

C.B. II No. 448—VOL.-II

**COMMITTEE ON SUBORDINATE
LEGISLATION**

**(THIRTEENTH LOK SABHA)
(1999-2000)**

FIRST REPORT

**[Action Taken Report on the Implementation of Recommendations/
Observations contained in Second, Third and Fourth Reports
(Eleventh Lok Sabha) of the Committee]**

[Presented on 18.12.2000]



**LOK SABHA SECRETARIAT
NEW DELHI**

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LOK SABHA SECRETARIAT

CORRIGENDA

The First Report of the Committee on Subordinate Legislation (Thirteenth Lok Sabha)

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| (iv) Implementation of the recommendations contained in para 9.3 of the 4th Report (Eleventh Lok Sabha) re: The Tea Board (Recruitment and conditions of services of Directors of Tea Promotion appointed by Government) Amendment Rules, 1995 (GSR 23-E of 1995). | | |
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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION
(1999-2000)**

- Shri Indrajit Gupta —*Chairman*
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SECRETARIAT

1. Shri P.D.T. Achary —*Joint Secretary*
2. Shri Ram Autar Ram —*Director*
3. Shri P.D. Malvalia —*Under Secretary*

INTRODUCTION

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

2. This Report relates to the implementation of the recommendations of the Committee made in their Second, Third and Fourth Reports (Eleventh Lok Sabha).

3. The Committee considered and adopted this Report at their sitting held on 22.8.2000.

4. The Minutes of the sitting of the Committee are appended to the Report.

5. 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 consolidated form in Appendix I to the Report.

NEW DELHI;
22 August, 2000

INDRAJIT GUPTA,
Chairman,
Committee on Subordinate Legislation.

REPORT

I

RECOMMENDATION OF THE COMMITTEE ON WHICH THE REPLY OF THE MINISTRY IS SATISFACTORY.

Implementation of recommendations contained in paras 1.5 and 1.6 of the Second Report of the Committee on Subordinate Legislation (Eleventh Lok Sabha) regarding New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980.

The Committee on Subordinate Legislation in paras 1.5 and 1.6 of their Second Report (Eleventh Lok Sabha) recommended as under:—

1.5 “The Committee feel that in the absence of any provision for automatic promotion of class IV employees in the Regulations of 1980, the fate of class IV staff who have completed 15 years of service in the post would entirely depend upon the Port Authorities who may or may not send the proposal for promotion of class IV staff in time to the Ministry. The Committee also feel that the existing procedure followed by the Ministry for promotion of class IV staff is an ad-hoc arrangement and is not a solution to the problem of lack of promotional opportunities for these categories of employees. The Committee agree with the view of the representative of the Ministry that a class IV employee should get at least two promotions in a career of 32 years.

1.6 The Committee, therefore, recommend that the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 should be suitably amended so as to include an express provision for time bound promotion for those class IV employees who have put in 15 years of service in the Port Trust.”

The Report of the Committee was presented to the House on 12 December, 1996 and was forwarded to the Ministry of Surface Transport for implementation of the recommendations contained therein.

The Ministry in their Action Taken Reply dated 23 April, 1998 stated as under:—

“Time bound promotion is not an accepted policy of the Government. If Government of India accepts the recommendations of the Fifth Pay Commission about time related pay-scales, this Ministry has no objection to extend it to the Ports in future.”

1.4 The aforesaid action taken reply of the Ministry was considered by the Committee at their sitting held on 22.8.2000 where the Committee noted that the said reply in respect of recommendations contained in paras 1.5-1.6 of the Second Report (Eleventh Lok Sabha) regarding New Mangalore Port Trust Employees (RSP) Regulations, 1980 did not reflect the factual position regarding time bound promotion of Class IV Employees, as certain agreement had since been arrived at between various Federations of Dock Workers and the Management of Port Trusts regarding Assured Career Progression Scheme. Information to this effect was sought from the Ministry of Surface Transport.

1.5 The Ministry *vide* their aforesaid communication dated 3rd October, 2000 have stated that as per the regulation of Section 12(3) of Industrial Disputes Act, 1947 a settlement on wage revision, retirement benefits and conditions of services of Port and Dock workers at Major Ports have been arrived at on 2.8.2000. Assured Career Progression to Class III and IV employees is one of the Clause of the settlement whereby Port Workers of Class III & IV category are to be given two financial upgradations on completion of 12 years and 24 years of regular service, provided there was no regular promotion during the period of 12 & 24 years. Further, since the settlement is under the Industrial Disputes Act, it has the force of law and therefore, need not be incorporated in the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations.

1.6 The Committee note with satisfaction that now in accordance with their recommendation, all class III and Class IV employees of the Port Trust will get atleast two financial upgradation in 24 years of service under the Assured Career Progression settlement. The Committee, therefore, do not wish to pursue the matter any further.

X

II

- (I) Implementation of recommendations contained in paras 9.3-9.5 of 3rd Report (Eleventh Lok Sabha) re: Central Engineering Services (Roads) Group 'A' Rules, 1995 (GSR 487 of 1995);
- (II) Implementation of Recommendations contained in paras 2.3 & 2.4 of the 4th Report (Eleventh Lok Sabha) re: The Central Water Engineering (Group A) Service Rules, 1995 (GSR 486 of 1995);
- (III) Implementation of recommendations contained in paras 7.5 to 7.7 of Fourth Report (Eleventh Lok Sabha) re: The Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Civil Service Rules, 1995 (GSR 91 of 1996); and
- (IV) Implementation of the recommendations contained in para 9.3 of the 4th Report (Eleventh Lok Sabha) re: The Tea Board (Recruitment and conditions of services of Directors of Tea Promotion appointed by Government) Amendment Rules, 1995 (GSR 23-E of 1995).

The Third and Fourth Reports of the Committee containing the recommendations on the above mentioned subjects were presented to the House on 11 March, 1997. These reports were forwarded to the concerned Ministries, namely, the Ministry of Surface Transport, Ministry of Water Resources, Ministry of Home Affairs and the Ministry of Commerce respectively for implementation of the recommendations contained therein.

2.2 In these reports on the aforesaid subject matter, the Committee had recommended that while terminating or reverting the services of a probationer, reasons should be recorded by the competent authority and the same should also be communicated to the concerned person if a person was not found fit for appointment.

2.3 The Department of Personnel and Training which is the nodal agency for framing of the aforesaid rules, in response to the implementation of the recommendations of the Committee have stated that before taking such action, adequate chance is given to the probationer to improve his shortcomings. Further, reasons are recorded, though not communicated in the case of termination/reversion and, therefore, there is no chance of any arbitrary use of power by the competent authority. The DOP&T have also cited the judgement of the Supreme Court in the case of Manohar Lal Preeta Vs. State of HP, (1974 Lab IC 1151) in which it was held that there is no obligation on the part of the appointing authority to assign any reasons for terminating the appointment during the period of probation. The Courts have, however, observed that the authority is not debarred also from stating the reasons if it chooses to do so.

2.4 Further, as per the subsequent clarification furnished by the DOP&T, it is seen that termination of the services of a probationer in no way adversely affects his future prospects of appointment under Government as a probationer does not lose his right to be considered for appointment to any other post or even to the same post by promotion or direct recruitment. However, if reasons for termination are formally conveyed, then it would amount to attaching a stigma on the probationer and would adversely affect his future prospects of appointment. The Ministry have also stressed that termination of probation is not a punishment but only an administrative action taken under initial terms and conditions of appointment as accepted by the probationer at the time of joining service, and, therefore, Central Civil Services (Classification, Control and Appeal) Rules are not relevant or applicable.

2.5 In support of their aforesaid contentions, the DOP&T have also cited some Supreme Court judgements. In the case of State of Bihar Vs. Gopi Kishore, Supreme Court has observed that appointment to a post on probation gives the probationer no right to the post and his services may be terminated without taking recourse laid down in the relevant rules for dismissing a public servant.

2.6 Further such termination without any enquiry whatsoever, cannot be said to deprive the probationer of any right to that post and is, therefore, no punishment. But, if on the other hand, the employer hold an enquiry into the alleged misconduct or inefficiency, or for some other similar reasons, the termination of service in such a case would amount to punishment because it puts a stigma on the competence of the probationer and thus affects his future career. In such a case, the probationer, is entitled to the protection of Article 311 (2) of the Constitution.

2.7 From the aforesaid clarification furnished by the DOP&T it may be seen that before terminating or reverting the services of a probationer, reasons are recorded in writing and thus there is no scope for any arbitrary use of the power. As regards communicating the reasons, the probationer is apprised of the same at several stages during the probation period. Further as held by the Supreme Court, there is no obligation on the part of the competent authority to communicate such reasons to the concerned person. The DOP&T have advocated strong reasons which appears to be justified in support of the existing scheme of the functioning of the system of probation vis-a-vis the recommendations of the Committee. Further, in a similar case, the Committee in Para 49 of their First Report (8th Lok Sabha) have accepted the view of the Government that a probationer need not be informed of the reasons for his discharge or reversion to this substantive post. The Committee feel that if such reasons are communicated to the probationer, it would put a stigma on his future prospects. The Committee, therefore, feels that the reply of the Ministry is satisfactory and do not wish to pursue the matter any further.

III

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE

Under Direction 108 (1) by the Speaker, the Ministries are required to furnish from time to time statements of action taken or proposed to be taken by them on the recommendations made by the Committee in their reports. With a view to ensuring speedy implementation of their recommendations, the Committee, in paragraph 93 of their Sixteenth Report (Fifth Lok Sabha), had fixed a time-limit of six months within which the Ministries/Departments should implement their recommendations. If in any particular case it had not been possible to adhere to this time limit, they should ask for extension of time from the Committee after explaining the difficulties in implementing the recommendations. Still the cases of delay continue to occur. The Committee cannot but stress again that the Ministries should evolve suitable measures to streamline their procedure in order that the recommendations made by the Committee are implemented with the maximum time-limit of six months laid down by them.

NEW DELHI;
22 August, 2000

INDRAJIT GUPTA,
Chairman,
Committee on Subordinate Legislation.

*

**STATEMENT SHOWING THE ACTION TAKEN BY THE
GOVERNMENT ON THE RECOMMENDATIONS OF THE
COMMITTEE**

| S. No. | Reference to Para Nos. of Report | Summary of Recommendations / Assurances | Gist of Government reply |
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| 1 | 2 | 3 | 4 |
| 1 | <p>SECOND REPORT (ELEVENTH LOK SABHA (PRESENTED ON 12.12.96))</p> | <p><i>New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980</i></p> | |
| | 1.10 | <p>The Committee note that the existing provisions in the New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 dealing with probation of employees do not provide for recording of reasons by the appointing authority before discharging a probationer who has no lien on any post or reverting an employee to the post held by him prior to his appointment in the extant service, in case he is not found fit for permanent appointment. The Committee are not satisfied with the plea taken by the Ministry that such an affected probationer can represent his case to the appointing authority, as it has been accepted by the Ministry that such provision is not in the rules but only mentioned in the instructions issued by the Department of Personnel and Training.</p> | |

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| 1.11 | <p>The Committee are of the view that guidelines are no substitute for the statutory rules. Further, in the absence of a provision in the regulation, a probationer is unlikely to know the right given to him to represent his case before the appointing authority in case of adverse action against him. The Committee are further of the view that a person on probation, who is being discharged or reverted as the case may be or whose probation period is being extended has a right to know about the reasons for such an action against him. Furthermore, such reasons should also be recorded in writing by the appointing authority.</p> | |
| 1.12 | <p>The Committee, therefore, The Ministry recommend that the New of Surface Mangalore Port Trust Employees Transport <i>vide</i> (Recruitment, Seniority and their O.M. Promotion) Regulations, 1980 No. H-11011/ should be amended to include a 1/97-P.E.I. provision therein that where it is dated 23.4.98 proposed to terminate the have accepted employment of a probationer the recommen- whether during or at the end of dation of the the period of probation, for any Committee specific fault or on account of his and amended unsuitability for the service, the the regulations probationers shall be apprised of accordingly the grounds of such proposal and <i>vide</i> CSR 334- given an opportunity to show cause E dated 4.6.98. against it, before orders are passed by the competent authority. It must also be ensured that his explanation in reply thereto is given due consideration.</p> | |

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| 2. | <i>Recovery of debts due to Banks and Financial Institutions Bill, 1993 (Bill No. 59 of 1993)</i> | | |
| 3.8 | <p>The Committee note that as per the opinion of Attorney-General of India, Sections 1(4), 3 and 8 of the Act are legislative in nature whereas Section 2(h), the Attorney-General has opined that such notification would be administrative in nature because it would involve issue of specific direction to bring a particular institution within the purview of the Act, having regard to the business activity and the area of operation of that particular institution.</p> | <p>The Ministry have laid the copies of the Notification issued by the Banking Division under Section 3 and 8 of Recovery of Debts due to Banks & Financial Institutions Act, 1999</p> | <p>(Vide O.M. No. 6.7.97-DRT dated 24.7.98)</p> |
| 3.9 | <p>The Committee, after going through the opinion of the Attorney-General of India, observed that it is functionally a composite phenomenon to distinguish between Administrative and Legislative Orders. If looked in microscopically, its spectrum shows varied shades of Legislative and Administrative Orders. But this type of examination is not possible in day to day working, because Administrative functions includes a bit all the three, and is an admixture of Executive, Legislative and Judicial. The distinction between Legislative and Administrative is often not</p> | | |

clear, the distinction between the Legislator and Administrator is much more obvious. Whether the order of Government falls within Legislative or Administrative, it depends on the type and quantum of administrative discretion vested in the Administrative authority and also on the condition of procedural conformity. In the instant case, Attorney-General opined that notification issued under Section 2 (h) would be an administrative order are not required to be laid on the Table of both of the Houses.

3.10 The Committee, therefore, recommend that the notification issued under Sections 1(4), 3 and 8 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 should be laid before the two Houses of the Parliament. The Committee desire the Ministry of Finance, Ministry of Law, Justice and Company Affairs to take appropriate action to ensure the laying of the aforesaid notification before the two Houses of Parliament.

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| THIRD REPORT (ELEVENTH LOK SABHA) (PRESENTED ON 11-3-1997) | | |
| 3. | <i>The Vegetable Oil Products (Standards of Quality) Amendment Order, 1995 (GSR 139-E of 1995)</i> | |
| 1.7 | <p>The Committee note that the wording 'for any special reasons' occurring in the proviso to clause 2 of the aforesaid Order conferred unfettered discretionary powers on the Controller in the matter of giving permission to any person for the manufacture, stock or sale of Vegetable Oil Products not conforming to the specified standards. The Committee feel that there must be some safeguards or checks to prevent the misuse of the discretionary power so conferred on the Controller and the best safeguard could be by making it obligatory for the Controller to record the reasons in writing while giving permission to any person under the enabling proviso. The Committee therefore, recommend that the Ministry should amend the Vegetable Oil Products (Standards of Quality) Order so as to provide for the recording of reasons in writing by the Controller while granting permission to any person to manufacture, stock or sale any variety of Vegetable Oil Products not conforming to specified standards and that too subject to the approval of the higher authorities and further to provide that such reasons should not be prejudicial to public interest in any manner.</p> <p>The Ministry of Civil Supplies, Consumer Affairs and Public Distribution have amended the Order as per the recommendation of the Committee, <i>Vide</i> GSR 624-E dated 27.10.1997 (Ministry's O.M. No. 2-VP(1)97), dated 28.10.1997</p> | |

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| 4. | <p><i>The Office of the Development Commissioner (Handlooms) National Handicrafts and Handlooms Museum Group 'C' (Junior Accountant) Recruitment (Amendment) Rules, 1995 (GSR 174 of 1995).</i></p> | | |
| 2.3 | <p>The Committee note that the term 'first class studio' occurring in Col. 7 of the schedule against S.N. 11 of the aforesaid Rules was vague and could be interpreted differently by different persons. The Committee note that on being pointed out, the Ministry of Textiles defined the term 'first temporary plan class studio' as a studio that can produce photographic work of professional quality which is acceptable for publishing in newspapers, periodicals and books. The Committee desire that Ministry should incorporate the term as defined by them in Col. 7 of S.No. 11 regarding the post of Dark Room Assistant so that this may not be interpreted differently by different persons.</p> | <p>The Ministry of Textiles have stated that post of Dark Room Assistant in the National Handicrafts and Handloom Museum was a temporary plan sanctioned upto February, 1994. The post is deemed to have been abolished and not likely to be revived.</p> | |
| | | | <p>(Vide Letter No. 1(1)95-DCH (NHHM) 479 dated 13.6.1997.</p> |
| | | | <p>The Ministry have accordingly deleted the post 'Dark Room Assistant' vide GSR 120 & 121 of 1998 dated 4 July, 1998.</p> |

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| 5. | <i>The Central Reserve Police Force (Combatised Para-Medical Posts) Recruitment Rules, 1995 (GSR 223 of 1995)</i> | <p data-bbox="537 695 932 1213">4.2 The Committee note that on The Ministry being pointed out the Ministry of Home Affairs agreed to amend the Central Reserve Police Force (Combatised Para-medical Posts) Recruitment Rules, 1995 so as to include the Ward Masters and Master Incharge also who are in the same grade as that of the Inspector (Ward Sister) for consideration for the post of Subedar Major in order to safeguard the interests of the Ward Masters and Master Incharge. The Committee desire the Ministry to do the needful at the earliest.</p> <p data-bbox="537 1283 932 1717">4.4 The Committee note that on being pointed out, the Ministry of Home Affairs have mentioned the amount of special pay admissible to the persons working against the post of Lance Naik and have also agreed to make the necessary amendment in the rules by incorporating therein the amount of the special pay. The Committee desire that the Ministry of Home Affairs should do the needful at the earliest.</p> | <p data-bbox="948 352 1127 562">(vide Ministry of Textiles letter No. 1/8(46)94/NHHM 1563 dated 24.7.1998).</p> <p data-bbox="948 695 1127 1276">The Ministry of Home Affairs have complied with the recommendation of the Committee by issuing the amendment notification vide GSR 95 dated 22.2.1997. (Ref. O.M. No. I-11019/5/97- Pers. II dated 9.5.1997)</p> |

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| 6. | <i>The Sugar (Price Determination for 1995-96 Production) Order, 1995 (GSR 731-E of 1995)</i> | | |
| 8.3 | The Committee observe that the Sugar (Price Determination for 1995-96 Production) Order, 1995 was stated to have come into effect at once. Normally, the notifications are brought into force from the date of their publication in the official gazette or from a specific date as may be mentioned therein. | The Ministry of Food and Consumer Affairs have undertaken to implement the recommendation of the Committee on Subordinate | |
| 8.4 | The Committee feel that the wordings "it shall come into force at once" contained in the commencement clause were very vague and leave scope for speculation as to the actual date of coming into force of the Order. In the case of Orders which involve financial matters as in the case of extant order which have a bearing on price changes, it becomes all the more important to specify the date of their commencement. The Committee feel that since the notification was intended to come into force from the date of its publication in the official gazette, the Ministry should have no difficulty in indicating the precise date. | Legislation by specifying the date of coming into force of such orders instead of making the orders effective at once in the future. | (Ref. O.M. No. 2-295-SPY (D.II dated 28.4.1998 of the Deptt. of the Sugar and Edible Oils, Ministry of Food and Consumer Affairs) |
| 8.5 | In this connection, the Committee would like to draw the attention of the Ministry to the following recommendation of the Committee made in para 12 of their Second Report (Seventh Lok Sabha namely:— | | |

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“.....the Committee feel that it would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. Accordingly the Committee recommend that a sub-rule regarding the date of coming into force should always be included in rules in future.”

- 8.6 The Committee, reiterating the above recommendation of the Committee, desire that the Ministry of Food should amend the Sugar (Price Determination for 1995-96 Production) Order so as to specify date of coming into force of the order replace the words “at once.”

FOURTH
REPORT
(ELEVENTH
LOK SABHA)
(PRESENTED
ON 11.3.97)

The Motor Vehicles (All India Permit for Tourist Transport Operators) Amendment Rules, 1995 (GSR 286-E of 1995)

7. 1.4 The Committee note that The eligibility Condition 6 of Eligibility condition for Conditions for Recognition as Recognition as Approved Tourist Transport Approved Operator laid down under the Tourist Motor Vehicles (All India Permit Transport for Tourist Transport Operators) Operator laid Amendment Rules, 1995 confer down in the wide discretionary power on the Rules have Central Government in the matter been amended of recognizing any Firm or suitably by withdrawing/withholding at any providing that time the recognition already Govt. of India granted without assigning any may in its reasons. According to the Ministry, discretion such action can be taken in case of refuse to a complaint of serious nature recognise any where prestige of the country is Tourist involved or in the public interest. Operator or

withdraw or withhold at any time recognition granted to any Tour Operator, but before applying such discretion, it shall be lawful for the Govt. of India to issue show cause notice to the aggrieved Tour Operator and to consider his reply on merit and to communicate him the decision taken on such consideration (Vide GSR 83-E of 1998).

(Ministry of Surface Transport F. No. RT-110431/94-MVL dated 17.11.1997).

- 1.5 The Committee find the reply of the Ministry unsatisfactory. The Ministry have used vague terminology like 'prestige' of the Country is involved' or 'in the public interest' to justify the withdrawal/withholding of recognition without assigning any

reasons. The Ministry have not elaborated the situations which are covered within the parameters of such terminology. The Committee feel that in order to put certain checks on the arbitrary use of the wide discretionary power so conferred on the competent authority, it would be in the fitness of things if some safeguards are evolved in that regard while exercising such power. It should be obligatory for the Central Government to record the reasons in writing in the case of refusing or withdrawing/withholding the recognition already granted to any firm, under condition 6 of the Eligibility Conditions and should not in any manner cause prejudice to the interest of any person or firm. The Committee further desire that to have an element of transparency, the reasons for taking such action by the Central Government against any person or firm may also be communicated to them. The Committee, therefore, recommend that the Ministry of Surface Transport should amend the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules accordingly.

The Ministry of Human Resource Development (Department of Education) Assistant Education Officer (Statistics), Assistant Director (Planning) and Deputy Director (Planning) Recruitment Rules, 1995, (GSR 6 OF 1996)

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| 3.3 | <p>The Committee note that According to the Ministry of Human Resource Development the Department of Personnel and Training's instructions regarding prescribing a uniform probation period of one year for both promotees and direct recruit could not be incorporated in the extant recruitment rules inadvertently.</p> <p>However, on being pointed out, the Ministry have since taken up the matter with the Department of Personnel and Training and UPSC to amend the rules to the desired effect.</p> <p>The Committee desire that the Ministry may notify the amended rules at the earliest.</p> <p><i>The Essential Oils Grading and Marking Rules, 1993 (GSR 259 Of 1995)</i></p> | <p>The rules have been amended to provide for uniform Probation period of one year for promotees as well as direct recruits <i>vide</i> GSR 141 of 1997.</p> <p>(Ministry of Human Resource Development O.M. No. A. 12011/2/94-E. I dated 19.3.97).</p> |
| 4.2 | <p>The Committee are not convinced with the reply of the Ministry that since the draft rules were sent to the Press in the year 1993, the rules carry the year 1993, instead of 1995. In this connection, the Committee observe that as per their oft-repeated recommendations, the year in the publication in the short title of rules should conform to the year of their publication in the official Gazette. The Committee are constrained to note that the Ministry have not issued any corrigendum to rectify the error. The Committee desire that the Ministry should issue the necessary corrigendum to reflect the correct year in the short title to the rules.</p> | <p>A corrigendum to rectify the year in the short title to the Essential Oils Grading and Marking Rules, 1993 has been issued to reflect the correct year in the Rules <i>vide</i> GSR 335 of 1997.</p> |

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| | 4.4 | <p>The Committee note that there is a delay of more than 12 months in the notification of final rules after the copies of the draft rules were made available to the public for inviting their comments/ suggestions. The committee are not satisfied with the reasons furnished by the Ministry. The Committee, however, note that on being pointed out, the Ministry have issued specific directions to the Directorate of Marketing and Inspections to streamline their procedure and have assured to take all possible steps to avoid recurrence of such delay in future. The Committee trust that such delays would not occur in future.</p> | <p>The Ministry have assured that all possible steps would be taken in future by them and the Directorate of Marketing and Inspection, to avoid such recurrence of delays in publication of the final rules by issuing special instructions in this regard.</p> <p>(vide Ministry of Rural Areas and Employment O.M. No. 45012/9/92 M (Vol. II) dated 11.9.97.</p> |
| 10. | | <p><i>The National Service Scheme, Department of Youth Affairs and Sports, Ministry of Human Resource Development (Group A and B Posts) Recruitment Rules, 1995 (GSR 407 of 1995)</i></p> | |
| | 5.3 | <p>The Committee note with satisfaction that on being pointed out, the Ministry of Human Resource Development (Department of Youth Affairs and Sports) have revised the National Service Scheme, (Department of Youth Affairs</p> | <p>Column 10 pertaining to the probation period in the NSS, Department of Youth Affairs</p> |

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| | | <p>and Sports) Ministry of Human and sports, Resource Development (Group Ministry of A and B Posts) Recruitment Human Rules, 1995 in consultation with Resource the Union Public Service Development Commission in respect of the (Group A & probationary period for the post B Posts) of Assistant Programme Adviser Recruitment from two Year to one year for Rules has promotees in column 10 of the been amended Schedule appended to the rules. to provide for The Committee desire that the uniform Ministry should notify the rules probation as amended at the earliest. period for both promotees and direct recruits vide GSR 479 dated 2.11.96. (Ministry of Human Resource Development O.M. No. A-11011/1/98) YS-III dated 2.1.98.</p> | |
| 11. | | <p><i>The Indian Forest Service (Pay) Seventh Amendment Rules, 1995 (GSR 505 of 1995)</i></p> | |
| | 6.3 | <p>The Committee note from the The reply of the Ministry of observations Personnel, Public Grievances, of the and Pensions that the Indian Committee Administrative Service (Pay) have been Rules and the Indian Police noted. Further Service (Pay) Rules were the Ministry amended on 10.11.1989 and have observed 28.12.1989 respectively and the that joint decision to extend the same meeting with benefit to the members of the other</p> | |

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| | <p>Indian Forest Service was also taken in 1989. The Committee are not satisfied with the reasons for the delay. The reasons advanced by the Ministry regarding the delay in notifying the amendment to the Indian Forest Service (Pay Rules) does not reflect any urgency on the part of that Ministry in the matter of finalisation of such important piece of subordinate legislation keeping at stake in interest of the intended beneficiaries for long. Instead, the Ministry have placed the blame on the Ministry of Environment and Forests for not furnishing the required papers. The Committee feels that it is indicative of the lack of proper coordination amongst the Ministries which has resulted in an avoidable delay in the extension of benefit to the members of the Indian Forest Service. Had the Ministry taken up the matter with the urgency it deserved, the delay could have been avoided as the matter was not a complicated one.</p> | <p>Ministries concerned would also be convened for finalisation of the contentious issues, if any, arising out of the amendment made to the statutory rules from time to time. (<i>vide</i> Ministry of Personnel, Public Grievances and Pensions and Trg. O.M. No. 28018/1/96-AIS (II) dated 27 June, 1997).</p> | |
| 6.4 | <p>The Committee, therefore, recommend that the Ministry of Personnel, Public Grievances and Pensions may evolve suitable procedural safeguards so as to curtail such enormous delays to the minimum in future. The Committee further desire that the Ministry should convene joint meetings with other Ministries concerned with the finalisation of any rules in cases where they are not able to sort out the matters in the due course of time.</p> | | |

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| 12. | <p>8.4 The Committee observe that according to the Ministry of Surface Transport, the Andaman Lakshadweep Harbour Works Group 'A' and 'B' Posts (Senior Scientist and Junior Scientist) Recruitment Rules, 1995 were approved by the DOP&T and the UPSC in March 1995 <i>i.e.</i> before the instructions were issued by DOP&T regarding prescribing a uniform period of probation for both promotees as well as direct recruits. The Ministry have since initiated the action to carry out the necessary amendments in the rules in consultation with the Department of Personnel and Training. The Committee desire that the Ministry Should notify the amendment rules at the earliest.</p> | <p>The requisite Corrigendum has been issued to rectify the error in the rules by prescribing Uniform Probation period for both promotees and direct recruits under Col. 10 of the rules <i>vide</i> GSR 105 of 1998. (Ministry of Surface Transport O.M. No. A-12018/2/98-PE-II dated June, 1998).</p> |
| 13. | <p>The Lady Harding Medical College and Shrimati Sucheta Kriplani Hospital and Kalawati Saran Children Hospital, New Delhi (Nursing Superintendent) Recruitment Rules, 1995 (GSR 301 of 1995)</p> | |

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| 10.5 | <p>The Committee note that, on being pointed out, the Ministry of Health and Family Welfare have agreed to issue the necessary amendment to the Lady Harding Medical College and Smt. Sucheta Kriplani Hospital and Kalawati Saran, Children Hospital, New Delhi (Nursing Superintendent) Recruitment Rules, 1995 so as to prescribe a uniform period of probation for both promotees as well direct recruits and the notification in that regard is being forwarded to the Ministry of Law and Justice for vetting. The Committee desire that the Ministry should notify the desired amendment rules at the earliest.</p> | <p>The recruitment rules for the post of Nursing Superintendent, have been amended to provide for uniform probation period. <i>vide</i> GSR 414 of 1996. (Ministry of Health and Family Welfare O.M. No. H-11029/297-ME (VA) dated 25.6.97).</p> | |

APPENDICES

APPENDIX—I

(Vide Para 5 of the Introduction)

SUMMARY OF RECOMMENDATION MADE IN THE FIRST REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (THIRTEENTH LOK SABHA)

| Sl.No. | Reference to para No. in the Report | Summary of Recommendations |
|--------|--|--|
| 1 | 2 | 3 |
| 1. | 1.6 | The Committee note with satisfaction that now in accordance with their recommendation, all Class III and Class IV employees of the Port Trust will get atleast two financial upgradation in 24 years of service under the Assured Career Progression settlement. The Committee, therefore, do not wish to pursue the matter any further. |
| 2. | 2.7 | From the aforesaid clarification furnished by the DOP&T it may be seen that before terminating or reverting the services of a probationer, reasons are recorded in writing and thus there is no scope for any arbitrary use of the power. As regards communicating the reasons, the probationer is apprised of the same at several stages during the probation period. Further as held by the Supreme Court, there is no obligation on the part of the competent authority to communicate such reasons to the concerned person. The DOP&T have advocated strong reasons which appears to be justified in support of the existing scheme of the functioning of the system of probation <i>vis-a-vis</i> the recommendations of the Committee. Further, in a similar case, the Committee in Para 49 of their First Report (8th Lok Sabha) have accepted the view of the Government |

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that a probationer need not be informed of the reasons for his discharge or reversion to this substantive post. The Committee feel that if such reasons are communicated to the probationer, it would put a stigma on his future prospects. The Committee, therefore feels that the reply of the Ministry is satisfactory and do not wish to pursue the matter any further.

MINUTES

APPENDIX—II

(Vide para 4 of the Introduction)

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MINUTES OF THE FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (THIRTEENTH LOK SABHA) (1999-2000)

The Committee met on Friday, 5 May, 2000 from 15.00 hours to 15.30 hours in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

MEMBERS

1. Shri Indrajit Gupta — *Chairman*
2. Shri Ananda Mohan Biswas
3. Shri Paban Singh Ghatowar
4. Shri Suresh Kurup
5. Shri Dharam Raj Singh Patel
6. Shri M.K. Annasaheb Patil
7. Shri Pravin Rashtrapal
8. Prof. Rasa Singh Rawat
9. Shri Anadi Charan Sahu
10. Shri Prabhat Samantray
11. Prof. I.G. Sanadi
12. Dr. N. Venkataswamy

SECRETARIAT

1. Shri P.D.T. Achary — *Joint Secretary*
2. Shri Ram Autar Ram — *Director*
3. Shri P.D. Malvalia — *Under Secretary*

2. The Chairman welcomed the Members of the Committee on Subordinate Legislation and explained to them broadly the scope, functions and working of the Committee (Annexure).

3. The Chairman informed the Members of the Committee that some unfinished work of the previous Committee may also be taken up by the Committee in their subsequent sittings.

4. The Committee decided to hold their next sitting in the first week of June, 2000.

The Committee then adjourned.

ANNEXURE

INAUGURAL ADDRESS BY THE CHAIRMAN TO THE MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION (THIRTEENTH LOK SABHA) (1999-2000)

Dear Friends,

1. It gives me immense pleasure to welcome you to this sitting of the newly constituted Committee on Subordinate legislation. Before I proceed to deal with the functions of this Committee, I like to explain to you the "Necessity of the Subordinate Legislation."

2. With the growing range and complexity of the governmental activity in our welfare State, legislation is no longer a simple affair. Subordinate Legislation is "a necessary evil." "The tendency to delegate Legislative powers to the executive, it is alleged, has become so wide spread and dangerous that the very existence and utility of the Legislature are at stake. Clothing the administrators with Legislative powers is regarded by many as an act of denial of civil liberties in certain circumstances. It is one kind of surrender of Parliament to Executive and it has strengthened the bureaucracy, and may turn democracy into despotism and arbitrary rule. Again the speed with which the laws are made and amended through the process of subordinate legislation is likely to endanger the life, liberty and property of the citizens and what is worse "multiplicity of rules and amendments may exhaust the patience and defer the endurance of those who would understand them." Yet it has come to stand. The problem is now not to abolish the system or find the substitute but how to ensure Legislative control over subordinate legislation.

3. The legislation that has to be approved by the Legislature is today so vast and varied that it has become almost impossible for legislators to deliberate upon, discuss and approve it in minute details for proper administration. Apart from the pressure on Parliamentary time, the factors like the technicality of the subject-matter, the need to meet unforeseen contingencies, the requirement of flexibility etc. compel the sovereign Legislature to resort to delegation of Legislative power to a subordinate authority. Parliament can at best, lay down the broad policy, and principles of an enactment, leaving the details to be worked out by the executive in the form of rules, regulations, bye-laws etc. within those parameters.

4. For the purpose referred to above, the first Committee on Subordinate Legislation was established in December, 1953 on the suggestion made by Dr. B.R. Ambedkar, the then law Minister in the Provisional Parliament. Since then the Committee is constituted every year by the Speaker, Lok Sabha.

5. To consider every statutory instrument laid before the House or to be laid in pursuance of any Act of Parliament it is essential to determine whether the special attention of the House should be drawn to any of the following grounds:—

(i) that it imposes a charge on the public revenues or contained provisions requiring payments to be made to the exchequer or any Government Department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payments.

(ii) that it is made in pursuance of an enactment containing specific provision excluding it from challenge in the courts, either at all times or after the expiration of a specific period.

(iii) that it appears to make some unusual or unexpected use of powers conferred by the Statute under which it is made;

(iv) that it purports to have retrospective effect where the parent statute confers no express authority so to provide;

(v) that there appears to have been unjustifiable delay in the publication or in laying of it before Parliament;

(vi) that there appears to have been unjustifiable delay in sending a notification to the Speaker under the proviso to subsection (i) of section 4 of the Statutory Instrument Act, 1946, where an instrument has come into operation before it has been laid before Parliament;

(vii) that for any special reason its form or purport calls for elucidation.

6. As a safeguard against assumption of the arbitrary powers by the executive through the instrument of subordinate legislation, this Committee has consistently maintained that all rules, regulations, etc. framed in exercise of the authority conferred by Parliament, should necessarily be laid before both the Houses of Parliament who should have the power to annul or modify them. To this end, the Committee had in 1971 approved the following standard formula for incorporation in all Acts/Bills providing for delegation of legislative power:

“Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the

rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule”.

[Paras 33-34, 2nd Report (5 L.S.)]

7. As hon'ble Members might be aware that, at the instance of the Committee, Parliament has already enacted two Comprehensive pieces of legislation viz., the Delegated Legislation Provisions (Amendment) Act, 1983 and 1986 incorporating the requisite laying provisions in more than 140 old Acts which did not previously contain them. Whenever a new Bill is introduced in the Lok Sabha or transmitted from the Rajya Sabha, which contains provision regarding making of rules, it is examined by the Secretariat whether it includes suitable provisions for laying of such rules etc. Under direction 103A, the hon'ble Speaker may also refer a Bill involving delegation of legislative power, to the Committee to examine the extent of power sought to be delegated. If the provisions of the Bill seeking to delegate legislative power are found to be not in order and need to be annulled wholly or in part or amended in any respect, the Committee may report that opinion and the grounds thereof to the House before the Bill is taken up for consideration. A special responsibility is thus cast upon the Members of this Committee to be ever watchful. If they find that any Bill seeks to make excessive or abnormal delegation of legislative power, they may raise the matter in the House or approach the hon'ble Speaker for referring it to this Committee.

8. Another important function of the Committee is “to scrutinise and report to the House whether the powers to make regulations, rules, sub-rules by-laws, etc. conferred by the Constitution or delegated by Parliament are being properly exercised within such delegation.” The broad principles governing their examination are contained in Rule 320. The procedure does not preclude the Members from examining the ‘Orders’ *suo motu* and making suggestions of their own. For this purpose, copies of all ‘Orders’ that are laid on the Table of the House are circulated to the Members of the Committee from time to time in convenient batches. Members might study these ‘Orders’ and bring to the notice of the Chairman or the Secretariat any cases where they feel the executive has gone beyond the powers delegated to it by the parent statute or any other infirmity in the rules which required to be considered by the Committee.

9. Friends, as you know, that in the welfare State, the ultimate goal of legislation (including subordinate legislation) is the maximum public good. As the general public consists mainly of laymen, it is considered imperative that the intention behind the subordinate legislation is expressed in simple language which can easily be understood by the common man without much difficulty. To achieve this objective, the Committee always upholds the need that the statutory ‘Orders’ should be precise, free from ambiguity and not cryptic, sketchy or skeletal.

10. The root-cause of abuse of subordinate legislation lies in unfettered and unguided discretionary powers conferred upon the executive. Therefore, a primary duty of the Committee is to ensure that adequate built-in safeguards are provided against possible abuse of such powers. The committee has, in the past, made valuable recommendations to this end.

11. It is well known that the parties which are affected by a given set of rules are always in a better position to say how the rules work in actual operation. Like-wise, persons who have to deal with the working of rules in their professional capacity, such as lawyers, accountants, actuaries, etc. have some special knowledge that can be profitably made use of by the Committee. The Committee, therefore, welcome comments/suggestions from the non-official organisations in regard to the subject selected by them for examination.

12. Since its inception in December, 1953, the Committee has presented 166 Reports to the House covering a varied range of subjects. The Committee has been able to make a distinct impact on administration in that it has always to keep in mind the possible reactions of Parliament and the Committee while drafting a rule. I would like to emphasise that the decisions of the Committee are unanimous and party considerations do not enter into its deliberations. Also in the discharge of our duties in the Committee, we shall not be acting in hostility to the executive. Our aim is to implement the will of Parliament as expressed through its statutes and our efforts in this direction should be constructive to those of the executive. I am confident that the above traditions will be followed by the Members of the present Committee also.

13. Hon'ble Members, I look forward to you for your earnest co-operation and active participation in the proceedings of the Committee and for your valuable suggestions to make our collective efforts more effective and purposive. Before I conclude, I would also like to mention that in accordance with Rule 285 of the Rules of procedure, a statement indicating some unfinished work of the previous Committee (Twelfth Lok Sabha) has also been made available to us. The unfinished work may also be taken up by us in our subsequent sittings.

Thank You.

II

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (THIRTEENTH LOK SABHA) (19992000)

The Committee met on Tuesday, 22 August, 2000 from 15.00 to 16.30 hours in Committee Room 'E', Basement, Parliament House Annex, New Delhi.

PRESENT

MEMBERS

- Shri Indrajit Gupta — *Chairman*
2. Shri Paban Singh Ghatowar
3. Shri Suresh Kurup
4. Shri Dharam Raj Singh Patel
5. Shri M.K. Annasaheb Patil
6. Prof. Rasa Singh Rawat
7. Shri Anadi Charan Sahu
8. Shri Prabhat Samantray
9. Dr. N. Venkataswamy

SECRETARIAT

1. Shri P.D.T. Achary — *Joint Secretary*
2. Shri Ram Autar Ram — *Director*
3. Shri P.D. Malvalia — *Under Secretary*

2. The Committee considered and adopted their draft First Action Taken Report on the implementation of recommendations contained in 2nd, 3rd and 4th Reports (Eleventh Lok Sabha) with certain modifications.

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10. *The Committee then adjourned.*

Paras 3 to 9 Omitted.

**Omitted portion of the minutes not included in this Report.

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