

**COMMITTEE ON SUBORDINATE LEGISLATION**  
**(FIFTEENTH LOK SABHA)**  
**(2011-2012)**

**TWENTY FIFTH REPORT**

**(PRESENTED ON 17.05.2012)**

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**LOK SABHA SECRETARIAT**

**NEW DELHI**

**May, 2012/Vaisakha, 1934 (Saka)**

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## CONTENTS

	<u>Para No.</u>	<u>Page No.</u>
COMPOSITION OF THE COMMITTEE		(iii)
INTRODUCTION		(v)
REPORT		
I. The Foreign Exchange Management (Amendment) Regulations, 2010 (GSR 340-E & GSR 341-E of 2010)	1.1-1.5	1
II. Absence of time limit in the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 (GSR 385-E of 2010).	2.1-2.4	4
III. Infirmities in the Ministry of Finance, Department of Economic Affairs, Economic Officer (Group 'B' Posts) Recruitment Rules 2010 (GSR 699 (E) of 2010)	3.1-3.8	6

## APPENDICES

I. Summary of main recommendations/observations made by the Committee	10
II. Extracts of the Minutes of the Second sitting of the Committee (2011-12) held on 16.01.2012 and Minutes of the Fifth sitting of the Committee (2011-12) held on 08.05.2012	13

**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**  
**(2011-2012)**

1. **Shri P. Karunakaran** **Chairman**
2. Shri Ghanshyam Anuragi
3. Shri Praveen Singh Aron
4. Shri Kalyan Banerjee0
5. Shri E.T. Mohammed Basheer
6. Shri Ramen Deka
7. Shri Mahesh Joshi
8. Shri Virender Kashyap
9. Shri Jitender Singh Malik
10. Dr. Thokchom Meinya
11. Ms. Mausam Noor
12. Shri Gajendra Singh Rajukhedi
13. Dr. Bholu Singh
14. Shri Vijay Bahadur Singh
15. Shri A.K.S. Vijayan

**SECRETARIAT**

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Shri Sirinivasulu Gunda - Addl. Director
4. Shri Krishendra Kumar - Under Secretary

## INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 16.01.2012.

3. The Committee considered and adopted this Report at their sitting held on 08.05.2012.

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. Extracts of the Minutes of the Second sitting of the Committee (2011-12) held on 16.01.2012 and Minutes of the Fifth sitting of the Committee (2011-12) held on 08.05.2012 relevant to this Report are included in Appendix-II.

New Delhi;  
May, 2012  
Vaisakha, 1934 (Saka)

**P. KARUNAKARAN**  
Chairman,  
*Committee on Subordinate Legislation*

## REPORT

I

### **THE FOREIGN EXCHANGE MANAGEMENT (AMENDMENT) REGULATIONS, 2010 (GSR 340-E & GSR 341-E of 2010)**

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The Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Amendment) Regulations, 2010 (GSR 340-E of 2010) and the Foreign Exchange Management (Transfer or issue of Security by a Person resident Outside India) (Amendment) Regulations, 2010 (GSR 341-E of 2010) were published in the Gazette of India, Extraordinary, Part – II, Section 3(i) dated 21 April, 2010. The dates of notification of the aforesaid rules were, however, 5 April, 2010 & 7 April, 2010 respectively. The Committee in this regard have time and again emphasized that the Extraordinary Gazette is a time bound publication used for publishing urgent material meant to be printed and made available on appointed date. Accordingly, the rules to be published in the Extraordinary Gazette are required to be published on the date of notification. However, the rules were published on 21 April, 2010 after a delay of 16 days & 14 days respectively from the date of notification. The Ministry of Finance (Department of Economic Affairs) were requested to furnish their comments in this regard.

1.2 The Ministry of Finance (Department of Economic Affairs) vide their OM dated 2 February, 2011 stated as under :-

“As per procedure, Department of Economic Affairs on receipt of draft Notification from the Reserve Bank of India, examine it in consultation with the concerned Divisions of the Department as well as the concerned Ministry/Department depending on the subject matter of the notification. The comments/views, if any, received from the concerned Division of the

Department/Department of DEA/Ministry on the draft notification, the same are incorporated in the notification. Thereafter, the notification is sent to the Government of India Press for publication with the approval of the competent authority. Hence the delay occurred which is inadvertent and regretted”.

1.3 As the Regulations pertaining to Reserve Bank of India notified under the Foreign Exchange Management Act, 1999 involve financial implications, the Ministry should therefore, have given utmost importance for the timely printing of the aforesaid regulations in the Extraordinary Gazette. Once the notifications were framed and ready for publication on 5 and 7 April, 2010 respectively, it should have been ensured that these were published on the same day. However, both these notifications were notified only on 21<sup>st</sup> April, 2010. It may be seen from the Ministry’s reply that they did not enumerate any reasons for the delay in printing. They have simply cited the reasons for delay in framing the notification. The Committee on Subordinate Legislation in their earlier recommendations have observed that the Extraordinary Gazette, which is a time bound publication and is used for publishing urgent material must be printed and made available on the appointed date. The Committee have also observed that the responsibility of the Ministry/Department does not cease with the sending of a notification to the Press. It is the concerned Ministry’s responsibility to ensure that these notifications are printed in time.

**1.4 The Committee note that the Ministry of Finance (Department of Economic Affairs) had sent two Reserve Bank of India notifications issued under the Foreign Exchange Management Act, 1999, which seek to amend the Foreign Exchange Management Regulations (GSR 340-E & GSR 341-E of 2010) for publication to the Government of India**

Press on 5 April, 2010 & 7 April, 2010 but the same were published in the Gazette of India, Extraordinary on 21 April, 2010 after a gap of 16 days & 14 days respectively. The Committee observe that the matter published in the Extraordinary Gazette was of urgent nature and therefore, should have been published on the same day on which it was sent to the Press.

(Recommendation No. 1)

1.5 Furthermore, as the instant case is related to the Reserve Bank of India's Regulations involving financial implications, utmost care and caution should have been taken to ensure timely publication of the notification. The Committee observe that the Ministry of Finance have only cited the reasons for delay in framing the notification and not the reasons for delay in publication which seem to indicate the Ministry's casual approach in ensuring timely publication of the extraordinary gazette. The Committee emphasise that the responsibility of the Ministry does not cease simply with the sending of notifications to the press. It is also the Ministry's responsibility to ensure that these are printed in time. The Committee, therefore, desire that the Ministry of Finance should incorporate some procedural safeguards in their system of governance in co-ordination with the Government of India press to ensure timely publication of notifications in the Extraordinary Gazette.

(Recommendation No. 2)



## II

### **ABSENCE OF TIME LIMIT IN THE COURIER IMPORTS AND EXPORTS (ELECTRONIC DECLARATION AND PROCESSING) REGULATIONS, 2010 (GSR 385-E OF 2010)**

The Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) on 5.5.2010. On scrutiny of the rules, it was noticed that in the second proviso to Regulation 13, there is mention about inquiry for suspension or revocation of registration of authorized courier but no time limit for completion of inquiry has been prescribed. The Ministry of Finance (Department of Revenue) were requested to furnish their comments in this regard.

2.2 The Ministry of Finance (Department of Revenue) vide their OM dated 9 February, 2011 stated as under :-

*“The second proviso of Regulation 13 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 are analogous with second proviso of Regulation 14 of the Courier Imports and Exports (Clearance) Regulations, 1998 issued vide notification No. 87/1998-Customs (N.T.) dated 9<sup>th</sup> November, 1998. As the Regulation 14 of Courier Imports and Exports (Clearance) Regulations was framed in 1998 and no difficulty so far has been reported, there does not appear any necessity to amend similar provision contained in Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. However, an instruction is being issued to field formations to complete the inquiry in terms of Regulation 13 of the Courier Imports and Exports (Electronics Declaration and Processing) Regulations, 2010 within a period of three months from the order of suspension”.*

2.3 In Regulation 13 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, the competent authority is authorised to conduct an inquiry against the Authorised Courier for suspension or revocation of his registration on the grounds of his failure to comply with any of the provisions of the aforesaid regulations like misconduct, etc. However, no time limit has been specified for completion of the inquiry. The Ministry in their reply have stated that there does not appear any necessity to amend Regulation 13 to

incorporate time limit for completion of the inquiry and at the same time instruction is being issued to field formations to complete the inquiry within a period of three months. The time limit for completion of enquiry being a very important proviso which will have a direct bearing on the fate of many authorized couriers, should be incorporated in the Regulation itself so as to make the provision specific and self contained. Administrative instructions are no substitute to statutory rules/regulations. Such instructions are also not published in the official Gazette and therefore escape the scrutiny of the Committee.

**2.4 The Committee observe that the second proviso to Regulation 13 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 (GSR 385-E of 2010) provides for inquiry before revocation of registration of authorized courier. However, no time limit has been prescribed for completion of inquiry. On being pointed out, the Ministry of Finance (Department of Revenue) have stated that no difficulty has been reported so far in an analogous proviso of some other Regulation (No. 14) framed in 1998 and there does not appear to be any necessity to amend Regulation 13 to incorporate a time limit. The Ministry of Finance have also stated that an instruction is being issued to field formations to complete the inquiry within a period of three months from the date of order of suspension. The Ministry's stand that since no difficulty had been reported in the past and therefore, there is no need for amendment seems to be myopic. The Ministry of Finance have, however, realized the need for a time limit and are reportedly in the process of issuing executive instructions stipulating a time limit of three months for completing the inquiry. The Committee feel that the executive instructions are no substitute to statutory Rules/Regulations and statutory backing to such provisions will pave way for a more responsible executive. The Committee, therefore, desire that the time limit stipulated through executive instructions should be given statutory status by suitably incorporating the provision in the Regulations.**

**(Recommendation No. 3)**

### III

#### **INFIRMITIES IN THE MINISTRY OF FINANCE, DEPARTMENT OF ECONOMIC AFFAIRS, ECONOMIC OFFICER (GROUP 'B' POSTS) RECRUITMENT RULES, 2010 (GSR 699 (E) OF 2010)**

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The Ministry of Finance, Department of Economic Affairs, Economic Officer (Group 'B' Posts) Recruitment Rules, 2010 [GSR 699 (E) of 2010] were published in Gazette of India, Extraordinary, Part-II, Section 3(i) dated 23<sup>rd</sup> August, 2010. On scrutiny of the above rules some infirmities were observed and the Ministry of Finance (Department of Economic Affairs) were, requested to furnish their comments on the same. The infirmities observed and the comments of the Ministry therein are reproduced below :-

#### **A. LACK OF CLARITY IN THE RULE**

3.2 On scrutiny of the aforesaid Rules, it was found that prescription of experience in Col.8 (ii) of the Schedule to the Rules, under 'the Essential Qualifications' requirement stipulates '2 Years experience of conducting economic investigation/research' which appeared to be vague as it was not specific about the nature and type of organisations from where such experience was to be obtained.

3.3 On being pointed out, the Ministry of Finance (Department of Economic Affairs) vide their reply dated 16<sup>th</sup> May, 2011 stated that "the matter relating to defining the experience in such a way so as to ensure that experience gained by candidates from sundry organizations does not get reckoned for filling up the post, is being re-examined in consultation with the user division and decision taken in the matter will be communicated."

3.4 The Ministry of Finance (Department of Economic Affairs) published Recruitment Rules (GSR 699-E of 2010) for the post of Economic Officer on 23.08.2010. One of the essential qualifications prescribed for the post is 2 Years experience of conducting economic investigation/research. The rule is, however, silent about the nature and type of organizations from where such experience should have been obtained. In the absence of clarity in this regard, the rule is susceptible to the risk of being interpreted variedly by different persons. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Economic Affairs) have agreed to re-examine it in consultation with the user division. The Committee desire that the Ministry of Finance should bring out necessary amendment in this regard as soon as possible. The Committee would expect the Ministry of Finance to be more vigilant in framing recruitment rules and see that rules are specific and leave no scope for different interpretations.

(Recommendation No. 4)

**B. PROBATION PERIOD**

3.5 In Column (10) of the Schedule the period of probation is mentioned as one year which needs to be spelt out clearly as 'One year for direct recruits'. The Ministry of Finance (Department of Economic Affairs) vide their OM dated 16.5.2011 have stated "the Recruitment Rules are being modified to incorporate the term 'One year for direct recruits' in Column 10 in place of 'One year'."

**3.6** Though Column (10) of the Schedule prescribed one year probation period, it was not clear as to whom the probation period would apply. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Economic Affairs) have clarified that the probation period of one year is applicable only for direct recruits. The Committee recommend that the rule should be suitably amended to reflect this position.

(Recommendation No. 5)

**C. OMISSION IN SAVING CLAUSE**

**3.7** On scrutiny of the aforesaid Rules, it was also observed that in the Rule 6 regarding reservation, relaxation of age limit and other concessions was not applicable to Ex-Servicemen. The Ministry of Finance (Department of Economic Affairs) vide their OM dated 16.5.2011 have stated that “the provision of Recruitment Rules are being modified to provide for the Saving Clause for Ex-Servicemen.”

**3.8** The Rule 6 of the aforesaid Recruitment Rules is silent about extending the benefit of reservation, relaxation of age limit and other concessions to ‘Ex-Servicemen’. The Ministry of Finance (Department of Economic Affairs) vide their OM dated 16.5.2011 stated that the Recruitment Rule is being modified to make the Saving Clause applicable for Ex-Servicemen. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Economic Affairs) have agreed to rectify the infirmity and bring

**Ex-Servicemen within the ambit of the Saving clause. The Committee recommend that the requisite amendment to the rules be carried out as assured by the Ministry of Finance and the Committee be apprised of the action taken in this regard.**

**(Recommendation No. 6)**

**New Delhi;  
May, 2012  
Vaisakha, 1934 (Saka)**

**P. KARUNAKARAN  
Chairman,  
*Committee on Subordinate Legislation***



<p>2.</p>	<p>2.4</p>	<p>incorporate some procedural safeguards in their system of governance/in co-ordination with the Government of India press to ensure timely publication of notifications in the Extraordinary Gazette.</p> <p>Absence of time limit in the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 (GSR 385-E of 2010)</p> <p>The Committee observe that the second proviso to Regulation 13 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 (GSR 385-E of 2010) provides for inquiry before revocation of registration of authorized courier. However, no time limit has been prescribed for completion of inquiry. On being pointed out, the Ministry of Finance (Department of Revenue) have stated that no difficulty has been reported so far in an analogous proviso of some other Regulation framed in 1998 and have therefore opined that there does not appear to be any necessity to amend Regulation 13 to incorporate a time limit. The Ministry of Finance have also stated that an instruction is being issued to field formations to complete the inquiry within a period of three months from the date of order of suspension. The Ministry's stand that since no difficulty had been reported in the past and therefore, there is no need for amendment seems to be myopic. The Ministry of Finance have, however, realized the need for a time limit and are reportedly in the process of issuing executive instructions stipulating a time limit of three months for completing the inquiry. The Committee feel that the executive instructions are no substitute to statutory Rules/Regulations and statutory backing to such provisions will pave way for a more responsible executive. The Committee, therefore, desire that the time limit stipulated through executive instructions should be given statutory status by suitably incorporating the provision in the Regulations.</p>
<p>3.</p>	<p>3.4</p>	<p>Infirmities in the Ministry of Finance, Department of Economic Affairs, Economic Officer (Group 'B' Posts) Recruitment Rules, 2010 (GSR 699 (E) of 2010)</p> <p>The Ministry of Finance (Department of Economic Affairs)</p>



		<p>published Recruitment Rules (GSR 699-E of 2010) for the post of Economic Officer on 23.08.2010. One of the essential qualifications prescribed for the post is 2 Years experience of conducting economic investigation/research. The rule is, however, silent about the nature and type of organizations from where such experience should have been obtained. In the absence of clarity in this regard, the rule is susceptible to the risk of being interpreted variedly by different persons. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Economic Affairs) have agreed to re-examine it in consultation with the user division. The Committee desire that the Ministry of Finance should bring out necessary amendment in this regard as soon as possible. The Committee would expect the Ministry of Finance to be more vigilant in framing recruitment rules and see that rules are specific and leave no scope for different interpretations.</p> <p>3.6 Though Column (10) of the Schedule prescribed one year probation period, it was not clear as to whom the probation period would apply. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Economic Affairs) have clarified that the probation period of one year is applicable only for direct recruits. The Committee recommend that the rule should be suitably amended to reflect this position.</p> <p>3.8 The Rule 6 of the aforesaid Recruitment Rules is silent about extending the benefit of reservation, relaxation of age limit and other concessions to 'Ex-Servicemen'. The Ministry of Finance (Department of Economic Affairs) vide their OM dated 16.5.2011 stated that the Recruitment Rule is being modified to make the Saving Clause applicable for Ex-Servicemen. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Economic Affairs) had agreed to rectify the infirmity and bring Ex-Servicemen within the ambit of the Saving clause. The Committee recommend that the requisite amendment to the rules be carried out as assured by the Ministry of Finance and the Committee be apprised of the action taken in this regard.</p>
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## APPENDIX -II

(Vide Para 5 of the Introduction of the Report)

### EXTRACTS FROM MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)

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The Committee sat on Monday, 16<sup>th</sup> January, 2012 from 1430 to 1525 hours in Committee Room '62', Parliament House, New Delhi.

#### PRESENT

1. Shri P. Karunakaran Chairman

#### MEMBERS

2. Shri Ghanshyam Anuragi
3. Shri E.T. Mohammed Basheer
4. Shri Mahesh Joshi
5. Shri Virender Kashyap
6. Dr. Thokchom Meinya

#### SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Shri Sundar Prasad Das - Deputy Secretary
4. Shri Krishendra Kumar - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2011-12).

3. XX XX XX XX

4. The Committee, thereafter, considered the following memoranda:

- (i) **Memorandum No. 30** – regarding the Foreign Exchange Management (Amendment) Regulations, 2010 (GSR 340-E & GSR 341-E of 2010).
- (ii) **Memorandum No. 31** – regarding absence of time limit in the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 (GSR 385-E of 2010).
- (iii) **Memorandum No. 32** – regarding infirmities in the Ministry of Finance, Department of Economic Affairs, Economic Officer (Group 'B' Posts) Recruitment Rules, 2010 (GSR 699-E of 2010).

5. After deliberations, the Committee decided to incorporate the points raised in Memoranda Nos. 30 to 32 in their Report slated to be prepared in this regard.

6. XX XX XX XX

The Committee then adjourned.

## EXTRACTS FROM MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)

The Fifth sitting of the Committee held on Tuesday, 8 May, 2012 from 1500 to 1540 hours in  
Chairman's Room No. 143, Parliament House, New Delhi.

### PRESENT

1. Shri P. Karunakaran Chairman

### MEMBERS

2. Shri Kalyan Banerjee
3. Shri E.T. Mohammed Basheer
4. Shri Ramen Deka
5. Shri Mahesh Joshi
6. Shri Virender Kashyap
7. Dr. Thokchom Meinya
8. Shri Gajendra Singh Rajukhedi
9. Dr. Bholu Singh
10. Shri Vijay Bahadur Singh
11. Shri A.K.S. Vijayan

### SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Shri Srinivasulu Gunda - Additional Director
4. Shri Krishendra Kumar - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2011-12).

3. The Committee, then, considered the draft 'Twenty Fifth Report' and adopted the same without any modification. The Committee authorized the Chairman to present the same to the House.

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The Committee then adjourned.

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\*\*Omitted portion of the Minutes are not relevant to this Report