

# COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

## SEVENTEENTH REPORT

*(Presented on 4 May, 1995)*



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TO

THE SEVENTEENTH REPORT OF THE COMMITTEE ON  
SUBORDINATE LEGISLATION (TENTH LOK SABHA)

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (1995-96)**

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2. Smt. Roli Srivastava — *Joint Secretary*
3. Shri P.D.T. Achary — *Director*
4. Shri Ram Autar Ram — *Deputy Secretary*

## INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 2 November, 1992, 9 February, 15 March, 9 June, 28 October, 1993, 11 January, 25 January, 8 September, 10 October, 1994. The Committee took evidence of the representatives of the (i) Ministry of Home Affairs; (ii) Ministry of Finance (Department of Revenue); (iii) Ministry of Power; (iv) Ministry of Finance/National Housing Bank; and (v) 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.

3. The Committee considered and adopted this Report at their sitting held on 6 April, 1995. The Minutes of the sittings relevant to this Report are appended to it.

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 consolidated form in Appendix I to the Report.

NEW DELHI;

*April, 1995*

*Chairra, 1917 (Saka)*

AMAL DATTA,

*Chairman,*

*Committee on Subordinate Legislation.*

# REPORT

## I

### THE DELHI, ANDAMAN AND NICOBAR ISLANDS POLICE SERVICE (AMENDMENT) RULES, 1991 (GSR 162 of 1991)

#### (A)

Rule 5, as amended, of the Delhi, Andaman and Nicobar Islands Police Service Rules, 1971 read as under:—

**"5. Method of Recruitment.—(1)** Save as otherwise provided in rule 17, appointments to the Service shall be made by the following methods, namely:—

- (a) 50% of the regular vacancies which occur from time to time in the authorised strength of the service shall be filled by direct recruitment in the manner specified in Part IV of these rules, and
- (b) The remaining vacancies shall be filled by selection in the manner specified in Part V of these rules from amongst officers who are regularly borne on the cadre of Inspectors of Police employed in the Union Territory of Delhi and Andaman and Nicobar Islands:

Provided that nothing in this rule shall preclude the Central Government from holding a vacancy in the service in abeyance:

Provided further that if sufficient number of candidates are not available for filling up the vacancies in the cadre in any year by direct recruitment or by promotion in the manner as specified in Part IV or Part V of these rules, the said unfilled direct recruitment quota or promotion quota vacancies, as the case may be, shall be carried forward and added to the corresponding direct recruitment vacancies or promotion vacancies as the case may be of the next year (and to subsequent year where necessary) of being filled by direct recruitment or promotion, as the case may be, in the total number.

(2) If the exigencies of public service so require, the Central Government, may, for reasons to be recorded in writing and in consultation with the Commission, vary the percentage of vacancies to be filled by each method as specified in sub-rule(1)."

1.2 The sub-rule (2) of rule 5 *ibid* seemed to carry the effect of eroding the whole provisions as contained in sub-rule (1) without resorting to the formal amendment of the recruitment rules. The matter was referred to the concerned Ministry of Home Affairs for eliciting their comments and for indicating the instances when the variation

in the percentage of vacancies was made during the last three years. In their reply dated 6 April, 1992, the Ministry stated as under:—

*“Rule 5(2), as substituted*

No new provision has been incorporated in Sub-rule 2 of Rule 5. The provisions regarding varying the percentage of vacancies to be filled by each method in consultation with the Commission has been in existence in the DANI Police Service Rules, 1971, ever since they were framed. A copy of the DANI Police Service Rules, 1971 is enclosed\* for the facility of reference.”

1.3 The Committee considered the above reply of the Ministry at their sitting held on 2 November, 1992 and noted that the Ministry had not indicated the instances when the variation in the percentage of vacancies was made by them during the last three years. With a view to elicit further clarification in the matter, the Committee decided to hear oral evidence of the representatives of the Ministry. Accordingly, the representatives of the Ministry appeared before the Committee on 9 February, 1993, to tender evidence.

1.4 During evidence, the Special Secretary of the Ministry informed the Committee that there was one instance when the variation was made in percentage of vacancies to be filled up by each method in 1991 where 60 posts in Delhi were brought on the cadre of DANIP under rule 5.

1.5 When asked the possible exigencies contemplated under sub-rule 5(2) warranting variation in percentage of vacancies to be filled up by each method the representative explained that sometimes it happens that they do not get direct recruits to the required number from the UPSC. Sometimes the selected candidates do not join or sometimes, even after joining, for improving their career, they reappear in the examination and in such cases, instead of carrying forward, they have to fill up the post, and for that they are required to vary the percentage. The representative assured that they will have a fresh look in the matter to see whether in the main rule itself if some kind of built-in provision could be provided to overcome these difficulties.

1.6 The Committee note that the exigencies contemplated in sub-rule (2) of rule 5 of the Delhi, Andaman and Nicobar Island Police Service Rules, empowering the Government to vary the percentage of vacancies to be filled by each method were not according to the spirit and the term of the rules framed under the Act and hence needed to be deleted. The Committee, however, note that the Ministry have agreed to amend the rules by providing some kind of built in provision in the main rule itself to overcome the need to vary the percentage of vacancies to be filled by each method. The Committee regret that although a period of two years has elapsed since the date of assurance given by the Ministry’s representatives to the

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\* Not reproduced.

Committee, no amendment to the rules have been placed before the Committee. The Committee desire that the Ministry may draft the amendments proposed to be carried out in the rules in this regard and may be shown to them before their final notification. The Committee further desire that the Ministry may do the needful at the earliest.

1.7 Sub-rule (1) of rule 29, as substituted by amendment of 1991, of the Delhi, Andaman and Nicobar Islands Police Service Rules, 1971 read as under:-

"29. *Pay and Allowances-* (1) The scales of Pay attached to the service shall be as follows:-

(i) Grade-I (Selection Grade)-  
Rs. 3000-100-1500-125-4500.

(ii) Grade-II (Time Scale)-  
Rs. 2000-60-2300-EB-75-3200-100-3500."

1.8 It was observed that pursuant to the recommendations of the Fourth Central Pay Commission, the revised scales of pay were normally given effect to from 1 January, 1986 whereas the notification under reference provided for these grades with effect from 16 March, 1991 i.e. the date of publication of the notification in the official gazette. The Ministry of Home Affairs were asked to state as to how the Government proposed to rectify this anomaly that had crept into the rules. In their reply dated 6 April, 1992, the Ministry stated as under:-

*"Rule 29, as amended*

The scale of pay of Central Government employees were revised *vide* notification in this behalf issued by Ministry of Finance. The notification issued by Ministry of Finance provided replacement scales for the old scales as recommended by the Fourth Central Pay Commission. All the Central Government employees were given option to come over to revised pay scale or to continue to draw their salary in the old scale. The Rule 29 of DANI Police Service Rules, 1971 was not amended immediately after revision of scales of pay as these revised scales had already become applicable after issue of notification by Ministry of Finance. Moreover, the employees were also given option to opt for revised scale of pay from the date of their first or even second increments and some employees did opt for revised scale of pay even from the date of their second increment as it was beneficial to them for the purpose of fixation of pay. In such a situation it was perhaps not desirable to indicate date of introduction of revised scale of pay in service as recommended by Fourth Central Pay Commission. Even otherwise, the idea of giving scale of pay attached to different posts in the service is that it should be known as to what is the scale attached to each Grade and it is not very important to indicate the date from which these scales are in



operation. The date of revision of scales is common to all Central Government employees and it is felt that it need not be reflected in a specific manner in the service rules."

1.9 On 2 November, 1992, the Committee considered the above reply of the Ministry and felt that the Ministry of Home Affairs had treated the rules framed under Article 309 of the constitution as mere formality of least importance. As a result of this, the recruitment rules were made to reflect a grossly deceptive version of things with respect to the pay-scales during the intervening period from 1 January, 1986 to 15 March, 1991. Further, the Ministry had shown no inclination to rectify the anomaly that had crept in the recruitment rules, even when a reference was made to them, in this regard. Under the circumstances, the Committee decided to call the representatives of the Ministry of Home Affairs for evidence so as to clarify the matter once for all. Accordingly, the representatives of the Ministry appeared before the Committee on 9 February, 1993.

1.10 During oral evidence, the attention of the Special Secretary was drawn to the fact that the statutory rules should always reflect the correct state of affairs. On being asked why the rules failed to mention that revised pay scales were given effect from 1 January, 1986 as per the correct position, the representative admitted that it was an omission on their part and regretted it. The representative assured the Committee to rectify the rules to this effect.

1.11 The Committee are distressed to note that the Ministry of Home Affairs have failed to recognise the importance of statutory rules framed in exercise of powers conferred to them by the proviso to Art. 309 of the Constitution and had treated such rules as formality of the least importance. The Committee, however observe that now the Ministry have admitted the omission on their part and have promised to rectify the rules reflecting the factual position in respect of the coming into force of the revised pay-scales under Rule 29 of the Delhi, Andaman and Nicobar Island Police Service Rules. The Committee desire the Ministry to do the needful at the earliest.

1.12 Sub-rule (2) of rule 30, as substituted, of the Delhi, Andaman and Nicobar Islands Police Service Rules, 1971 read as under:-

"(2) A member of the service with a minimum of 8 years regular service in a duty post in Grade II of the DANI Police Service including service in a State Police Service shall be eligible for being considered for appointment to the selection Grade:

Provided further that where a person is considered for such appointment, all persons senior to him in Grade-II shall also be considered irrespective of the fact whether or not they fulfil the requirement as to the minimum of 8 years' Service.

1.13 The position as stated in the proviso to rule 30 (2) seemed to be anomalous in as much as the eligibility of senior persons in the grade for

next higher promotion was directly linked to a junior person having been fulfilled minimum requirement of 8 years' service. It flowed from it that if a junior person was inducted into service with enough service in a State Police Service, everybody senior to him would acquire eligibility including him. The matter was referred to the Ministry of Home Affairs for their comments. In their reply dated 9 April, 1992, the Ministry stated as under:

*"Proviso to Rule 30 (2) as substituted*

The pre-amended Rule 31 (2) of DANI Police Service provided "An Officer with the minimum of 8 years service in Grade II shall be eligible for being considered for appointment to the Selection Grade.

Provided that service in a duty post or an equivalent post or in a State Police Service or in Grade II of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service shall count towards the eight years' period.

Provided further that where a person is considered for such appointment all persons senior to him in Grade II shall be considered irrespective of the fact whether or not they fulfil the requirement as to the minimum of 8 years' service."

In the amended version of Sub-rule 2, it would be seen that first proviso has been deleted. The second proviso in the pre-amended Sub-rule 2 has not been deleted and retained as proviso one to safeguard the interest of senior officer of the service. It is not that senior officers have to depend upon juniors for becoming eligible after 8 years' of service in DANIPS. As a matter of fact, since the rules provided eligibility for appointment to Selection Grade as 8 years regular service in a duty post in Grade II of DANI Police Service including service in a State Police Service, the promotee officers become eligible for consideration for appointment to Selection Grade even before completing 8 years of service as a Member of DANIPS. This happens because the promotee officers before actually becoming Members of Service officiate against ex-cadre posts equivalent to that of ACP in the State Police and that service is counted for computing their eligibility for promotion to next higher grade although the same is not counted for grant of seniority to them. It is in the light of this background that promotee officers become eligible for consideration for appointment to Selection Grade earlier than direct recruits who are not having any officiating service to their credit. Moreover, this provision has also been in existence in the rules ever since they were notified in 1971."

1.14 At their sitting held on 2 November, 1992 the Committee considered the above reply of the Ministry. The Committee felt that the position as stated in the proviso to rule 30(2) seemed to be anomalous in as much as the eligibility of senior persons in the grade for next higher promotion was directly linked to a junior person having been fulfilled

minimum requirement of 8 years' service. It flowed from it that if a junior person was inducted into service, everybody senior to him would acquire eligibility including him. The anomaly lies in the fact that the service in the previous cadres counts towards promotion but not for seniority purposes. In the circumstances, there might arise a case when no senior person was eligible for promotion for not having completed the required 8 years of service. However, the moment some more persons join the service with ex-cadre experience, all the senior personnel would suddenly become eligible despite the fact that they might not yet have put sufficient service in the grade. Under such circumstances, the situation could be easily exploited to cater the vested interests in the Police Service. The Committee decided to hear the official representatives of the Ministry of Home Affairs with a view to further elucidate the matters so as to do away with the anomaly without any further prolongation in the statutory rules. Accordingly, the representatives of the Ministry appeared before the Committee on 9 February, 1993 to tender evidence.

1.15 During the course of the evidence, on being drawn his attention towards the existing anomaly, the representative was asked to state rationale behind it. In reply, the representative agreed with the apprehensions expressed by the Committee and stated that the problem has arisen because in spite of giving the benefit of additional service to the persons who has come with experience from outside, such persons are not given any weightage in respect of seniority.

1.16 On being asked why not the criteria of seniority alone was followed in determining the eligibility for promotion, the representative stated as under:-

"At the moment we have to agree with you that this seems quite rational. The problem has arisen because in spite of giving the benefit of additional service to the person who has come with experience from outside we have not given him the weightage of seniority. Otherwise problem in the promotion would not have arisen. Let us look at it in another fashion, if there have been bottlenecks and people with 10 years or 11 years service were not promoted and this rule of 8 years applies then what would have happened. Then the person with 7 years outside service would become eligible whereas a person with 10 years will not be eligible. It would also happen the other way as now. But on the whole we do realise that there is a need to correct this thing and when we discussed it among ourselves we felt that perhaps we could think in terms of weighted seniority which is obvious."

1.17 The Committee note that for computing the eligibility for promotion to the next higher grade, the Ministry have proposed to give the benefit of weightage of seniority to the persons who come with experience from outside, to do away with the existing anomaly. In this connection, the

**Committee feel that the service rules should be set to reflect stability in the position of various personnel in relation to their promotion prospect to the next higher grades. The Committee desire the Ministry to reconsider the matter and furnish a draft of the rule after making the proposed changes.**

## II

### INCOME TAX (THIRD AMENDMENT) RULES, 1992 (S.O. 80-E of 1992)

The Income-tax (Third amendment) Rules, 1992 were published in the Gazette of India: Extraordinary, dated 27 January, 1992. It was observed therefrom that rule 11A was given retrospective effect from 1.4.1991 and clauses (i) and (ii) of rule 11D from 1.4.1990 respectively. However, the explanatory memorandum appended thereto was silent as to the reasons for notification of the amendment after a gap of more than nine months in respect of rules 11A and more than 21 months in respect of clauses (i) and (ii) of rule 11D. The matter was referred to concerned Ministry of Finance on 21 September, 1992 for ascertaining the reasons for the delay and how the matters sought to be regulated by the amendment rules were actually governed during that intervening period.

2.2 In their reply dated 9 October, 1992, the Ministry stated as under:-

“The notification of Rules for defining the physically handicapped persons for the purposes of section 80DD and 80U of Income-tax Act, required defining the term “Mental retardation” and “blindness” which was not defined earlier in any Income-tax statute. In this regard various eminent persons were required to be contacted for their expert opinion. Ministry of Welfare has their own definition of mental retardation and their comments were obtained in this regard.

Ministry of Law and Justice (Legislative Department) had certain reservations about the extent of mental retardation that should make a person eligible for deduction. After long deliberations, the term mental retardation was defined for the purpose of Rule 11A and Rule 11D which was agreeable to Ministry of Welfare and Ministry of Law and Justice and which met the administrative requirement of Ministry of Finance.

Similarly, for defining the category of blindness for Rule 11A and 11D expert opinion of Head of the ophthalmology Department, All India Institute of Medical Sciences was sought and was examined in the light of definition of Ministry of Welfare. The final approval of the Ministry of Law and was received on 2 January, 1992 after which the draft rules were sent to the official Language Wing of the Law Ministry. Immediately on receipt of the translation, the notification was issued on 27.1.1992.

Since the terms to be defined for the purpose of Rule 11A and Rule 11D were medico-technical and complicated and deliberation at

various levels were required, the notification of Rule 11A and Rule 11D got delayed.

Rule 11A and Rule 11D has been given effect retrospectively from 1.4.91 and 1.4.90 respectively. Any assessee having handicapped dependent would get deduction u/s 80DD w.e.f. 1-4-91. Similarly, any handicapped persons covered under Rule 11 D would get deduction u/s 80U w.e.f. 1 April, 1990 as was the intention of the legislature. Thus the benefit sought to be made available to persons by insertion of section 80DD under the Income-tax Act and amendment in section 80U are available intervening the period is well covered by making rule 11A and rule 11D effective retrospectively.

In view of the above, it is submitted that the delay was for circumstances mentioned above and is regretted."

2.3 The Committee considered the above reply of the Ministry at their sitting held on 15 March, 1993 and noted that, according to the Ministry, the notification got delayed as the terms 'mental retardation' and 'blindness' to be defined for the purpose of rule 11A and rule 11D were complicated being medico-technical and deliberations at various levels were required. The Ministry, however, did not indicate as to how the matters were actually governed during the intervening period of more than 9 months in respect of rule 11A and more than 21 months in respect of clauses (i) and (ii) of rule 11D. With a view to elicit further clarification in the matter, the Committee decided to hear oral evidence of the representatives of the Ministry. Accordingly, the representatives of the Ministry appeared before the Committee on 9 June, 1993 and tendered their evidence.

2.4 During evidence, the attention of the Secretary (Revenue) was drawn to the delay in the framing of the rules pursuant to amendments made in the budget proposals and the representative was asked to explain the procedure followed in the Ministry in framing the rules. While admitting that the delay was unjustified in the extant case and tendering unqualified regrets for the same, the Revenue Secretary explained that whenever an amendment was made in the Act giving benefit to a particular group of people or certain Departments or organisations, as had happened in the present case, the concerned Ministries were to be consulted in order to ascertain what should be specified in the rules or what type of procedure should be specified therein etc. He assured the Committee that in future, such delays would be avoided by issuing necessary instructions forthwith that whenever an amendment is carried in the Act, the rules were also framed and simultaneously brought into force.

2.5 As regards extending the benefits of these rules to the intended beneficiaries, the member, Central Board of Direct Taxes, explained that even though there was a delay of 9 months in respect of Section 80 DD and of 21 months in the case of dependents, such assesseees can still claim a deduction by filing a rectification petition within four years under section 15A or a revised petition under Section 264 for which the time-limit was normally one year. He further added that unlimited period is available to the Commissioner of Income-tax to admit any delated petition, whenever the delay occurred because of the fault of Government Department. He added that in order to ensure that no hardship is caused to the assesseees in claiming deductions retrospectively under the extant amendment, they would issue a circular\* to all concerned Assessment Officers to admit such claims and if necessary by condoning the delay. The Committee desired that the circular may be issued immediately and a copy of the same might also be furnished to the Committee.

2.6 On his attention being drawn to an oft-repeated recommendation of the Committee that if a Ministry was not able to frame rules within six months of coming into force of the relevant provisions of the Act, the Revenue Secretary admitted that it had not been done in the present case.

2.7 The representative was also told that whenever the retrospective effect was given to a rule, then a clarification should be given that nobody would be adversely affected as a result of such retrospection and was asked to evolve suitable procedure to keep in mind the recommendations of the Committee during formulation of the rules.

2.8 The Committee note that on being pointed out, the Ministry of Finance have regretted the delay on their part in carrying out the amendments in the Income-tax rules and have given assurance that in future it would be ensured that rules come into force simultaneously with the approval of a legislation by Parliament. The Committee hope that the Ministry would keep its assurance.

2.9 The Committee further note that the extension of benefits of deduction to the intended beneficiaries who had already filed their returns and their assessment orders were finalised on the basis of the then provisions of the rules in vogue. The Ministry have stated that such assesseees can file a revised petition under the Income-tax Act. To further safeguard the interest of such assesseees, the Ministry proposed to issue a circular to all the Assessment Officer to admit revised claims of such assesseees and not to treat their claims as time-barred. The Committee desire the Ministry to issue the proposed circular at the earliest, if not already done.

2.10 The Committee also note with concern that the Ministry have failed to comply with the oft-repeated recommendations of the Committee viz., if

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\* Since been issued (pl. see appendix-II)

Ministry is not able to frame the rules within a period of six months of the coming into force of the relevant provisions of the Act, it should at the expiration of six months, explain the reasons to the Committee and seek specific extension of time from them; and if in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules. The Committee recommend that the Ministry should evolve suitable procedure to keep themselves abreast of Committee's recommendations while framing rules.



### III

#### THE CENTRAL ELECTRICITY AUTHORITY (TERMS AND CONDITIONS OF SERVICE OF CHAIRMAN AND MEMBERS) AMENDMENT RULES, 1992 (GSR 598 of 1992)

The Central Electricity Authority (Terms and Conditions of Service of Chairman and Members) Amendment Rules, 1992 (GSR 598 of 1992), were published in the Gazette of India, Part II, Section 3 (i), dated 26 December, 1992. The amendment notification read as under:—

##### *Terms of Office of Chairman and Other Members:—*

- (1) Any vacancy arising in the authorised strength of full-time members of the Authority shall be filled in a manner that as far as possible, not less than one-half of the full-time members shall be persons belonging to the Central Power Engineering (Group A) Service, who have completed at least three years regular service in the grade of Chief Engineer or equivalent or higher.
- (2) No person shall be appointed to the remaining posts of full-time member unless he has held the post of Chief Engineer or equivalent or higher for at least a period of three years under the Central Government or the State Governments or the State Electricity Boards or Semi-Government Organisations or public Sector Undertakings or Universities or Indian Institutes of Technology.
- (3) Subject to the provisions of sub-section (4) of Section 3, a member shall normally hold office for a period not exceeding five years from the date of his appointment as member:

Provided that the term of office of a member shall be further restricted to the date on which such member attain the age of superannuation unless, he is granted extension of Service or is re-employed beyond the age of superannuation:

Provided further that a member shall cease to be such member if he—

- (a) having been appointed on deputation, ceases to be in service of the respective State Government, Central Government or any other lending authority; or
- (b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government involves moral turpitude; or
- (c) is an undischarged insolvent; or

- (d) being a part-time member is, without the permission of the Authority previously obtained absent from three consecutive meetings of the Authority.
- (4) Where the prescribed terms of office of a member provided in sub-rule (3) expires before he attains the age of superannuation the Central Government may extend the term of office of such a member for a further period not exceeding the date of his superannuation."

3.2 In terms of sub-rule (4) of rule 3, as amended, where the prescribed term (*i.e.* 5 years) of office of a member expired before he attained the age of superannuation, the Central Government might extend the term of office of such member upto the date of his superannuation. The rule 3(4), as it stood, conferred wide discretion upon the Government in the matter of extension of services of any member prior to his retirement on superannuation, and the extended period could even be more than the prescribed term of 5 years. The concerned Ministry of Power were requested to state the genesis of these provisions and whether any upper limit of extension was contemplated to be laid down keeping in view the prescribed term of not exceeding 5 years as member. In their reply dated 22 October, 1993, the Ministry furnished a detailed note indicating the background of the amendment.

3.3. According to the reply of the Ministry, the Central Electricity Authority rules were first notified by the Central Government in 1977 in exercise of its rule making power under Section 4B of the Electricity (Supply) Act, 1948, which did not contain provisions regarding terms and conditions of service of Chairman and other Members of the Authority. Later on, it was advised by the Law Ministry that the Central Government had to frame rules in respect of these matters also as provided in Section 4B (2) (b) of the Act, as in the absence of any rules in this regard, the Members of the Authority were availing varying terms of office. A need was, therefore, felt to prescribe a tenure of, say 5 years for the Members (including Chairman). Separately, Cadre Review of the Central Power Engineering (Group A) Service was under consideration in this Ministry at that time. One of the proposals in this regard was for encadrement of the post of Member in that Service. In the event of the encadrement of the post of Member in that Service, situations were likely to arise where officers of the service promoted as Members before they attained the age of 53 years, might be compelled to demit office even before attaining the age of superannuation. It was, therefore, decided to provide for a tenure of 5 years and also to extend the tenure for a further period not exceeding

the date of superannuation. Accordingly, the Central Electricity Authority (Terms and Conditions of Service of Chairman and other Members) Rules, 1988, were notified in Part II, Section 3, Sub-Section (i) of Gazette of India, under GSR 123, dated 27.2.1988. Based on the Cadre Review of the Central Power Engineering (Group A) Service, the question of encadrement of 50% of posts of Members in the Central Power Engineering (Group A) Service was considered in consultation with the Department of Personnel and Training and the Ministry of Law (Department of Legal Affairs) and it was decided that the Central Electricity Authority (Terms and Conditions of Chairman and Other Members) Rules, 1988, be amended to provide that the vacancies of full-time Members shall be filled in such a manner that, as far as possible, not less than one-half of the full-time Members shall be persons belonging to the Central Power Engineering (Group A) Service. Accordingly, the Principal Rules were amended *vide* the Central Electricity Authority (Terms and Conditions of Service of Chairman and Other Members) Amendment Rules, 1992 (GSR 598 of 1992). This amendment was made mainly with a view to incorporating the decisions to encadre 50% of the posts of Members. No change was made in regard to the tenure of Members prescribed in the Principal Rules as notified in 1988. Thus the provisions contained in Rule 3(4) of the Amendment Rules, 1992 are the same as were in Rule 3 (2) of the Principal Rules notified *vide* GSR 123 of 1988. The Ministry also stated that in Public Sector Undertakings appointments to Board level posts also are initially made for a period of five years which can be extended further depending upon the performance of the incumbent during his tenure and, therefore, the Central Electricity Authority (Terms and Conditions of Service of Chairman and Other Members) Amendment Rules, does not give any extraordinary powers to the Central Government in regard to the tenure of Members of Authority.

3.4 The Committee considered the above reply of the Ministry at their sitting held on 28 October, 1993, and decided to hear oral evidence of the representatives of the Ministry with a view to elicit further clarification in the matter. Accordingly, the representatives of the Ministry of Power appeared before the Committee on 11 January, 1994 and tendered their evidence.

3.5 During the evidence, Power Secretary submitted that the Central Electricity Authority is a statutory body vested with important responsibilities like assessing the power requirements, planning the power requirements for future etc. and with a view to providing certain degree of stability, a tenure of 5 years has been prescribed for the Members of the Authority.

3.6 Regarding extension of the services of Members beyond the prescribed tenure of 5 years upto attaining the age of superannuation, the Power Secretary submitted that normally a member comes at the age of

50-52 years and if he performs well, his services can be extended till the age of his retirement so that there is no discontinuity in his service. In case of a member who comes on deputation, there is an option for him to go back to his parent service after completing his tenure of 5 years or if his services are required in public interest, his services as a member can be continued with the permission of the cadre controlling officer of the service to which that officer belongs.

3.7 Regarding the provision contained in sub-rule (1) of rule 3 that not less than one-half of the full-time members shall be belonging to the Central Power Engineering (Group 'A') Service, the Power Secretary stated that the provision is to ensure promotion prospects of the Central Power Engineering Service Officers and for filling up the remaining vacancies, circulars are issued to all State Governments, State Electricity Boards, Indian Institutes of Technology and some of the prestigious academic institutions. On being pointed out that as per the provision of 'not less than one-half', even a full complement of membership may be selected out of the Central Power Engineering Service, the Power Secretary stated that the provision is made to strike a balance between adequate promotion prospects to Central Power Engineering Service to maintain morale and, at the same time, to ensure that specialists are inducted from other services also.

3.8 According to the provision contained in Sub-Section (1) of Section 3 of the Central Electricity Authority (Terms and Conditions of Service of Chairman and Members) Rules, not less than one-half of the full-time members of the Authority shall be persons belonging to the Central Power Engineering (Group A) Service. The Committee note from the reply of the Ministry that provision has been incorporated keeping in view the promotion prospects of the Central Power Engineering Service Officers, and at the same time to ensure that specialists from other services are also inducted. The Committee, however, note with concern the wordings 'not less than one half' in rule gives a wide discretion to the Central Government as it can select a full complement of membership of the Authority from the Central Power Engineering Service itself. The Committee feel that the genesis of the provision is only to provide a privilege to a small section of people belonging to this service, leaving a limited scope for selection competent people from other sources like State Governments, State Electricity Boards, Semi-Government Organisations or Public Sector Undertakings or Universities or Indian Institutes of Technology. The Committee are of the view that power planning is specialised field and, instead of imposing any sort of restriction regarding the source of selection of candidates for the Electricity Authority, the field should be thrown open so that the best available people in the country could be selected. The Committee, therefore, recommend that the rule should be amended to do away with the restriction that 'not less than one-half of the members shall be from the Central Power Engineering Service' and instead selection

should be made from all available sources to ensure that only the best available persons fulfilling the required qualifications for different fields are selected.

3.9 With regard to the question of extension being given to Members beyond the tenure of 5 years under sub-rule (4) of Rule, 3, the Committee note that the practical aspect of the matter has been explained by the representatives of the Ministry. The Committee also take note of the view expressed by the Ministry that on the basis of the available data, the chance of any official getting by way of extension another 5 years is extremely rare. The Committee is inclined to accept this view of the Ministry for present.

#### IV

### NON-EXERCISE OF REGULATION-MAKING POWER UNDER THE NATIONAL HOUSING BANK ACT, 1987

The National Housing Bank Act, 1987 (assented to by the President on 23 December, 1987) came into force on 9 July, 1988. Section 55 thereof empowers the Board of Directors of the National Housing Bank to make regulations for the purpose of giving effect to the provisions of the Act. It was, however, observed that the National Housing Bank had since notified only two sets of regulations, viz., the National Housing Bank General Regulations, 1988 (S.O. 935-E of 1988); and the National Housing Bank (Issue and Management of Bonds) Regulations, 1989 (S.O. 600-E of 1988) governing matters enumerated in clauses (a) to (d) and (h) of section 55(2) of the Act *ibid*; whereas no regulations had been notified governing other areas enumerated in Section 55 of the said Act.

4.2 On 17 January, 1994 the attention of the Ministry of Finance/National Housing Bank 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 (5 R-2LS)]

“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 Act, explain the reasons to the Committee and seek a specific extension of time from them.”

[Para 108 (18 R-5LS)]

4.3 The Ministry/Bank 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. The Ministry/Bank were also requested to furnish a note detailing the procedure/practice being followed to regulate the duties and conduct, salaries, allowances and conditions of service (and, in particular, the seniority/promotion) of the officers and other members of the staff in the Bank which were essential to run day-to-day functioning of the institution.

4.4 In their reply dated 20 January, 1994, the National Housing Bank stated as under:—

“....consequent to the creation of a Special Fund under Section

37(2) of the National Housing Bank Act, 1987 the Board of Directors of National Housing Bank has made regulations known as "the National Housing Bank (Slim Improvement and Low Cost Housing Fund Regulations, 1993) as required in terms of clause (g) of section 55(2) of the Act. The said regulations have been sent for publication in the Official Gazette through the Ministry of Finance (Banking Division).

We also wish to inform you that the exercise for making regulations providing for matters covered by clauses. (i) and (j) is already on. The Board at its meeting held on June 23, 1993 approved the text of the National Housing Bank (Conduct, Discipline and Appeals) Regulations providing for matters relating to conduct, discipline and appeals etc., of the employees in the Bank. Thereafter, the same were sent to Reserve Bank of India for its approval as required under the Act. Reserve Bank of India *vide* its letter dated November 30, 1993, suggested certain modifications in the proposed regulations and the same is being examined.

Similarly, the regulations providing for matters relating to salaries, allowances and conditions of service including seniority and promotion of the officers and other members of the staff in the Bank are being prepared. However, the Board at its meeting held on December 27, 1993 has approved the terms and conditions for grant of gratuity to the employees of the Bank.

Pending the framing of above regulations, the service conditions of the employees in the Bank are being regulated generally on the basis of the Reserve Bank of India (Staff) Regulations and instructions issued by the Chairman and the Board from time to time. The Bank has adopted pay scales as are applicable to the employees of the nationalised banks and is extending other perquisites and allowances broadly on the lines obtaining in the banking industry.

The provident Fund is being maintained by the trustees of the Reserve Bank Employees' Provident Fund, a fund approved under the Provident Fund Act, 1925. The Bank's total strength is only 69. It was felt convenient to continue with the existing arrangement with Reserve Bank of India Employees' Provident Fund for some more time.

Seniority of the employees is yet to be fixed which is proposed to be done once service regulations are made.

In this context, it may be mentioned that in terms of Section 5(3) of the Act, the Chairman has been vested with powers of general superintendence, directions and management of the affairs and business of the Bank and is empowered to exercise all powers

and authorised to do all acts and things which may be exercised or done by the Bank.

As regards making of regulations providing for matters covered by clauses (e) and (f) of Section 55, it is submitted that the Bank has proposed certain amendments to the Act. The suggested amendments include:

(a) Proposal for amendment for section 16 to provide flexibility for borrowing in foreign currency by the Bank. It was felt that it will be difficult to laydown terms and conditions in this regard. Therefore, it will be appropriate to effect each borrowing in foreign currency with the previous approval of the Central Government and Reserve Bank.

(b) Proposal for amendment of Section 32 to enable the Bank to obtain such information from housing finance institution as it may require instead of the prescribed information.

Both these proposals have been agreed to by the Reserve Bank. We feel that framing of regulations in terms of clauses (e) and (f) of sub-section (2) of section 55 may not be necessary once the suggested amendments are carried out.

However, pending the above, the Bank has made borrowings in foreign currency on the terms and conditions approved by the Central Government and the Reserve Bank. The information from the Housing finance companies is being collected pursuant to the directions issued under sections 30 and 31 of the Act.

The Board of Directors of the Bank was first constituted only on April 3, 1992. Since then, the work of making regulations is on and is expected to be completed in the near future. In view of this, we request you to please grant us another six months' time to complete the work of framing service regulations. We regret that we did not approach you earlier for extension of time."

4.5 The Committee were not convinced with the reasons attributed by the Bank in their aforesaid reply. On 8 September, 1994, the Committee took oral evidence of the representatives of the Ministry of Finance/National Housing Bank. While explaining the delay in framing the regulations enumerated in clauses (i) and (j) of the Act providing for matters relating to conduct, discipline and appeal, salaries, allowances and conditions of service including seniority and promotions of the officers and other members of the Staff, Shri R.K. Gupta, the special Secretary and Chairman of the National Housing Bank informed that they are in the process of finalising these regulations, and hoped to get them cleared from the Board of the National Housing Bank by 29 September, 1994. The Board had agreed in principle to what they had



proposed. They further informed that they would be able to have these regulations published within the next three months *i.e.* by the end of December, 1994.

4.6 The Committee were also informed that the draft of the regulations which was cleared by the Board of the National Housing Bank was sent to the Ministry which suggested certain modifications in it. These modified regulations would be placed for final clearance in the Board's meeting to be held on 29 September, 1994. The representative of the Bank further informed the Committee that in respect of the second set related to the duties, conduct, salaries, allowances and conditions of service *i.e.* under clause (i) of the Act, they were asked to opt for the Reserve Bank Rules or the public sector banks rules. Later on it was decided to opt for the public sector bank's scales and system of rules. On that basis these regulations have been finalised and would also be cleared by 29 September, 1994 and would be published within the next three months *i.e.* by 31 December, 1994.

4.7 With regard to the functioning of the bank in the absence of the regulations, it was stated that there was delay in the formation of the Board. The National Housing Board started functioning in July, 1988 and between July 1988 and April 1992, there was no Board of Directors. In the absence of the Board there was only an Advisory Committee which functioned. The National Housing Bank's Chairman at that point of time wrote to the Reserve Bank suggesting that they would follow the Reserve Bank system and Reserve Bank of India gave them clearance for the same. Then the initial recruitment of the personnel of the National Housing Bank was done.

4.8 In a subsequent communication dated 16 February, 1995, the Ministry of Finance have sought another extension of time upto 30 June, 1995 as the draft regulations re: National Housing Bank (Officers) Service Regulations, 1994 have been approved by the Board and has been sent to Reserve Bank of India for its approval as required under the National Housing Bank Act. After obtaining approval from the Reserve Bank of India, the Service Regulations will have to be approved by the Central Government, which may require some more time. They have further stated that the regulations re: (i) National Housing Bank employees' (Conduct) Regulations, 1994; and (ii) National Housing Bank Employees' (Discipline and Appeal) Regulations, 1994 have been framed by the National Housing Bank and have since been notified in the official Gazette.

4.9 The Committee are unhappy to note that although the National Housing Bank Act, 1987 came into force on 9 July, 1988 the regulations under Clauses (i) and (j) of Section 55 of the Act providing for matters relating to Conduct, Salaries, Allowances, Conditions of Service, Establishment and Maintenance of Provident Fund and any other fund for the benefit of Officers and other members of the staff of the National

Housing Bank have not so far been finalised by the Bank and the Ministry of Finance. This has caused prejudice to the working of the bank. The Committee find that the seniority of the employees of the bank has not so far been fixed for want of regulations and the Provident Fund of the employees of the National Housing Bank is being maintained by the trustees of the Reserve Bank of India Provident Fund. The Committee are not satisfied with the justification given namely that in terms of Section 5 (3) of the Act, Chairman has been vested with powers of General Superintendence direction and management of the affairs and business of the bank and is empowered to exercise all powers and authorised to do all acts and things which may be exercised and done by the bank. Vesting of all such powers in an individual for such a long period is not the intendment of the Act. While noting that the bank authorities have owned up the blame for not constituting the Board of Directors for well over 3 years resulting in the delay in framing and notifying the regulations relating to certain crucial areas of the working of the Bank, the Committee feel that the authorities have not shown sufficient alacrity in complying with statutory directives and also the directives of the Committee on Subordinate Legislation. The Committee take a serious view of it and direct the Government to ensure strict compliance with the directives of the Committee with regard to the framing of regulations.

4.10 The Committee note with concern that the Ministry of Finance have not kept the promise of their Special Secretary and have approached the Committee for further extension of time upto 30th June, 1995. The Committee desire the Ministry to finalise all the regulations under clauses (l) and (j) of Section 55 of the Act without any further delay. The Committee also recommend that a set of model rules may be framed by the Government for all the Direct financial institutions which may be set up in future, so as to avoid any intended or unintended delays in framing rules by each individual institutions. The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a 'Note' in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill.

**NON-EXERCISE OF RULE MAKING POWER UNDER THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was assented to by the President on 11.9.1989 and was brought into force by the Central Government on 30.1.1990. Section 23(1) thereof empowers the Central Government to make rules for the purpose of giving effect to 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 have been framed under the Act as soon as possible after the commencement of the Act and in no case this period should have exceeded six months. In case, however, the Ministry found that for any unavoidable reasons it was not possible for them to adhere to the prescribed time-limit in an exceptional case, they should have at the expiration of six months from the commencement of the relevant Act, explained the reasons to the Committee and should have sought a specific extension of time from the Committee.

5.2 In compliance with the aforesaid recommendation, the rules were required to be framed by 30 July, 1990 *i.e.* within six months of the enactment of the statute. The Ministry did not seek any extension of time for about 3½ years. However, in their communications dated 5.1.1994 and 29.4.1994, the Ministry of Welfare, stated that the draft rules under the Act had been framed and were under process in consultation with the Ministry of Law, Justice and Company Affairs. The Ministry sought extensions of time upto 31 March, 1994 and again upto 30 June, 1994 to finalise the rules. In a subsequent communication dated 12 July, 1994, the Ministry sought a further extension of time upto 30 September, 1994 for finalisation of rules in consultation with the Ministry of Law, Justice and Company Affairs. On 4 October, 1994 the Ministry sought yet another extension of time upto 31 December, 1994 stating that the draft rules as vetted by the Ministry of Law and Justice have been sent for inter-departmental consultation to the Ministry of Home Affairs, Department of Expenditure, Department of Legal Affairs, Planning Commission and the National Commission for Scheduled Castes and the Scheduled Tribes for their comments, which were awaited from them.

5.3 The Ministry were requested to furnish a list of dates showing the steps taken by them to frame the rules alongwith their comments so as to ascertain whether timely actions were taken and if not, the reasons for delay in each case.

5.4 In their reply dated 3 August, 1994, the Ministry furnished a statement (Appendix III) showing the steps taken to frame the rules and also stated that as consultations were necessary with the States/Union Territories as well as the Ministry of Law, Justice and Company Affairs, every care was being taken while finalising the draft rules.

5.5 The reply of the Ministry of Welfare was not convincing. The Committee, therefore, took oral evidence of the representatives of the Ministry of Welfare on 10 October, 1994 on delay in framing the rules under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5.6 The Chairman observed that although the Act came into existence in 1989, the rules have not been framed till date. He pointed out that the list furnished by the Ministry indicates that the first draft Rules were submitted on 8.9.1989 to the then Secretary of the Ministry i.e. 2 days before the President's assent was given. The Secretary, Ministry of Welfare acknowledged this fact and informed the Committee that a Committee under the Chairmanship of Additional Secretary (Welfare) was constituted on 26.9.1989 which met on 5.10.1989 and 24.10.1989 to consider the said draft rules and advice. Accordingly, the matter was referred to the State Governments on 25.10.1989 to elicit the opinion on legal questions etc. The National Commission for Scheduled Castes and Scheduled Tribes gave their views in the matter on 24.10.1989, 15.11.1989 and 9.1.1990.

5.7 On being asked as to why the rules could not be framed in time despite all these exercises by the Ministry, the Secretary informed the Committee that since the Act is to be implemented by the State Governments and for that necessary machinery has to be created and also provision has to be made for providing effective relief and rehabilitation. He further informed that the Welfare Ministry was advised to consult the State Government. Accordingly, they were addressed many times but could not get response from most of them. He stated that after a lot of discussion, the Government decided that relief package should be a part of the rules. The amount of Rs. 100 crores was worked out as the total amount that would be required for relief and rehabilitation, half of which is to be provided by the State Governments. According to him, this was the compelling reason for delay in framing the rules as the States did not respond in time.

5.8 The Chairman pointed out that when the Act was passed, there was no intention of immediately revising the scale of compensation and bringing it to a uniform scale. Just because different States were paying different rates of compensation, there was no need for the Ministry to wait till a uniform rate of compensation was agreed to and then frame the rules.

The rules should have been notified immediately and thereafter the scale of compensation could be upgraded through an amendment of the rules. The Secretary, Ministry of Welfare stated that under Section 21(2)(iii) of the Act, the provision for economic and social rehabilitation of the victims should be clearly laid down in the rules. He also stated that since an amount of Rs. 100 crores was involved, the Finance and Planning Ministries were also consulted. When asked whether this would be a plan expenditure, the Secretary's reply was in the affirmative.

5.9 On the question whether special legal aid is being given to the victims of atrocities, the Secretary informed the Committee that there are certain policies and programmes which take care of this aspect.

5.10 The Committee observed that social legislations are made to give protection to the Scheduled Castes and Scheduled Tribes. The Parliament in its wisdom has enacted Legislation to settle the cases of atrocities expeditiously. But due to this delay the Ministry has undone what the Parliament has done. The Secretary of the Ministry of Welfare shared the concern of the Committee but could not give satisfactory reply for the delay of about 4 years in framing the rules under the Act. Secretary (Welfare) informed that normally, this work is done by the Home Department of the State Governments, Director General of Police etc. There was a demand by some Hon'ble Members in Parliament that the implementation of this Act should be transferred to the Ministry of Home Affairs. The Committee was informed by the Secretary that a decision has been taken that the implementation of this Act would be passed on to the Ministry of Home Affairs.

5.11 The Secretary, Ministry of Welfare, assured the Committee that they would be able to finalise the rules by 31 December, 1994 positively. They would not approach the Committee for further extension of time for this purpose, he said.

5.12 In a subsequent communication dated 12 January, 1995, the Ministry of Welfare have sought another extension of time upto 31 March, 1995 as they are in the process of incorporating the comments/views received from the various State Governments/Union Territory Administrations in the draft rules.

5.13 The Committee are constrained to observe that the matter relating to framing of the rules under this Act has been dealt with in the Ministry of Welfare in a very casual manner and no serious attention has been paid for the last 4 years to expediting the framing of rules under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Committee express serious resentment over the fact that the Ministry did not even seek extension of time for about 3½ years after the expiry of the permissible period of 6 months in violation of the recommendation of the Committee contained in para 108 of the 18th report (Fifth Lok Sabha). The Committee are not convinced with the submission of the Ministry that the rules could

not be finalised because the State Governments who had to implement the rules had to be consulted and that most of them did not respond. Their contention that the Ministry of Law, Justice and Company Affairs, Ministry of Finance and the Planning Commission were to be consulted because of the legal/financial implications is not justifiable on any account. While passing the Act, it was not the intention of the Parliament to immediately revise the rates of compensation to the victims of atrocities and make them uniform in all the States. The rules could have been framed and given effect immediately after enactment *i.e.* within six months of the permissible period laid down by the Committee. The scales/rates of compensation could have been settled thereafter and incorporated in the rules by suitable amendments subsequently. The Committee are of the view that the rules could have been finalised much before, had the Ministry moved in the matter with the seriousness it deserved, and had arranged meetings with the heads of the respective State Governments and the Central Ministries rather than resorting to futile and protracted correspondence in a lethargic manner.

5.14 On perusal of draft rules placed before the Secretaries of the State Governments at their meeting held at New Delhi by Ministry of Welfare on 31 October, 1994, the Committee feel that the scale of relief given under Section 3(1)(iv), 3(1)(xiii), 3(1)(xiv), 3(i) & (ii) of the Act, are much lower keeping in view the deep humiliation and demoralisation suffered by the victims of atrocities. The Committee, therefore, recommend that the relief should be fixed on a much higher scale than is proposed in the draft rules, as was agreed to by most of the representatives of the States at their aforesaid meeting.

5.15 The Committee are constrained to note that inspite of the assurance given by the Welfare Secretary to the Committee during the course of evidence the Ministry has failed to fulfil their promise to finalise and notify the rules by 31 December, 1994. The Ministry subsequently informed that the rules have since been notified *vide* GSR 316-E dated 31.3.1995. The Committee also desire that every rule made under the Act should be placed before Parliament in compliance with Section 23(2) of the Act. The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a 'note' in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill.

NEW DELHI;

April, 1995

Chaitra, 1917 (S)

AMAL DATTA,

Chairman,

Committee on Subordinate Legislation.

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## **APPENDICES**

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## APPENDIX I

### *Summary of Recommendations made in the Seventeenth Report of the Committee on Subordinate Legislation (Tenth Lok Sabha)*

S. No.	Reference to para No. in the Report	Summary of Recommendations
1	2	3
1.	1.6	<p>The Committee note that the exigencies contemplated in sub rule (2) of rule 5 of the Delhi, Andaman and Nicobar Island Police Service Rules, empowering the Government to vary the percentage of vacancies to be filled by each method were not according to the spirit and the term of the rules framed under the Act and hence needed to be deleted. The Committee, however, note that the Ministry have agreed to amend the rules by providing some kind of built in provision in the main rule itself to overcome the need to vary the percentage of vacancies to be filled by each method. The Committee regret that although a period of two years has elapsed since the date of assurance given by the Ministry's representatives to the Committee, no amendment to the rules have been placed before the Committee. The Committee desire that the Ministry may draft the amendments proposed to be carried out in the rules in this regard and may be shown to them before their final notification. The Committee further desires that the Ministry may do the needful at the earliest.</p>
	1.11	<p>The Committee are distressed to note that the Ministry of Home Affairs have failed to recognise the importance of statutory rules framed in exercise of powers conferred on them by the proviso to Art. 309 of the Constitution and had treated such rules as formality of the least importance. The Committee, however observe that now the Ministry have admitted the omission on their part and have promised to</p>



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rectify the rules reflecting the factual position in respect of the coming into force of the revised pay-scales under Rule 29 of the Delhi, Andaman and Nicobar Island Police Service Rules. The Committee desire the Ministry to do the needful at the earliest.

1.17 The Committee note that for computing the eligibility for promotion to the next higher grade, the Ministry have proposed to give the benefit of weightage of seniority to the persons who come with experience from outside, to do away with the existing anomaly. In this connection, the Committee feel that the service rules should be set to reflect stability in the position of various personnel in relation to their promotion prospect to the next higher grades. The Committee desire the Ministry to reconsider the matter and furnish a draft of the rule after making the proposed changes.

2. 2.8-2.10 The Committee note that on being pointed out, the Ministry of Finance have regretted the delay on their part in carrying out the amendments in the Income-tax rules and have given assurance that in future it would be ensured that rules come into force simultaneously with the approval of a legislation by Parliament. The Committee hope that the Ministry would keep its assurance.

The Committee further note that the extension of benefits of deduction to the intended beneficiaries who had already filed their returns and their assessment orders were finalised on the basis of the then provisions of the rules in vogue. The Ministry have stated that such assesseees can file a revised petition under the Income-tax Act. To further safeguard the interest of such assesseees, the Ministry proposed to issue a circular to all the Assessment Officers to admit revised claims of such assesseees and not to treat their claims as time-barred. The Committee desire the Ministry to issue the proposed circular at the earliest, if not already done.

The Committee also note with concern that the Ministry have failed to comply with the oft-repeated recommendations of the Committee viz., if Ministry

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is not able to frame the rules within a period of six months of the coming into force of the relevant provisions of the Act, it should at the expiration of six months, explain the reasons to the Committee and seek specific extension of time from them; and if in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules. The Committee recommend that the Ministry should evolve suitable procedure to keep themselves abreast of Committee's recommendations while framing rules.

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3.8

According to the provision contained in Sub-Section (1) of Section 3 of the Central Electricity Authority (Terms and Conditions of Service of Chairman and Members) Rules, not less than one-half of the full-time members of the Authority shall be persons belonging to the Central Power Engineering (Group A) Service. The Committee note from the reply of the Ministry that the provision has been incorporated keeping in view the promotion prospects of the Central Power Engineering Service Officers, and at the same time to ensure that specialists from other services are also inducted. The Committee, however, note with concern the wordings 'not less than one half' in rule gives a wide discretion to the Central Government as it can select a full complement of membership of the Authority from the Central Power Engineering Service itself. The Committee feel that the genesis of the provision is only to provide a privilege to a small section of people belonging to this service, leaving a limited scope for selection of competent people from other sources like State Governments, State Electricity Boards, Semi-Government Organisations or Public Sector Undertakings or Universities or Indian Institutes of Technology. The Committee are of the view that power planning is specialised field and, instead of imposing any sort of restriction regarding the source of selection of candidates for the

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Electricity Authority, the field should be thrown open so that the best available people in the country could be selected. The Committee, therefore, recommend that the rule should be amended to do away with the restriction that 'not less than one-half of the members shall be from the Central Power Engineering Service' and instead selection should be made from all available sources to ensure that only the best available persons fulfilling the required qualifications for different fields are selected.

3.9 With regard to the question of extension being given to Members beyond the tenure of 5 years under sub-rule (4) of Rule 3, the Committee note that the practical aspect of the matter has been explained by the representatives of the Ministry. The Committee also take note of the view expressed by the Ministry that on the basis of the available data, the chance of any official getting by way of extension another 5 years is extremely rare. The Committee is inclined to accept this view of the Ministry for the present.

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4.9

The Committee are unhappily to note that although the National Housing Bank Act, 1987 came into force on 9 July, 1988 the regulations under Clauses (i) and (j) of Section 55 of the Act providing for matters relating to Conduct, Salaries Allowances, Conditions of Service, Establishment and Maintenance of Provident Fund and any other fund for the benefit of Officers and other members of the staff of the National Housing Bank have not so far been finalised by the Bank and the Ministry of Finance. This has caused prejudice to the working of the bank. The Committee find that the seniority of the employees of the bank has not so far been fixed for want of regulations and the Provident Fund of the employees of the National Housing Bank is being maintained by the trustees of the Reserve Bank of India Provident Fund. The Committee are not satisfied with the justification given namely that in terms of Section 5 (3) of the Act, Chairman has been vested with powers of General Superintendence direction and management of the affairs and business of the bank and is empowered to exercise all powers and

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authorised to do all acts and things which may be exercised and done by the bank. Vesting of all such powers in an individual for such a long period is not the intendment of the Act. While noting that the bank authorities have owned up the blame for not constituting the Board of Directors for well over 3 years resulting in the delay in framing and notifying the regulations relating to certain crucial areas of the working of the Bank, the Committee feel that the authorities have not shown sufficient electricity in complying with statutory directives and also the directives of the Committee on Subordinate Legislation. The Committee take a serious view of it and direct the Government to ensure strict compliance with the directives of the Committee with regard to the framing of regulations.

- 4.10 The Committee note with concern that the Ministry of Finance have not kept the promise of their Special Secretary and have approached the Committee for further extension of time upto 30th June, 1995. The Committee desire the Ministry to finalise all the regulations under clauses (i) and (j) of Section 55 of the Act without any further delay. The Committee also recommend that a set of model rules may be framed by the Government for all the Direct financial institutions which may be set up in future, so as to avoid any intended or unintended delays in framing rules by each individual institutions. The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a 'Note' in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill.

5. 5.13 The Committee are constrained to observe that the matter relating to framing of the rules under this Act has been dealt within the Ministry of Welfare in a very casual manner and no serious attention has been paid for the last 4 years to expediting the framing of rules under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,
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1989. The Committee express serious resentment over the fact that the Ministry did not even seek extension of time for about 3½ years after the expiry of the permissible period of 6 months in violation of the recommendation of the Committee contained in para 108 of the 18th Report (Fifth Lok Sabha). The Committee are not convinced with the submission of the Ministry that the rules could not be finalised because the State Governments who had to implement the rules had to be consulted and that most of them did not respond. Their contention that the Ministry of Law, Justice and Company Affairs, Ministry of Finance and the Planning Commission were to be consulted because of the legal/financial implications is not justifiable on any account. While passing the Act, it was not the intention of the Parliament to immediately revise the rates of compensation to the victims of atrocities and make them uniform in all the States. The rules could have been framed and given effect immediately after enactment *i.e.* within six months of the permissible period laid down by the Committee. The scales/rates of compensation could have been settled thereafter and incorporated in the rules by suitable amendments subsequently. The Committee are of the view that the rules could have been finalised much before, had the Ministry moved in the matter with the seriousness it deserved, and had arranged meetings with the heads of the respective State Governments and the Central Ministries rather than resorting to futile and protracted correspondence in a lethargic manner.

5.14

On perusal of draft rules placed before the Secretaries of the State Governments at their meeting held at New Delhi by Ministry of Welfare on 31 October, 1994 the Committee feel that the scale of relief given under Section 3(1)(iv), 3(1)(xiii), 3(i)(xiv)), 3(i) & (ii) of the Act, are much lower keeping in view the deep humiliation and demoralisation suffered by the victims of atrocities. The Committee, therefore, recommend that the relief should be fixed on a much higher scale than is proposed in the draft rules, as was agreed to by most

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of the representatives of the states at their aforesaid meeting.

**5.15**

The Committee are constrained to note that inspite of the assurance given by the Welfare Secretary to the Committee during the course of evidence the Ministry has failed to fulfil their promise to finalise and notify the rules by 31 December, 1994. The Ministry subsequently informed that the rules have since been notified *vide* GSR 316-E dated 31.3.1995. The Committee also desire that every rule made under the Act should be placed before Parliament in compliance with Section 23 (2) of the Act. The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a 'Note' in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill.

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## APPENDIX-II

(Vide para 2.5 of the Report)

Circular No. 653

F.No. 178/54/93-I TA-I  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

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New Delhi, the 15th June, 1993

To

All Chief Commissioners of Income Tax,  
All Director Generals of Income Tax.

Sir,

**SUBJECT: *Deduction under section 80 U and 80 DD of the Income-tax Act, 1961—Clarification regarding—***

Section 80 U as it existed till the assessment year 1989-90 and earlier years provided for a deduction in the case of a resident individual assessee suffering from a permanent physical disability (including total blindness).

2. By an amendment made by the Finance Act of 1989 with effect from assessment year 1990-91 the deduction was made also applicable to assesseees suffering from mental retardation to the extent specified in the rules made in this behalf by the Board. Though this amendment came into force *w.e.f.* 1.4.1990, the rule referred to therein viz-Rule 11D(ii) defining "mental retardation", has been notified only on 27.1.1992 though with retrospective effect from 1.4.1990. Thus it is possible that, in the absence of relevant rules at the time the returns for the assessment years 1990-91 and 1991-92 were due, certain eligible assesseees could not have claimed the deduction under Section 80U(i) (iii).

A similar issue has arisen in respect of Section 80DD, which was inserted by the Finance Act, 1990 *w.e.f.* 1991-92. This section provides for a deduction in respect of medical treatment, training and rehabilitation of handicapped dependants of assesseees. The deduction is applicable if the dependent is suffering from a permanent physical disability including blindness or is subject to mental retardation, being a permanent physical disability or mental retardation specified in the rules made in this behalf by

the C.B.D.T.. Though this section became effective from the assessment year 1991-92 the rule specified therein viz. Rule 11A was introduced only on 27.1.1992 though with retrospective effect from 1.4.1991. It is possible therefore that certain eligible assesseees may not have claimed the deduction due to absence of rules at the relevant time when the return for the assessment year 1991-92 was due.

It is clarified that such of those assesseees, in whose cases the assessments for these assessment years have already been made, or intimations u/s 143(1) (a) have already been issued are free to file rectification applications u/s 154 or revision petitions u/s 264 enclosing proper medical certificates and such petitions shall be admitted by the concerned authorities, if necessary by condoning the delay, and shall be disposed of on merits. Where any refund is due on this account the same shall be granted.

In the cases of those assesseees in whose cases the assessments are still pending or no intimation u/s 143(1) (a) has so far been served, they may file revised returns for the limited purpose of claiming deduction under either Section 80 U (1) (iii) or Section 80 DD and, for this purpose, the Board, in exercise of the powers vested in it u/s 119 (2) (a) of the Income Tax Act, hereby extends the time limit mentioned u/s 139 (5) till 31.12.1993 for filing such revised returns for the aforesaid assessment years. The Assessing Officers are authorised to deal with such returns or merits according to law and grant refunds wherever due.

If there are any other cases of hardship, not covered by this Circular, the same may be brought to the notice of the Board for appropriate action.

The contents of this Circular may please be brought to the notice of all concerned authorities in your jurisdiction.

Yours faithfully,

Sd/-

(G. MUTHURAMAKRISHNAN)  
DIRECTOR TO THE GOVT. OF INDIA



### APPENDIX-III

(See para 5.4 of the Report)

*Statement showing the steps taken to frame the rules*

1. First draft of the rules was submitted on 8.9.1989.
2. A Committee under chairmanship of Additional Secretary (Welfare) was constituted on 26.9.1989.
3. The Committee met on 5.10.1989 and 24.10.1989.
4. State Governments were addressed on 25.10.1989 for eliciting material on legal aid etc.
5. National Commission for SC/ST gave their views on 24.10.1989, 15.11.1989 and 9.1.1990.
6. The Act came into force w.e.f. 30.1.1990.
7. Draft rules submitted to Secretary (W) on 18.2.1990.
8. Secretary (W) desired on 29.12.1990 to recast the draft rules.
9. Revised draft rules were submitted to Secretary (W) on 17.6.1991.
10. The matter was discussed with Additional Legislative Counsel on 14.8.1991 and further revision of draft rules took place.
11. Draft rules were submitted to WM on 11.6.1992 who desired the matter to be discussed.
12. International Finance Division suggested assessment of requirement of funds on 23.6.1992. An assessment of Rs. 7 crores (based on Rs. 20,000 per major case numbering 3500) was made on 15.7.1992.
13. The case was referred to Ministry of Law on 7.10.1992.
14. Ministry of Law advised on 20.10.1992 to consult all the States/UTs and accordingly States were addressed on 3.11.1992.
15. Case was again referred to Ministry of Law on 3.12.1992 which wanted further clarifications. Subsequently, they made some modifications on 8.11.1993 and desired to have fairly typed copies. They also suggested the Ministry of Welfare to consult the States and the Ministry of Finance for sharing the cost of expenditure.
16. The draft rules were sent to State Governments for their concurrence to bear the cost of expenditure on 17.2.1994 and the matter was followed up on 11.3.1994, 23.3.1994 and 6.5.1994. Reply from the States is awaited.

17. In a staff Meeting held on 5.5.1994 by the Secretary (W), it was decided that rules may be notified, after the concurrence of Legislative Department.
18. Ministry of Law and Justice *vide* their letter (dated 10.5.1994) wanted to see the file. Hence file was sent to the Ministry of Law and Justice on 13.5.94.
19. The Ministry of Law and Justice have returned the draft rules on 15.7.94 with various amendments for comments of the Ministry of Welfare.

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**MINUTES**

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## APPENDIX-IV

(Vide para 3 of the Introduction)

### XII

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

The Committee met on Monday, 2 November, 1992 from 15.00 to 16.00 hours.

#### PRESENT

Shri Somnath Chatterjee — *Chairman*

#### MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Shri Chhitubhai Gamit
4. Shri Ram Niwas Mirdha
5. Shri Shravan Kumar Patel
6. Shri A. Venkata Reddy
7. Shri Mohan Singh
8. Shri Tara Singh

#### SECRETARIAT

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

2. The Committee considered Memoranda Nos. 31 to 39 on the following subjects:—

\*3 to 7.

- (iv) The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991 (GSR 162 of 1991)—Rule 5 regarding Method of Recruitment (Memorandum No. 34);
- (v) The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991—Rule 29 re: Pay and allowances (Memorandum No. 35); and
- (vi) The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991—Rule 30 regarding Appointment to Selection Grade (Memorandum No. 37).

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

8. The Committee considered the above Memoranda at some length and then decided to call the representatives of the Ministry of Home Affairs and the Ministry of Finance to elicit further clarification in the matter.

\*9 to 11.

12. The Committee then adjourned to meet again on 12 November, 1992.

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XV

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

The Committee met on Tuesday, 9 February, 1993 from 16.00 to 17.50 hours.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Shri Guman Mal Lodha
4. Shri A. Venkata Reddy
5. Shri Mohan Singh
6. Shri Shivendra Bahadur Singh
7. Shri Tara Singh
8. Kumari Frida Topno

SECRETARIAT

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

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri P.P.R. Nair — *Special Secretary*
2. Shri Arun Sinha — *Additional Secretary*
3. Shri R.R. Shah — *Joint Secretary*
4. Shri Arun Mathur — *Director*
5. Shri R.K. Malhotra — *Desk Officer*

2. Before the Committee proceeded to take evidence, the Chairman, while welcoming the witnesses, drew their attention to the provisions contained in Direction 58 of the Direction by the Speaker.

(i) *The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991 (GSR 162 of 1991) Rule 5 regarding Method of Recruitment.*

3. At the outset, the Committee desired to know whether there had been any instance when the variation in the percentage of vacancies filled by both the methods had been made during the last three years. The special Secretary in the Ministry of Home Affairs informed the Committee as under:—

“There was one instance in 1991 where 60 posts in Delhi were brought on the cadre of DANIP. All these posts were held by

promotee officers who were working on officiating *ad hoc* basis. All these posts have been filled up on a regular basis under rule 5.

The reasons were recorded. It was done in consultation with the Law Ministry, Department of Personnel and the UPSC. It was done because these 60 officers were officiating for a long time. This was done as one time exception to fill up the posts which were there."

4. When asked what exigency was contemplated to provide for such variation, the representative stated:—

"Sometimes it happens that we do not get, mostly, direct recruits to the required number because they come through the UPSC and they go away to other services. In such cases, instead of carrying forward, we do fill up the post; that is why we may require to vary it. This is a promotion from Inspector to Assistant Commissioner of Police. The direct recruit is the AC; and it is Class II post."

5. On being asked whether there had been any instance when the required number of candidates were not available even after going through the procedure prescribed in this behalf, the representative of the Ministry explained as follows:—

"From 1986 onwards, the allotted seats were 12 for the direct recruits and we got 7, in 1987 against 10, we got 6, in 1988, they were 5 and we got three and so on. So, there is a difficulty in getting the desired number of direct recruits. This is done through the UPSC.

Some times, the selected candidates do not join. But even after they have joined, for bettering their career, they can again appear in the examination. So, they appear and go away. It happens in other services also. It is not an exclusive problem for this. We will have a fresh look at it.

6. When the Committee pointed out that making such a provision in the rules had no rationale except encouraging favouritism, the representative explained the position as under:—

"We agree what you are saying is that this amount to somewhat excessive delegation. Yes, we do feel that we have a little practical difficulty. As in this particular case there were people who initially were not available. Some new posts were added, some new persons were provided jobs as ACP. Over a period of time when these people had worked for three or four years the cadre question came up. Therefore, some adjustment had to take place. In fact, we were thinking whether in the main rule itself some kind of built-in provision can be provided so that this kind of difficulty if it arises could be taken care of."

7. The Chairman directed the representatives of the Ministry to furnish a copy of the reference made to the UPSC under sub-rule 2 of rule 5.

*(ii) The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991 (GSR 162 of 1991) Rule 29 regarding Pay and Allowances.*

8. The Committee drew the attention of the representatives of the Ministry to the fact that pursuant to the recommendations of the Fourth Central Commission the revised scales of pay were given effect from 1 January, 1986, however the revised pay scales attached to the service were given effect from 16 March, 1991. In this context, the representative of the Ministry stated as follows:—

“It was an omission. It is not correct. It came into force with effect from 1.1.86 in all the Departments. These rules were amended in all the Departments. These rules were amended in 1991. New people who were in service even before this amendment of the rules have got the benefit from 1.1.86. But while amending this rule it was omitted to mention the effect from 1.1.86.”

9. When asked whether the rules made by the Ministry were vetted by the Ministry of Law and Justice, the representative replied in the affirmative. The witness also stated that these rules were also vetted by the Department of Personnel and Training.

10. The witness promised to carry out the necessary correction in the rule and intimate the Committee accordingly.

*(iii) The Delhi, Andaman and Nicobar Islands Police Service (Amendment) Rules, 1991 (GSR 162 of 1991) Rule 30 regarding Appointment to Selection Grade.*

11. The Committee pointed out that the position as stated in the proviso to rule 30(2) seemed to be anomalous as the eligibility of senior persons in the grade for next higher promotion was directly linked to a junior person having been fulfilled minimum requirement of 8 years' service. The representative of the Ministry clarified the position as under:—

“At the moment we have to agree with you that this seems quite rationale. The problem has arisen because in spite of giving the benefit of additional service to the person who has come with experience from outside we have not given him the weighted seniority. Otherwise problems in the promotion would not have arisen. Let us look at it in another fashion, if there have been bottlenecks and people with 10 year or 11 year service were not promoted and this rule of 8 years applies then what would have happened. Then the person with 7 years' outside service would become eligible whereas a person with 10 years' will not be eligible. It could also happen the other way as now. But on the whole we do realise that there is a need to correct this thing and when we discussed it among ourselves we felt that perhaps we could think in terms of weighted seniority which is obvious.”



12. The Chairman drew the attention of the representatives of the Ministry to reconsider the matter and furnish a fresh draft of the rule by making the necessary changes therein as pointed out by the Committee during evidence. The representative agreed to do the needful.

*The witnesses then withdrew.*

*The Committee then decided to hold their next sitting on 26 February, 1993.*

**XVII**  
**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 Rashwan
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.

\*3 to 7

(vi) *The Income-tax (Third Amendment) Rules, 1992 (S.O. 80-E of 1992)*  
— (*Memorandum No. 61*)

8. The Committee considered the above memorandum and noted with concern that the Ministry of Finance had taken more than 21 months in defining two well known medical term 'mental retardation' and 'blindness' for purposes of rule 11A and Rule 11D of the Income-tax Rules. As a consequence, the benefit intended to be accrued to the concerned public from 1.4.1990 and 1.4.1991 on insertion of sections 80U(1) and 80DD respectively, was unduly delayed. The Committee desired the Ministry to evolve suitable procedural safeguards in order to curtail such enormous delays in future.

The Committee further observed that since the Income-tax returns for a particular year were required to be filed by the assesses within the prescribed time-schedules, it would be anomalous if certain cases pending for disposal by the Income-tax authorities were dealt with under the amended rules whereas several others of identical nature were dealt with on the basis on the then provisions of the rules in vogue, resulting in denial

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

of benefit to many intended beneficiaries, contrary to the intention of the law and the legislature. The Committee decided to hear oral evidence of the representatives of the Ministry of Finance with a view to seek further elucidation in the matter.

\*9.

*The Committee then adjourned.*

## XXII

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

The Committee met on Wednesday, 9 June, 1993 from 11.00 to 12.00 hours.

#### PRESENT

Shri Amal Datta —*Chairman*

#### MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Guman Mal Lodha
4. Shri Ram Niwas Mirdha
5. Shri Mohan Singh
6. Shri Tara Singh
7. Kumari Frida Topno
8. Shri Ratilal Kalidas Varma

#### WITNESSES

#### MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

1. Shri M.R. Sivaraman, Secretary (Revenue)
2. Shri N.R. Sivaswamy, Member (CBDT)
3. Ms. M.L. Mahajan, J.S. (TPL-II)

#### SECRETARIAT

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

2. The Committee heard the oral evidence of the representatives of the Ministry of Finance (Department of Revenue) regarding Income-tax (Third Amendment) Rules, 1992 (S.O. 80—E of 1992).

3. At the outset, the Committee desired to know the reasons for the delay in framing the rules and also the procedure followed by the Ministry or by the CBDT in framing these rules. In reply, the Secretary (Revenue) regretted the delay and assured that in future it would be ensured that such delays might not occur. As regards the procedure, he explained that whenever an amendment to a particular section of the Act was made giving benefit to a particular group of people or organisations, they normally had to consult all the concerned Ministries/Specialised Organisations etc. in order to ascertain what sort of procedure

should be followed by them in framing the rules for giving benefit to that particular class.

4. As regards the availing of the benefit of these rules by the assessee<sup>s</sup> was concerned, the representative explained that even though there was a delay of 22 months in respect of handicapped and 9 months in the case of dependents, such assessee<sup>s</sup> could still claim a deduction by filling a rectification petition under section 154 or a revised petition under section 264. Furthermore there was unlimited period available to the Commissioner of Income-tax. The representative further informed that they had decided to issue a Circular in that regard that any assessee even than was at liberty to file a rectification petition provided he filed a medical certificate. On being asked whether such Certificate was time-barred, it was informed that the medical certificate need not accompany return and could be filed later. The Committee pointed out that the concessions under these rules were being given to an assessee because of his reduced capacity for normal work or engaging in a gainful employment or occupation and desired to know whether it was necessary to be bound by a definition like the term 'permanent disability or 50% loss in one limb', and desired that the rules should be reconsidered. In reply, the representative stated that rules should be unambiguous and if it was not quantified like 50% etc., there would be problems. The Committee desired that the quantum of disability should be reconsidered which was agreed to by the representative. The Committee further desired the Ministry that the purpose of definition should also be indicated while taking consultation of the specialised agencies for framing a particular definition. The Committee then drew the attention of the representative to the Committee's oft-repeated recommendation that if a Ministry was not able to frame rules within a period of six months of coming into force of the relevant provisions of the Act, it should, at the expiration of six months, explain the reasons to the Committee and seek specific extension of time from them and pointed out, that was not done by the Ministry in that case, which was confessed by the representative. The Committee desired the Ministry to follow a procedure in that regard. The Committee also asked the representative to furnish a note regarding other rules pursuant to the amendments contained in the Act of 1991-92 and 1993 which were still to be framed and published. The representative agreed to it. The Committee further asked the representative that whenever any amendment rules were brought out, they should be given adequate publicity through newspapers for the benefit of all concerned. The Committee desired similar information in the cases of Income-tax Act, Wealth-tax Act and Expenditure-tax Act etc. The representative promised to send that information at the earliest.

*The Committee then adjourned.*

## XXVIII

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

The Committee met on Thursday, 28 October, 1993 from 15.30 hrs. to 16.15 hrs.

#### PRESENT

Shri Amal Datta — *Chairman*

#### MEMBERS

2. Shri R. Dhanuskodi Athithan
3. Shri Ram Niwas Mirdha
4. Shri Shraavan Kumar Patel
5. Shri Mohan Singh
6. Kumari Frida Topno

#### SECRETARIAT

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

2. The Committee considered Memoranda Nos. 72 to 77 as follows:—  
\* 3 to 5

(iii) *The Central Electricity Authority (Terms and Conditions of Service of Chairman and Members) Amendment Rules, 1992 (GSR 598 of 1992) — (Memorandum No. 74)*

6. The Committee considered the above memorandum and observed that rule 3(4) as amended, conferred *wide* discretion upon the Government in the matter of extension of services of any member beyond the prescribed period of 5 years prior to his retirement on superannuation. The Committee noted that according to the Ministry of Power, the said sub-rule was incorporated with a view to take care of such situations which might arise where officers of the Service promoted as members before attaining the age of 53 years, might be compelled to demit office even before attaining the age of superannuation, after completing their tenure of 5 years. With a view to further elucidate the matter, the Committee decided to hear oral evidence of the representatives of the Ministry of Power.

\* 7 to 10

*The Committee then adjourned.*

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

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

The Committee met in Tuesday, 11 January, 1994 from 11.00 to 13.30 hours.

PRESENT

Shri Amal Datta —*Chairman*

MEMBERS

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

SECRETARIAT

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

WITNESSES

1. Shri R. Vasudevan, Secretary, Ministry of Power
2. Shri Y.P. Gambhir, Chairman, General Electricity Authority
3. Shri V.K. Dewan, J.S. (Admn.), Ministry of Power

2. The Committee took oral evidence of the representatives of the Ministry of Power in order to clarify itself about the tenure of members of the Electricity Board which was governed by the Central Electricity Authority (Terms and Conditions of Service of Chairman and Members) Amendment Rules, 1992.

3. On being asked whether while prescribing the tenure of a member for five years, in certain cases the provisions for giving extension might lead to some members having availed 2 terms of five years and some even exceed the limit, the representative stated that the Central Electricity Authority, a statutory body was vested with certain very important responsibilities like assessing the power requirements, Planning the power requirements for future etc. Thus to provide stability a tenure of five years was fixed. But depending upon the performance of the Member, the tenure of the Member was extended in the public interest, till his date of superannuation with the permission of the cadre controlling officer of the Service to which that officer belonged. He further stated that this provision of extension enabled the member to continue till the age of superannuation.

4. On being asked about the method of selection for the post of Member and the selection body, the representative stated that there was a Selection Committee, which prepared panel of names with Secretary, Power as the Chairman, Fifty per cent of the posts were filled from the Central Power Engineering Service and the remaining fifty per cent posts were filled from State Electricity Boards, IITs and some of the prestigious academic institutions by circulating them about the vacancy as and when it arose.

5. On being asked about the 50% ratio of the Member who are selected from the Central Power Engineering Service as against the remaining 50% with that of the other sources viz., State Electricity Boards, IITs etc, the representative stated that the officers of the Central Power Unit were specialised in this field whose entire career was built up for planning purposes and in order to provide adequate promotion prospects to them, this ratio had been prescribed. He further stated that the posts were circulated to State Electricity Boards, IITs, Universities etc. and to all the Ministries, Chairman, DUC, CMD of NYPC, BHEL, NHPC, Director, IITs at New Delhi, Kanpur, Kharagpur, Bombay and Madras etc. and sometimes Members were also drawn from Law Ministry. The maximum number was eight. All the Members were full-time Members. The representative further stated that the Members were designated as Member (Hydel; Member (Planning); Member (Grid and Operations); Member (Power Systems); Member (Economic and Commercial) and Member (Thermal).

6. On being asked whether a person from the private Sector could be inducted as a Member, the representative stated that such a person could be inducted as a part-time Member. On being asked whether there was any convention or rule that the Chairman will be from the Central Power Engineering Service, the representative further stated that there was a Selection Board with Secretary (Power) as its Chairman, and Chairman Central Electricity Authority and Chairman of the Public Sector Undertakings were Members. The selection of Members was done with the approval of the Cabinet Committee. The Committee asked the representative to send the relevant papers relating to the recruitment of the Members.

7. The Committee afterwards held an informal discussion with the representatives of the Ministry of Environment and Forests on the rules framed by the Central Government under the Environment (Protection) Act, 1986 with a view to ascertaining whether such rules covered all the areas enumerated in the Act and were adequate enough to meet the present day requirement or otherwise needed any modification.

[The witnesses then withdrew.]

*The Committee then adjourned*



### XXXIII

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

The Committee met on Tuesday, 25 January, 1994 from 11.00 to 12.30 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 K.G. Shivappa
7. Shri Mohan Singh (Deoria)
8. Prof. K.V. Thomas
9. Shri Umrao Singh

#### SECRETARIAT

- |                         |                           |
|-------------------------|---------------------------|
| 1. Shri S.C. Gupta      | — <i>Joint Secretary</i>  |
| 2. Shri R.K. Chatterjee | — <i>Deputy Secretary</i> |
| 3. Shri Ram Kumar       | — <i>Under Secretary</i>  |

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3. The Committee then considered Memoranda Nos. 83 to 86 as follows:—

(i) *Non-exercise of power to make regulations under the National Housing Bank Act, 1987 (Memorandum No. 83)*

4. The Committee considered the above memorandum at length and noted that the National Housing Bank had neither shown any reasons for not complying with the recommendations of the Committee for seeking extension of time nor did they frame regulations on all the aspects enumerated in the Act. The Committee, therefore, decided to call the representatives of the Ministry of Finance/National Housing Bank for oral evidence for elucidation on the matter.

\*5 to 7

*The Committee then adjourned.*

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

## XLIX

### MINUTES OF THE FORTYNINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1990-94)

The Committee on Subordinate Legislation met on Thursday,  
8 September, 1994 from 11.00 to 13.00 hours.

#### PRESENT

Shri Amal Datta — *Chairman*

#### MEMBERS

2. Shri Prithviraj D. Chavan
3. Dr. A.K. Patel
4. Shri Rajendra Kumar Sharma
5. Prof. K.V. Thomas

#### SECRETARIAT

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

#### 1. REPRESENTATIVES OF THE MINISTRY OF FINANCE AND NATIONAL HOUSING BANK

1. Shri R.V. Gupta — Special secretary and Chairman of the  
National Housing Bank
2. Shri V.G. Athavale, — Executive Director, National Housing  
Bank
3. Shri S.P. Ghosh — Chief General Manager & Secretary of  
National Housing Bank
4. Shri P.K. Handa — General Manager of National Housing  
Bank
5. Shri K.K. Balu — Deputy General Manager of N.H.B.
6. Shri R.S. Garg — Regional Manager, N.H.B.
7. Shri K.K. Bhargava — O.S.D.

#### II. REPRESENTATIVES OF THE MINISTRY OF FINANCE/LIC/GENERAL INSURANCE CORPORATION

1. Shri C.S. Rao — Joint Secretary (insurance)
2. Shri J.S. Salunke — Chairman (L.I.C.)
3. Shri U. Mahesh Rao — Managing Director (GIC)

4. Shri F.R. Heredia — General Manager (GIC)  
 5. Shri Y. Ramachandran— Chief (legal and HPF). (LIC)  
 6. Shri R.C. Sharma — General Manager (GIC)  
 7. Shri T.C. Nanda — Under Secretary, Ministry of Finance  
 8. Shri P.T. Kini — Deputy Secretary (Insurance) (LIC)

2. The Committee took up oral evidence of the representatives of the Ministry of Finance and the National Housing Bank regarding non-exercise of regulation-making power under the National Housing Bank Act, 1987.

3. On being asked the reasons for not framing regulations enumerated in clauses (i) and (j) of the Act providing for matters relating to conduct, discipline and appeal, salaries allowances and conditions of service including seniority and promotions of the officers and other members of the Staff, the Committee were informed by the Special Secretary and the Chairman of the National Housing Bank that they are in the process of finalising these regulations, and hoped to get them cleared from the Board of the National Housing Bank by 29 September, 1994. In this connection, they have consulted the Ministry of Finance who have agreed in principle to what they had proposed. They further informed that they would be able to have these rules published within the next three months.

4. When asked whether the Reserve bank of India has cleared those regulations approved by the Board and forwarded to the Ministry for their approval, the Committee were informed that the draft which was cleared by the Board of the National Housing Bank, went to the Ministry which suggested certain modifications in it. These modified regulations would be placed for final clearance in the Board's meeting to be held on 29 September, 1994. The witness also informed that the second set related to the duties, conduct, salaries, allowances and conditions of service i.e. under clause (i), of the Act they were asked to opt for the Reserve Bank rules or the public sector banks rules. Later on it was decided to opt for the public sector banks scales and system of rules. on that basis these rules have been finalised and would also be cleared on 29 September, 1994 and would be published within the next three months.

5. As regards, the functioning in the absence of the regulations, it was stated that there was delay in the formation of the Board. The National Housing Board started functioning in July, 1988 and between July 1988 and April 1992, there was no Board of Directors. In the absence of National Housing Board, there was only an Advisory Committee which functioned. The National Housing Bank's Chairman at that point of time wrote to the Reserve bank, suggesting that they would follow the Reserve Bank system and the Reserve Bank gave them the clearance to go ahead. Then the initial recruitment of the personnel of the NHB was done.

\*6 to 11 \*\*

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*The Committee then adjourned*

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

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 (Dcoria)
8. Shri Ratilal Kalidas Varma

**SECRETARIAT**

**Shri Ram Autar Ram —Deputy Secretary**

**REPRESENTATIVES OF THE MINISTRY OF WELFARE**

1. Shri Mata Prasad —Secretary
2. Shri Ganga Das —Joint Secretary
3. Dr. R.K. Shrivastava —Director
4. Shri M. Rajendran —Assistant Director

2. The Committee heard the views of the representatives of the Ministry of Welfare on delay in framing the rules under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. At the outset, the Chairman referred to the fact that the Act came into existence in 1989 and yet the rules have not been framed. He also referred to the information given to the Committee namely that a Committee was set up in 1989 under the Chairmanship of Additional Secretary (Welfare) for framing the rules, the State Governments were addressed for eliciting on legal aid etc. and the National Commission gave its views on 24.10.89 and 15.11.89, and 9.1.90. Despite all this rules have not been framed so far. The Secretary stated in reply that since the Act is to be implemented by the State Governments and for that necessary machinery has to be created and also provision has to be made for providing effective relief and rehabilitation, the Welfare Ministry was advised to consult the State Governments. They were addressed many

times, there was no response from most of them. He further stated that after a lot of discussion the Government decided that relief package should be a part of the rules. Accordingly the amount of Rs. 100 crores was worked out as the total amount that will be required for relief and rehabilitation, half of which is to be provided by the State Governments. This according to him, was the compelling reason for the delay in framing the rules as the States did not respond.

4. The Chairman pointed out that when the Act was passed there was no intention of immediately revising the scale of compensation and bringing in to a uniform scale. Just because different States are paying different rates of compensation, there was no need to wait till a uniform rate of compensation is agreed to and then frame the rules. The rules should have been notified immediately and therefore scale of compensation could be upgraded through an amendment of the rules. The Secretary stated in reply that under Section 21(2) (iii) of the Act, the provision for economic and social rehabilitation of the victims should be clearly laid down in the rules. He also stated that since an amount of Rs. 100 crores was involved the Finance and Planning Ministries was also consulted. At this stage the Chairman enquired whether this would be a plan expenditure and the reply was in the affirmative. The Committee expressed serious reservations about it as they felt that if it is treated as a Plan expenditure, every time there are atrocities, the Ministry has to go to the Planning Commission for funds.

5. The Chairman also wanted to know whether special legal aid is being given to the victims of atrocities. The Secretary said that there are certain policies and programmes which take care of this aspect.

6. On being observed, that social legislations are made only to give protection to the Scheduled Castes and Scheduled Tribes but there is a complete vacuum in providing protection and there is lethargy in deciding the cases. The Parliament, in its wisdom tried to settle these cases immediately. But by this process, the Ministry has undone what the Parliament has done. The Secretary of the Ministry of Welfare shared the concern of the Committee but could not give satisfactory reply for the delay of about 4 years in framing the rules under the Act. Normally, this work is done by the Home Department of the State Governments, Directors General of Police etc. There was a demand by some Hon'ble Members in Parliament that the implementation of this Act should be transferred to the Ministry of Home Affairs. A decision has been taken that the implementation of this Act would be passed on to the Ministry of Home Affairs. Secretary (Welfare) assured the Committee that they would be able to frame the rules by 31 December, 1994, and he would not come again before the Committee for further extension of time beyond 31 December, 1994.

[The witness withdrew]

*The Committee then adjourned.*

MINUTES OF THE FIFTY-FOURTH SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1995-96)

The Committee met on Thursday, 6 April, 1995 from 15.00 to 16.30 hours.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri Pritiviraj D. Chavan
3. Shri V. Dhananjaya Kumar
4. Shri Dharampal Singh Malik
5. Shri Rajendra Kumar Sharma
6. Shri Pratap Singh
7. Prof. K.V. Thomas
8. Shri Umrao Singh

SECRETARIAT

1. Shri S.N. Mishra — *Additional Secretary*
2. Shrimati Roli Srivastava — *Joint Secretary*
3. Shri Ram Autar Ram — *Deputy Secretary*

2. The Committee considered their draft Seventeenth And Eighteenth Reports and adopted them with the following modifications:—

SEVENTEENTH REPORT

- (i) In page 3, para 1.6, line 23,  
*after the word 'method' add*  
"The Committee regret that although a period of two years has elapsed since the date of assurance given by the Ministry's representatives to the Committee, no amendments to rules incorporating the assurance have been placed before the Committee."
- (ii) In page 17, para 2.10, line 23,  
*for "them" read "themselves"*
- (iii) In page 35, para 4.10,
  - (a) line 5, *for "January, 1995" read "June, 1995"*
  - (b) *after line 13, add—*  
"The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a 'Note' in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill."

(iv) In page 44, for para 5.15, substitute—

“The Committee are constrained to note that in spite of the assurance given by the Welfare Secretary to the Committee during the course of evidence the Ministry has failed to fulfil their promise to finalise and notify rules by 31 December, 1994. The Ministry subsequently informed that rules have since been notified *vide* GSR 316-E dated 31 March, 1995. The Committee desire that every rule made under the Act should be placed before the Parliament in compliance with Section 23(2) of the Act. The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a ‘Note’ in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill.”

\*(v) to (ix)

3. The Committee then decided to meet on 3 May, 1994.

*The Committee then adjourned.*