticed. Had this not been pointed out by the Committee, the entire formulation of the Rules would have gone awry and at the same time raised doubts in the minds of prospective candidates applying for consideration for appointment to different posts. The various provisions should, therefore, be precise, self-contained and conform to the guidelines formulated by Department of Personnel & Training in this regard. Further, the Committee also recommend that the Ministry should take initiative in rectifying routine, procedural and typographical errors on their own as soon as the rules are published in the Gazette and should not wait for the Committee to point out such deficiencies.</p> <p>2.4 The Committee, however, note that on being pointed out by them, the Ministry of Water Resources have agreed to amend the aforesaid rules. The Committee, therefore, urge the Ministry to be more vigilant and adhere to the recommendation of the Committee to prevent recurrence of such large-scale errors in future. They accordingly, recommend that the requisite amendments to the rules be carried out at the earliest, as assured by the Ministry and the Committee be apprised of the action taken in this regard.</p>
----	--	--

3.	3.4	<p><u>The Jaggery Grading and Marking Rules, 2008 (GSR 810-E of 2008)</u></p> <p>The Committee note that the words ‘with or without suitable inner lining of food grade material’ in rule 7(1) of the aforesaid rules lacked clarity. The words used in the Rules appeared to give an impression that jute containers for packing of jaggery with suitable inner lining of food grade material has been kept as optional. The Committee take serious note of the health hazard involved in the event of packaging of containers without suitable inner lining of food grade material. In the absence of specificity, the packers will opt for packing of jaggery without the inner lining due to additional cost involved in packaging with inner lining. The Committee desire that in the light of lack of clarity in the Rules, the Ministry should make suitable amendments in the Rules in order to make the packaging with inner lining of food grade material mandatory. As the health risks are also involved due to the lack of clarity in the rules regarding packaging, the Committee, therefore recommend that the terms and expressions should be clearly specified to make the Rules unambiguous and oriented towards welfare of consumers.</p>
----	-----	---

APPENDIX –II

(Vide Para 5 of the Introduction of the Report)

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

The Committee sat on Wednesday, 3rd November from 1400 to 1500 hours in Committee Room No. G-074, Parliament Library Building, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

LOK SABHA

2. Shri Paban Singh Ghatowar
3. Smt. Paramjit Kaur Gulshan
4. Shri Mangani Lal Mandal
5. Shri Pinaki Misra
6. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri S.C. Kaliraman - Additional 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.18** –The Railway Services (Revised Pay) Rules, 2008 (GSR 643-E of 2008).
- (ii) **Memorandum No.19** –The Jaggery Grading and Marking Rules, 2008 (GSR 810-E of 2008).
- (iii) **Memorandum No. 20** – Infirmities in the Ministry of Water Resources, Ganga Flood Control Commission (Group 'C' posts) Recruitment Rules, 2008 (GSR 149 of 2008).

4. After deliberations, the Committee decided to incorporate some amendments and the points raised in Memoranda Nos. 18 to 20 in their Report to be presented to the House.

The Committee then adjourned.

**EXTRACTS FROM MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (2010-2011)**

The Committee sat on Tuesday, 10th May, 2011 from 1430 to 1530 hours in
Committee Room No. 53, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Paban Singh Ghatowar
3. Shri D.B. Chandre Gowda
4. Smt. Paramjit Kaur Gulshan
5. Shri Mangani Lal Mandal
6. Shri Pinaki Misra

SECRETARIAT

1. Shri J.S. Chauhan - Director
2. Shri S.C. Kaliraman - Additional Director

.....contd/-

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 'Seventeenth Report' and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House

4. XX XX XX

The Committee then adjourned.

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