

Confidential

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

TWENTIETH REPORT

[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS
/OBSERVATIONS CONTAINED IN FIFTH REPORT (2009-2010) (FIFTEENTH LOK
SABHA)]

(PRESENTED ON 6.9.2011)

S

E

A

L

LOK SABHA SECRETARIAT

NEW DELHI

SEPTEMBER, 2011/BHADRA ,1933 (Saka)

COSL No.29

PRICE: Rs.

(C) 2011 BY LOK SABHA SECRETARIAT

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.

CONTENTS

	PAGE No.
COMPOSITION OF THE COMMITTEE	(iii)
INTRODUCTION.....	(iv)
REPORT	1

APPENDICES

- I. Statement showing the action taken by the Government on the recommendations/observations contained in the Fifth Report of the Committee on Subordinate Legislation (15th Lok Sabha).....
- II. Minutes of the Tenth sitting (2010-11) of the Committee (15th Lok Sabha) held on 29.8.2011.
- III. Analysis of the Action Taken by the Government on the recommendations contained in the Fifth Report of the Committee on Subordinate Legislation (15th Lok Sabha).....

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 Deepak Mahna | - | Joint Secretary |
| 2. | Shri J.S. Chauhan | - | Director |
| 3. | Shri S.C. Kaliraman | - | Director |

*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 authorised by the Committee to submit the report on their behalf, present this Twentieth Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Fifth Report (2009-2010) (Fifteenth Lok Sabha) which was presented to Lok Sabha on 27.4.2010.

3. The Committee considered and adopted this Report at their sitting held on 29.8.2011.

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

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

6. An analysis of the action taken by Government on the recommendations contained in the Fifth Report of the Committee (15th Lok Sabha) is given in Appendix III.

**New Delhi;
SEPTEMBER, 2011, BHADRA 1933**

**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 Fifth Report (Fifteenth Lok Sabha) which was presented to Lok Sabha on 27.4.2010. The Fifth Report dealt with the following Chapters: -

- I. Infirmities in the Ministry of Micro, Small and Medium Enterprises, Office of the Development Commissioner (Micro, Small and Medium Enterprises), Group 'A' Gazetted Posts (Electronics and Electrical Disciplines) Recruitment Rules, 2008 (GSR 185 of 2008).
- II. The Civilians in Defence Services (Revised Pay) Rules, 2008 (SRO 21-E of 2008).
- III. Infirmity in the Ministry of Urban Development Joint Adviser (Public Health and Environmental Engineering) Recruitment Rules, 2008 (GSR 530-E of 2008).

2. The shortcomings observed during scrutiny of the rules mentioned above were brought to the notice of the Ministries concerned for their comments/necessary corrective action. The Ministries concerned are in the process of taking action on all the recommendations contained in the Fifth Report except that in Para 2.5. A statement showing the action taken by the Government on the recommendations contained in the Fifth Report (15th Lok Sabha) is given in Appendix-I.

3. As regards para 2.5 relating to absence of a footnote or an explanatory note that no one would be adversely affected because of the retrospective effect given to the Civilians in Defence Services (Revised Pay) Rules, 2008, the Ministry of Defence had stated that no case had come to their notice about adverse effect of the Rules on account of their retrospective effect and if in case of such an eventuality, existing mechanism like Anomaly Committee, redressal of grievances will take care of the situation.

4. Since it was felt that giving such explanatory note was essential not because of legal necessity but because of propriety and as a check on abuse of power and to prove that there is no malafide, the Committee on Subordinate Legislation (2009-2010) in their Fifth Report (15th LS) had recommended in this connection as follows:-

“The Committee therefore, do not approve of the response of the Ministry in this regard. The Committee urge the Ministry of Defence to scrupulously follow the recommendations of the Committee on Subordinate Legislation while framing such rules in future and accordingly apprise them of the precise action taken in this regard.

The Ministry of Defence in their Action Taken Reply have reiterated their earlier stance and have stated that there may not be any need to add an explanatory note”.

5. The Committee note with satisfaction that five out of six recommendations contained in the Fifth Report (Fifteenth Lok Sabha) have been accepted by the Government. The Committee appreciate the initiation of the Government’s action to rectify the lacuna observed in the rules in accordance with five recommendations (Para Nos. 1.4, 1.5, 1.6, 1.8 and 3.4) of the Committee contained in the Report. With regard to the recommendation (Para 2.5) of the Committee pertaining to the Ministry of Defence regarding the absence of an explanatory note stating that the retrospective effect given to the rules will not affect any one adversely, and in case there is any such eventuality, the anomaly Committee would take care of it, the Committee are unhappy to note that the Ministry is not inclined to rectify the lacuna. The Committee reiterates that the explanatory note in such cases is essential as a check on abuse of powers and to prove that there is no malafide. The Committee are not convinced with the reply of the Ministry and therefore express their strong displeasure that the Ministry did not seem to have paid any heed to the intention of the Committee’s recommendation in this regard. The Committee, therefore, urge the Ministry to rectify the lacuna at the earliest and intimate them about the same instantly.

New Delhi;
SEPTEMBER , 2011/BHADRA, 1933

P. KARUNAKARAN,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX – I

(vide Para 4 of Introduction of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS CONTAINED IN THE FIFTH REPORT OF THE COMMITTEE (15th LOK SABHA)

1.0 Infirmities in the Ministry of Micro, Small and Medium Enterprises, Office of the Development Commissioner (Micro, Small and Medium Enterprises), Group 'A' Gazetted Posts (Electronics and Electrical Disciplines) Recruitment Rules, 2008 (GSR 185 of 2008).

Recommendation (Paras 1.4, 1.5, 1.6 & 1.8)

1.4 The Committee desire that when there is no specific deputation quota for the post of Director (Electronics) and in case, any incumbent is appointed on deputation due to non-filling of vacancy by the mode of promotion, in order to avoid frequent replacements which could affect continuity in the organization as well as render the accumulative wealth of experience redundant, the period of deputation in such cases should necessarily be prescribed as 5 years. In addition to this, since both the post(s) have identical pay scales and in terms of DOPT guidelines on Recruitment Rules as quoted by the Ministry, the period of deputation needs to be 5 years.

1.5 The Committee also observe that while clarifying the position of deputation for the post(s) of Deputy Director (Electronics) and Deputy Director (Electrical), the Ministry have stated that the deputation tenure for the post of Dy. Director (Electronics) (Sl.No. 4) is 4 years and that it had been printed as 3 years in the Gazette of India due to printing error. The Ministry have informed that they are in the process of issuing amendment in the notification to suitably rectify the discrepancy. The Committee desire that a copy of the notification carrying out the amendment may be supplied to them at the earliest. The Committee urge the Ministry to be more careful in future while framing the Recruitment Rules.

1.6 The Committee note that the entry under posts at Sl. No(s). 5 & 8 in Column 7 of the Schedule was not in accordance with the relevant guidelines issued by DOPT in this regard. The Committee note with satisfaction that the Ministry have noted the lacuna as pointed out by the Committee. The Ministry had also stated that they are taking necessary action for amending the RRs by inserting the word "or" in place of "and". The Committee urge the Ministry to be more careful in future and adhere to the guidelines issued by DOPT while framing the Recruitment Rules.

1.8 The Committee note that the entry under essential qualification for direct recruitment to the post of Assistant Director (Grade-I) (Electronics) includes 'Three years experience in a supervisory capacity'. In the absence of the type of organizations from where such experience is to be

considered, the entry appears to be susceptible to the risk of being interpreted variedly by different persons and therefore the experience gained by the candidates from sundry organizations will also have to be reckoned for filling up the post. On being pointed out, the Ministry of Micro, Small and Medium Enterprises had simply made an attempt to define the term "Electronics" in all its dimensions. However, the Ministry had not clarified on the point that the term 'experience' needs to be defined properly so that experience gained by the candidates from sundry organizations may not be reckoned for filling up the post of Assistant Director Grade-I (Electronics) on direct recruitment basis. Thus, the ambiguity in the rules leaves open the scope for misuse of delegated legislation and harms the interest of general public at large. The Committee desire the Ministry to incorporate an in-built provision in the rules for filtering the component of experience gained by candidates from sundry organizations. The Committee also desire the Ministry to amend the rules to make the entry more precise and specific, thereby obviating any scope for ambiguity in the recruitment rules.

Reply of the Ministry

The draft amendment of the Notification has since been vetted by Ministry of Law. The same is being forwarded to Official Language Wing of the Ministry of Law for translation of the Notification into Hindi. Thereafter the same shall be forwarded to Government of India press for publication in the Gazette of India. As desired by the Committee under Recommendations No. 2 and 3, a copy of the amendment Notification shall be sent to the Lok Sabha Secretariat as and when notified copies are received from the press. As regards Recommendations No. 1 and 4, this office is taking up the matter with DoPT & UPSC. Action on these recommendations shall be taken as and when advice of these departments are received.

[Ministry of Micro, Small and Medium Enterprises)
OM No. A-12018/4/2003-A(G) dated 5.8.2010]

Clarification sought from the Ministry

The Ministry was requested to submit further progress

Further reply of the Ministry

It is stated that the recommendations No. 2 & 3 i.e. contained in Paras 1.5 & 1.6 of the Fifth Report of the Committee on Subordinate Legislation were printing errors and have been incorporated in the copy of notification. Now, a copy of Notification has been sent to the Government of India Press for publishing the same in the Gazette of India vide this office letter No. A-12018/4/2003-A(G) dated 27.10.2010.

As regards, the recommendations No. 1 and 4 (contained in Paras 1.4 & 1.8), this office had sent a proposal to Deptt. of Personnel & Training , Estt (RR Division) on dated 26.8.2010 for their approval regarding changes n GSR 185 of 2008 i.e. the Recruitment Rules, 2008 for the post of Director (Electronics) and Assistant Director (Grade-I) (Electronics). After examining the proposal, DOPT, Estt.(RR) Division has agreed with the proposal and suggested to consult UPSC.

Accordingly, revised Schedule, Annexure-III and draft Notification were prepared and sent to UPSC on dated 13.12.2010 to obtain Commission's approval. After obtaining the Commission's approval further necessary action to amend the RRs will be taken.

[Ministry of Micro, Small and Medium Enterprises]

OM No. A-12018/4/2003-A(G) dated 20.12.2010]

II. The Civilians in Defence Services (Revised Pay) Rules, 2008 (SRO 21-E of 2008).

Recommendation (Para 2.5)

The Committee therefore, do not approve of the response of the Ministry in this regard. The Committee urge the Ministry of Defence to scrupulously follow the recommendations of the Committee on Subordinate Legislation while framing such rules in future and accordingly apprise them of the precise action taken in this regard.

Reply of the Ministry

The Civilian in Defence Services (Revised Pay) Rules, 2008 were framed on the basis of Central Civil Services (Revised Pay) Rules, 2008 issued by Ministry of Finance for implementation of VI CPC recommendations. The Civilians in Defence Services (Revised Pay) Rules, 2008 as well as Central Civil Services (Revised Pay) Rules, 2008 were issued with retrospective application based on the specific recommendations of the Sixth Central Pay Commission. Such Rules with retrospective applicability were also issued in the past based on the recommendations of the successive Pay Commissions.

Further, under the rules, employees have the option to retain the pre-revised pay scales if it is more beneficial to them or to come over to the new pay structure from a date subsequent to 1.1.2006, if that is more beneficial.

Moreover, if at all any anomaly arises due to retrospective application of the Rules with effect from 1.1.2006, the same could be referred to the Departmental Anomaly Committee or the National Anomaly Committee.

Furthermore, the mechanism available in the shape of Rule 16 of the Civilians in Defence Services (Revised Pay) Rules, 2008 has given power to the President to relax these rules in case provisions of these rules cause undue hardship in any particular case.

In view of the above, there may not be any need to add a foot-note/explanatory note in the rules to the effect that no one will be adversely affected as a result of retrospective effect being given to these rules.

[Ministry of Defence OM No. H-11013/16/2010/D(Parl) dated 29.7.2010]

III. Infirmity in the Ministry of Urban Development Joint Adviser (Public Health and Environmental Engineering) Recruitment Rules, 2008 (GSR 530-E of 2008).

Recommendation (Para 3.4)

The Committee had recommended time and again that the provisions in the rules should be clearly specified to avoid any scope for ambiguity and minimise the possibility of being interpreted differently by different officials/persons. The Committee note that in the instant case, the experience required in Column 12(1)(b)(iii) of the Schedule to the Rules do not specify the nature of organizations from where experience would be considered. Thus, the lack of clarity in the rules vitiates the purpose of delegated legislation. Therefore, the Committee desire that such provisions, wherever prescribed in the rules, should be well defined and meet the requirements of the job.

Reply of the Ministry

Ministry of Finance (Department of Expenditure) vide ID No. F.36/E.Coord/II/2009 dated 18 May, 2009 concurred into the proposal of strengthening of Central Public Health & Environmental Engineering Organisation (CPHEEO) for creation of various posts including Joint Adviser (PHEE). Consequent upon the restructuring/strengthening, the sanctioned strength of CPHEEO has increased and necessitated review of Recruitment Rules as there have been changes in the number of posts in these grades as well as in the feeder grades. The Recruitment Rules for the post of Joint Adviser (PHEE) in CPHEEO are under revision, in accordance with the instructions issued by Department of Personnel & Training from time to time. The provisions in the revised/amended Recruitment Rules would be clearly specified/defined to avoid any kind of ambiguity.

[Ministry of Urban Development OM No. A-12018/1/2003-Admn.I/PHE(Vol.II)
dated 21.5.2010]

Reminder issue to the Ministry

The Ministry was requested to furnish a copy of the amended rules relating to the above subject may kindly be furnished to this Secretariat at the earliest.

Further reply of the Ministry

It is stated that the draft Recruitment Rules for various Group 'A' technical posts of Central Public Health and Environmental Engineering Organisation (CPHEEO), including those for the post of Joint Adviser (PHEE), were sent to Department of Personnel & Training, who have already approved the same with some modifications. The same have now been sent to Union Public Service Commission on 14.12.2010 for their concurrence/approval.

It may be mentioned that in Col.12 of the Schedule to the RRs, DOPT have agreed to reduce the minimum 3 years regular service of 2 years (for a period of 5 years) at the level of Deputy Adviser (PHE) in case of combined regular service of 10 years at the level of Assistant Adviser (PHE) and Deputy Adviser (PHE).

It is requested that the Hon'ble Chairman and the Hon'ble Members of the Committee on Subordinate Legislation may please be apprised of this position. A copy of the amended RRs would be made available to Lok Sabha Secretariat as and when the Recruitment Rules for the post of Joint Adviser (PHEE) are notified in the Gazette of India.

[Ministry of Urban Development OM No. A-12018/1/2003-Admn.I/PHE(Vol.II)
dated 21.12.2010

APPENDIX-II
(vide Para 5 of Introduction of the Report)

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

The Committee sat on Monday, the 29th August, 2011 from 1500 to 1600 hours
in Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri D.B. Chandre Gowda
3. Smt. Paramjit Kaur Gulshan
4. Shri Sanjeev Ganesh Naik
5. Shri Hamdullah Sayeed
6. Dr. Rajan Sushant
7. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri Deepak Mahna - Joint Secretary
2. Shri S.C. Kaliraman - Director

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

3. The Committee, thereafter, took up for consideration the draft 'Nineteenth Report' & 'Twentieth 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 6 of Introduction of the Report)

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

(FIFTEENTH LOK SABHA)

I.	Total No. of recommendations/observations made	6
II.	Recommendations that have been accepted by the Government [<u>vide</u> recommendations at Sl. Nos. 1.4, 1.5, 1.6, 1.8 and 3.4]	5
III.	No. of recommendations which the Committee want to pursue in view of Government reply (Para 2.5)	1
IV.	Percentage of recommendations accepted	83%