

COMMITTEE ON SUBORDINATE LEGISLATION

(THIRTEENTH LOK SABHA)

(2003-2004)

TENTH REPORT

LOK SABHA SECRETARIAT

NEW DELHI

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(2003-2004)

1. Dr. B.B. Ramaiah - Chairman
2. Shri S.K. Bwiswmuthiary
3. Shri Ramdas Rupala Gavit
4. Shri Paban Singh Ghatowar
5. Shri Talib Hussain Chowdhary
6. Dr. M. Jagannath
7. Shri Ram Singh Kaswan
8. Shri Suresh Kurup
9. Shri Pravin Rashtrapal
10. Shri Anadicharan Sahu
11. Prof. I.G. Sanadi
12. Dr. Ram Lakhan Singh
13. Shri Ramjiwan Singh
14. Shri Tufani Saroj
15. Dr. N. Venkataswamy

SECRETARIAT

1. Shri John Joseph - Additional Secretary
2. Shri Ram Autar Ram - Joint Secretary
3. Shri A. Louis Martin - Deputy Secretary
4. Shri Ashok Balwani - 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 Tenth Report.

The matters covered by this Report were considered by the Committee at their sitting held on 7.11.2002.

The Committee considered and adopted this Report at their sitting. The Minutes of the sittings relevant to this Report are appended to it.

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 in the Report.

NEW DELHI;

(B.B. RAMAIAH)
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION

The Directorate of Employment (Programmer) (Group A Gazetted) Recruitment (Amendment) Rules, 2000 (GSR 97 of 2002)

The Directorate of Employment (Programmer) (Group A Gazetted) Recruitment (Amendment) Rules, 2000 were published in the Gazette of India, Part II, Section 3 (i) dated 23 March, 2002. It was observed therefrom that the year in the short title was indicated as 2000 whereas the rules were published in the year 2002. As per oft-repeated recommendation of the Committee on Subordinate Legislation, the year in the short title should correspond to the year of publication of the Gazette. The Ministry of Labour were, therefore, requested to state reasons for deviation from normal practice followed in this respect.

1.2 The Ministry vide their reply dated 19 July, 2002 inter-alia stated that the year in the short-title was inadvertently shown as 2000 instead of 2002. However, a corrigendum in this regard will be issued shortly and a copy will be furnished to the Lok Sabha Secretariat.

1.3 The Ministry vide their reply dated 24 September, 2002 furnished a printed copy of the Gazette Notification carrying the requisite corrigendum and notified vide GSR No. 527-E dated 26 July, 2002.

1.4 The Committee observe from the above rules that the year in the short title was indicated as 2000 whereas these rules were published in the year 2002. As per the requirement of the Subordinate Legislation, the year in the short-title to all rules whether original or amended should conform to the year of publication of the Gazette Notification. The Committee note with satisfaction that on being pointed out, the Ministry of Labour (Directorate General of Employment and Training) have issued a corrigendum vide GSR 527-E dated 26 July, 2002 so as to reflect the correct year in the short-title and desire that to obviate such errors in future, the

Ministry should ensure careful scrutiny of all details contained in statutory notifications before their finalisation.

II

The Directorate General of Shipping and Regional Office (Sails) Group A and B (Non-Technical Posts) Recruitment Rules, 2001 (GSR 300 of 2001)

The Directorate General of Shipping and Regional Office (Sails) Group A and B (Non-Technical Posts) Recruitment Rules, 2001 were published in the Gazette of India, Part II, Section 3 (i) dated 2 June, 2001. It was observed therefrom that under column 10 relating to period of probation for the posts of Assistant Director General of Shipping and Executive Officer, longer probation period had been prescribed for promotees as compared to Direct Recruits. The Ministry of Shipping were requested to state the rationale behind prescribing a longer probation period for promotees as compared with that of the direct recruits and for treating the candidates at two different footings in the matter of probation. In this connection, attention of the Ministry was also invited to the Department of Personnel and Training O.M. No.21011/94 Estt. (C) dated 20 April, 1995 regarding prescribing a uniform period of probation for both promotees as well as direct recruits. The Ministry of shipping were requested further to state whether they had any objection in amending the aforesaid rules to the desired effect.

2.2. The Ministry of Shipping in their communication dated 13 December, 2001 had stated that the probation periods have been prescribed in accordance with the guidelines issued by the DOP&T on 18 March, 1988. Further, the matter was taken up with the DOP&T also who have observed that the probation period of 2 years for promotees is in order as per their guidelines. Regarding the justification for longer probation period for promotees, the Ministry have stated that the DOP&T has no comments to offer.

2.3 The Committee observe from the above rules that for the post of Assistant Director General, a probation period of two years was prescribed for promotees and

only one year for direct recruits. According to the Ministry the probation periods were prescribed in accordance with the guidelines issued by the DOP&T on 18 March, 1988. However with regard to prescribing longer probation period for promotees even the DOP&T had no comments to offer. The Committee are not satisfied with the reply of the Ministry as it is not fair to prescribe a longer period of probation for promotees inspite of the fact that they possess the working experience in the organisation as compared to direct recruits who do not have any working experience in that organisation as they are being inducted into the service from an outside source. The Committee desire that Ministry should amend the rule so as to prescribe uniform probation period for both direct recruits and promotees, if not lesser for promotees.

III

The Department of Defence production and Supplies, Director General Quality Assurance Group `C` Data Entry Operator Recruitment Rules, 2000 (SRO 297 of 2000)

The Department of Defence production and Supplies, Director General Quality Assurance Group `C` Data Entry Operator Recruitment Rules, 2000 were published in the Gazette of India, Part-II, Section 4, dated 16 December, 2000. It was observed therefrom that as per the entry under Col. 6 of the Schedule appended thereto a lower age limit of 18 years has been prescribed for direct recruits to the post of Data Entry Operator which appeared to be redundant, as the educational qualification of degree from a recognised university as prescribed under Col. 8 cannot be achieved at that age. The Ministry of Defence were therefore, requested to furnish the rationale behind prescribing the lower age limit of 18 years and also to state whether they have any objection in amending the relevant entry suitably.

3.2. The Ministry vide their reply dated 30 May, 2001 have stated that they have no objection in amending the recruitment rules for the post of Data Entry Operator by deleting the provision of lower age limit of 18 years which was redundant.

3.3. The Ministry vide their communication dated 25 October, 2001 have enclosed a copy of the gazette notification containing the desired amendment in the recruitment rules vide SRO 166 dated 29 September, 2001.

3.4 The Committee observe from the above rules that under col. 6 read with col. 8 of the schedule appended thereto, the lower age limit of 18 years prescribed for direct recruits appeared to be redundant as the educational qualifications and experience so prescribed cannot be achieved at that age. In this connection, the Committee note that on being pointed out the Ministry of Defence have deleted the lower age limit of 18 years under column 6 of the schedule and have prescribed 21-27 years of age for the direct recruits to the post of Data Entry Operator vide Gazette Notification S.R.O No.166 dated 29 September, 2001 so as to do away with the redundancy in the age limit.

IV

The Survey of India Assistant Stores Officer Recruitment Rules, 2000 (GSR 527 of 2000)

The Survey of India Assistant Stores Officer Recruitment Rules, 2000 were published in the Gazette of India, Part II, Section 3 (i) dated 23 December, 2000. It was observed from Column 14 that regarding the requirement of consultation with SSC for making recruitment to any post a reference had been made that recruitment would be made as required under DOPT's O.M. It was felt that instead of giving reference of an O.M. issued by DOPT, it should have been clearly mentioned whether SSC was required to be consulted or not. Since as per oft-repeated recommendation of the Committee on Subordinate Legislation that the rules should be self-contained and any legislation by

reference should be scrupulously avoided, the Ministry of Science and Technology were requested to clarify the position in that regard and to state whether they had any objection in amending the Recruitment Rules to the desired effect.

4.2. The Ministry of Science and Technology in their communication dated 18 July, 2001 stated that they are proposing to amend Col. 14 by making the necessary entry and that the amendment would be notified in the gazette in consultation with DOPT & Ministry of Law. The Ministry in their communication dated 19 December, 2001 forwarded a printed copy of the amendment notification carrying the requisite corrigendum, published in the Gazette of India vide GSR 529 dated 22 September, 2001.

4.3 The Committee observe that Column 14 of the above rules which makes mention regarding the requirement of consultation with SSC while making recruitment to any post, there was no clear indication as to whether the recruitment for the post of Asstt. Stores Officer would be made in consultation with SSC or not, instead, a reference of DOPT's instructional order had been made. The Committee note that on drawing the attention of the Ministry towards the recommendation of the Committee that the rules should be self-contained and any reference by way of legislation should be scrupulously avoided, the Ministry of Science and Technology have suitably amended column 14 of the above rules to provide that consultation with Staff Selection Commission is necessary while making direct recruitment and notified the amendment vide Gazette of India Notification No. GSR 529 dated 22 September, 2001.

V

The 'Paradip Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after Retirement) Regulations, 2000 (GSR 72-E of 2000)

The 'Paradip Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after Retirement) Regulations, 2000 were published in the Gazette of India,

Extraordinary, Part-II, Section 3(i) dated 27th January, 2000. Regulation 9 of the aforesaid Regulations reads as under:-

“Interpretation: When a doubt arises as to the interpretation of these Regulations the matter will be referred to the Chairman, Paradip Port Trust, whose decision shall be final”

5.2. It was observed that the wording ‘Whose decision shall be final’ appearing in the aforesaid regulation was apt to give an impression that the jurisdiction of the law courts was being ousted. The matter was, therefore, taken up with the concerned Ministry of Surface Transport. The attention of the Ministry was also invited to an oft-repeated recommendation of the Committee on Subordinate Legislation that ‘Interpretation clause should not be so worded as to give an impression that power of interpretation of rules which should vest in courts, had been taken away or the jurisdiction of the courts is being ousted in any way’. The Ministry were, therefore, requested to state whether they had any objection in deleting such wording.

5.3. The Ministry after receiving several written and telephonic reminders from the Lok Sabha Secretariat, vide their reply dated 21st March, 2001 inter-alia stated as under:-

“..... that the necessary amendment has been made to the above Regulation as per the suggestion of the Committee on Subordinate Legislation. It may be mentioned that on account of the process of obtaining the amendment proposal as well as some Annexures from Paradip Port, (which were not enclosed in the original notification inadvertently), there has been delay in issuing the amendment notification.”

5.4. The Ministry thereafter vide their reply dated 4.4.2001 furnished a printed copy of the Gazette Notification carrying the requisite amendment by deleting the wording ‘whose decision shall be final’ issued vide GSR 204-E dated 21 March, 2001

5.5 The Committee observe from Regulation 9 dealing with interpretation of the above regulations that the wording “whose decision shall be final” were apt to give an impression in the minds of general public that the jurisdiction of the law courts was being ousted, which could never be the intention of any subordinate legislation. In this regard, the Committee note with satisfaction that on being pointed out, the Ministry of Surface Transport (now Ministry of Shipping (Ports Wing) have amended Regulation 9 by deleting the wording “whose decision shall be final”. The Committee however express their dissatisfaction over the fact that the Ministry had not been prompt in giving their replies to the Lok Sabha Secretariat, which had resulted in delay in issuance of the amendment notification. According to the Ministry the delay occurred in the process of obtaining the amendment proposal from the Paradip Port which reflects the lack of coordination between the Ministry and its different wings. The Committee desire that the Ministry should be more prompt in replying to the Parliamentary references and to evolve suitable guidelines for avoiding such inordinate delays in the future.

NEW DELHI;

(B.B. RAMAIAH)
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

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

(THIRTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1	1.4	<p>The Directorate of Employment (Programmer) (Group A Gazetted) Recruitment (Amendment) Rules, 2000 (GSR 97 of 2002)</p> <p>The Committee observe from the above rules that the year in the short title was indicated as 2000 whereas these rules were published in the year 2002. As per the requirement of the Subordinate Legislation, the year in the short-title to all rules whether original or amended should conform to the year of publication of the Gazette Notification. The Committee note with satisfaction that on being pointed out, the Ministry of Labour (Directorate General of Employment and Training) have issued a corrigendum <u>vide</u> GSR 527-E dated 26 July, 2002 so as to reflect the correct year in the short-title and desire that to obviate such errors in future, the Ministry should ensure careful scrutiny of all details contained in statutory notifications before their finalisation.</p>
2.	2.3	<p>The Directorate General of Shipping and Regional Office (Sails) Group A and B (Non-Technical Posts) Recruitment Rules, 2001 (GSR 300 of 2001)</p> <p>The Committee observe from the above rules that for the post of Assistant Director General, a probation period of two</p>

<p>3.</p>	<p>3.4</p>	<p>years was prescribed for promotees and only one year for direct recruits. According to the Ministry the probation periods were prescribed in accordance with the guidelines issued by the DOP&T on 18 March, 1988. However with regard to prescribing longer probation period for promotees even the DOP&T had no comments to offer. The Committee are not satisfied with the reply of the Ministry as it is not fair to prescribe a longer period of probation for promotees inspite of the fact that they possess the working experience in the organisation as compared to direct recruits who do not have any working experience in that organisation as they are being inducted into the service from an outside source. The Committee desire that Ministry should amend the rule so as to prescribe uniform probation period for both direct recruits and promotees, if not lesser for promotees.</p> <p><u>The Department of Defence production and Supplies, Director General Quality Assurance Group `C` Data Entry Operator Recruitment Rules, 2000 (SRO 297 of 2000)</u></p>
<p>4.</p>	<p>4.3</p>	<p><u>The Committee observe from the above rules that under col. 6 read with col. 8 of the schedule appended thereto, the lower age limit of 18 years prescribed for direct recruits appeared to be redundant as the educational qualifications and experience so prescribed cannot be achieved at that age. In this connection, the Committee note that on being pointed out the Ministry of Defence have deleted the lower age limit of 18 years under column 6 of the schedule and have prescribed 21-27 years of age for the direct recruits to the post of Data Entry Operator vide</u></p>

5.	5.5	<p><u>Gazette Notification S.R.O No.166 dated 29 September, 2001 so as to do away with the redundancy in the age limit.</u></p> <p><u>The Survey of India Assistant Stores Officer Recruitment Rules, 2000 (GSR 527 of 2000)</u></p> <p>The Committee observe that Column 14 of the above rules which makes mention regarding the requirement of consultation with SSC while making recruitment to any post, there was no clear indication as to whether the recruitment for the post of Asstt. Stores Officer would be made in consultation with SSC or not, instead, a reference of DOPT's instructional order had been made. The Committee note that on drawing the attention of the Ministry towards the recommendation of the Committee that the rules should be self-contained and any reference by way of legislation should be scrupulously avoided, the Ministry of Science and Technology have suitably amended column 14 of the above rules to provide that consultation with Staff Selection Commission is necessary while making direct recruitment and notified the amendment vide Gazette of India Notification No. GSR 529 dated 22 September, 2001.</p> <p><u>The 'Paradip Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after Retirement) Regulations, 2000 (GSR 72-E of 2000)</u></p> <p>The Committee observe from Regulation 9 dealing with interpretation of the above regulations that the wording "<u>whose decision shall be final</u>" were apt to give an impression in the minds of general public that the jurisdiction of the law courts was being ousted, which could never be the intention of any subordinate legislation. In this regard, the Committee note with satisfaction that on being pointed out, the Ministry of Surface Transport (now Ministry of Shipping (Ports Wing) have amended Regulation 9 by deleting the wording "<u>whose decision shall be final</u>". The Committee however express their dissatisfaction over the fact that the Ministry had not been prompt in giving their replies to the Lok Sabha Secretariat, which had resulted in delay in issuance of the amendment notification. According to the Ministry the delay occurred in the process of obtaining the</p>
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		<p>amendment proposal from the Paradip Port which reflects the lack of coordination between the Ministry and its different wings. The Committee desire that the Ministry should be more prompt in replying to the Parliamentary references and to evolve suitable guidelines for avoiding such inordinate delays in the future.</p>
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