

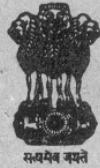
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**COMMITTEE ON SUBORDINATE
LEGISLATION**

(THIRTEENTH LOK SABHA)
(1999-2000)

SECOND REPORT

[Presented on 18-12-2000]



**LOK SABHA SECRETARIAT
NEW DELHI**

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LOK SABHA SECRETARIAT

CORRIGENDA

TO

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

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION
(1999-2000)**

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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 Second Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on 8.6.2000, 22.8.2000 and 18.10.2000.

3. The Committee took oral evidence of the Ministry of Petroleum and Natural Gas on 8.6.2000 and 22.8.2000 to hear their views with regard to regularisation of the services of Contract Employees of the Engineers India Limited. The Committee wish to express their thanks to the representatives of the Ministry for furnishing the desired information.

4. The Committee considered and adopted this Report at their sitting held on 6 November, 2000. The Minutes of the sittings relevant to this Report are appended to it.

5. 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;
6 November, 2000

INDRAJIT GUPTA,
Chairman,
Committee on Subordinate Legislation.

REPORT

I

Representation on Behalf of All Contract Employees of M/s. Engineers India Limited

The representation received from All Contract Employees Association of M/s. Engineers India Ltd. addressed to the Committee on Subordinate Legislation, *inter alia* highlighted the following grievances of all Contract Employees of M/s. Engineers India Ltd. in relation to their, Selection, recruitment, and appointment in the aforesaid organisations:—

- (i) That since 1993, E.I.L. has been appointing “Employees on Contract for three years” in the two lowest technical categories viz. Engineers and Senior Engineers and also in other non technical categories viz. Accountants, Office Assistants and Storekeepers. Such appointments are being made every year since 1993 and are being continued even today.

At present, there are over 350 such contract employees consisting of about 300 Engineers & 50 other non technical personnel. After the completion of 3 years contract period, extension for a further period of 3 years have been granted to those who completed the initial 3 years contract period;

- (ii) That the employees so appointed on contract are being paid consolidated salary and their total emoluments at present are only around half of the total emoluments drawn by regular employees at corresponding levels inspite of the fact that the nature of the work being done, job responsibilities, professional qualifications, experience and professional competence of the regular employees and contract employees at the corresponding levels are the same and there are no differences in any manner whatsoever.
- (iii) That these 350 contract employees have been treated differently and arbitrarily vis-a-vis the regular employees by the management of EIL, a Government of India Undertaking under the administrative control of Ministry of the Petroleum and Natural Gas.
- (iv) That several requests were made to the Management of EIL on different occasions but have failed to evoke any positive

response from the Management and no opportunity of being heard had been given to them. These contract employees had, therefore, to file a writ petition in February, 1998 in the Hon'ble High Court of Gujarat for regularisation of their services with all consequential benefits as that being extended to regular permanent employees;

- v) That a majority of these 350 odd contract employees with their dependent families are above 35 years of age and the remaining are in the age group of 30—35 years.
- (vi) In the end an appeal has been made to direct the management of EIL in order to—
 - (a) Maintain *status quo* and refrain from termination of services of contract employees any further, till the issue is logically concluded/resolved;
 - (b) Reinstate the contract employees whose services have been terminated and who have suffered both mentally and physically;
 - (c) To absorb these 350 and odd contract employees in regular services of the company under existing rules pertaining to regular employees of EIL, from their respective dates of joining with all consequential benefits, in fair recognition of their long and dedicated service to the company.

1.2 In order to obtain clarification on the subject, the representation was forwarded to the concerned Ministry of Petroleum and Natural Gas for their comments in the matter.

1.3 The Ministry in their reply dated 7 April, 2000 *inter-alia* submitted as under:—

- (a) Engineers India Limited (EIL), New Delhi is an engineering consultancy organisation, providing services to various private and public sector companies for building up their projects in the field of petroleum refining, petrochemicals, chemical processing plants, pipelines, off shore, non-ferrous metallurgy and other allied areas;
- (b) That the services of the petitioners cannot be regularise straightway as they were specifically recruited on contract basis to meet the short-term requirements of various projects undertaken by the organisation. The appointment of these contract employees were "tenure appointment" for a specific period and the appointment stand automatically terminated on expiry of contractual period unless extended further;
- (c) That the Contract Employees Association has already filed a Writ Petition for regularization of services in the High Court of

Gujarat. The Writ Petition is pending before the Court. As the matter is *subjudice*, it is for consideration that the present representation may not be admitted.

1.4 For further elucidation in the matter, the Committee decided to hear oral evidence of the representatives of the All Contract Employees Association of the Engineers India Ltd. and the concerned Ministry of Petroleum and Natural Gas. Accordingly, the representatives of the Contract Employees Association and the Ministry of Petroleum and Natural Gas appeared before the Committee for oral evidence on 8.6.2000.

1.5 The Committee first heard the views of the Engineers India Limited Contract Employees Association regarding the representation made by them. Placing his case before the Committee, Shri C.S. Srinivas, President of the Contract Employees Association while justifying the regularisation of their services, stated that about 350 Contract Engineers who were initially appointed for 3 years were given extensions. Secondly, most of the Contract Employees have attained the age between 30—35 years, are highly qualified and have served in the Engineers India Limited to the satisfaction of the management. Regarding the termination of their services after the completion of contract period, he stated that they may have to face hard times, if they were suddenly thrown out of the job as at this age, this is the only source of employment for them. Instead of regularising their services, the Management was recruiting fresh graduates from the colleges. He cited examples of Railways and Telecommunications. Ministries where the services of Contract Employees have been regularized. He informed the Committee that since 1993, about 700 Engineers were recruited by the Engineers India Limited on regular basis. Regarding the writ petition filed by them in the Gujarat High Court, the Committee was informed that the case has not yet come up for hearing.

1.6 It was also stated by them that the jobs for which they were recruited were still in existence or even if the project were completed, their services could have been utilised at some other projects.

1.7 The Committee thereafter heard the views of the representatives of the Ministry of Petroleum and Natural Gas and the Management of Engineers India Limited. Shri Naresh Narad, Additional Secretary of the Ministry stated that at the time of employment, the contract employees were very well aware that they were being recruited for a specific period only. In this regard, he submitted that out of 291 Engineers who had separated from Engineers India Limited, 241 are those who have resigned for better job opportunities elsewhere and 36 have been released on completion of the project. He further stated that Contract Employees were recruited with lots of relaxation in their qualification as compared to the regular recruits being taken from the colleges.

1.8 Shri S.J. Chopra, CMD of Engineers India Limited stated that the Contract Employees were recruited only for particular projects and

furthermore they have introduced a voluntary retirement scheme to cut down the strength of existing regular staff as their total requirement of man-power has been reduced. In this regard, the Committee pointed out that while making regular employment some preference should be given to the Contract Employees by way of fixing some percentage for them in the regular recruitment. An assurance was given by the Additional Secretary to consider this proposal at the forthcoming sitting of the Board of Directors. On being asked by the Committee whether the termination of services of Contract Employees was violative of the Contract Labour Abolition Act, 1970, the Committee were informed that Engineers were not covered under that Act. The Committee were also given assurance that the matter regarding consideration of application of the Contract Employees against regular vacancies would be looked into at the meeting of the Board of Directors which was to be held on the following day.

1.9 The Ministry of Petroleum and Natural Gas were requested to communicate the outcome of the said meeting of the Board of Directors regarding regularisation of the services of Contract Engineers, in the company. The Ministry subsequently furnished a copy of the said Board's decision taken on 9.6.2000.

1.10 On perusal of the said decision, it was seen that certain amendments were proposed in the recruitment rules for officers so as to prescribe for filling up 50% vacancies of the Management Trainees from Contract Engineers subject to some minimum qualifying marks at Degree level, passing of written test and thereafter an interview before a Selection Committee. It was prescribed that such proposed amendments would come into force with immediate effect. However, some points in the said Board's decision required further elucidation/clarifications such as the precise date of coming into force of such proposed amendments, minimum qualifying marks required at Degree level for being eligible for written test, mode of implementing the proposed amendment etc. Accordingly the matter was again referred to the Ministry of Petroleum and Natural Gas to elicit the said clarifications. The said Board's decision was also communicated to the representatives of the Contract Employees Association for their comments, who in turn replied that they were not satisfied with the decision so taken and expressed apprehensions about the fair selection in the written test.

1.11 In the meantime, two more representation were received from the contract engineers wherein it was alleged that after the appearance of the contract engineers before the Committee on 8.6.2000 for oral evidence, the services of many more contract employees were terminated in an arbitrary manner. Furthermore, the services of one of the Contract Engineers who appeared for oral evidence before the Committee was terminated in order to punish him for appearing before the Committee. The matter regarding further clarifications on the points relating to

Board's decision alongwith the above mentioned representations so received from EIL Contract Employees Association was taken up with the Ministry of Petroleum and Natural Gas.

1.12 The Ministry in their reply dated 11 August, 2000 stated as under:—

- “(i) that the process of implementing the Board's decision has already been started and the actual regularisation of the services of Contract Engineers would begin from the year 2001;
- (ii) that, no immediate relief is envisaged to the Contract Employees by the Board's decision;
- (iii) that the number of vacancies of Management Trainees in Engineers India Limited varies from year to year;
- (iv) that all the existing Contract Engineers are likely to be eligible for the written test;
- (v) that well laid down recruitment procedure exists in the Company and due weightage for written test, experience and interview would be ensured;
- (vi) that due consideration would be given to the experience gained by the Contract Engineers for being appointed at various levels;
- (vii) that no written test is taken by Company at the time of recruitment of the Contract Engineers and they were recruited by walk-interviews only;
- (viii) that the unfilled vacancies to be filled up by Contract Engineers on regular basis cannot be carried forward to next year as it would adversely affect the work;
- (ix) regarding allegation made by the Engineers India Ltd. Contract Employees Association that after oral evidence before the Committee on 8.6.2000, the services of many more Contract Employees have been terminated, the Ministry stated that such allegations are without basis as such services were terminated as per the terms and conditions of contract only or closure of project sites on completion of projects. The Ministry further stated that in view of the considerable reduction in work load, 29 regular employees also have been given voluntary retirement under Voluntary Retirement Scheme during the last four months.”

1.13 In between, two letters from Shri B. R. Manhar, M.P. Rajya Sabha were received pertaining to the regularisation of the services of the Contract Employees of other Public Sector Undertakings controlled by different Ministries. (Annexure-I and II)

1.14 The Committee again decided to hear the oral evidence of the Ministry of Petroleum and Natural Gas on 22.8.2000 on the points arising

out from their reply dated 11.8.2000. During the course of oral evidence, regarding the termination of services of one of the Contract Engineers namely Shri S. K. Aggarwal who appeared before the Committee at their earlier sitting held on 8.6.2000 for oral evidence, the Secretary, Petroleum and Natural Gas told to the Committee that it was not a victimisation, but his services were terminated on the expiry of his term of contract.

1.15 Regarding regularisation of the Services of Contract Engineers, the Secretary of the Ministry submitted that at the instance of the Committee, they have already reserved 50% of all the vacancies for Contract Engineers with relaxed educational and other qualifications. Regarding justification for written test, the Secretary submitted that in view of these relaxed qualifications, the necessity of a written test and interview had arisen. He further submitted that there has been a considerable reduction in the workload in the E.I.L. and as a result 29 regular employees have been released under Voluntary Retirement Scheme.

1.16 The Committee then pointed out that in many other Public Sector Undertakings the services of Contract Employees had been regularised on the basis of seniority. Performance and the number of vacancies and nowhere written tests were held. The Committee stressed that the same criteria should be followed by Engineers India Ltd. also. In this regard, the Secretary of the Ministry submitted that a uniform criteria cannot be adopted because different Public Sector Undertakings have different types of roles and different type of competitions they face in the market.

1.17 On a pointed question, the Secretary of the Ministry submitted that the Contract Engineers in the Engineers India Ltd. were not covered under the Contract Labour Act as they were holding the status of officers.

1.18 In the end, the CMD of Engineers India Ltd. submitted that they were taking all possible steps to regularise the services of Contract Engineers but the only difficulty they were facing was that the number of projects being undertaken by the Engineers India Ltd. have considerably reduced since 1994-95 and their requirement of work force has become almost half.

1.19 It has come to the notice of the Committee from the Annual Report of the Engineers India Limited that a large number of projects are pending for being executed by the Company. In addition to it, some more work is expected to be received by the Company from the Oil sectors also. It is, therefore, incorrect to say that the volume of work with the Company has gone down.

1.20 The Committee feel that the termination of the services of Contract Engineers and other non-technical Contract Employees who had served in the Engineers India Limited for many years is not a healthy practice and is against the principles of natural justice. They are now between the ages of 35-40 years and as such they do not have any chance for further employment. In this regard, the Committee note that at their

instance, the management of Engineers India Limited have decided to fill up 50% vacancies of the Management Trainees from the Contract Engineers of the Company. The Committee however, note that such vacancies are to be filled up after subjecting the Contract Employees to a written test and subsequent interview before a Selection Committee. While appreciating the decision so taken by the Board regarding regularisation of the services of the Contract Engineers, the Committee recommend that 100% of the vacancies instead of the proposed 50% should be filled up from the Contract Engineers only till all the Contract Engineers (including the retrenched ones) are absorbed on regular basis. The Committee recommend the same for the non-technical Contract Employees also. The Committee are, further, of the view that the requirement of such written test is not justified and as such the selection should be made on the basis of seniority, satisfactory performance and annual performance appraisal report of the Contract Engineers during their earlier service already rendered in the company. The Committee are of the view that suitability of the Contract Engineers for the job has already been well determined. As such, Contract Engineers have already proved their merit and suitability in the service. In view of this, the Committee recommend that the requirement of the written test should be dispensed with.

1.21. The Committee also recommend that the cases of those contract engineers and non-technical Contract Employees whose services have been terminated by the management should be reviewed in line with the recommendation contained in Para 1.20 above and they should be reinstated, without any break in service.

II

The Courier Imports and Exports (Clearance) Regulations, 1998 (GSR 662-E of 1998)

The Courier Imports and Exports (Clearance) Regulations, 1998 were published in the Gazette of India, Part-II, Section 3 (i) dated 9 November, 1998. During the course of examination of these regulations the following points were referred to the Ministry of Finance for their comments:—

- (i) **Regulation 5(5)** : It was prescribed that if the clearance of the imported goods is not done within 30 days of their arrival, the same shall be disposed off by the custom authorities. It was felt that before disposing off such goods, notice may be given to the authorised dealer and he may also be given a reasonable opportunity of being heard in the matter.
- (ii) **Regulation 6(5)** : It was prescribed that if the goods meant for export are not exported within seven days of their arrival, the same shall be detained and disposed off by the customs after giving notice to the authorised dealer. It was felt that some provisions may also be made to take care of those circumstances which are beyond the control of the authorised dealer for exporting goods within 7 days. Such circumstances may include bad weather, cancellation of Air Flights etc.

2.2 The Ministry *vide* their reply dated 14 July, 1999 *inter-alia* stated as follows:—

“.....that the suggestions made therein have been examined by the Board and the same have been accepted. The Courier Imports and Exports (Clearance) Regulations, 1998 are being amended accordingly. The copy of the amendment notification to the said regulations will be sent to you in due course.”

2.3 In this regard, the Ministry were requested to furnish a printed copy of the notification, for information of the Committee on Subordinate Legislation.

2.4 The Ministry *vide* their reply dated 21 October, 1999 furnished a cyclostyled copy of the amended notification carrying the following information:—

“.....(iii) In regulation 5, for sub-regulation (5), the following sub-regulation shall be substituted, namely:—

Any imported goods which are not taken clearance, shall be detained by the Customs and shall be disposed off *after issuing a notice to the Authorised Courier* after the expiry of a period of thirty days of the arrival of the said goods and the charges payable for storage and holding of such goods shall be payable by the Authorised Courier.

In regulation 6, in sub-regulation (5), after the words "of arrival of such goods into such area", the following words shall be inserted; namely:—

"or within such extended period as permitted by the proper officer in case of delay due to such reasons which the proper officer considers to be beyond the control of the concerned courier".

Regulation 5(5)

2.5 The Committee note that in the extant regulation it was prescribed that if the clearance of the imported goods was not done within 30 days of their arrival, the same shall be disposed off by the custom authorities. In this regard, the Committee feel that the principles of natural justice, which are essential for imparting justice, have been ignored by the Ministry to a certain extent *i.e.* before the custom authorities disposes the uncleared imported goods, a notice should have been given to the concerned dealer before taking such action and he might also be given a reasonable opportunity of being heard in the matter. The Committee note with satisfaction that on being pointed out, the Ministry have notified the desired amendment in the regulation *vide* Gazette of India Notification number GSR 645-E dated 21 September, 1999.

Regulation 6(5)

2.6 The Committee note that in the extant regulation, dealing with exporting of goods, it was prescribed that if the goods meant for export were not exported within seven days of their arrival, the same *shall be detained and disposed off by the customs* after giving notice to the authorised dealer. The Committee feel that since this provision was mandatory in nature, some unavoidable circumstances like bad weather, cancellation of air flights etc. should be kept in mind by the Ministry while framing the aforesaid regulations *i.e.* to say that the principles of natural justice should not be discarded until and unless circumstances demand so. However, the Committee note with satisfaction that on being pointed out, the Ministry had accordingly amended the extant regulations to the desired effect *vide* Gazette of India Notification number GSR 645-E dated 21 September, 1999.

III

The New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Amendment Regulations, 1998 (GSR 658-E of 1998)

The New Mangalore Port Trust Employees (RSP) Amendment Regulations, 1998 were published in the Gazette of India, Part-II, Section 3(i) dated 5 November, 1998. It was observed therefrom that as per the entries made under Col. 9 of the Schedule appended thereto against the post of Assistant Matron, direct recruitment was prescribed as one of the method of recruitment. However, under Col. 7 of the Schedule, the educational qualifications required for *Direct Recruits* were not prescribed and instead the entry 'not applicable' was made. The matter was, therefore, referred to the Ministry of Surface Transport for clarification.

3.2 The Ministry of Surface Transport in their reply dated 10 October, 1999 stated that the aforesaid error had been committed inadvertently and a corrigendum would be issued with the approval of the Port Trust Board. The Ministry were thereafter requested to expedite the matter with the New Mangalore Port Trust for carrying out the desired amendment in the extant regulations.

3.3 The Ministry *vide* their reply dated 21 March, 2000, furnished a copy of the Gazette Notification issued *vide* GSR No 4-E dated 1 January, 2000 carrying the requisite amendment in the regulations by prescribing the necessary qualifications required for direct recruitment to the post of Assistant Matron.

3.4 The Committee note that in the New Mangalore Port Trust Employees (RSP) Amendment Regulations, 1998 under the entries made under col. 9 of the Schedule appended thereto against the post of Assistant Matron, direct recruitment was prescribed as one of the method of recruitment. However, under Col. 7 of the schedule, the educational qualifications required for direct recruits were not prescribed and instead the entry 'not applicable' was made.

3.5 The Committee note with satisfaction that on being pointed out, the Ministry have carried out the necessary amendment in the extant regulations by prescribing the educational qualifications required for direct recruits for the post of Assistant Matron under Col. 7 of the Schedule and notified the same *vide* Gazette of India Notification No. GSR 4-E dated 1 January, 2000. The Committee desire the Ministry to be more careful in such matters so as to avoid such type of lapses in the future.

IV

(a) The Central Excise (Seventeenth Amendment) Rules, 1999 (GSR 709-E of 1999);

(b) the Customs (Settlement of Cases) Rules, 1999 (GSR 710-E of 1999)

The Central Excise (Seventeenth Amendment) Rules, 1999 and the Customs (Settlement of Cases) Rules, 1999 were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 22 October, 1999. Rules 220B(2) and 5(2) respectively of the above rules relating to Manner of Provisional Attachment of Property, provided that the Commissioner may authorise any officer subordinate to him to take steps to attach such property of the applicant. In this regard, it was felt that the minimum rank of the officer who can be so authorised by the Commissioner for the purpose of attachment of the property should also be prescribed in the rules so as to prevent any misuse of the provision. The Ministry of Finance (Department of Revenue) were requested to state whether they have any objection in amending the rules to the desired effect.

4.2 The Ministry of Finance *vide* their reply dated 13 March, 2000 stated that the rules have been amended as per the suggestion of the Committee to prescribe an officer not below the rank of an Assistant Commissioner who can be so authorised by the Commissioner for attachment of the property, in the relevant rules. The Ministry also endorsed a copy of the amended rules published by them in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section(i), dated 9 March, 2000, *vide* GSR No. 234-E and 235-E respectively.

4.3 The Committee note that above rules did not prescribe minimum rank of the officer who could be authorised by the Commissioner to attach the property of the applicant. The Committee, however note with satisfaction that on being pointed out, the Ministry of Finance have amended the Central Excise (Seventeenth Amendment) Rules, 1999 and the Customs (Settlement of Cases) Rules, 1999 by providing that an officer not below the rank of an Assistant Commissioner can be so authorised by the Commissioner for attachment of property of the applicant so as to avoid any misuse of the provision and have published the amended rules in the Gazette of India *vide* GSR No. 234-E and 235-E respectively.

V

**The Department of Telecommunications Stenographers (Grade, I, II, III)
Recruitment Rules, 1994 (GSR 4 of 1996)**

The Department of Telecommunications Stenographers (Grade I, II, III) Recruitment Rules, 1994, were published in the Gazette of India, Part II, Section 3 (i) dated January 6, 1996. The following discrepancies were observed therefrom:

(A)

Year in the short title

It was observed that the short title indicated the year as 1994 whereas the rules were published in 1996. Normally the year in the short title should conform to the year of publication of the Gazette Notification. The Ministry of Communications were asked to state the reasons for deviation from the normal practice in that regard and to state whether any corrigendum had since been issued by them to rectify the year in the short title.

5.2 In their reply dated 17 June, 1996, the Ministry informed that no such corrigendum was issued by them so far. However, as suggested by Lok Sabha Secretariat, a corrigendum was being issued by them.

5.3 Subsequently, on 12 May, 1998, the Ministry enclosed a copy of the Gazette of India Notification No. GSR 119-E dated 5 March, 1998 carrying the requisite corrigenda to rectify the year in the short title.

5.4 The Committee note with satisfaction that on being pointed out, the Ministry have issued the necessary corrigenda to Department of Telecommunications Stenographers (Grade-I, II, III) Recruitment Rules, 1994, so as to indicate the correct year in the short title *vide* Gazette of India Notification No. GSR 119(E) dated 5 March, 1998.

(B)

Delay in publication of the Gazette Notification

5.5 It was noticed that the Notification containing the above rules were sent for publication on 2 December, 1994, but these were published in the Gazette of India only on 6 January, 1996 i.e. after a delay of 14 months. The Ministry were, therefore, asked to state the reasons for such an inordinate delay in publication of the Gazette Notification.

5.6 In their reply dated 17 June, 1996 the Ministry attributed the reasons for such inordinate delay on the part of the Government of India Press that the Press did not take any action for about 9 months despite repeated reminders by that Ministry and after that the Press asked for certain information/documents which were furnished to them and hence the delay in publication of the said Notification.

5.7 The Committee note that the Ministry have attributed the delay in publication of the final rules on the part of the Government of India Press for not initiating timely action in the final publication of the rules. The Committee do not find the reasons adduced by the Ministry convincing as they have not stated the circumstances under which the Press did not take any action on publication of the Notification.

5.8 The Committee feel that the duty of the Ministry does not end with merely sending the Notification to the Press, but the Ministry should also ensure that the Notifications sent by them are printed correctly and well within time. The Committee regret to note that had the Ministry taken up the matter with the seriousness it deserved, this delay could have been curtailed to a large extent. The Committee desire the Ministry to be more careful in future and should evolve some procedural safeguards to ensure timely publication of their Notifications.

(C)

Column 11 of the Schedule regarding method of recruitment

5.9 It was observed that under Column 11 of the Schedule appended to the Recruitment Rules, an experience of three years was prescribed for recruitment to the post of Stenographer Grade III for the Departmental candidates whereas no such experience was prescribed for direct recruitment or casual labourers. The provision was, therefore, felt to be discriminatory to the interest of promotees. The matter was referred to the Ministry for ascertaining the rationale behind this discriminatory provision.

5.10 In their reply dated 17 June, 1996 the Ministry stated as under:—

“So far as prescribing of experience for direct recruits and casual labourers is concerned it is stated that it is not feasible to prescribe any experience for direct recruits as they are recruited through a common competitive examination conducted by the Staff Selection Commission for the vacancies in all the Ministries/Departments and that prescribing some experience for the casual labourers was being considered by them in consultation with the Ministry of Law/Department of Personnel and Training.”

5.11 In a further communication dated 20 December, 1996, the Ministry stated that their proposal to amend the Recruitment Rules of Stenographer Grade-III incorporating five years service for Temporary Status Mazdoors and regular Group 'D' staff for the purpose of their consideration in Stenographer Grade-III was not agreed to by Department of Personnel and Training.

5.12 After constant pursuing by the Secretariat through repeated reminders, the Ministry *vide* their communication dated 15 April, 1997, stated as under:—

“That action to amend the Recruitment Rules of Stenographer Grade-III was initiated as per the observations of Department of Personnel and Training/Ministry of Law & Justice (Department of

Legislation). However the same has been kept in abeyance due to temporary ban on framing/amendment of Recruitment Rules in respect of any Group of Posts/Services/Cadres by Department of Personnel & Training for examining recommendations of Fifth Central Pay Commission. As such necessary action will be taken only on lifting of said ban."

In this connection, the attention of the Ministry was drawn to the fact that the ban was imposed only on 10 February, 1997, whereas the first communication in the extant case was made on 22 May, 1996 and the Ministry were made to realise that due care was not taken by them to make the amendments prior to imposition of the aforesaid ban.

5.13 In a subsequent communication dated 12 May, 1998, the Ministry of Communication submitted a copy of the Notification containing the requisite amendment to read as under:

"In the Department of Telecommunications Stenographers (Grade I, II, III) Recruitment Rules, 1994.

* * * * *

(b) in the schedule against the post of Stenographer Grade III, in Column 11, for the existing entries, the following shall be substituted, namely:—

50% by direct recruitment.

50% by departmental competitive examination from amongst regular Group 'C' and Group 'D' employees who possess the educational and other qualifications as laid down for direct recruits and have rendered—

(i) in the case of Group 'C' employees, three years' regular service in the grade; and

(ii) in the case of Group 'D' employees, five years' regular service in the grade,

working under the recruitment authority, failing which by direct recruitment."

5.14 The Committee note that Column 11 of the Schedule to the Department of Telecommunications Stenographers (Grade I, II, III) Recruitment Rules, 1994, regarding method of recruitment, prescribed an experience of three years for recruitment to the post of stenographer grade III for the Departmental candidates whereas no experience was prescribed for direct recruits or casual labourers. The Committee further note from the reply of the Ministry that prescribing of experience for direct recruits as was done for Departmental candidates was not feasible for them because direct candidates are recruited through a common competitive examination conducted by the Staff Selection Commission for the vacancies in all the Ministries/Departments.

5.15 As regards the anomaly wherein three years experience was prescribed for Departmental candidates and no experience was prescribed for casual labourers, the Committee note with satisfaction that the Ministry have since suitably amended the rules so as to do away with the existing anomaly by prescribing five years regular service in the Grade for Group 'D' employees *vide* Gazette of India Notification No. GSR 119-E dated 5 March, 1998.

VI

The India Security Press and Currency Note Press (Senior Safety Officer and Safety Officer) Recruitment Rules, 1995 (GSR 435 of 1995).

The India Security Press and Currency Note Press (Senior Safety Officer and Safety Officer) Recruitment Rules, 1995 were published in the Gazette of India, Part-II, Section 3 (i) dated 30 September, 1995. It was observed, therefrom that as per scheme of column 10 of the schedule appended to the recruitment rules, in the case of Senior Safety Officer, the probation period for direct recruits was one year whereas it was two years for promotees. It was felt not proper. The matter was, therefore, referred to the Ministry of Finance (Department of Economic Affairs) to ascertain the rationale behind prescribing a longer probation period for promotees as compared with that of the direct recruits and thereby 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. 21011/1/94 Estt. (c) dated 20 April, 1995 regarding prescribing a uniform period of probation for both promotees as well as direct recruits.

6.2 The Ministry in their reply, dated 13 June, 1996 stated as under:—

“..... that Recruitment Rules in question have been referred to UPSC for their concurrence in issuing suitable corrigendum”.

6.3 The Ministry in their subsequent reply dated 19 August, 1997 intimated that the requisite amendment in the Recruitment Rules has since been carried out. The Ministry also furnished a printed copy of the revised Gazette Notification prescribing uniform probation period for both direct recruits and promotees.

6.4 The Committee note that the Ministry of Finance (Department of Economic Affairs) India Security Press/Currency Note Press (Senior Safety Officer) Recruitment Rules, 1995, provided for a longer probation period for promotees as compared to that for direct recruits. However, the Committee note with satisfaction that on being drawn the attention of the Ministry to the guidelines issued by the Department of Personnel and Training O.M. No. 21011/1/94 Estt.(c) dated 20 April, 1995 regarding prescribing a uniform period of probation for both direct recruits and promotees, the Ministry have since amended rules *vide* Gazette of India Notification No. GSR 83 dated 15 February, 1997 by prescribing a uniform period of probation for both promotees and direct recruits. The Committee desire that the Ministry should be more careful in future in following the guidelines issued by DOP&T while framing the Recruitment Rules.

VII

The Ministry of Human Resource Development, Directorate of Adult Education, Desk Top Publishing Operator, Group 'C' Post Recruitment Rules, 1995 (GSR 5 of 1996).

The Ministry of Human Resource Development, Directorate of Adult Education, Desk Top Publishing Operator, Group 'C', Post Recruitment Rules, 1995 were published in the Gazette of India, Part II, Section 3(i) dated 6 January, 1996. The note under Col. 11 of the Schedule relating to the method of recruitment to the post of Desk Top Publishing Operator read as under:—

Col. 11 relating to method of recruitment to the post of Desk Top Publishing Operator.

Note:—"Suitability of the incumbent of the post of Desk Top Publishing Operator in the Ministry of Human Resource Development, Directorate of Adult Education shall be assessed by the Departmental Promotion Committee and if assessed suitable, he shall be deemed to have been appointed to the post with effect from the 18th day of September, 1992...

7.2 The provision seemed to be unusual in as much as the appointment of a person through direct recruitment was being effected from a backdate, namely 18 September, 1992. The matter was referred to the Ministry of Human Resource Development to know the special reasons for doing so.

7.3 In their reply dated 23 July, 1996, the Ministry stated as under:—

"..... the post of Desk Top Publishing Operator was created in the Directorate of Adult Education, a subordinate office of the Department of Education with the approval of competent authority. The Recruitment Rules for the post of Desk Top Publishing Operator were formulated in consultation with the Legislative Department, Ministry of Law and Justice. The column 11 indicates the method of recruitment. As per the provisions the post is to be filled by direct recruitment. However, as has been indicated in the note to this column, duly approved by the Legislative Department, the suitability of the incumbent to the post of Desk Top Publishing Operator in the Ministry of Human Resource Development, Directorate of Adult Education shall be assessed by the DPC and if assessed suitable he shall be deemed to have been appointed to the post w.e.f. 18.9.92. This note has been incorporated in the Recruitment Rules as the post of Desk Top Publishing Operator was already created with the approval of competent authority w.e.f. 18.9.92 and a qualified person was already working on adhoc basis. This clause was incorporated with the approval of the competent authority and the Legislative Department keeping in view the fact that a Departmental

Candidate is already working against the post of Desk Top Publishing Operator. The note of column 11 implies that in the first instance the suitability of the existing incumbent, working on adhoc basis as Desk Top Publishing Operator will be assessed and in case he is not found suitable the method of direct recruitment will be adopted.”

7.4 The reply of the Ministry was not convincing since as per normal practice, where a new service is formed and the recruitment rules are framed for the first time and there are officers already holding posts proposed to be included in the service on a regular basis, a suitable ‘Initial Constitution’ clause is inserted in the notification so as to count the regular service rendered by such before the date of notification of the rules. The Ministry were again referred to state whether they had any objection in amending the recruitment rules to the desired effect.

7.5 On being pointed out, the Ministry of Human Resource Development have since issued an amendment notification by inserting a suitable ‘Initial Constitution’ clause so as to regularise the services of the incumbents appointed under these rules from the 18th day of September, 1992 and to take in to account the service rendered by him for deciding his eligibility for promotion to the next higher grade.

7.6 The Committee note that Column 11 of the above rules relating to method of recruitment to the post of Desk Top Publishing Operator provided for filling up of the said post through direct recruitment and that the incumbent found suitable by the DPC for the aforesaid post shall be deemed to have appointed from a backdate. The Committee find the provision to be unusual since the mode of appointment was through direct recruitment. In this regard, the Committee note from the reply of Ministry that the said post was already created with the approval of competent authority *w.e.f.* 18.9.92 and a qualified person was already working on a *ad-hoc* basis on that post and that the ‘note’ under column 11 implies that in the first instance the suitability of the existing incumbent working on *ad-hoc* basis will be assessed by the DPC and if he is found unsuitable then the method of direct recruitment would be adopted. In this regard, the Committee feel that the appropriate way for the Ministry was to insert a suitable “Initial Constitution” Clause in the rules so as to protect the interest of the incumbents working on *ad-hoc* basis and to count the regular service rendered by such person before the date of notification of the rules.

7.7 The Committee note with satisfaction that on being pointed out, the Ministry of Human Resource Development (Department of Education) have now inserted an “Initial Constitution” Clause in the Recruitment (Amendment) Rules, so as to regularise the services of the incumbent who

was holding the post of Desk Top Publishing Operator on the date of commencement of these rules and also to take into account the services rendered by such incumbent for deciding his eligibility for promotion to the next higher grade *vide* Gazette of India Notification GSR No. 279 dated 5 July, 1997.

VIII

The Tambaku Vikas Nideshalaya (Directorate of Tobacco Development) (Group 'C' and Group 'D' posts) Recruitment (Amendment) Rules, 1995 (GSR 302 of 1996)

The Tambaku Vikas Nideshalaya (Directorate of Tobacco Development) (Group 'C' and Group 'D' posts) Recruitment (Amendment) Rules, 1995 were published in the Gazette of India, Part-II, Section 3 (i) dated 20 July, 1996. It was observed therefrom that the short title of the rules indicated the year as 1995 whereas these rules were published in the year 1996. Normally the year in the short title should conform to the year of publication of the Gazette Notification. The Ministry of Agriculture were therefore asked to state whether any corrigendum had been issued by them to rectify the error and, if not, whether they had any objection in complying with the requirement of the Committee on Subordinate Legislation so as to reflect the correct year in the rules.

8.2 In their reply dated 29 April, 1997 the Ministry enclosed a copy of the corrigendum to the aforesaid rules indicating the correct year in the rules.

8.3 The Committee note that the short title to the Tambaku Vikas Nideshalaya (Directorate of Tobacco Development) (Group 'C' and Group 'D' posts) Recruitment (Amendment) Rules, bore the year 1995 whereas these were published in the year 1996. As per the requirement of 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, however, note with satisfaction that on being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) have issued a corrigendum *vide* GSR 57 dated January 25, 1997 so as to reflect the correct year in the short title. The Committee desire that to obviate such errors in future, the Ministry should take due care in finalising the statutory notifications and also provide for their monitoring at higher level of officers to evolve a fool-proof system.

IX

The Spices Board (Quality Marking) (Amendment) Regulations, 1995 (GSR 113 of 1996)

The Spices Board (Quality Marking) (Amendment) Regulations, 1995 were published in the Gazette of India, Part II, Section 3 (i) dated 9 March, 1996. It was observed therefrom that the year in the short-title was not tallying with that of the year of publication of the Regulations in the Gazette of India Notification. It was further observed that although the regulations were amending in nature, the particulars of publication of the principle regulations were not indicated therein by way of a foot-note as per the normal practice followed in this regard. The matter was, therefore, taken up with the Ministry concerned *i.e.* the Ministry of Commerce to ascertain the special reasons, if any, for deviation from the normal practice. The Ministry were also requested to state whether they have any objection to amending the regulations to the desired effect.

9.2 The Ministry of Commerce in their reply dated 12 August, 1996, stated as under:—

“.....the matter was examined and Chairman, Spices Board has informed that:—

- (i) The draft amendment notification was sent directly by the Spices Board to the Manager, Government of India Press, New Delhi on 17th October, 1995 for publication in the Gazette of India. Government of India Press, New Delhi *vide* their letter No. 17020/13/5(845) dated 10 November, 1995 requested the Spices Board to intimate the dates of notification and *vide* letter No. ADM/REG/01/898 dated 4 January, 1996 Spices Board informed the Government Press of India the date of notification of the regulation. Again Government of India Press *vide* their letter dated 22 January, 1996 requested the Board to mention the date of notification of the present amendment. In response to that, Board intimated the date of notification as 15 February, 1996 *vide* their letter ADM/REG/01.89 dated 15 February, 1996 addressed to the Government of India Press. The final notification dated 15.2.1996 was published on 9 March, 1996. However, in the short title the year was not corrected to 1996 by oversight. The correspondence in respect of publication of the notification were conducted directly by the Spices Board with the Government of India Press, New Delhi.

- (ii) the footnote was not appended to the amendment regulations due to oversight.

The Ministry has no objection to the amendment in regulations to correct the title of the regulations and also to the footnote and the same is being done in consultation with Ministry of Law. A copy of the regulations carrying out the above amendments will be sent to the Lok Sabha Secretariat in due course."

9.3. In their subsequent communication dated 18 December, 1996 the Ministry stated as under:—

".....the matter has been examined in consultation with the Ministry of Law & Justice and a copy of the Gazette Notification No. GSR 480 (E) dated 4th October, 1996 which has been published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 17th October, 1996 and carrying out the necessary amendments to the Spices Board (Quality Marking) (Amendment) Regulation, 1995".

9.4 The Committee note with satisfaction that on being pointed out, the Ministry of Commerce have carried out the proposed amendments in the Spices Board (Quality Marking) (Amendment) Regulations, 1995 *vide* Gazette of India Notification No. GSR 480-E dated 4 October, 1996, so as to indicate the correct year in the short-title as well as indicating the particulars of publication of the principle Regulations by way of a foot-note. The Committee however, stress upon the Ministry that they should evolve suitable procedural safeguards so as to ensure that such lapses do not recur in future.

NEW DELHI;
November, 2000

INDRAJIT GUPTA,
Chairman,
Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(Vide Para 5 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF THE COMMITTEE OF SUBORDINATE LEGISLATION (THIRTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
		<i>Representation on behalf of all Contract Employees of M/s Engineers India Limited</i>
1.	1.19	It has come to the notice of the Committee from the Annual Report of the Engineers India Limited that a large number of projects are pending for being executed by the Company. In addition to it, some more work is expected to be received by the Company from the Oil sectors also. It is, therefore, incorrect to say that the volume of work with the Company has gone down.
2.	1.20	The Committee feel that the termination of the services of Contract Engineers and other non-technical Contract Employees who had served in the Engineers India Limited for many years is not a healthy practice and is against the principles of natural justice. They are now between the ages of 35—40 years and as such they do not have any chance for further employment. In this regard, the Committee note that at their instance, the management of Engineers India Limited have decided to fill up 50% vacancies of the Management Trainees from the Contract Engineers of the Company. The Committee however, note that such vacancies are to be filled up after subjecting the Contract Employees to a written test and subsequent interview before a Selection Committee. While appreciating the decision so taken by the Board

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regarding regularisation of the services of the Contract Engineers, the Committee recommend that 100% of the vacancies instead of the proposed 50% should be filled up from the Contract Engineers only till all the Contract Engineers (including the retrenched ones) are absorbed on regular basis. The Committee recommend the same for the non-technical Contract Employees also. The Committee are, further, of the view that the requirement of such written test is not justified and as such the selection should be made on the basis of seniority, satisfactory performance and annual performance appraisal report of the Contract Engineers during their earlier service already rendered in the company. The Committee are of the view that suitability of the Contract Engineers for the job has already been well determined. As such, Contract Engineers have already proved their merit and suitability in the service. In view of this, the Committee recommend that the requirement of the written test should be dispensed with.

3. 1.21 The Committee also recommend that the cases of those Contract Engineers and non-technical Contract Employees whose services have been terminated by the management should be reviewed in line with the recommendation contained in Para 1.20 above and they should be reinstated, without any break in service.

The Courier Imports and Exports (Clearance) Regulations, 1998 (GSR 662-E of 1998)
Regulation 5(5)

4. 2.5 The Committee note that in the extant regulation it was prescribed that if the clearance of the imported goods was not done within 30 days of their arrival, the same shall be disposed off by the custom authorities. In this regard, the Committee feel that the principles of natural justice, which are essential for imparting justice, have been ignored by the Ministry to a certain extent *i.e.* before the
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customs authorities disposes the uncleared imported goods, a notice should have been given to the concerned Dealer before taking such action and he might also be given a reasonable opportunity of being heard in the matter. The Committee note with satisfaction that on being pointed out, the Ministry have notified the desired amendment in the regulation *vide* Gazette of India Notification number GSR 645-E dated 21 September, '99.

Regulation 6 (5)

5. 2.6

The Committee note that in the extant regulation, dealing with exporting of goods, it was prescribed that if the goods meant for export were not exported within seven days of their arrival, the same *shall be detained and disposed off by the customs* after giving notice to the authorised dealer. The Committee feel that since this provision was mandatory in nature, some unavoidable circumstances like bad weather, cancellation of air flights etc. should be kept in mind by the Ministry while framing the aforesaid regulations *i.e.* to say that the principles of natural justice should not be discarded until and unless circumstances demands so. However, the Committee note with satisfaction that on being pointed out, the Ministry had accordingly amended the extant regulations to the desired effect *vide* Gazette of India Notification number GSR 645-E dated 21 September, 1999.

The New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) amendment Regulations, 1998 (GSR 658-E of 1998)

6. 3.4

The Committee note that in the New Mangalore Port Trust Employees (RSP) Amendment Regulations, 1998 under the entries made under Col. 9 of the Schedule appended thereto against the post of Assistant Matron, direct recruitment was prescribed as one of the method of recruitment. However under Col. 7 of the Schedule, the educational qualifications required for direct recruits were not prescribed and instead the entry 'not applicable' was made.

1	2	3
7.	3.5	<p>The Committee note with satisfaction that on being pointed out, the Ministry have carried out the necessary amendment in the extant regulations by prescribing the educational qualifications required for direct recruits for the post of Assistant Matron under Col. 7 of the Schedule and notified the same <i>vide</i> Gazette of India Notification No. GSR 4-E dated 1 January, 2000. The Committee desire the Ministry to be more careful in such matter so as to avoid such type of lapses in the future.</p> <p>(a) The Central Excise (Seventeenth Amendment) Rules, 1999 (GSR 709-E of 1999);</p> <p>(b) The Customs (Settlement of Cases) Rules, 1999 (GSR 710-E of 1999).</p>
8.	4.3	<p>The Committee note that above rules did not prescribe minimum rank of the officer who could be authorised by the Commissioner to attach the property of the applicant. The Committee however note with satisfaction that on being pointed out, the Ministry of Finance have amended the Central Excise (Seventeenth Amendment) Rules, 1999 and the Customs (Settlement of Cases) Rules, 1999 by providing that an officer not below the rank of an Assistant Commissioner can be so authorised by the Commissioner for attachment of property of the applicant so as to avoid any misuse of the provision and have published the amended rules in the Gazette of India <i>vide</i> GSR No. 234-E and 235-E respectively.</p> <p><i>The Department of Telecommunications Stenographers' (Grade I, II and III) Recruitment Rules, 1994 (GSR 4 of 1996).</i></p>
9.	5.4	<p>The Committee note with satisfaction that on being pointed out, the Ministry have issued the necessary corrigenda to Department of Telecommunications Stenographers' (Grade-I, II and III) Recruitment Rules, 1994, so as to indicate the correct year in the short title <i>vide</i> Gazette of India Notification No. GSR 119(E) dated 5 March, 1998.</p>

1	2	3
10.	5.7	The Committee note that the Ministry have attributed the delay in publication of the final rules on the part of the Government of India Press for not initiating timely action in the final publication of the rules. The Committee do not find the reasons adduced by the Ministry convincing as they have not stated the circumstances under which the Press did not take any action on publication of the Notification.
11.	5.8	The Committee feel that the duty of the Ministry does not end with merely sending the Notification to the Press, but the Ministry should also ensure that the Notifications sent by them are printed correctly and well within time. The Committee regret to note that had the Ministry taken up the matter with the seriousness it deserved, this delay could have been curtailed to a large extent. The Committee desire the Ministry to be more careful in future and should evolve some procedural safeguards to ensure timely publication of their Notifications.
12.	5.14	The Committee note that Column 11 of the Schedule to the Department of Telecommunications Stenographers (Grade I, II, III) Recruitment Rules, 1994, regarding method of recruitment, prescribed an experience of three years for recruitment of the post of stenographer grade III for the Departmental candidates whereas no experience was prescribed for direct recruits or casual labourers. The Committee further note from the reply of the Ministry that prescribing of experience for direct recruits as was done for Departmental candidates was not feasible for them because direct candidates are recruited through a common competitive examination conducted by the Staff Selection Commission for the vacancies in all the Ministries/Departments.
13.	5.15	As regards the anomaly wherein three years experience was prescribed for Departmental candidates and no experience was prescribed for casual labourers, the Committee note with satisfaction that the Ministry have since suitably amended the rules so as to do away with the existing anomaly by prescribing five years regular service in

the Grade for Group 'D' employees *vide* Gazette of India Notification No. GSR 119-E dated 5 March, 1998.

The India Security Press and Currency Note Press (Senior Safety Officer and Safety Officer) Recruitment Rules, 1995 (GSR 435 of 1995).

14. 6.4 The Committee note that the Ministry of Finance (Department of Economic Affairs) India Security Press/Currency Note Press (Senior Safety Officer) Recruitment Rules, 1995, provided for a longer probation period for promotees as compared to that for direct recruits. However, the Committee note with satisfaction that on being drawn the attention of the Ministry to the guidelines issued by the Department of Personnel and Training O.M. No. 21011/1/94 Estt(c) dated 20 April, 1995 regarding prescribing a uniform period of probation for both direct recruits and promotees, the Ministry have since amended rules *vide* Gazette of India Notification No. GSR 83 dated 15 February, 1997 by prescribing a uniform period of probation for both promotees and direct recruits. The Committee desire that the Ministry should be more careful in future in following the guidelines issued by DoP&T while framing the Recruitment Rules.

The Ministry of Human Resource Development, Directorate of Adult Education, Desk Top Publishing Operator, Group 'C' Post Recruitment Rules, 1995 (GSR 5 of 1996).

15. 7.6 The Committee note that Column 11 of the above rules relating to method of recruitment to the post of Desk Top Publishing Operator provided for filling up of the said post through direct recruitment and that the incumbent found suitable by the DPC for the aforesaid post shall be deemed to have appointed from a backdate. The Committee find the provision to be unusual since the mode of appointment was through direct recruitment. In this regard, the Committee note from the reply of Ministry that the
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said post was already created with the approval of competent authority w.e.f. 18.9.92 and a qualified person was already working on *ad-hoc* basis on that post and that the 'note' under column 11 implies that in the first instance the suitability of the existing incumbent working on *ad-hoc* basis will be assessed by the DPC and if he is found unsuitable then the method of direct recruitment would be adopted. In this regard, the Committee feel that the appropriate way for the Ministry was to insert a suitable "initial constitution" Clause in the rules so as to protect the interest of the incumbents working on *ad-hoc* basis and to count the regular service rendered by such person before the date of notification of the rules.

16. 7.7 The Committee note with satisfaction that on being pointed out, the Ministry of Human Resource Development (Department of Education) have now inserted an "Initial Constitution" Clause in the Recruitment (Amendment) Rules, so as to regularise the services of the incumbent who was holding the post of Desk Top Publishing Operator on the date of commencement of these rules and also to take into account the services rendered by such incumbent for deciding his eligibility for promotion to the next higher grade *vide* Gazette of India notification GSR No. 279 dated 5 July, 1997.

The Tambaku Vikas Nideshalaya (Directorate of Tobacco Development) (Group 'C' and Group 'D' posts) Recruitment (Amendment) Rules, 1995 (GSR 302 of 1996).

17. 8.3 The Committee note that the short title to the Tambaku Vikas Nideshalaya (Directorate of Tobacco Development) (Group 'C' and Group 'D' posts) Recruitment (Amendment) Rules, bore the year 1995 whereas these were published in the year

1996. As per the requirement of 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, however, note with satisfaction that on being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) have issued a corrigendum *vide* GSR 57 dated January 25, 1997 so as to reflect the correct year in the short title. The Committee desire that to obviate such errors in future, the Ministry should take due care in finalising the statutory notifications and also provide for their monitoring at higher level of officers to evolve a fool-proof system.

The Spices Board (Quality Marking) (Amendment) Regulations, 1995 (GSR 113 of 1996).

18. 9.4

The Committee note with satisfaction that on being pointed out, the Ministry of Commerce have carried out the proposed amendments in the Spices Board (Quality Marking) (Amendment) Regulations, 1995 *vide* Gazette of India Notification No. GSR 480-E dated 4 October, 1996, so as to indicate the correct year in the short-title as well as indicating the particulars of publication of the principle Regulations by way of a foot-note. The Committee however, stress upon the Ministry that they should evolve suitable procedural safeguards so as to ensure that such lapses do not recur in future.

MINUTES

APPENDIX II

[Vide para 4 of the Introduction]

I

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

The Committee met on Thursday, 8 June, 2000 from 11.00 hours to 12.45 hours in Committee Room 'B', 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 Jai Prakash
5. Shri Suresh Kurup
6. Shri Annasaheb M.K. Patil
7. Shri Pravin Rashtrapal
8. Shri Rajiv Pratap Rudy
9. Shri Prabhat Samantray
10. Prof. I.G. Sanadi

SECRETARIAT

1. Shri P.D.T. Achary — *Joint Secretary*
 2. Shri P.D. Malvalia — *Under Secretary*
- I. *Representatives of the EIL Contract Employees Association*
1. Shri C.S. Srinivas
 2. Shri S.K. Aggarwal
 3. Shri A.K. Jain
- II. *Representatives of the Ministry of Petroleum and Natural Gas*
1. Shri Naresh Narad, Additional Secretary
 2. Shri Shiv Raj Singh, Joint Secretary
 3. Dr. S.J. Chopra, C&MD—Engineers India Ltd.
 4. Shri Vijay K. Talwar, Dir. (Press)—Engineers India Ltd.

2. The Committee at first heard the views of the Engineers India Limited Contract Employees Association regarding the representation made by them. Placing his case before the Committee Shri C.S. Srinivas, President of the Contract Employees Association while justifying the

regularisation of their services, stated that about 350 contract Engineers who were initially appointed for 3 years were given extensions. Secondly, most of the Contract Employees have attained the age between 30—35 years, are highly qualified and have served in the Engineers India Limited to the satisfaction of the management. Regarding the termination of their services after the completion of contract period, he stated that they may have to face hard times, if they were suddenly thrown out of the job as at this age this is the only source of employment for them. Instead of regularising their services, the Management was recruiting fresh graduates from the colleges. He cited examples of Railways and Telecommunications where the services of Contract Employees have been regularized. He informed the Committee that since 1993, about 700 Engineers were recruited by the Engineers India Limited on regular basis.

3. Regarding the writ petition filed by them in the Gujarat High Court, the Committee was informed that the case has not yet come up for hearing.

4. On being asked why the action of Management were being termed by them as victimization as it was done in accordance with the terms of contract only, it was stated that the jobs for which they were recruited were still in existence or even if the project was completed, their services could have been utilised at some other projects.

5. To a pointed question whether the Contract Employees were given any opportunity to compete with direct recruits, the representative stated that there was no such bar but preference was not given to their application for consideration. In this regard, he also informed the Committee that in a recently convened meeting, the Joint Secretary of the Ministry of Petroleum and Natural Gas had instructed the Management of Engineers India Limited to make certain rules to absorb the Contract Employees in the Company.

The witnesses then withdrew

6. The Committee thereafter heard the views of the representatives of the Ministry of Petroleum and Natural Gas and the Management of Engineers India Limited. At the outset, the Chairman pointed out the grievances of the Contract Employees and desired to know the justification for the termination of the services of Contract Employees.

7. Shri Naresh Narad, Additional Secretary of the Ministry stated that at the time of employment, the contract employees were very well aware that they were being recruited for a specific period only. In this regard, he submitted that out of 291 Engineers who had separated from Engineers India Limited, 241 are those who have resigned for better job

opportunities elsewhere and 36 have been released on completion of the project. He further stated that Contract Employees were recruited with lots of relaxation in their qualification as compared to the regular recruits being taken from the colleges.

8. Shri S.J. Chopra, CMD of Engineers India Limited stated that the Contract Employees were recruited only for particular projects and furthermore they have introduced a voluntary retirement scheme to cut down the strength of existing regular staff as their total requirement of man-power has been reduced. In this regard, the Committee pointed out that while making regular employment some preference should be given to the Contract Employees by way of fixing some percentage for them in the regular recruitment. An assurance was given by the Additional Secretary to consider this proposal at the forthcoming sitting of the Board of Directors.

9. On being asked whether the termination of Services of Contract Employees was violative of the Contract Labour Abolition Act, 1970, the Committee were informed that Engineers were not covered under that Act. The Committee were also given assurance that the matter regarding consideration of application of the Contract Employees against regular vacancies would also be looked into.

The witnesses then withdrew.

The Committee then adjourned.

II

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

The Committee met on Tuesday, 22 August, 2000 from 15.00 to 16.30 hours in Committee Room 'E', Basement, Parliament House Annexe, 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*
1. Representative of the Ministry of Petroleum and Natural Gas
i. Shri S. Narayan, Secretary
ii. Shri Shivraj Singh, Joint Secretary (Refineries)
2. Representatives from M/s Engineers India Limited
i. Dr. S.J. Chopra, Acting Chairman and Managing Director
ii. Shri V.K. Talwar, Director (Personnel)

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3. The Committee then heard oral evidence of the Representatives of the Ministry of Petroleum and Natural Gas regarding

* Omitted portions of the Minutes are not included in the Report.

regularisation of the services of the Contract Engineers in the Engineers India Ltd.

4. At the outset, the Chairman drew the attention of the Secretary of the Ministry of Petroleum and Natural Gas to the termination of services of one of the Contract Engineers namely Shri S.K. Aggarwal who appeared before the Committee at their earlier sitting held on 8.6.2000 for oral evidence. The Secretary, Petroleum and Natural Gas told the Committee that it was not victimisation. His services were terminated on the expiry of his term of contract.

5. Regarding regularisation of the Services of Contract Engineers, the Secretary of the Ministry submitted that they have already reserved 50% of all the vacancies for Contract Engineers with relaxed educational and other qualifications. This was done at the instance of this august Committee. In view of these relaxed qualifications, the necessity of a written test and interview has arisen. He further submitted that there has been a considerable reduction in the workload in the E.I.L. and as a result 29 regular employees have been released under Voluntary Retirement Scheme.

6. The Committee then pointed out that in many other Public Sector Undertakings the services of Contract Employees have been regularised on the basis of seniority, performance and the number of vacancies and nowhere written tests were held. The Committee stressed that the same criteria should be followed by Engineers India Ltd. also. In this regard, the Secretary of the Ministry submitted that a uniform criterion cannot be adopted because different Public Sector Undertakings have different roles and face different types of competitions in the market.

7. On a pointed question, the Secretary of the Ministry submitted that the Contract Engineers in the Engineers India Ltd. were not covered under the Contract Labour Act as they were holding the status of officers.

8. In the end, the CMD of Engineers India Ltd. submitted that they were taking all possible steps to regularise the services of Contract Engineers but the only difficulty they were facing was that the number of projects being undertaken by the Engineers India Ltd. has considerably reduced since 1994-95 and their requirement of work force has become almost half.

The witnesses then withdrew.

The Committee then adjourned.

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

The Committee met on Wednesday, 18 October, 2000 from 15.00 hours to 16.00 hours in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

MEMBERS

Shri Annasaheb M.K. Patil —*Convenor*

2. Shri Ananda Mohan Biswas
3. Shri Paban Singh Ghatowar
4. Shri Jai Prakash
5. Shri Suresh Kurup
6. Shri Annasaheb M. K. Patil
7. Prof. Rasa Singh Rawat
8. Shri Rajiv Pratap Rudy
9. Shri Prabhat Samantray

SECRETARIAT

Shri Ram Autar Ram—*Director*

2. At the outset, a letter received from the Chairman, Committee on Subordinate Legislation which was addressed to the Members of the Committee, was read out. In that letter, the Chairman had conveyed his inability to attend the sitting of the Committee on account of an accident met by him due to fall in the bathroom and had desired the Members to choose amongst themselves a convenor in accordance with Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha. Accordingly the Members nominated Shri Annasaheb M.K. Patil, M.P. to preside over the sitting. The Committee also expressed their concern over the injury suffered by the Hon'ble Chairman and wished him a speedy recovery which was conveyed to him by the Secretariat, on the desire of the Committee.

The Committee then considered Memoranda Nos. 2—10 as follows:—

**The Courier Imports and Exports (Clearance) Regulations, 1998
(GSR 662-E of 1998) (Memorandum No. 2)**

Regulation 5(5)

3. The Committee noted that in the extant regulation it was prescribed that if the clearance of the imported goods was not done within 30 days of their arrival, the same shall be disposed off by the custom authorities. In this regard, the Committee felt that the principles of natural justice, which were essential for imparting justice, have been ignored by the Ministry to a certain extent *i.e.* before the custom authorities disposed off the uncleared imported goods, a notice should have been given to the concerned Dealer before taking such drastic action and he might also be given a reasonable opportunity of being heard in the matter. The Committee noted with satisfaction that on being pointed out, the Ministry had notified the desired amendment in the regulation *vide* Gazette of India Notification Number GSR 645-E dated 21 September, 99.

Regulation 6(5)

4. The Committee noted that in the extant regulation, dealing with exporting of goods, it was prescribed that if the goods meant for export were not exported within seven days of their arrival, the same *shall be detained and disposed off by the customs* after giving notice to the authorised dealer. The Committee felt that Since this provision was mandatory in nature, some unavoidable circumstances like bad weather, cancellation of air flights etc. should have been kept in mind by the Ministry while framing the aforesaid regulations *i.e.* to say that the principles of natural justice should not be discarded until and unless circumstances demanded so. However, the Committee noted with satisfaction that on being point out, the Ministry had accordingly amended the extant regulations to the desired effect *vide* Gazette of India Notification No. GSR 645-E dated 21 September, 1999.

***The New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Amendment Regulations, 1998 (GSR 658-E of 1998)
(Memorandum No. 3)***

5. The Committee noted that in the New Mangalore Port Trust Employees (RSP) Amendment Regulations, 1998 under the entries made under Col. 9 of the Schedule appended thereto against the post of Assistant Matron, direct recruitment was prescribed as one of the method of recruitment. However under Col. 7 of the schedule, the educational qualifications required for direct recruits were not prescribed and instead the entry 'not applicable' was made. The Committee however noted with satisfaction that on being pointed out, the Ministry had carried out the necessary amendment in the extant regulations by prescribing the educational qualifications required for direct recruits for the post of Assistant Matron under Col. 7 of the Schedule and notified the same *vide* Gazette of India Notification No. GSR 4-E dated 1 January, 2000. The Committee desired that the Ministry should be more careful in such matters so as to avoid such type of lapses, in the future.

Para 6 Omitted.

(a) *The Central Excise (Seventeenth Amendment) Rules, 1999 (GSR 709-E of 1999);*

(b) *The Customs (Settlement of Cases) Rules, 1999 (GSR 710-E of 1999) (Memorandum No. 5)*

7. The Committee noted that the above rules did not prescribed minimum rank of the officer who could be authorised by the Commissioner to attach the property of the applicant. The Committee, however, noted with satisfaction that on being pointed out, the Ministry of Finance had amended the Central Excise (Seventeenth Amendment) Rules, 1999 and the Customs (Settlement of Cases) Rules, 1999 by providing that an officer not below the rank of an Assistant Commissioner could be so authorised by the Commissioner for attachment of property of the applicant so as to avoid any misuse of the provision and had published the amended rules in the Gazette of India *vide* GSR No. 234-E and 235-E respectively.

The Department of Telecommunications Stenographers (Grade I, II, III) Recruitment Rules, 1994 (GSR 4 of 1996) (Memorandum No. 6)

(A)

8. The above rules did not reflect the correct year in the short title. The Committee noted with satisfaction that on being pointed out, the Ministry have issued the necessary corrigenda to Department of Telecommunications Stenographers (Grade-I, II and III) Recruitment Rules, 1994, so as to indicate the correct year in the short title *vide* Gazette of India Notification No. GSR 119(E) dated 5 March, 1998.

(B)

9. The Committee noted that the Ministry had attributed the delay in publication of the final rules on the part of the Government of India Press for not initiating timely action in the final publication of the rules. The Committee did not find the reasons forwarded by the Ministry convincing as they had not stated the circumstances under which the Press did not take any action on publication of the Notification. The Committee felt that the duty of the Ministry does not end with merely sending the Notification to the Press, but the Ministry should also ensure that the Notifications sent by them are printed correctly and well within time. The Committee regretted to note that had the Ministry taken up the matter with the seriousness it deserved, this delay could have been curtailed to a large extent. The Committee desired the Ministry to be more careful in future and should evolve some procedural safeguards to ensure timely publication of their Notifications.

*Omitted portion of the Minutes is not included in the Report.

(C)

10. The Committee noted that Column 11 of the Schedule to Recruitment Rules, 1994, regarding method of recruitment, prescribed an experience of three years for recruitment to the post of stenographer grade III for the Departmental candidates whereas no experience was prescribed for casual labourers. The Committee, however, noted with satisfaction that the Ministry had suitably amended the rules so as to do away with the existing anomaly by prescribing five years regular service in the Grade for Group 'D' employees *vide* Gazette of India Notification No. GSR 119-E dated 5 March, 1998.

The India Security Press and Currency Note Press (Senior Safety Officer and Safety Officer) Recruitment Rules, 1995 (GSR 435 of 1995). (Memorandum No. 7)

11. The Committee noted that the Ministry of Finance (Department of Economic Affairs) India Security Press/Currency Note Press (Senior Safety Officer) Recruitment Rules, 1995, provided for a longer probation period for promotees as compared to that for direct recruits. However, the Committee noted with satisfaction that on being drawn the attention of the Ministry to the guidelines issued by the Department of Personnel and Training *vide* their O.M. No. 21011/1/94 Estt(c) dated 20 April, 1995 prescribing a uniform period of probation for both direct recruits and promotees, the Ministry had amended the rules *vide* Gazette of India Notification No. GSR 83 dated 15 February, 1997 by prescribing a uniform period of probation for both promotees and direct recruits. The Committee desired that the Ministry should be more careful in future in following the guidelines issued by DOT&T while framing the Recruitment Rules.

The Ministry of Human Resource Development, Directorate of Adult Education, Desk Top Publishing Operator, Group 'C' Post Recruitment Rules, 1995 (GSR 5 of 1996) (Memorandum No. 8)

12. The Committee noted that Column 11 of the above rules relating to method of recruitment to the post of Desk Top Publishing Operator provided for filling up of the said post through direct recruitment and that the incumbent found suitable by the DPC for the aforesaid post shall be deemed to have been appointed from a backdate. The Committee found the provision to be unusual since the mode of appointment was through direct recruitment. In this regard, the Committee noted from the reply of Ministry that the said post was already created with the approval of competent authority *w.e.f.* 18.9.1992 and a qualified person was already working on *ad-hoc* basis on that post and that the 'note' under column 11 implied that in the first instance the suitability of the existing incumbent working on *ad-hoc* basis would be assessed by the DPC and if he was found unsuitable then the method of direct recruitment would be adopted. In this regard, the Committee felt that the appropriate way for the

Ministry was to insert a suitable "Initial Constitution" Clause in the rules so as to protect the interest of the incumbents working on *ad-hoc* basis and to count the regular service rendered by such person before the date of notification of the rules. The Committee noted with satisfaction that on being pointed out, the Ministry of Human Resource Development (Department of Education) have now inserted an "Initial Constitution" Clause in the Recruitment (Amendment) Rules, so as to regularise the services of the incumbent who was holding the post of Desk Top Publishing Operator on the date of commencement of these rules and also to take into account the services rendered by such incumbent for deciding his eligibility for promotion to the next higher grade *vide* Gazette of India Notification GSR No. 279 dated 5 July, 1997.

The Tambaku Vikas Nideshalaya (Directorate of Tobacco Development) (Group 'C' and Group 'D' posts) Recruitment (Amendment) Rules, 1995 (GSR 302 of 1996) (Memorandum No. 9)

13. The Committee note that the short title to the aforesaid Recruitment (Amendment) Rules, bore the year 1995 whereas these were published in the year 1996. As per the requirement of 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 however noted with satisfaction that on being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) had issued a corrigendum *vide* GSR 57 dated January 25, 1997 so as to reflect the correct year in the short title. The Committee desired that to obviate such errors in future, the Ministry should take due care in finalising the statutory notifications and also provide for their monitoring at higher level of officers to evolve a fool-proof system.

The Spices Board (Quality Marking) (Amendment) Regulations, 1995 (GSR 113 of 1996) (Memorandum No. 10)

14. The Committee noted with satisfaction that on being pointed out, the Ministry of Commerce had carried out the proposed amendments in the Spices Board (Quality Marking) (Amendment) Regulations, 1995 *vide* Gazette of India Notification No. GSR 480-E dated 4 October, 1996, so as to indicate the correct year in the short-title as well as indicating the particulars of publication of the principle Regulations by way of a footnote. The Committee however, stressed that the Ministry should evolve suitable procedural safeguards so as to ensure that such lapses do not re-occur in future.

The Committee then adjourned.

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