

COMMITTEE ON SUBORDINATE LEGISLATION
(THIRTEENTH LOK SABHA)
(2003-2004)

FIFTEENTH REPORT

(PRESENTED ON 23.12.2003)

LOK SABHA SECRETARIAT

NEW DELHI

C O N T E N T S

COMPOSITION OF THE COMMITTEE

INTRODUCTION

REPORT

1. The Export of Honey (Quality Control Inspection and Monitoring) Rules, 2002 (SO 277-E of 2002)
2. The Petroleum Rules, 2002 (GSR 204-E of 2002)
3. The Allotment of Government Residences (Security Paper Mill, Hoshangabad) Rules, 2002 (SO 1783 of 2002)
4. The Ministry of Finance, Department of Economic Affairs, (Bank Note Press, Dewas, Group C Posts) Recruitment (Amendment) Rules, 2002 (GSR 493 of 2002)
5. The Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002 (GSR 100-E of 2002)

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 Lakhani Singh
13. Shri Ramjiwan Singh
14. Shri Tufani Saroj
15. Dr. N. Venkataswamy

SECRETARIAT

1. Shri S.K. Sharma - Joint Secretary
2. Shri A. Louis Martin - Director
3. 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 Fifteenth Report.

The matters covered by this Report were considered by the Committee at their sitting held on 13 October, 2003.

The Committee considered and adopted this Report at their sitting. The Extract from the Minutes of the sittings relevant to this Report are included in Appendix II to IV.

For facility of reference and convenience, recommendations/observation 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;
_____,2003

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

The Export of Honey (Quality Control, Inspection and Monitoring) Rules, 2002

The Export of Honey (Quality Control, Inspection and Monitoring) Rules, 2002 (SO 277-E of 2002) were published in the Gazette of India, Part-II, Section 3 (ii) dated 4 March, 2002. Rule 7 of these Rules read as under:-

“7 APPEAL:-

- (a) Any exporter aggrieved by the refusal of the Agency to issue the certificate of inspection may within 10 days of the receipt of the communication of such refusal may prefer an appeal which shall be referred by the Agency to a panel of experts consisting of not less than three, but not more than seven persons appointed for the purposes by the Central Government.
- (b) XX XX XX
- (c) XX XX XX
- (d) The decision of the panel on such appeal shall be final.

1.2. Under Rule 7 (a) any aggrieved exporter could appeal within 10 days from the date of refusal of the Agency to issue the certificate of inspection. However, no time limit has been prescribed for disposal of the appeal by the Agency / panel of experts. Further, in Rule 7 (d), the wordings “..... decision of the panel on such appeal shall be final” give an impression that the jurisdiction of the Law Courts is being ousted. The matter was, therefore, referred to the Ministry of Commerce for their comments.

1.3. The Ministry of Commerce in their reply dated 18 October, 2002 stated as under:-

Rule 7 (a)

“To facilitate implementation of this notification, operating instructions have been issued internally wherein a time limit of 15 days to dispose of the appeal from the time of its receipt has been given. This has also been included in the guidelines for exporters.”

Rule 7 (d)

“This has been given to specify that the appellate panel would decide about the appeals filed by the aggrieved exporter under Export of Honey (Quality Control, Inspection & Monitoring) Rules, 2002 only and would be final authority with regard to these Rules. The decision of Appellate Authority has to be followed by EIC.EIA. The decision of Appellate Authority is not absolute and it is open to challenge in any court of law.”

1.4. The Export of Honey (Quality Control, Inspection and Monitoring) Rules, 2002 provided that any aggrieved exporter can make appeal within 10 days from the date of refusal by the Agency to issue the certificate of inspection. However, no time limit has been prescribed for disposal of such appeal by the Agency / panel of experts. According to the Ministry of Commerce, operating instructions have been issued internally wherein a time limit of 15 days to dispose of the appeal from the time of its receipt has been given. The Committee are not satisfied with this arrangement. Administrative instructions are no substitute to statutory rules. Administrative instructions are not required to be published in the Official Gazette. The Committee stress that the time limit laid down by the Ministry internally for disposal of appeals should be suitably incorporated in the Rules.

1.5. The Committee further note that in Rule 7 (d) the wordings “decision of the panel on such appeal shall be final” give an impression that the jurisdiction of the Law Courts is being ousted. The Ministry have clarified that the decision of the Appellate Authority is not absolute and is open to challenge in any court of law. The Committee suggest that the Ministry should issue a corrigendum to suitably reflect this position in the rules.

II

The Petroleum Rules, 2002

The Petroleum Rules, 2002, (GSR 204-E of 2002) were published in the Gazette of India, Part II, Section 3 (i) dated 13 March, 2002. Rule 154 (3) of the Petroleum Rules reads as under:-

“Rule 154 (3), Appeals:- “Every appeal shall be in writing and shall be accompanied by a copy of the order appealed against and shall be presented within sixty days of the order passed”.

2.2. It was observed that no time limit was prescribed for disposal of appeal by the concerned authority. The matter was therefore, referred to the Ministry of Petroleum and Natural Gas for their comments. The Ministry vide their communication dated 16 September, 2002 stated as under:-

“The Petroleum Rules, 2002 were published on the recommendations of the Rajya Sabha Committee on Subordinate Legislation vide Hundred and Twentieth report dated 28 July, 1998 on “Petroleum Rules, 1976, OISD Standards and Related Areas”. It may be mentioned that no time limit was prescribed in the Petroleum Rules, 1976 (Rule 155) which has been repealed with the notification of the Petroleum Rules, 2002.”

2.3. The matter was considered by the Committee on Subordinate Legislation at their sitting held on 14 October, 2003.

2.4. The Committee observed that Rule 154(3) of the Petroleum Rules, 2002 provided a maximum period of sixty days for presenting an appeal. However, no time limit has been prescribed for the disposal of the said appeal by the concerned authorities. Ministry's contention that no time limit had been prescribed in the erstwhile Petroleum Rules, 1976 is not convincing. Laying down a time limit is necessary to ensure disposal of appeals within reasonable time. The Committee urge that the Ministry should lay down suitable time limit for disposal of such appeals and it should be incorporated in the rules.

III

The Allotment of Government Residences (Security Paper Mill, Hoshangabad) Rules, 2002 (SO 1783 of 2002)

The Allotment of Government Residences (Security Paper Mill, Hoshangabad) Rules, 2002 were published in the Gazette of India, Part-II, Section 3(ii) dated 1 June, 2002. These rules are to govern the allotment of residences to the employees of the Security Paper Mill, Hoshangabad. The Ministry were asked to state as to how the matters relating to the allotment of residences were actually being governed prior to the notification of these rules and whether there was any delay in the issuance of SO 1783 with regard to the statutory provisions governing these rules. In response, the Ministry stated (on 22 January, 2003) as under:

“..... Allotment of Government Residences (Security Paper Mill, Hoshangabad) Rules were drafted in 1983 duly vetted by Ministry of Law, Justice and Company Affairs (Legislative Deptt.). These Rules could not be published in official Gazette for want of Hindi translation. These were however notified for information of Security Paper Mill, Hoshangabad employees on 24.10.1983. Regarding SO 1783 it may be mentioned that the delay in issuance of these rules was because of some amendments moved after implementation of National Productivity Council (NPC) Report and some further amendments which were necessitated due to implementation of 5th Pay Commission recommendation.”

3.2. It was also observed that the short title to the rules indicated the year as 2001 whereas the rules were published in the Gazette of India in the year 2002. As per oft-repeated recommendation of the Committee, the year in the short title should conform to the year of publication of the rules in the Official Gazette. On being pointed out, the Ministry informed (on 17 December, 2002) that the year ‘2002’ was erroneously shown

as '2001' due to oversight and that the Ministry had issued a corrigendum to rectify the error in the short title.

3.3. The Committee note that the Allotment of Government Residences (Security Paper Mill, Hoshangabad) Rules, were drafted way back in 1983 but were not published in the official Gazette at that time for want of Hindi translation. Further, the delay in issuance of these rules is stated to be due to some amendments moved on the basis of National Productivity Council (NPC) Report and Fifth Central Pay Commission Report. The Committee note that the reasons advanced by the Ministry can in no way justify the 19 years delay in the issue of notification of the rules. Such an inordinate delay by the Ministry just for “want of Hindi Translation” and remotely relevant reports only reflects the casual manner in which the whole issue relating to such an important piece of delegated legislation has been dealt with by the Ministry. As a result, the allotment of residences to the employees of the Security Paper Mill which was sought to be governed by the statutory rules, has in fact, been governed by the executive instructions for 19 long years. The Committee take a serious view of the casual manner in which the Ministry have handled the issue of notification of statutory rules and would like to urge the Ministry to evolve suitable procedural safeguards to avoid such unjustified delays in future.

3.4. The Committee also note that the Ministry have since amended the notification to rectify an error in the short title. The Committee hope that the Ministry would exercise sufficient care to ensure that their notifications are error free.

IV

The Ministry of Finance, Department of Economic Affairs, (Bank Note Press, Dewas, Group C Posts) Recruitment (Amendment) Rules, 2002. (GSR 493 of 2002).

The Ministry of Finance, Department of Economic Affairs, (Bank Note Press, Dewas, Group C Posts) Recruitment (Amendment) Rules, 2002 published in Gazette of India, Part-II, Section 3 (i) dated 7 December, 2002 contained a number of shortcomings. The shortcomings noticed and reply of the Ministry of Finance (Department of Economic Affairs) thereon (dated 22 April, 2003) are dealt hereunder:-.

A. Rules relating to the post of Stenographer Grade-II at Serial No. 20

4.2. It was observed that the educational qualification for the post of Stenographer Grade-II as mentioned in column 6 was Matriculation or Higher Secondary (10+2) or equivalent qualification. Since “Higher Secondary (10+2)” was a higher qualification than “Matriculation” therefore treating both of them as equivalent looked somewhat odd.

4.3. It was also observed that while the prescribed upper age limit for direct recruits for the post of Stenographer Grade II is 25 years, one of the essential qualifications required for the post is eight years service as Stenographer III. It appeared that these conditions were mutually exclusive and unrealistic.

4.4. The Ministry in their reply, have stated that the educational qualification for the post of Stenographer Gr.II had been mentioned as 'Matriculation or Higher Secondary' as per notified Recruitment Rules in force prior to present amendment of Recruitment Rules. However, in order to avoid any confusion, the word 'Higher Secondary' would be deleted and instead the words "Matriculation or equivalent" would be inserted.

4.5. As regards upper age limit and experience, the Ministry stated that Bank Note Press had retained the same experience for both the direct recruits and promotees as per notified Recruitment Rules in force prior to amendment of Recruitment Rules. The Ministry also added that in view of the observations of the Committee and as per Model Recruitment Rules, the requirement of experience provided for Grade II direct recruits is proposed to be deleted and the age limit prescribed for Direct Recruits through open competition is also proposed to be increased to 27 years.

4.6. The Committee note that the educational qualification prescribed by the Ministry of Finance (Department of Economic Affairs) for the post of stenographer Grade-II gives an impression that a higher qualification viz. "Higher Secondary (10+2)" and a lower qualification viz. "Matriculation" are treated at par. On being pointed out, the Ministry of Finance have agreed to amend the educational qualification to state as "Matriculation or equivalent." The Committee desire the Ministry to bring out the amendment as proposed by them, at the earliest.

4.7. The Committee observe that it is unrealistic to achieve the requisite 8 years experience in the grade of Stenographer III within the prescribed upper age limit of 25 years. The Committee are glad to note that, on being pointed out, the Ministry have proposed to delete the requirement of prior-experience and also proposed to raise the upper age limit to 27 years for direct recruits. The Committee desire that necessary amendments in this regard be notified at the earliest.

B. Rules relating to the Post of Translator at Serial No. 21.

4.8. One of the essential qualifications prescribed for the post of Translator is as under:-

“At least three years’ experience of translation from English to Hindi and vice versa in a Central Government / State Government Office or in a reputed Industrial concern.

The term ‘Reputed Industrial Concern’ appeared to be vague and could be interpreted differently by different persons.”

4.9. The Ministry in their reply have stated that the word “Reputed Industrial Concern” below Col. 8 was retained as per the approved Recruitment Rules in force prior to amendment and that to avoid ambiguity, the Ministry have proposed to amend the same as below:-

“At least three years experience of translation from English to Hindi and vice versa in a Central Government / State Government or in Public Sector undertakings.”

4.10. The Committee are of the view that the term ‘Reputed Industrial Concern’ used in the rules is vague as it can be interpreted differently by different persons. On being pointed out, the Ministry of Finance have agreed to bring out an amendment to avoid the ambiguity. The Committee hope that the Ministry will notify necessary amendment in this regard at the earliest.

C Rules relating to the Posts mentioned at Serial No. 33 to 36.

4.11. As regards age limit for direct recruits for the posts of Assistant Medical Store Keeper (Sl.No. 33) ; X-ray Technician (Sl.No. 34); Sr. Laboratory Assistant (Hospital) (Sl.No.35) and Junior Laboratory Assistant (Hospital) (Sl.No.36) it was observed that no age-span had been provided but age limit was shown as “25 years” in respect of posts at Sl.No. 33 and 36 and “30 Years” in respect of posts at Sl.No. 34 and 35. Absence of age span is likely to cause confusion.

4.12. The Ministry in their reply have stated that in the Amendment Rules the provisions existing prior to amendment were only being retained and that it is now proposed to amend Col. 6 (prescribing Age limit for Direct Recruits) of these posts as follows:-

“Not exceeding 25 years” in the case of S.No. 33 and 36 and in the case of S.No. 34 and 35 ‘Not exceeding 30 years’.

4.13. The Committee note that no age span has been provided in the rules for recruitment to the posts of Assistant Medical Store Keeper; X-ray Technician; Sr. Laboratory Assistant (Hospital) and Junior Laboratory Assistant (Hospital). Instead, a specific year has been shown as the age limit which is liable to cause confusion in the minds of candidates. On being pointed out, the Ministry have agreed to amend the provision as ‘Not exceeding 25 years’ for the posts of Assistant Medical Store Keeper and Junior Laboratory Assistant (Hospital) and as ‘Not exceeding 30 years’ for the posts of X-ray Technician and Sr. Laboratory Assistant (Hospital). The Committee would like the Ministry to notify suitable amendments in this regard expeditiously.

The Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002 (GSR 100-E of 2002)

The Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002 was published in the Gazette of India, Part-II, Section 3(i) dated 13 February, 2002. It was observed therefrom that the Scheme had been given retrospective effect from 2nd March, 2001 but there was no explanatory memorandum which is normally appended to state that nobody would be adversely affected by such retrospection.

5.2. As per the recommendation of the Committee, all orders/rules should be published before the date of their enforcement or they should be enforced from the date of their publication. However, if in any particular case, the 'Orders' had to be given retrospective effect in view of any unavoidable circumstances, the retrospection having otherwise legal validity, a clarification was required to be given, either by way of an explanation in the 'order' or in the form of a foot-note to the relevant 'Orders' to the effect that no one would be adversely affected as a result of retrospective effect being given to such 'Orders'.

5.3. On being asked the Ministry vide their communication dated 17 January, 2003 enclosed a copy of the Gazette Notification issued by them incorporating an explanatory memorandum certifying that nobody would be adversely affected because of the retrospection of the Scheme w.e.f. 2 March, 2001

5.4. The Committee note that the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002 published in the Gazette of India on 13 February, 2002 gives retrospective effect from 2 March, 2001. The Committee further note that as per recommendation of the Committee, all orders should be made effective only after their publication in the Gazette. In unavoidable circumstances, if the rules are to be given retrospective effect, a foot note certifying that no one would be adversely affected by such retrospective effect given to the rules, should be appended. The Committee note with satisfaction that on being pointed out, the Ministry have issued an amendment vide Gazette of India notification No. GSR 789(E) dated 2 December, 2002 certifying that nobody would be adversely affected because of the retrospective effect being given to the Scheme.

NEW DELHI;
_____,2003

(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	Summary of Recommendations
1	2	3
1.	<p data-bbox="370 821 412 852">1.4</p> <p data-bbox="370 1514 412 1545">1.5</p>	<p data-bbox="751 672 1495 743">The Export of Honey (Quality Control, Inspection and Monitoring) Rules, 2002</p> <p data-bbox="751 821 1562 1398">The Export of Honey (Quality Control, Inspection and Monitoring) Rules, 2002 provided that any aggrieved exporter can make appeal within 10 days from the date of refusal by the Agency to issue the certificate of inspection. However, no time limit has been prescribed for disposal of such appeal by the Agency / panel of experts. According to the Ministry of Commerce, operating instructions have been issued internally wherein a time limit of 15 days to dispose of the appeal from the time of its receipt has been given. The Committee are not satisfied with this arrangement. Administrative instructions are no substitute to statutory rules. Administrative instructions are not required to be published in the Official Gazette. The Committee stress that the time limit laid down by the Ministry internally for disposal of appeals should be suitably incorporated in the Rules.</p> <p data-bbox="751 1514 1562 1801">The Committee further note that in Rule 7 (d) the wordings “decision of the panel on such appeal shall be final” give an impression that the jurisdiction of the Law Courts is being ousted. The Ministry have clarified that the decision of the Appellate Authority is not absolute and is open to challenge in any court of law. The Committee suggest that the Ministry should issue a corrigendum to suitably reflect this position in the rules.</p>

2.	2.4	<p><u>The Petroleum Rules, 2002 (GSR 204-E of 2002)</u></p> <p>The Committee observed that Rule 154(3) of the Petroleum Rules, 2002 provided a maximum period of sixty days for presenting an appeal. However, no time limit has been prescribed for the disposal of the said appeal by the concerned authorities. Ministry's contention that no time limit had been prescribed in the erstwhile Petroleum Rules, 1976 is not convincing. Laying down a time limit is necessary to ensure disposal of appeals within reasonable time. The Committee urge that the Ministry should lay down suitable time limit for disposal of such appeals and it should be incorporated in the rules.</p>
3.	3.3	<p><u>The Allotment of Government Residences (Security Paper Mill, Hoshangabad) Rules, 2002 (SO 1783 of 2002)</u></p> <p>The Committee note that the Allotment of Government Residences (Security Paper Mill, Hoshangabad) Rules, were drafted way back in 1983 but were not published in the official Gazette at that time for want of Hindi translation. Further, the delay in issuance of these rules is stated to be due to some amendments moved on the basis of National Productivity Council (NPC) Report and Fifth Central Pay Commission Report. The Committee note that the reasons advanced by the Ministry can in no way justify the 19 years delay in the issue of notification of the rules. Such an inordinate delay by the Ministry just for "want of Hindi Translation" and remotely relevant reports only reflects the casual manner in which the whole issue relating to such an important piece of delegated legislation has been dealt with by the Ministry. As a result, the allotment of residences to the employees of the Security Paper Mill which was sought to be governed by the statutory rules, has in fact, been governed by the executive instructions for 19 long years. The Committee take a serious view of the casual manner in which the Ministry have handled the issue of notification of statutory rules and would like to urge the Ministry to evolve suitable procedural safeguards to avoid such unjustified delays in future.</p>

4.	3.4	<p>The Committee also note that the Ministry have since amended the notification to rectify an error in the short title. The Committee hope that the Ministry would exercise sufficient care to ensure that their notifications are error free.</p> <p>The Ministry of Finance, Department of Economic Affairs, (Bank Note Press, Dewas, Group C Posts) Recruitment (Amendment) Rules, 2002. (GSR 493 of 2002).</p>
	4.6	<p>The Committee note that the educational qualification prescribed by the Ministry of Finance (Department of Economic Affairs) for the post of stenographer Grade-II gives an impression that a higher qualification viz. “Higher Secondary (10+2)” and a lower qualification viz. “Matriculation” are treated at par. On being pointed out, the Ministry of Finance have agreed to amend the educational qualification to state as “Matriculation or equivalent.” The Committee desire the Ministry to bring out the amendment as proposed by them, at the earliest.</p>
	4.7	<p>The Committee observe that it is unrealistic to achieve the requisite 8 years experience in the grade of Stenographer III within the prescribed upper age limit of 25 years. The Committee are glad to note that, on being pointed out, the Ministry have proposed to delete the requirement of prior-experience and also proposed to raise the upper age limit to 27 years for direct recruits. The Committee desire that necessary amendments in this regard be notified at the earliest.</p>
	4.10	<p>The Committee are of the view that the term ‘Reputed Industrial Concern’ used in the rules is vague as it can be interpreted differently by different persons. On being pointed out, the Ministry of Finance have agreed to bring out an amendment to avoid the ambiguity. The Committee hope that the Ministry will notify necessary amendment in this regard at the earliest.</p>

5.	4.13	<p>The Committee note that no age span has been provided in the rules for recruitment to the posts of Assistant Medical Store Keeper; X-ray Technician; Sr. Laboratory Assistant (Hospital) and Junior Laboratory Assistant (Hospital). Instead, a specific year has been shown as the age limit which is liable to cause confusion in the minds of candidates. On being pointed out, the Ministry have agreed to amend the provision as ‘Not exceeding 25 years’ for the posts of Assistant Medical Store Keeper and Junior Laboratory Assistant (Hospital) and as ‘Not exceeding 30 years’ for the posts of X-ray Technician and Sr. Laboratory Assistant (Hospital). The Committee would like the Ministry to notify suitable amendments in this regard expeditiously.</p>
	5.4	<p>The Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002 (GSR 100-E of 2002)</p> <p>The Committee note that the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002 published in the Gazette of India on 13 February, 2002 gives retrospective effect from 2 March, 2001. The Committee further note that as per recommendation of the Committee, all orders should be made effective only after their publication in the Gazette. In unavoidable circumstances, if the rules are to be given retrospective effect, a foot note certifying that no one would be adversely affected by such retrospective effect given to the rules, should be appended. The Committee note with satisfaction that on being pointed out, the Ministry have issued an amendment <u>vide</u> Gazette of India notification No. GSR 789(E) dated 2 December, 2002 certifying that nobody would be adversely affected because of the retrospective effect being given to the Scheme.</p>