

# COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

## FOURTEENTH REPORT

[Presented on 16 DEC 1994]



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LOK SABHA SECRETARIAT  
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# LOK SABHA SECRETARIAT

## CORRIGENDA

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (1993-94)**

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2. Shri Prithviraj D. Chavan
3. Shri Guman Mal Lodha
4. Shri Dharampal Singh Malik
5. Shri Rasheed Masood
6. Shri M.V.V.S. Murthy
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# **REPORT**

## **I**

### **INTRODUCTION**

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

1.2 The matters covered by this Report were considered by the Committee at their sittings held on 15 March and 27 September, 1993, 12 and 24 January, 30 March, 24 May and 10 October, 1994. The Committee took evidence of the representatives of (i) Ministry of Personnel, Public Grievances and Pensions (ii) The Ministry of Human Resource Development; and (iii) Ministry of Welfare. The Committee wish to express their thanks to the officers for appearing before the Committee and furnishing the information desired by them.

1.3 The Committee considered and adopted this Report at their sitting held on 10 October, 1994. The Minutes of the sittings relevant to this Report are appended to it.

1.4 For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix I to the Report.

## II

### NON-EXERCISE OF RULE MAKING POWER UNDER THE NATIONAL COMMISSION FOR MINORITIES ACT, 1992

2.1 The National Commission for Minorities Act, 1992 was enacted on 17 May, 1992 and came into force on 17 May, 1993 i.e. one year later. Section 15(1) thereof empowers the Central Government to make rules for carrying out the provisions of the Act. In accordance with the recommendation of the Committee on Subordinate Legislation made in para 108 of their Eighteenth Report (Fifth Lok Sabha), the rules should be framed under an Act as soon as possible after the commencement of an Act and in no case this period should exceed six months. In case, however, a Ministry finds that for any unavoidable reasons it is not possible for them to adhere to the prescribed time-limit in an exceptional case, they should at the expiration of six months from the commencement of the relevant Act, explain the reasons to the Committee and seek a specific extension of time from them.

2.2 In compliance with the aforesaid recommendation, the rules were required to be framed under the National Commission for Minorities Act by 17 November, 1993 i.e. within six months of coming into force of the Act. However, on 15 March, 1994, the Ministry of Welfare sought an extension of time for six months i.e. upto 17 May, 1994 as the rules could not be framed by them within the stipulated date. The reasons attributed by the Ministry was that the terms and conditions of service of the Chairman and Members of the National Commission for Minorities could not be finalised. According to them the draft rules regarding terms and conditions of service of the Chairman and Members and the rules for the maintenance of accounts of the Commission were still under consideration and were likely to take some more time for finalisation.

2.3 The Committee were not convinced about the reasons attributed by the Ministry. On 30 March, 1994, the Committee took oral evidence of the representatives of the Ministry of Welfare. While explaining the delay of one year in not framing the rules, the Ministry informed that the delay occurred in the process of selecting suitable persons as Chairperson and Members of the Minorities Commission. According to them the executive orders were in force for governing matters under the Act pending finalisation of the rules. They also explained that the delay was due to the time taken in the process of consulting the Commission and on the inter-departmental correspondence on the matter.

2.4 During the course of evidence, the Committee pointed out that the Ministry should sort out the matter with all the departments involved in

making the rules within one month and they must frame the rules within six weeks from that date.

2.5 On 29 April, 1994, the Ministry of Welfare were requested to furnish information as to the progress made in rule making by the Ministry in that regard.

2.6 On 3 May, 1994, the Ministry furnished a copy of the status report on the progress made in framing the rules as under:—

**“A. Rules relating to the terms and conditions of service of the Chairman and Members of National Commission for Minorities (NCM)**

2.7 As already explained to the Committee, it has not been possible to finalise the rules relating to conditions of the service of the Chairman so far because a proposal in this regard which had been referred to the PMO for obtaining the approval of the Prime Minister in December, 1993, is still awaiting approval. The Principal Secretary to the Prime Minister has been reminded demi officially by Secretary (Welfare) on 13.4.1994. The draft rules have been framed and are ready to be sent to the Ministry of Finance/Department of Personnel for approval with such changes as may be necessary, on the finalisation of the Chairman's terms.

**B. Rules relating to the recruitment and terms and conditions of the officers and other employees of the National Commission for Minorities (NCM)**

2.8 The draft recruitment rules for various posts of the Commission (excluding posts of and above the rank of Deputy Secretary) have been received from the Commission and are being examined. The NCM is however, yet to send the draft rules relating to the terms and conditions of the officers and employees of the NCM. They have indicated that the draft rules in this regard will be sent by 4.5.1994. It is considered necessary to have their comments in this regard because the NCM will be the appointing authority for such posts. Every effort will be made to finalise the rules as soon as the draft rules in regard to terms and conditions are available from the NCM.

**C. Rules relating to the Annual Statement of Accounts and Annual Report of the NCM**

2.9 The draft rules were referred to the NCM for their comments on 29.3.1994. The Commission sent its comments on 13.4.1994. The draft rules require certain clarifications and elaboration. For this purpose the matter was discussed between the Joint Secretary, Ministry of Welfare and the Secretary of the NCM on 25.4.1994. The NCM had agreed to review the rules and send the revised rules by 26.4.1994. A reminder was sent to

them on 28.4.1994. However, NCM considered it necessary to place the revised draft rules before the full Commission. The meeting of the NCM was held on 2.5.1994. The NCM has indicated that the revised draft rules were being sent on 3.5.1994. Further action will be taken on receipt of the draft rules."

2.10 The Committee are distressed to note that despite the suggestion given by them during the course of evidence the Ministry of Welfare has failed to convene an inter-departmental meeting to sort out the matter in order to curtail any further delay in framing the rules. As a result of this even after a gap of more than three months, the rules are pending finalisation. The Committee are of the view that such delays would ultimately defeat the very purpose of the legislation passed by the Parliament namely, to look after the interests of the minorities in the country. The Committee would like the Ministry to take up the matter with the seriousness it deserved. The Committee, therefore, desire that the Ministry should not waste any more time in the inter-departmental hurdles and should convene a meeting of all the agencies concerned with the finalisation of rules to sort out the matter, so that rules could be notified under the Minorities Commission at the earliest.



### III

#### THE COAST GUARD DIRECTOR GENERAL RECRUITMENT RULES, 1990 (SRO 69 of 1991)

3.1 The Coast Guard Director General Recruitment Rules, 1990 were published in the Gazette of India, Part II, Section 4, dated 23 March, 1991 and were brought into force on the date of their publication in the official gazette i.e. 23 March, 1991 for regulating the method of recruitment to the post of Director General, Coast Guard. It was enquired from the concerned Ministry of Defence as to when the post of Director General, Coast Guard was created and how the matters were being governed till then.

3.2 In their reply dated 2 April, 1991, the Ministry stated as under:—

“Column 1 of the Schedule:—The Post of Director General, Coast Guard was created in October, 1978 *vide* Government sanction letter No. CGHQ/PR/2015/18-CGS/DON (II) dated 21 October, 1978. The post of the Director General, Coast Guard has been filled since its creation by deputation/reemployment of a naval officer holding the rank of Vice Admiral.”

3.3 The Committee note that the post of Director General, Coast Guard was created in 1978 and has been filled up since its creation by deputation/reemployment of a naval officer holding the rank of Vice Admiral. However, the recruitment rules governing the post were notified only in March, 1991. The Committee are surprised to note that the Ministry have not indicated as to how the matters relating to recruitment of Director General were regulated during the intervening period of 12 years i.e. between the creation of the post of Director General in October, 1978 and the commencement of the Coast Guard Director General Recruitment Rules in March, 1991. In the absence of any recruitment rules framed in this regard, the Committee feel that for this intervening period, the matters were dealt with by issuing executive instructions which were no substitute for the proper statutory rules.

3.4 Section 5 of the Coast Guard Act, 1978 provides for appointment of an officer by the Central Government as the Director General of Coast Guard and Section 123 confers the necessary rule making power on the Central Government for carrying out the purposes of the Act. The Committee are surprised to note that inspite of all such powers vested with the Government, it is not known as to what had prevented the Government from framing the recruitment rules relating to the post of Director General,

Coast Guard in 1978 itself. As a result of this, the matters sought to be governed by statutory rules as per the intention of the legislature, were in fact governed by executive instructions, which constituted violation of the statute both in letter and in spirit.

3.5 Further, the recruitment rules had come into force from the date of their publication in the official gazette i.e. from 23 March, 1991. As the rules had not been given any retrospective effect, the Committee wonders how the Government had regularised the services of the persons who had already served as the Director General, Coast Guard and or was currently holding that post from a back date.

3.6 The Committee desire that the Ministry of Defence may ensure that the interests of the person holding the post of Director General should not be jeopardised merely because the rules were not framed in time. The Committee further desire that the Ministry may undertake a scrutiny of its exercise of rules making power under other statutes and intimate this Committee of the outcome thereof within 3 months.

## IV

### THE ATOMIC ENERGY (CONTROL OF IRRADIATION OF FOOD) RULES, 1990 (GSR 129 OF 1991)—RULES 6 AND 7 THEREOF

#### (A)

4.1 The Atomic Energy (Control of Irradiation of Food) Rules, 1990 were published in the Gazette of India, Part II, Section 3(i), dated 2 March, 1991. Sub-rules (1) and (2) of rule 6 and sub-rules (1) and (2) of rule 7 read as under:—

#### *“6. Power to suspend the certificate of approval:*

- (1) If the competent authority is satisfied, on the basis of the inspection report, that any irradiation facility has ceased to conform to the safety and efficiency criteria specified in Schedule III and IV, it may for reasons to be recorded in writing, make an order suspending the certificate of approval and call upon the licensee to rectify the defects mentioned therein within a period of thirty days from the date of the order.
- (2) The order of the competent authority made under sub-rule (1) along with the copy of the inspection report shall be communicated to the licensee, who shall on receipt of the same, cease to operate the irradiation facility until the suspension of certificate of approval is revoked under sub-rule (5).

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#### *7. Power to suspend the licence:*

- (1) If the licensing authority is satisfied on the basis of the inspection report that the licensee has failed to ensure that the irradiation facility under this control conforms to the safety and efficiency criteria specified in Schedule III and IV, it may for reasons to be recorded in writing make an order suspending the licence and call upon the licensee to rectify the defects mentioned therein within a period of twenty days from the date of receipt of the order.
- (2) The order made by the licensing authority under sub-rule (1) along with the copy of the inspection report shall be communicated to the licensee, who shall on receipt of the same, cease to operate the irradiation facility until the suspension of the licence is revoked under sub-rule (3).

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4.2 It was observed that under rules 6(1) and 7(1), the licensee might be asked to cease the operation of the irradiation facility but the notice period to rectify the defects under rule 6 was 30 days as against 20 days under rule 7. Thus, different time periods were prescribed for rectification of the defects by the licensee under rule 6 and rule 7. Besides, there was no provision for extension of time to rectify the defects even if the licensee was prevented by reasons beyond his control. Further, to meet the requirements of natural justice, it was felt that the licensee should have a right of appeal to the next higher authority.

4.3 The matter was referred to the concerned Department of Atomic Energy for comments, with the request whether they have any objection to amending the rules to the desired effect. In their reply dated 26 March, 1993, the Department stated as under:—

“.....The Department agrees with the views of the Committee and the period referred in both cases may be made 30 days.

In regard to the “extension” of time “the period of 30 days stipulated under rules 6(1) and 7(1) may be condoned by the licensing authority after having satisfied himself with the fact that the licensee is not able to rectify the defects for reasons beyond his control with in the stipulated period of 30 days.” This may be called Rule 7(2).”

Accordingly the present Rule 7(2) may be renumbered as 7(3) and 7(3) numbered as 7(4).

A provision for appeal may be put under the new Rule 7(5) as follows:

“An appeal shall lie against any order of suspension or revocation of a licence by the licensing authority with the Central Government.”

4.4 The Committee note that, on being pointed out, the Department of Atomic Energy have agreed to amend the Atomic Energy (Control of Irradiation of Food) Rules to the effect that the notice period of 20 days and 30 days in each case prescribed in rules 6(1) and 7(1) respectively may be made 30 days in each case. The Committee also note that the Department have also agreed to insert new sub-rule in rule 7 by providing therein a provision for the extension of time periods stipulated under rules 6(1) and 7(1) in cases where the licensee is not able to rectify the defects within the prescribed period for reasons beyond his control and a provision for appeal with the Central Government against any order of suspension or revocation of a licence by the licensing authority.

4.5 The Committee desire that the Department of Atomic Energy should also insert a similar provision in rule 7 regarding the 'extension of time' and the 'right of appeal' pertaining to certificate of approval.

4.6 The Committee also desire that the Department should carry out the needful amendments at the earliest.

**THE ATOMIC ENERGY (CONTROL OF IRRADIATION OF FOOD) RULES, 1990 (GSR 129 of 1991)—RULE 8 (3) THEREOF**

**(B)**

4.7 Sub-rule 3 of rule 8 of the Atomic Energy (Control of Irradiation of Food) Rules, 1990, reads as under:—

"8. *Revocation of Licence*:—

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(3) Where in the opinion of the licensing authority it is necessary to do so in *public interest*."

4.8 It was felt that the term 'public interest' was vague and could be elaborated. The Department of Atomic Energy were requested if they had any objection to amending the rules to the necessary effect. In their reply dated 26 March, 1993, the Department stated as under:—

"The Department suggests that Rule 8 (3) may be reworded as 'where in the opinion of the licensing authority it is necessary to do so in order to ensure safety for any other reasons whatsoever'."

4.9 The Committee note that the Department of Atomic Energy, while agreeing to amend rule 8(3) of the Atomic Energy (Control of Irradiation of Food) Rules, have suggested that the term 'public interest' appearing therein may be replaced by the words 'in order to ensure safety for any other reasons whatsoever'. The Committee, however, feel that it would be more appropriate if the terms 'in order to ensure safety of persons whosoever may suffer any injury because of any negligence in the process of irradiation or through irradiated products' may be used in place of 'public interest'. The Committee therefore, recommend that the desired amendment in the aforesaid rule may be made at the earliest.

4.10 The Committee further desire that the Department should also provide a suitable provision for the recording of reasons in writing by the licensing authority in order to obviate any misuse of the discretionary powers.

4.11 The Committee, therefore, desire that the Department should notify the requisite amendments at the earliest.

THE ATOMIC ENERGY (CONTROL OF IRRADIATION OF FOOD) RULES, 1990 (GSR 129 OF 1991)—RULE 10(1) THEREOF

(C)

4.12 Sub-rule (1) of rule 10 of the Atomic Energy (Control of Irradiation of Food) Rules, 1990 reads as under:—

“10. *Periodic Inspection of facilities:*—

(1) The competent authority shall undertake inspection of each irradiation facilities atleast twice a year.”

4.13 It was felt that to make the inspections evenly spaced, a provision could be made to provide for a maximum gap of six months between two inspections. The Department of Atomic Energy were requested if they had any objection to amending the rules to the necessary effect. In their reply dated 26 March, 1993, the Department stated as under:—

“Rule 10(1) may be replaced by ‘the competent authority shall undertake inspection of each irradiation facilities atleast twice a year, but the maximum gap between inspections shall be one year’.”

4.14 The Committee note that the Department of Atomic Energy have agreed to amend sub-rule (1) of rule 10 of the Atomic Energy (Control of Irradiation of Food) Rules so as to provide for a maximum gap between the two inspections be one year.

4.15 The Committee are of the opinion that it will be more appropriate if the maximum gap between the two inspections does not exceed 8 months under rule 10(1). The Committee therefore, desire that the Department of Atomic Energy should notify the amendments to this effect at the earliest.

THE ATOMIC ENERGY (CONTROL OF IRRADIATION OF FOOD) RULES, 1990 (GSR 129 OF 1991)—RULES 2, 18 AND 23 THEREOF

(D)

4.16 The Atomic Energy (Control of Irradiation of Food) Rules, 1990 were published in the Gazette of India, Part II, Section 3(i) dated 2 March, 1991.

4.17 Sub-rules (p), (s) and (x) of rule 2, sub-rule (3) of rule 18 and rule 23 of the Atomic Energy (Control of Irradiation of Food) Rules, 1990 read as under:—

2. *Definitions:*—

.. .. ..

(p) “Operational limits shall have same meaning as assigned in clause (h) of Rule 2 of Radiation Protection Rules.

.. .. ..

- (s) "Radiation Protection Rules" means the Radiation Protection Rules, 1971 published with the notification of Government of India in the Department of Atomic Energy in No. GSR 1601 dated 13th September, 1971.

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- (x) Words and expressions used herein but not defined shall have the meaning assigned to them in the Radiation Protection Rules.

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#### 18. *Duties of Radiological Safety Officer:—*

- (3) Carry out leakage tests as specified in the Radiation Protection Rules 1971 and tests of safety related systems.

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23. *Posting of radiation warning signs:—* The licensee shall conspicuously display at the site in which irradiation is in progress the radiation warning signs specified in Rule 17 of the Radiation Protection Rules.

4.18 In all the aforesaid rules it was observed that a reference was made to the Radiation Protection Rules, 1971 whereas the Committee on Subordinate Legislation have always emphasized that the rules should be self-contained and the legislation by reference should be avoided. The matter was referred to the Department of Atomic Energy for their comments with the request whether they have any objection to amending the rules to the desired effect.

4.19 In their reply dated 26 March, 1993, the Department stated as under:—

"The Department agrees with the view of the Committee, Sub-rule (p) of Rule 2 may be amended as follows: "operation limits" means limits on levels of Radiation or on levels of contamination as the competent authority may by notification specify from time to time.

However, regarding sub-rule (s) and sub-rule (x) of Rule 2, they may be deleted as they have no special relevance. Accordingly renumbering has to be done after these deletions as follows:

- Rule 2. Sub-rule "t" becomes "s"  
 Sub-rule "u" becomes "t"  
 Sub-rule "v" becomes "u"

Sub-rule (3) of Rule 18 may be replaced as follows:

"Carry out leakage tests as specified by the competent authority and tests of safety related systems."

Rule 23 may be replaced as follows:

Posting of radiation warning signs: The licensee shall

conspicuously display at the site in which irradiation is in progress, the radiation warning sign as given below:

“(RADIATION SYMBOL) (Please see annexure I enclosed)”\*

4.20 The Committee note that, on being pointed out by them, the Department of Atomic Energy have agreed to amend the Atomic Energy (Control of Irradiation of Food) Rules to do away with the element of legislation by reference occurring therein. According to the Department, sub-rules (s) and (x) of Rule 2 might be deleted as they have no special relevance, and in the case of sub-rule (p) of Rule 2 and sub-rule (3) of Rule 18, the term Radiation Protection Rules may be replaced by the terms ‘as the competent authority may by notification specify from time to time’ and as specified by the competent authority respectively. Similarly, in the case of rule 23, instead of referring to rule 17 of the Radiation Protection Rules, 1971, the Department have proposed a ‘warning sign’ to be displayed at the irradiation site.

4.21 The Committee feel that the ‘operation limit’s referred to in rule 2(p) and the ‘leakage tests’ referred to in rule 18 might be laid down in the rules to make them self-contained rather than providing for them to be specified by the competent authority from time to time.

4.22 In this connection, the Committee in para 13 of their First Report (Fourth Lok Sabha) observed as under:—

“....The Committee have time and again emphasized that rules should, as far as possible, be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing....”

4.23 In order to meet the objective of the aforesaid recommendation in letter and spirit, the Committee desire that the Department should amend the Atomic Energy (Control of Irradiation of Food) Rules suitably by ensuring that not only legislation by reference is avoided but also the rules are self-contained in every respect.



**THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (RECRUITMENT AND CONDITIONS OF SERVICE) AMENDMENT RULES, 1992 (GSR 47 of 1992)**

5.1 The Department of Parliamentary Affairs (Recruitment and Conditions of Service) Amendment Rules, 1992 were published in the Gazette of India, Part II, Section 3(i), dated 8 February, 1992. The proviso added to rule 4(6)(i) read as under:—

“Provided that if sufficient number of candidates are not available for filling up the vacancies through Direct Recruitment as aforesaid, the unfilled vacancies in the Direct Recruitment quota shall be filled by promotion of Upper Division Clerks as aforesaid”.

5.2 It was most unlikely that the adequate number of candidates would not be available in the open market for filling up 50 per cent vacancies in the grade of Assistants through direct recruitment. With a view to ensure that the posts intended to be filled up by direct recruitment were not diverted to others, the said proviso needed to be deleted. The matter was taken up with the concerned Ministry of Parliamentary Affairs to ascertain if they had any objection to amending the rules to the necessary effect. In their reply dated 2 December, 1992, the Ministry stated as under:—

“.....prior to the amendment, Rule 4(6) (i) of Department of Parliamentary Affairs (Recruitment and Conditions of Service) Rules, 1963 provided as under:—

‘Fifty percent of the vacancies in the Assistant Grade shall be filled by promotion of Upper Division Clerks who have rendered not less than five years service in the Grade or ten years combined service in the Grade of Lower Division Clerks and Upper Division Clerks with at least three years’ continuous service in the Grade of Upper Division Clerks on the basis of seniority-cum-fitness and fifty percent of the vacancies shall be filled by direct recruitment on the basis of competitive examination held for the purpose by the Commission’.”

On representations from some of the ad-hoc Assistants (Regular Upper Division Clerks) in this Ministry that the Recruitment Rules of the Ministry relating to the grade of Assistants may be amended to provide for diversion of unfilled vacancies in the direct recruitment quota in the Assistants grade to the promotion of UDCs on the basis of a similar provision in the CSS Rules, the following proviso was inserted after rule 4(6) (i) with the approval of Department of Personnel and Training and the UPSC.—

“Provided that if sufficient number of candidates are not available for filling up the vacancies through Direct Recruitment as aforesaid, the unfilled vacancies in the Direct Recruitment quota shall be filled by promotion of Upper Division Clerks as aforesaid.”

A similar proviso was added in the Central Secretariat Service Rules, 1962, through an amendment in December, 1979. It was decided to insert the provision under consideration in the Recruitment Rules of this Ministry to bring it at par with the provisions contained in the Central Secretariat Service Rules. The amendment was made after approval of the Department of Personnel and Training and the UPSC. A copy each of Department of Personnel and Training O.M. No. 52677-CS(I) dated 6.2.80 and their Notification No. 52677-CS(I) dated 15.12.1979 and an extract of Rules 13(6) of the Central Secretariat Service Rules, 1962 are enclosed.\*

In view of the position stated above, this Ministry is not in favour of amending the rules as desired.

5.3 At their sitting held on 15.3.1993, the Committee considered the matter in detail and decided to hear the representatives of the Department of Personnel and Training and the Staff Selection Commission for further elucidation of the facts.

5.4 During evidence before the Committee on 27.9.1993, the representatives of the Ministry of Personnel informed that the shortfall was due to non-acceptance of appointment offered by a large number of successful candidates selected by Staff Selection Commission. As a result, there was a shortfall in filling those vacancies which accumulated to about 260 vacancies. Explaining the genesis of the proviso, the witnesses submitted that to do away with this backlog and also taking into consideration the fact that a large number of UDCs were stagnating for long time due to non-availability of vacancies in the promotion quota, the proviso had been inserted so as to provide for diversion of unfilled vacancies in the direct recruit quota to the promotees.

5.5 The Committee drew the attention of the representatives to the unfair practice of diverting the unfilled vacancies in the direct recruit quota to the promotees and said that the practice needed to be stopped. For this purpose Committee stressed upon the representatives to bring out some new schemes as an improvement over the existing system of filling up the vacancies in the direct recruit quota.

5.6 In a communication dated 26 October, 1993, the Ministry of Personnel, Public Grievances and Pension, in consultation with Staff Selection Commission, suggested certain steps in order to overcome this acute problem, as under:—

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\* Not reproduced.

"During the course of oral evidence by the Department of Personnel and Training (DOPT) before the Committee on Subordinate Legislation on 29.9.93 in connection with direct recruitment to the assistants grade of Department of Parliamentary Affairs, the Committee noted the recurring shortfall in direct recruitment to the assistants grade of Central Secretariat Service (CSS) for past several years, and asked the Department of Personnel and Training to consider the steps to be taken so that vacancies in the direct recruitment quota for assistants grade of the CSS are filled by direct recruits.

The matter has been examined in consultation with Staff Selection Commission (SSC). Since the shortfall is due to non-acceptance of appointment offers by a large number of successful candidates selected for appointment by SSC. It is considered necessary to have a reserve list of candidates who could be offered the vacancies that are released when higher ranking candidates decline to take up the appointment. At present no such reserve lists are prepared. As a common examination is held for selection of assistants for five different services, and the candidates may opt for one or more services, and allotment to the different services is based on the candidate's rank and preference, a reserve list becomes difficult to operate. The vacancy caused in one service because of the non acceptance of an offer of appointment, has to be offered to the next highest rank holder even if he has already taken up appointment in another of the 5 services. The problem is particularly acute in the CSS, which is generally the third choice of candidates, since the number of candidates who drop out is large.

To overcome this problem, it is proposed to club the 3 least popular of the 5 services into one group/category. The candidates could then opt for one or more of the following:

- (a) Assistants Grade of Indian Foreign Service (B);
- (b) Assistants Grade of Railway Board Secretariat Service;
- (c) Assistants Grade of Central Secretariat Service, Armed Forces Headquarters Service, and posts of Assistants in other Departments & Attached Offices."

Among these 3 categories the allotment of candidates would be based on rank and preference. The clubbing of different services in the last group would however mean that a candidate who chooses this group can be allotted to any of the services comprising this group; such allotment would be done by DOPT in an objective and impartial manner but candidates would not be allowed to exercise a choice of particular services within this group. Such an arrangement will facilitate reserve lists being prepared and used for making good the shortfalls in any or all of the services for which recruitment is made through the common examination.

5.7 Further, the time given to successful candidates for taking up an appointment is proposed to be restricted to a maximum of three months from the date of offer. Thereafter, the offer would be treated as lapsed and candidates from the reserve lists would be offered the appointment instead.

5.8 The Staff Selection Commission would review the time taken at each stage of the recruitment process in order to reduce the time to the minimum.

5.9 To reduce the time lag between the declaration of results and actual appointment, successful candidates, upto  $2\frac{1}{2}$  times the number of vacancies, will be required by the SSC, before the declaration of results, to submit within a prescribed period, the attestation form required for verification of character and antecedents. Candidates who fail to submit the form in time would be disqualified. This procedure would serve to reduce delay in verification procedures and also to eliminate those candidates who may have, in the intervening period between the examination and the declaration of results, lost interest in taking up the appointment for various reasons.

5.10 The notification of Rules for the Assistants Grade Examination for 1993 has already been issued. Since the steps now contemplated will involve changes in the Rules these will be brought into effect from the Examination for 1994.

5.11 The Committee note that the Scheme as suggested by the Ministry, if implemented, would be able to provide sufficient number of candidates as there would be a reserve list for making good the shortfalls, if any. The Committee feel that the existence of a proviso of the nature providing that the unfilled vacancies in the direct recruitment quota could be filled by promotion in case sufficient number of direct recruitment candidates were not available, would be redundant. The recruitment rules, which provide that fifty per cent of the vacancies in the Assistant Grade shall be filled by promotion of Upper Division Clerks and remaining fifty per cent by direct recruitment on the basis of competitive examination held for the purpose by the Staff Selection Commission, should strictly be adhered to. The Committee, therefore, desire that the Ministry should delete the proviso, as inserted, from the recruitment rules.

## VI

### NON-EXERCISE OF RULES MAKING POWR UNDER NATIONAL COMMISSION FOR WOMEN ACT, 1990

6.1 The National Commission for Women Act, 1990 (assented to by the President on 30 August, 1990) came into force on 31 January, 1992. Section 17\* thereof empowered the Central Government to make rules for carrying out the provisions of the Act. It was, however, observed that the Government had since notified only one set of rules viz., the National Commission for Women (Salaries and Allowances and Conditions of Service of Chairperson and Members) Rules, 1992 (GSR 74-E dated 31 January, 1992) as prescribed in Section 4(5) of the Act *ibid.*, and whereas no rules had been notified governing other areas enumerated in section 17 of the said Act. On 1 September, 1992, the attention of the concerned Ministry of Human Resource Development was invited to the following observations of the Committee:—

“Ordinarily, rules should be framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed six months.”

[Para 34 (5R—2 LS)]

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“In case, a Ministry/Department finds that for any unavoidable reasons it is not possible for them to adhere to the prescribed time-limit (of six months to frame the rules) in an exceptional case, they should at the expiration of six months from the commencement of the relevant Acts, explain the reasons of the Committee and seek a specific extension of time from them.”

[Para 108 (18R—5LS)]

The Ministry were requested to state the reasons (i) for delay in framing the rules, and (ii) for not seeking specific extension of time from the Committee in this regard, as laid down by the Committee in the aforesaid recommendations.

6.2 In a belated reply dated 24 November, 1993, the Ministry stated as under:—

“... the National Commission for Women Act, 1990 was brought into force on 31 January, 1992 and the Commission was constituted on that date. Section 17(2) stipulates making of rules in various matters for the Commission. It may be mentioned that immediately after the

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\* Reproduced as Appendix.

Commission was constituted action was initiated to frame the rules regarding salary and allowances payable to and other terms and conditions of service of the Chairperson and Members and those for allowances for attending the Meetings of the Committee by the co-opted Members have already been notified and these were laid in the Lok Sabha on 5 May, 1992 and in the Rajya Sabha on 8 May, 1992.

As regards framing of rules under Section 17(2)(d) and (e), action was initiated. These rules are to be finalised in consultation with the Ministry of Finance and the Comptroller and Auditor-General (C&AG). These rules were framed and sent to the Department of Economic Affairs for obtaining C&AG's approval in February, 1992. The Office of C & AG had suggested some modifications in May, 1992. These rules were sent to the National Commission for Women (NCW) for carrying out necessary changes in the rules and re-submitting it to the Department. The rules were referred to the legislative Department for vetting in June, 1992. The rules so vetted were referred to the Commission in July, 1992 for their comments. The NCW suggested some changes which were accepted by the Department and FA and revised rules were sent to C&AG for concurrence. Informal discussion was held between the C&AG and NCW. Some further changes were proposed and the file was sent back to carry out those changes and re-submit the file to the C&AG for approval. The file has been sent to the Ministry of Finance on 25 October, 1993 for seeking the approval of C&AG. Thus finalisation of rules is likely to take some time.

Lok Sabha Secretariat is requested to kindly move the Committee on Subordinate Legislation for grant of extension of time for modifying the Rules of Annual Accounts and Annual Report of the Commission upto 30 April, 1994.

The need for framing rules under Section 17(2) (c) and (f) has not arisen so far.

This issue with the approval of Secretary, WCO."

6.3 The Committee considered the reply of the Ministry at their sitting held on 24 January, 1994. The Committee were not convinced with the reply of the Ministry as the Ministry had neither shown any reasons for not complying with the recommendation of the Committee nor they had framed rules on all the aspects enumerated in the parent Act, even after the lapse of two years after coming into force of the Act. In the circumstances, the Committee decided to call the representatives of the Ministry for oral evidence for further elucidating the matter.

6.4 Accordingly, the representatives of the Ministry appeared before the Committee on 24 January, 1994 to tender evidence. During evidence, the attention of the Secretary of the Department of Women and Child Development (hereinafter called 'representative') was drawn to the unduly long time taken by them in furnishing the reply. Admitting the delay, the

representative promised to devise some more effective methods to ensure timely replies, to the parliamentary matters.

6.5 Coming to the question of delay in framing the rules under the National Commission for Women Act, the representative stated that the rules governing salary and allowances payable to and other terms and conditions of service of the Chairperson and Members of the National Commission for Women, and allowances payable for attending the meeting of its committees by coopted members were duly notified in May, 1992 and were also placed on the Table of both Houses of Parliament. As regards the rules in respect of the form of Annual Statement of Accounts and the annual Reports as required by clauses (d) and (e) of Section 17(2) of the Act, the representative informed that the draft rules were ready for notifying in July but in the meantime, the Commission came into existence and it suggested certain modification in the draft rules. The representatives informed that the matter was being expedited to notify the rules. The representative further submitted that although there had been delay in the finalisation of these rules, the work had been going on more or less as if the rules had been notified.

6.6 On being asked whether the rules governing the salaries and allowances payable to, and other terms and conditions of service of the officers and employees have been prescribed and if not, how the affairs were being managed, the representative stated that the officers and other employees for the Commission were all provided by the Government and they were Government servants and were governed by usual rules and regulations and, therefore, a separate set of rules were not required.

6.7 On being asked what was the need of sub-section (2) of Section 5, the representative stated that the interpretation of 'for the purpose of Commission' was they were people appointed by the Government especially for the Commission and only for such posts rules were required to be framed under section 5(2) of the Act.

6.8 On being asked about the strength of the Commission the representative informed that 28 posts had been sanctioned for the Commission out of which 13 had been filled up and 15 were vacant. On being asked whether the Commission was handicapped by not having the full strength, the Member-Secretary of the National Commission (hereinafter called Member-Secretary) stated that they are utilising the services of some consultants who were mostly retired Government servants and they were being paid only half salary as per Government rules. At present there are 22 such consultants. To the question whether the appointment of such consultants were in order and within the rules and whether the rules had been notified for the purpose of salary and allowances of such consultants, the representative stated that there were Government orders issued by the Department of Personnel in respect of engagement of consultants, i.e. fixation of fees of retired employees of the Central Government appointing

them as full time consultants etc. [order No. 604/12/86 Est.(Allowances), Ministry of Personnel and Public Grievances dated 15 December, 1988]. On being asked about the circumstances under which the consultants could be appointed, the Member-Secretary informed that they had maintained internal file in the Commission. The Committee desired to see the relevant files.

6.9 On being asked about the procedure being adopted for selecting a consultant, the Member-Secretary of Commission stated that the post is not advertised as they have a large number of applications of retired persons who had worked in various fields and they are appointed as per the requirement of the Commission. On being asked about the period of appointment of such consultants, the Member-Secretary of Commission stated that they were appointed until further orders, which might be only for a few months. On being asked about the letter of appointment of these consultants, the Member-Secretary informed that it would be submitted later on.

6.10 On being asked why the Government had not provided people for the remaining 15 vacancies out of the sanctioned strength of 28, the representative replied that they would not appoint people directly but through the Department of Education and their request was pending with them. To the question why such request had been pending for the last two years with the Department of Education, the representative stated that the Department of Education circulate the vacancies with the Department itself and also in the other Ministries, and persons who opt for deputation could join the Commission. However, there had been a lack of response as the Commission was a new body, but gradually as it would become an established body, the position was likely to improve.

6.11 When asked whether the Commission had submitted its Annual Report, the representative stated that the Report was being drafted and expected to be completed by the end of March and in the mean time, the rules regarding the Annual Report were also likely to be finalised. Similarly for statement of Accounts, the representative stated that it would be finalised as soon as the rules were finalised.

6.12 On being asked about the staffing policy of the National Commission i.e. by deputing persons for a certain period and then reverting back to their parent Department or there would be permanent deputation, the representative stated that the whole matter would be received only after gathering experience and as now, there was no such thinking. When pointed out that if the persons after gaining some experience in the National Commission were reverted back to their Department, then the experience so gathered by them in the National Commission would get wasted, the representative assured that the question would be examined.



6.13 The Committee note with concern that the Ministry of Human Resource Development had taken almost three months in furnishing their reply regarding Non-Exercise of rule making power under the National Commission for Women Act. The Committee observe that the delay indicates that there is some deficiency in the way, the work is being handled in the Ministry. The Committee desire the Ministry to be prompt in sending their replies to the communications and observations of the Committee. The Committee also desire the Ministry to streamline the procedure to prevent recurrence of such delays in future.

6.14 The Committee further observe that since the coming into force of the National Commission for Women Act, 1990 on 31 January, 1992, the Ministry have not been able to frame the rules on all the aspects enumerated under Section 17 of the said Act, within the time limit of six months prescribed by the Committee in Para 34 of their Fifth Report (Second Lok Sabha), nor did they approach the Committee for extension of time on the expiry of six months' period. Instead, the Ministry have submitted that although there had been delay in the finalisation of the rules, the work had been going on more or less as if the rules had been notified. The Committee do not appreciate the stand taken by the Ministry and reiterate their aforesaid recommendation. The Committee desire the Ministry to finalise and notify the rules on the remaining aspects of the Act at the earliest in order to place the matter on proper statutory footing.

6.15 As regards the rules concerning terms and conditions of service of employees of Commission are concerned, the Committee note that according to the Ministry, in terms of sub-section (2) of Section 5 of the National Commission for Women Act, rules were required to be framed only for such officers and employees of the Commission who were specifically appointed by the Government for the purpose of Commission. The other officers and employees provided by the Government on deputation basis etc. continued to be Government servants and their terms and conditions of service continued to be governed by the usual Government rules and regulations. In this connection, the Committee observe that even after three years of its coming into existence, the Government have not made any appointment for the purpose of the Commission in terms of Section 5(2) of the Act, and all the existing employees have been employed on deputation basis. The Committee do not find it a healthy practice as such deputationist after gaining experience in an emerging body like National Commission would sooner or later would be reverted back to their parent office and as such their experience would get wasted. In order that the experience so gathered is not taken away, the Committee desire the Government to immediately notify rules regarding terms and conditions of the officers and employees of the Government in term of Section 5(2) and within the frame work of those rules, appoint persons specifically for the purpose of Commission on permanent basis, although they may be posted initially on deputation basis.

6.16 The Committee further note that instead of having full sanctioned staff strength, the Commission has engaged many consultants to carry on its work. Most of such consultants are retired Government employees appointed on temporary basis. The Committee do not approve the procedure so adopted by the Commission. The Committee, feel that the appointment of the consultants in the Commission is not a fair proposition as it is not free from favouritism/nepotism. At the same time it would adversely affect the interest of the young aspirants for such jobs. The Committee therefore recommend that the practice of making such appointments of consultants from among the retiring officers/staff should be dispensed with as soon as possible.

NEW DELHI;  
October, 1994

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Asvina, 1916 (Saka)

AMAL DATTA,  
Chairman,  
Committee on Subordinate Legislation.

## APPENDIX I

(vide Para 1.4 of the Report)

### SUMMARY OF RECOMMENDATIONS MADE IN THE FOURTEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA)

Sl. No.	Reference to para No. in the Report	Summary of Recommendations
1	2	3
1.	2.10	The Committee are distressed to note that despite the suggestion given by them during the course of evidence the Ministry of Welfare has failed to convene an inter-departmental meeting to sort out the matter in order to curtail any further delay in framing the rules. As a result of this even after a gap of more than three months, the rules are pending finalisation. The Committee are of the view that such delays would ultimately defeat the very purpose of the legislation passed by the Parliament namely, to look after the interests of the minorities in the country. The Committee would like the Ministry to take up the matter with the seriousness it deserved. The Committee, therefore, desire that the Ministry should not waste any more time in the inter-departmental hurdles and should convene a meeting of all the agencies concerned with the finalisation of rules to sort out the matter, so that rules could be notified under the Minorities Commission at the earliest.
2.	3.3, 3.4, 3.5 and 3.6	The Committee note that the post of Director General, Coast Guard was created in 1978 and has been filled up since its creation by deputation/re-employment of a naval officer holding the rank of Vice-Admiral. However, the recruitment rules governing the post were notified only in March, 1991. The Committee are surprised to note that the Ministry

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have not indicated as to now the matters relating to recruitment of Director General were regulated during the intervening period of 12 years i.e. between the creation of the post of Director General in October, 1978 and the commencement of the Coast Guard Director General Recruitment Rules in March, 1991. In the absence of any recruitment rules framed in this regard, the Committee feel that for this intervening period, the matters were dealt with by issuing executive instructions which were no substitute for the proper statutory rules.

Section 5 of the Coast Guard Act, 1978 provides for appointment of an officer by the Central Government as the Director General of Coast Guard and Section 123 confers the necessary rule making power on the Central Government for carrying out the purposes of the Act. The Committee are surprised to note that inspite of all such powers vested with the Government, it is not known as to what had prevented the Government from framing the recruitment rules relating to the post of Director General, Coast Guard in 1978 itself. As a result of this, the matters sought to be governed by statutory rules as per the intention of the legislature, were in fact governed by executive instructions, which constituted violation of the statute both in letter and in spirit.

Further, the recruitment rules had come into force from the date of their publication in the official gazette i.e. from 23 March, 1991. As the rules had not been given any retrospective effect, the Committee wonders how the Government had regularised the services of the persons who had already served as the Director General, Coast Guard and or was currently holding that post from a back date.

The Committee desire that the Ministry of Defence may ensure that the interests of the person holding the post of Director General should not be jeopardised merely because the rules were not framed in time. The Committee further desire that the Ministry may undertake a scrutiny of this exercise of rule making power under other statutes and intimate this Committee of the outcome thereof within 3 months.

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3.	4.4, 4.5, 4.6, 4.9, 4.10, 4.11, 4.14., 4.15 and 4.20, 4.21, 4.22 and 4.23	The Committee note that, on being pointed out, the Department of Atomic Energy have agreed to amend the Atomic Energy (Control of Irradiation of Food) Rules to the effect that the notice periods of 20 days and 30 days in each case prescribed in rules 6(1) and 7(1) respectively may be made 30 days in each case. The Committee also note that the Department have also agreed to insert new sub-rule in rule 7 by providing therein a provision for the extension of time periods stipulated under rules 6(1), and 7(1) in cases where the licensee is not able to rectify the defects within the prescribed period for reasons beyond his control and a provision for appeal with the Central Government against any order of suspension or revocation of a licence by the licensing authority.

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The Committee desire that the Department of Atomic Energy should also insert a similar provision in rule 7 regarding the 'extension of time' and the 'right of appeal' pertaining to certificate of approval.

The Committee also desire that the Department should carry out the needful amendments at the earliest.

The Committee note that the Department of Atomic Energy, while agreeing to amend rule 8(3) of the Atomic Energy (Control of Irradiation of Food) Rules, have suggested that the term 'public interest' appearing therein may be replaced by the words 'in order to ensure safety for any other reasons whatsoever'. The Committee, however, feel that it would be more appropriate if the terms 'in order to ensure safety of persons whosoever may suffer any injury because of any negligence in the process of irradiation or through irradiated products' may be used in place of 'public interest'. The Committee therefore, recommend that the desired amendment in the aforesaid rule may be made at the earliest.

The Committee further desire that the Department should also provide a suitable provision for the recording of reasons in writing by the licensing authority in order to obviate any misuse of the discretionary powers.

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The Committee, therefore, desire that the Department should notify the requisite amendments at the earliest.

The Committee note that the Department of Atomic Energy have agreed to amend sub-rule (1) of rule 10 of the Atomic Energy (Control of Irradiation of Food) Rules so as to provide for a maximum gap between the two inspections be one year.

The Committee are of the opinion that it will be more appropriate if the maximum gap between the two inspections does not exceed 8 months under rule 10(1). The Committee therefore, desire that the Department of Atomic Energy should notify the amendments to this effect at the earliest.

The Committee note that, on being pointed out by them, the Department of Atomic Energy have agreed to amend the Atomic Energy (Control of Irradiation of Food) Rules to do away with the element of legislation by reference occurring therein. According to the Department, sub-rules (s) and (x) of Rule 2 might be deleted as they have no special relevance, and in the case of sub-rule (p) of Rule 2 and sub-rule (3) of Rule 18, the term Radiation Protection Rules may be replaced by the terms 'as the competent authority may by notification specify from time to time' and as specified by the competent authority respectively. Similarly, in the case of rule 23, instead of referring to rule 17 of the Radiation Protection Rules, 1971, the Department have proposed a 'warning sign' to be displayed at the irradiation site.

The Committee feel that the 'operation limits referred to in rule 2(p) and the 'leakage tests' referred to in rule 18 might be laid down in the rules to make them self-contained rather than providing for them to be specified by the competent authority from time to time.

In this connection, the Committee in para 13 of their First Report (Fourth Lok Sabha) observed as under:—

".....The Committee have time and again emphasized that rules should, as far as possible, be

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		self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing....."
		In order to meet the objective of the aforesaid recommendation in letter and spirit, the Committee desire that the Department should amend the Atomic Energy (Control of Irradiation of Food) Rules suitably by ensuring that not only legislation by reference is avoided but also the rules are self-contained in every respect.
4.	5.11	The Committee note that the Scheme as suggested by the Ministry, if implemented, would be able to provide sufficient number of candidates as there would be a reserve list for making good the short-falls, if any. The Committee feel that the existence of a proviso of the nature providing that the unfilled vacancies in the direct recruitment quota could be filled by promotion in case sufficient number of direct recruitment candidates were not available, would be redundant. The recruitment rules, which provide that fifty per cent of the vacancies in the Assistant Grade shall be filled by promotion of Upper Division Clerks and remaining fifty per cent by direct recruitment on the basis of competitive examination held for the purpose by the Staff Selection Commission, should strictly be adhered to. The Committee, therefore, desire that the Ministry should delete the proviso, as inserted, from the statute books.
5.	6.13, 6.14. 6.15 and 6.16	The Committee note with concern that the Ministry of Human Resource Development had taken taken almost three months in furnishing their reply regarding Non-Exercise of rules making power under the National Commission for Women Act. The Committee observe that the delay indicates that there is some deficiency in the way, the work is being handled in the Ministry. The Committee desire the Ministry to be prompt in sending their replies to the Communications and observations of the Committee. The Committee also desire the Ministry to streamline the procedure to prevent recurrence of such delays in future.

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The Committee further observe that since the coming into force of the National Commission for Women Act, 1990 on 31 January, 1992, the Ministry have not been able to frame the rules on all the aspects enumerated under Section 17 of the said Act, within the time limit of six months prescribed by the Committee in Para 34 of their Fifth Report (Second Lok Sabha), nor did they approach the Committee for extension of time on the expiry of six months' period. Instead, the Ministry have submitted that although there had been delay in the finalisation of the rules, the work had been going on more or less as if the rules had been notified. The Committee do not appreciate the stand taken by the Ministry and reiterate their aforesaid recommendation. The Committee desire the Ministry to finalise and notify the rules on the remaining aspects of the Act at the earliest in order to place the matter on proper statutory footing.

As regards the rules concerning terms and conditions of service of employees of Commission are concerned, the Committee note that according to the Ministry, in terms of sub-section (2) of Section 5 of the National Commission for Women Act, rules were required to be framed only for such officers and employees of the Commission who were specifically appointed by the Government for the purpose of Commission. The other officers and employees provided by the Government on deputation basis etc. continued to be Government servants and their terms and conditions of service continued to be governed by the usual Government rules and regulations. In this connection, the Committee observe that even after three years of its coming into existence, the Government have not made any appointment for the purpose of the Commission in terms of Section 5 (2) of the Act, and all the existing employees have been provided on deputation basis. The Committee do not find it a healthy practice as such deputationist after gaining experience in an emerging body like National Commission would sooner or later would be reverted



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back to their parent office and as such their experience would get wasted. In order that the experience so gathered is not taken away, the Committee desire the Government to immediately notify rules regarding terms and conditions of the officers and employees of the Government in term of Section 5(2) and within the frame work of those rules, appoint persons specifically for the purpose of Commission on permanent basis, although they may be posted initially on deputations basis.

The Committee further note that instead of having full sanctioned staff strength, the Commission has engaged many consultants to carry on its work. Most of such consultants are retired Government employees appointed on temporary basis. The Committee do not approve the procedure so adopted by the Commission. The Committee, however, feel that the appointment of the consultants in the Commission is not a fair proposition as it is not free from favouritism/nepotism. At the same time it would adversely affect the interest of the young aspirants for such jobs. The Committee therefore recommend that the practice of making such appointments of consultants from among the retiring officers/staff should be dispensed with as soon as possible.

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## MINUTES

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## APPENDIX II

(Vide para 1.3 of the report)

### MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1992-93)

The Committee met on Monday, 15 March, 1993 from 15.00 to 15.30 hours.

#### PRESENT

Shri Somnath Chatterjee — *Chairman*

#### MEMBERS

2. Dr. K.D. Jeswani
3. Shri Ram Singh Kashwan
4. Shri Guman Mal Lodha
5. Km. Frida Topno
6. Shri Ratilal Kalidas Varma

#### SECRETARIAT

1. Shri R.K. Chatterjee — *Deputy Secretary*
2. Shri Ram Kumar — *Under Secretary*

2. The Committee took up for consideration Memoranda Nos. 56 to 62 as follows.

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(V) The Department of Parliamentary Affairs (Recruitment and Conditions of Service) Amendment Rules, 1992 (GSR 47 of 1992) — (Memorandum No. 60)

7. The Committee considered the above Memorandum and decided to hear the representatives of the Department of Personnel and Training and the Staff Selection Commission for further elucidation of the facts.

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*The Committee then adjourned.*

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\*\*\* Omitted portions of the Minutes are not covered by this report.

MINUTES OF THE TWENTY SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1992-93)

The Committee met on Monday, 27 September, 1993 from 15.00 to 17.00 hours.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri R. Dhanusokodi Athithan
3. Shri Ram Niwas Mirdha
4. Shri Mohan Singh
5. Shri Shivendra Bahadur Singh
6. Shri Tara Singh
7. Shri Ratilal Kalidas Varma

SECRETARIAT

1. Shri S.C. Gupta—*Joint Secretary*
2. Shri Ram Kumar—*Under Secretary*

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REPRESENTATIVES OF THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

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|---------------------|--|------------------|
| 1. Shri C.K. Joseph | — <i>Additional</i>                            | <i>Secretary</i> |
| 2. Shri J.S. Mathur | — <i>Joint</i>                                 | <i>Secretary</i> |
| 3. Shri S.N. Bajpe  | — <i>Chairman, Staff Selection Commission.</i> |                  |

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8. The Committee then heard the representatives of the Ministry of Personnel, Public Grievances and Pensions regarding insertion of provisions for filling up of vacancies of Assistants in direct recruitment quota by promotion of departmental candidates.

9. When enquired the genesis of the proviso, so inserted, the representatives of the Ministry stated that the necessity arised only due to non-acceptance of appointment offered by a large number of successful candidates selected by the Service Selection Commission. As a result there was a shortfall in filling those vacancies which accumulated to about 260 vacancies. The witnesses further submitted that to do away with that backlog and also taking into consideration the fact that a large number of UDCs were stagnating for long time due to non-availability of vacancies in

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\*\*\* Omitted portions of the Minutes are not covered by this Report.

the promotion quota, the proviso had been inserted so as to provide for diversion of unfilled vacancies in the direct recruit quota to the promotees.

10. On being asked whether the Ministry had any difficulty in filling up by direct recruitment quota, the representatives of the Ministry stated that there were five categories of posts among the Assistants. The first category belonged to Indian Foreign Service, Grade B, the second category was the Railway Service, the third was Central Secretariat Service, the fourth was the Defence Service and some of the smaller departments had been clubbed in the fifth category. Since they had to show these categories in different categories according to their merit position and preference, they prepared the list on those lines. From a practical point of view, the Ministry were unable to operate a reserve list regarding the first four categories. If they nominated the candidates with lower ranks, people who were allocated to second, third or fourth categories might like to go to the first category, so they could not dislocate those who had already joined the other services.

11. When asked whether the Ministry had any suggestions or schemes to improve upon the system in a short time so that the Committee could incorporate their suggestions in the Report, the representatives of the Ministry stated that they would furnish the requisite information within a month's time.

(The witnesses then withdrew).

*The Committee then adjourned.*

MINUTES OF THE THIRTY-FIRST SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee met on Wednesday, 12 January, 1994 from 11.00 to 12.30 hours.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri Guman Mal Lodha
3. Dr. A.K. Patel
4. Shri Rajendra Kumar Sharma
5. Shri K.G. Shivappa
6. Shri Mohan Singh (Deoria)
7. Prof. K.V. Thomas

SECRETARIAT

Shri Ram Kumar — *Under Secretary*

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2. The Committee then considered Memoranda Nos. 78-82 as follows.

**(i) Non-Exercise of Rules making Power under National Commission for Women Act, 1990 (Memorandum No. 78)**

The Committee noted that whereas the Ministry of Human Resource Development had framed rules governing salary and allowances payable to and other terms and conditions of service of the Chairperson and Members of National Commission for Women, and allowances payable for attending the meetings of its Committee by co-opted members as required by Clauses (a) and (b) of section 17(2) of the parent Act, the Ministry were absolutely silent with regard to framing the rules governing salary and allowances payable to the officers and the employees of the Commission and their terms and conditions of service as required by clause (a) of section 17(2) *ibid.*, which is very vital for functioning of the Commission. The Ministry had stated that need had not arisen so far.

The Committee were not satisfied with the reply of the Ministry. The Ministry had neither shown any reasons for not complying with the recommendations of the Committee nor did they frame rules on all the aspects enumerated in the parent Act, even after a lapse of two years. The Committee decided to call the representatives of the Ministry for oral

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\*\*\* Omitted portions of the Minutes are not covered by this Report.

evidence for further elucidating the facts and the reasons for such gross negligence in the vital matters of framing the statutory rules.

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*The Committee then adjourned.*

**MINUTES OF THE THIRTY-SECOND SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(TENTH LOK SABHA) (1993-94)**

The Committee met on Monday, 24 January, 1994 from 13.00 hours to 15.00 hours.

**PRESENT**

Shri Amal Datta — *Chairman*

**MEMBERS**

2. Shri Prithviraj D. Chavan
3. Shri Guman Mal Lodha
4. Dr. A.K. Patel
5. Shri Rajendra Kumar Sharma
6. Shri Mohan Singh (Deoria)
7. Shri Umrao Singh

**REPRESENTATIVE OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT  
(DEPARTMENT OF WOMEN CHILD DEVELOPMENT)**

1. Dr. (Smt.) Lata Singh, Secretary
2. Shri S.K. Gupta, Joint Secretary
3. Smt. Annie Prasad, Members Secretary, NCW.

**SECRETARIAT**

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|-------------------------|---------------------------|
| 1. Shri R.K. Chatterjee | — <i>Deputy Secretary</i> |
| 2. Shri Ram Kumar       | — <i>Under Secretary</i>  |

2. The Committee heard evidence of the representatives of the Ministry of Human Resource Development (Department of Women and Child Development) regarding the Non-Exercise of rule making power under the National Commission for Women Act, 1990.

During evidence, the attention of the Secretary of the Department of Women and Child Development (hereinafter called "representatives")



were drawn to the unduly long time taken by them in furnishing the reply. Admitting the delay the representative promised to devise some more effective methods to ensure timely replies to the Parliamentary Committee. Coming to the question of delay in framing the rules under the National Commission for Women Act, the representative stated that the rules governing salary and allowances payable to and other terms and conditions of service of the Chairperson and Members of the National Commission for Women, and allowances payable for attending the meeting of its Committees by coopted members were duly notified in May, 1992 and were also placed on the Table of both Houses of Parliament. As regards the rules in respect of the form of Annual Statement of Accounts and the Annual Reports as required by clauses (d) and (e) of Section 17(2) of the Act, the representative informed that the rules were ready for being notified in July but in the meantime, the Commission came into existence and it suggested certain modifications in the draft rules. The representatives informed that the matter was being expedited to notify the rules. The representative further submitted that although there had been delay in the finalisation of these rules, the work had been going on more or less as if the rules had been notified.

4. On being asked whether the rules governing the salaries and allowances and other terms and conditions of service of the officers and employees have been prescribed and if not, how the affairs were being managed, the representative stated that the officers and other employees for the Commission were provided by the Government and they were Government servants and were governed by usual rules and regulations and, therefore, a separate set of rules were not required.

5. On being asked about the need of sub-section (2) of Section 5, the representative stated that the interpretation of 'for the purpose of Commission' was that there were people appointed by the Government especially for the Commission and only for such posts rules were required to be framed under section 5(2) of the Act.

6. On being asked about the strength of the Commission the representative informed that 28 posts had been sanctioned for the Commission out of which 13 had been filled and 15 were vacant. On being asked whether the Commission was handicapped by not having the full strength, the Member-Secretary of the National Commission (hereinafter called Member Secretary) stated that they are utilising the services of some consultants who were mostly retired Government servants and they were being paid only half salary as per Government rules. At present there are 22 such consultants. To the question whether the appointment of such consultants was in order and within the rules and whether the rules had been notified for the purpose of salary and allowances of such consultants, the Government representative stated that there were Government orders issued by the Department of Personnel in respect of engagement of consultants, *i.e.* fixation of fees of retired employees of the Central

Government, appointing them as full time consultants etc. [Order No. 604/12/86 Est. (Allowances) Ministry of Personnel and Public Grievances dated 15 December, 1988]. On being asked about the circumstances under which the consultants could be appointed, the Member-Secretary informed that they had maintained internal file in the Commission. The Committee desired to see the relevant files.

7. On being asked about the procedure being adopted for selecting a consultant, the Member-Secretary of Commission stated that the post is not advertised as they have a large number of applications of retired persons who had worked in various fields and they are appointed as per the requirement of the Commission. On being asked about the period of appointment of such consultants, the Member-Secretary of Commission stated that they were appointed until further orders which might be only for a few months. On being asked about the letter of appointment of these consultants, the Member-Secretary informed that it would be submitted later on.

8. To the question as to why the Government had not provided people for the remaining 15 vacancies out of the sanctioned strength of 28, the representative replied that they would not appoint people directly but through the Department of Education and their request was pending with them. To the question why such request had been pending for the last two years with the Department of Education, the representative stated that the Department of Education circulates the vacancies within the Department itself and also in the other Ministries, and persons who opt for deputation could join the Commission. However, there had been a lack of response as the Commission was a new body, but gradually as it would become established, the position was likely to improve.

9. When asked whether the Commission had submitted its Annual Report, the representative stated that the Report was being drafted and expected to be completed by the end of March and in the mean time, the rules regarding the Annual Report were also likely to be finalised. Similarly for statement of Accounts, the representative stated that it would be finalised as soon as the rules were finalised.

10. On being asked about the staffing policy of the National Commission *i.e.* by deputing persons for a certain period and then reverting back to their parent Department or there would be permanent deputation, the representative stated that the whole matter would be received only after gathering experience and as of now, there was no such thinking. When pointed out that if the persons after gaining some experience in the National Commission were reverted back to their Department, then the experience so gathered by them in the National Commission would go waste, the representative assured that the question would be examined.

*The Committee then adjourned.*

# MINUTES OF THE THIRTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee met on Wednesday, 30 March, 1994 from 1500 hours to 1615 hours.

## PRESENT

Shri Amal Datta — *Chairman*

## MEMBERS

2. Shri Guman Mal Lodha
3. Shri M.V.V.S Murthy
4. Dr. A.K. Patel
5. Shri K.G. Shivappa
6. Shri Ratilal Kalidas Varma

## SECRETARIAT

1. Shri Ram Kumar — *Under Secretary*
2. Shri R. Kothandaraman — *Assistant Director*

## REPRESENTATIVES FROM THE MINISTRY OF WELFARE, NATIONAL COMMISSION FOR MINORITIES AND NATIONAL COMMISSION FOR BACKWARD CLASSES

1. Shri Mata Prasad — *Secretary, Ministry of Welfare*
2. Shri M.S. Pandit — *Joint Secretary, Ministry of Welfare*
3. Shri M.A.K. Tayab — *Secretary, Minorities Commission.*

2. The Committee took oral evidence of the representatives of the Ministry of Welfare in regard to their request for extension of time for framing rules under the (i) National Commission for Minorities Act, 1992 and (ii) National Commission for Backward Classes Act, 1993.

3. The Ministry informed the Committee that the National Commission for Minorities Act was enacted in May, 1992 and the Commission was constituted in May, 1993. The Ministry explained that the delay in constitution of the Commission was on account of time spent on the exercise of choosing suitable persons as Chairperson and members of the Commission.

4. As regards the delay in framing rules under the National Minorities Commission Act, 1993, the Ministry informed that executive orders were in force for governing matters under the Act pending finalisation of the rules. The Ministry explained that the delay in framing the rules under the Act was due to time taken in the process of consulting the Commission and on the inter-departmental correspondence on the matter.

5. The Committee directed the Ministry to frame the rules under the National Minorities Commission Act, 1992 within six weeks.

6. The Ministry attributed the same reasons for the delay in framing the rules and constituting the Commission under the National Backward Classes Commission Act, 1993.

7. The Committee did not favour the grant of extension of time for framing rules under the National Backward Classes Commission Act, 1993 upto August, 1994 and directed the Ministry to expedite the process of framing rules thereunder.

8. The Committee also directed the Ministry to sent the Committee the relevent notes and copies of inter-departmental correspondence on the matters.

9. The Committee further directed that the views of the Committee may be made known by the Ministry to all other agencies involved in the framing of rules under both statues.

*The Committee then adjourned.*

MINUTES OF THE FORTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA)  
(1993-94)

The Committee met on Monday, 24 May, 1994 from 11.00 to 12.30 hours.

PRESENT

Shri Amal Datta —*Chairman*

MEMBERS

2. Dr. A.K. Patel
3. Shri Rajinder Kumar Sharma
4. Shri K.G. Shivappa
5. Shri Mohan Singh (Deoria)
6. Shri Swarup Upadhyay
7. Shri Ratilal Kalidas Varma

SECRETARIAT

1. Shri S.C. Gupta —*Joint Secretary*
2. Shri R.K. Chatterjee —*Deputy Secretary*
3. Shri Ram Kumar —*Under Secretary*
4. Shri R. Kothandaraman —*Assistant Director*

2. The Committee considered the memoranda Nos. 98 to 104 as follows.

(i) **The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (GSR 129 of 1991)**—Rules 6 and 7 thereof—(Memorandum No. 98)

3. The Committee noted that the Department of Atomic Energy had agreed to amend the Atomic Energy (Control of Irradiation of Food) Rules to the effect that the notice periods of 20 days and 30 days prescribed in rules 6(1) and 7(1) respectively might be made 30 days in each case. They had further agreed to amend rule 7(i) for condoning the period of 30 days if the licensee was prevented for reasons beyond his control; and (ii) for appeal against any order of suspension or revocation of a licence in the rules. The Committee desired the Department to carry out similar amendments in rule 6 pertaining to certificate of approval.

(ii) **The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (GSR 129 of 1991)**—Rule 8(3) thereof—(Memorandum No. 99)

4. The Committee felt that the terms 'public interest' occurring in rule 8(3) might further be elaborated and replaced by the terms 'in order to ensure safety of persons whosoever may suffer any injury because of any negligence in the process of irradiation or through irradiated products' and

there should also be suitable provisions for recording of reasons in writing by the licensing authority to obviate any misuse of the discretionary powers. The Committee desired the Department to notify the requisite amendments at the earliest.

**(iii) The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (GSR 129 of 1991)—Rule 10(1) thereof—(Memorandum No. 100)**

5. The Committee were of the opinion that the maximum gap between the inspections should not exceed 8 months under rule 10(1). The Committee desired the Department of Atomic Energy to notify the amendment at the earliest.

**(iv) The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (GSR 129 of 1991)—Rules 2, 18 and 23 thereof—(Memorandum No. 101)**

6. The Committee noted that the Department of Atomic Energy had agreed to amend Rules 2, 18 and 23 of the Atomic Energy (Control of Irradiation of Food) Rules, 1990 to make them self-contained by omitting references therein to other rules. The Committee decided to reiterate their observations made in para 13 of the First Report (Fourth Lok Sabha) which emphasized framing of self-contained rules and avoidance of legislation by reference.

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**(vi) The Coast Guard Director-General Recruitment Rules 1990 (SRO 69 of 1991)—(Memorandum No. 103)**

8. The Committee noted that the post of Director General, Coast Guard was created in 1978 and had been filled up since its creation by deputation/re-employment of a naval officer holding the rank of Vice-Admiral. However, the recruitment rules governing the post were notified only in March, 1991. It was, therefore, not known as to how the services of the incumbent holding the post of Director-General Coast Guard were governed until the said rules came into force. The Committee emphasised the need to ensure that the interests of the person holding the charge of the said post should not be jeopardised merely for not framing the recruitment rules in time. The Committee further desired the Ministry of Defence to undertake a reappraisal of their other recruitment rules lest there might still be similar posts wherein genuine grievances might have arisen due to infirmities inherent in the rules.

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**MINUTES OF THE FIFTIETH SITTING OF  
THE COMMITTEE ON SUBORDINATE LEGISLATION**

The Committee met on Monday, 10 October, 1994 from  
15.00 to 16.30 hours.

**PRESENT**

**Shri Amal Datta—Chairman**

**MEMBERS**

2. Shri Prithviraj D. Chavan
3. Shri Guman Mal Lodha
4. Shri D. Pandian
5. Dr. A.K. Patel
6. Shri Rajendra Kumar Sharma
7. Shri Mohan Singh (Deoria)
8. Shri Ratilal Kalidas Varma

**SECRETARIAT**

**Shri Ram Autar Ram—Deputy Secretary**

\*2 to 4            XXX            XXX            XXX

5. The Committee then considered their draft Fourteenth Report and adopted the Report with slight modifications.

*The Committee then adjourned*

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\* Omitted portion of the Minutes are not covered in this Report.

### **APPENDIX III**

**[Vide para 6.1 of the Report]**

#### **SECTION 17 OF THE NATIONAL COMMISSION FOR WOMEN ACT, 1990**

17. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) Salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section 5;
- (b) Allowances for attending the meetings of the Committee by the co-opted persons under sub-section (3) of section 8;
- (c) Other matters under clause (f) of sub-section (4) of section 10;
- (d) The form in which the annual statement of accounts shall be maintained under sub-section (1) of section 12;
- (e) The form in, and the time at, which the annual report shall be prepared under section 13;
- (f) Any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.