

COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTH LOK SABHA)

SEVENTH REPORT

(Presented on 8 September, 1981)



LOK SABHA SECRETARIAT
NEW DELHI

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Corrigenda to the Seventh Report of the
Committee on Subordinate Legislation
(Seventh Lok Sabha) presented to the
House on 3 September, 1981.

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1961-62)**

1. Shri Mool Chand Daga—*Chairman*
2. Shri M. Ankineedu
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri T. V. Chandrashekharappa
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12. Shri Ashoke Sen
13. Shri Ajit Pratap Singh
14. Shri Chandra Shekhar Singh

SECRETARIAT

Shri S. D. Kaura—*Chief Legislative Committee Officer.*

Shri S. S. Chawla—*Senior Legislative Committee Officer.*

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 5 January, 8 and 9 July and 4 and 5 August, 1981.

3. At their sittings held on 4 and 5 August, 1981, the Committee took evidence of the representatives of (i) the Department of Personnel and Administrative Reforms for not incorporating the principles of determining seniority of persons appointed under the Indian Civil Accounts Service (Group A) Recruitment Rules, 1977 and (ii) the Ministry of Law, Justice and Company Affairs (Department of Justice) regarding the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975, respectively. The Committee wish to express their thanks to the officers of the Ministries for appearing before the Committee and furnishing the information desired by them.

4. The Committee considered and adopted this Report at their sitting held on 4 September, 1981. The Minutes of the sittings which form part of the Report are appended to it.

5. A statement showing the summary of recommendations/observations of the Committee is also appended to the Report.

II

THE INDIAN BOILER (FIRST AMENDMENT) REGULATIONS, 1978

(G.S.R. 192 OF 1978)

6. Note below Appendix 'J' to the Indian Boiler Regulations, 1950, as amended by the G.S.R. 192 of 1978, read as under:—

"If and when relaxation in respect of inspection is granted by the Inspecting Authority to the manufacturers, the same shall be intimated to the Central Boilers Board."⁴²

7. It was felt that the reasons for granting relaxation should be recorded in writing by the Inspecting Authority to obviate any possibility of discrimination.

8. The Ministry of Industry (Department of Industrial Development), with whom the matter was taken up, stated in their reply dated 25 July, 1980 as under:—

“...the Central Boilers Board agreed with the recommendations of the Committee on Subordinate Legislation and referred the matter to its Coordination and Standing Sub-Committee for preparation of a suitable draft amendment to Appendix ‘J’ of the Indian Boiler Regulations, 1950. In accordance with the decision of the Central Boilers Board a suitable draft amendment to Appendix ‘J’ of the Indian Boilers Regulations, 1950, has been prepared by its Coordination and Standing Sub-Committee, which met in Delhi early this month, and the draft amendment* is now being processed for pre-publication in the Gazette of India as required under the Indian Boilers Act, 1923...”

9. The Committee note that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have amended the Note below Appendix ‘J’ to the Indian Boiler Regulations, 1950 (Vide G.S.R. 251 of 1981) to provide for recording of reasons in writing for granting relaxation in inspection by the Inspecting Authority. However, the Committee are of the view that suitable guidelines should also be laid down for granting such relaxation in order to make the Regulations self-contained.

10. The Committee are not happy over the unusually long time of more than 2 years taken by the Ministry in processing a routine amendment and desire them to streamline the procedure in this regard to obviate recurrence of such avoidable delays.

III

THE DIRECTORATE OF TRAINING, DIRECTORATE GENERAL OF EMPLOYMENT AND TRAINING (CLASS I AND CLASS II POSTS) RECRUITMENT (AMENDMENT) RULES, 1978 (G.S.R. 1356 OF 1978)

11. Under column 11 of the Schedule appended to the Directorate of Training, Directorate General of Employment and Training

*The amendment was published in the Gazette of India, Part II, Section 3(i), dated 7 March, 1981 under G.S.R. 251.

(Class I and Class II posts) Recruitment (Amendment) Rules, 1978 (G.S.R. 1356 of 1978), the following provision was made in the case of appointment by transfer on deputation to the post of training Officer, (Secretarial Practice):—

“Transfer on deputation: Officers holding analogous posts or with 3/8 years regular service in posts in the scale of Rs. 550-900/425-700 or equivalent and possessing qualifications and experience laid down for direct recruitment.”

12. It was felt that the period of deputation should also be specified in the Rules to make them self-contained.

13. The Committee note with satisfaction that, on being pointed out, the concerned Ministry of Labour have amended the entry under column 11 of the Schedule appended to the Directorate of Training, Directorate General of Employment and Training (Class I and Class II posts) Recruitment (Amendment) Rules, 1978 relating to the post of Training Officer (Secretarial Practice) (Vide G.S.R. 198, dated 13 February, 1981) so as to indicate that period of deputation shall ordinarily not exceed three years.

IV

THE OIL INDUSTRY DEVELOPMENT BOARD EMPLOYEES' (GENERAL CONDITIONS OF SERVICE) RULES, 1978 (G.S.R. 428-E OF 1978)

(A)

14. Sub-rules (2), (3) and (4) of Rule 3 of the Oil Industry Development Board Employees' (General Conditions of Service) Rules, 1978 read as under:—

“(2) The scales of pay and allowances applicable to the Officers and other employees in the service of the Board shall be the same as those applicable to officers of similar status in the service of the Central Government or such other allowances as may be prescribed by the Board with the approval of the Central Government.

(3) Subject to the rules framed by the Board in regard to certain service conditions governing the officers and employees of the Board, the Fundamental Rules and the Supplementary Rules of the Government of India shall apply to officers and other employees in the service of the Board.

Provided that the powers vested under the Fundamental Rules and the Supplementary Rules in the President shall be exercised by the Chairman and those vested in the Head of Department by the Secretary.

- (4) An advance for building a new house (including purchase of land for the purpose) or for purchase of a ready-built house or for enlarging living accommodation of an existing house owned by an officer or other employees of the Board other than those appointed by the Central Government may be granted to such officer or employees at such rates and on such conditions as may be prescribed in the rules of the Central Government for the time being in force regulating the grant of advance for building of houses of Central Government servants. Subject to provision of funds in the budget estimates the Chairman shall have the powers to grant advances upto the maximum limits of such amounts of advances as are admissible to Central Government servants under orders issued from time to time. The Chairman may also delegate to the Secretary or any other officer of the Board such of his powers as he deems fit."

15. The aforesaid provisions in the Rules were considered to be deficient inasmuch as they were not self-contained and were in the nature of 'legislation by reference.'

16. The Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum), with whom the matter was taken up stated in their reply dated 16 October, 1980 as under:—

"As regards the suggestion to amend Rule 3 (2), (3), (4) of the OIBB Employees' (General Conditions of Service Rules), it is submitted that the general guidelines of the Board were to follow the Central Government rates/pattern in most of the matters such as pay scales, D.A., C.C.A., Children Education Allowance, T.A., Leave Salary/Leave, etc. While following the Central Government rates, the Board also decided to follow the Central Government Rules to avoid anomalies and to save the labour of framing separate set of Rules for a very small establishment comprising of about 9 officers/officials. This Department is of the view that self-contained Rules, if necessary, can be framed at a later stage when the staff strength is stabilised and the position becomes clear."

17. The Committee are not convinced with the arguments advanced by the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) for not framing separate set of Rules. The Committee have time and again emphasised that, the Rules should, as far as possible, be self-contained and self-explanatory and 'legislation by reference' should be scrupulously avoided. The Committee, therefore, desire the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) to frame a compact set of Rules governing the conditions of service of the employees of the Oil Industry Development Board at an early date.

(B)

18. Sub-rule (2) of Rule 4 of the Oil Industry Development Board Employees' (General Conditions of Service) Rules 1978 read as under:—

"The Contributory Provident Fund shall be administered by the Secretary or other officer authorised by the Chairman in this behalf in accordance with such rules as the Board may make with the approval of the Central Government."

19. The above sub-rule did not provide for publication of the Rules framed by the Board governing the Contributory Provident Fund in the Official Gazette. In the absence of such a provision, those Rules could escape the scrutiny by the Committee on Subordinate Legislation.

20. The Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum), with whom the matter was taken up, stated in their reply dated 16 October, 1980 as under:

".....the Rules relating to Provident Fund were published in the Gazette of India (Extraordinary) on 28th October, 1978, and a copy thereof was also laid on the Table of the House."

21. The Committee note Contributory Provident Fund Rules made by the Board have been published in the Gazette of India as also laid on the Table of the House. The Committee, however, observe that as the practice of publishing of Rules in the Official Gazette and laying them on the Table of the House is already followed, the Ministry of Petroleum and Chemicals (Department of Petroleum) should have no objection to giving it a statutory footing by incorporating a suitable provision in the Oil Industry Development Board Employees' (General Conditions of Service) Rules, 1978.

**THE TUTICORIN PORT (AUTHORISATION OF PILOTS)
REGULATIONS, 1979 (G.S.R. 98-E OF 1979)**

(A)

22. Regulation 5 of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979 relates to conditions for joining the Pilot Service. Clause (b) of the said Regulation reads as under:

“that on the date of appointment as a Probationer Pilot, he is of an age not below 24 and not exceeding 35 years unless otherwise relaxed by the Board.”

23. It was felt that the considerations on which the age of Probationer Pilot could be relaxed by the Board should be mentioned in the Regulations in order to make them self-contained and for the information of all concerned.

24. The Ministry of Shipping and Transport (Ports Wing), to whom the matter was referred, stated in their reply dated 20 January, 1981 as under:—

“Regulation 5(b)—It is proposed to amend Regulation to provide that the prescribed age limit may be relaxed:

- (i) In the case of a candidate who is an ex-serviceman, i.e. ex-employee of India's Defence Forces, to the extent of the service rendered by him in the Defence Forces plus three years where the vacancy to be filled is a vacancy reserved for such ex-servicemen and dependents of those killed in action, and to the extent of the service rendered by him in the Defence Forces where the vacancy to be filled is an unreserved vacancy, and
- (ii) In the case of a candidate belonging to the Scheduled Caste or Scheduled Tribe, in accordance with such orders of the Central Government as may be issued from time to time for appointments to services or posts under it in favour of the Scheduled Castes and the Scheduled Tribes.
- (iii) If suitable candidates within the prescribed age limit are not available.”

25. The Committee note that, on being pointed out, the Ministry of Shipping and Transport (Ports Wing) have agreed to amend sub-regulation (b) of regulation 5 of the Tuticorin Port (Authorisation

tion of Pilots) Regulations, 1979 so as to lay down the limit of age relaxation for appointment of the Probation Pilots in respect of Ex-servicemen and Scheduled Caste/Scheduled Tribe candidates. The Committee concur in with the amendments proposed by the Ministry in this regard excepting clause (iii) thereof which the Committee feel is again in the nature of vaguely defined provisions of law. The Committee, therefore, desire the Ministry to issue the proposed amendment at an early date omitting clause (iii) thereof.

(B)

26. Regulation 6(2) of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979 provides that the fee for a Pilotage Licence shall be prescribed by the Board from time to time.

27. It was felt that the fee to be prescribed for a Pilotage Licence should be indicated in the Regulations to make them self-contained and for the information of all concerned.

28. The Ministry of Shipping and Transport (Ports Wing), to whom the matter was referred, stated in their reply dated 20 January, 1981 as under:—

“Regulation 6(2). The matter has been examined in consultation with the Ministry of Law, who have advised that it is not legally tenable to levy licence fee on the pilots who are the regular employees of the Board. It has, therefore, been decided to delete the sub-regulation 6(2).”

29. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Ports Wing) have decided to delete regulation 6(2) of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979. The Committee desire the Ministry to notify the amendment in this regard at an early date.

VI

THE DEPARTMENT OF SPACE EMPLOYEES' (CLASSIFICATION, CONTROL AND APPEAL) FIRST AMENDMENT RULES, 1978 (S.O. 585 OF 1978).

30. Sub-rule (8) of Rule 11 of the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 as substituted by the above amending Rules (S.O. 585 of 1978) reads as under:—

“(8) (a) The employee may take the assistance of any other employee or a Government servant belonging to any other

Central or State Government Department to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

- (b) The employee may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."

31. It was felt that the conditions as mentioned in the above mentioned sub-rule 8(b) subject to which an employee might take the assistance of a retired Government servant should be specified in the Rules in order to make them self-contained and for the information of all concerned.

32. The Department of Space, to whom the matter was referred, in their reply dated 3 April, 1979, stated as under:—

".....rule 11(8)(b) of the Department of Space Employees' (Classification Control and Appeal) Rules, 1976 provides that retired Government servants assisting Government employees in disciplinary proceedings subject to such conditions as may be specified by the President from time to time by general or special orders in this behalf, because, if all the detailed terms and conditions are to be incorporated in the rule itself, the rule will become unwieldy and cumbersome, considering the number of terms and conditions governing the question regarding retired Government servant assisting Government servants in the disciplinary proceedings laid down in this Department's Office Memorandum No. 2/10(32)/76-I dated September 7, 1977 (copy enclosed for ready reference). Further, it is not unusual for rules to be supplemented by orders and instructions so that the rules may not themselves become unwieldy. Also, when a rule refers to general or special orders to be issued by President in regard to the matter covered by it, it is evident that such general or special orders supplement the rules. Moreover, any change that may be required from time to time in the light of the work experience can also be made without going through the lengthy process of amending the rules themselves if

*See Appendix II.

the rules are supplemented by orders to which reference is made in the rules themselves. Thus, this Department's Office Memorandum dated 7th September, 1977 referred to, above laying down the conditions under which a retired Government Servant can assist the serving Government Servant in disciplinary proceedings was itself amended in June 1978 vide this Department's Office Memorandum dated 22nd June, 1978..... to enable retired Government employees to take up three cases at a time instead of two as provided in the Office Memorandum of 7th September, 1977. It is felt that this flexibility will be lost if the detailed terms and conditions are incorporated in the rule itself."

33. The Committee are not convinced with the argument advanced by the Department of Space that if all the detail terms and conditions of recruitment were to be incorporated in the Rules, it would make them unwieldy and cumbersome. The Committee have time and again emphasised that Rules should, as far as possible, be self-contained. Apart from that, the terms and conditions outside the Rules through the Departmental Instructions, are not published in the Official Gazette and, therefore, escape the scrutiny of the Committee. The Committee desire the Department of Space to indicate the terms and conditions in brief by way of an annexure to the Department of Space Employees' (Classification, Control and Appeal) Rules, if these tend to make the Rules unwieldy and cumbersome.

VII

- (i) THE EXPORT OF ROASTED AND SALTED CASHEW KERNELS (INSPECTION) RULES, 1978 (S.O. 276 OF 1978)
- (ii) THE EXPORT OF ROSIN (INSPECTION) RULES, 1978 (S.O. 576 OF 1978)

34. Rule 3 of the Export of Roasted and Salted Cashew Kernels (Inspection) Rules, 1978 read as under:—

"Basis of Inspection.—Inspection of roasted and salted cashew Kernels for export shall be carried out with a view to seeing that they conform to the standard specification recognised by the Central Government under Section 6 of the Act, (hereinafter referred to as the recognised specification)."

35. Similarly Rule 3 of the Export of Rosin (Inspection) Rules, 1978 reads as under:

"Basis of Inspection.—Inspection of Rosin shall be carried out

with a view to ensuring that the quality of the same conforms to the specifications recognised by the Central Government under section 6 of the Act.”

36. It was felt that S.O. numbers and the dates of their publication in the Gazette which contained those specifications should be mentioned in the relevant Rules for the information of all concerned and to make the Rules self-contained.

37. The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have amended the relevant rules, namely, Rule 3 of the Export of Roasted and Salted Cashew Kernels (Inspection) Rules, 1978 and Rule 3 of the Export of Rosin (Inspection) Rules, 1978, vide S.O. dated 6 January, 1979 and S.O. 2210 dated 30 June, 1979 respectively indicating therein the S.O. numbers and the dates of their publication in the Gazette under which the specifications recognised by Government were published. The Committee, however, desire the Ministry to take care in future to ensure that whenever similar Rules are notified, they invariably indicate the relevant S.O. number and the date of its publication, containing the specifications recognised by Government in that behalf, without waiting for the Committee to point it out.

VIII

IMPLEMENTATION OF RECOMMENDATIONS

(i) IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARAGRAPH 141 OF THE TWELFTH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING THE PLANNING COMMISSION (VERITYPE OPERATOR) RECRUITMENT RULES, 1971 (G.S.R. 1651 OF 1971).

38. Rule 6 of the Planning Commission (Veritype Operator) Recruitment Rules, 1971 reads as follows:—

“Liability to serve in the Defence Service.—Any person holding a degree in Engineering or equivalent qualification appointed to the post in the Planning Commission on or after the commencement of these rules shall, if so required, be liable to serve in any Defence Service or post connected with the Defence of India, for a period of not less than four years including the period spent on training, if any:

Provided that such person—

(a) shall not be required to serve as aforesaid after the expiry of ten years from the date of appointment; and

(b) shall not ordinarily be required to serve as aforesaid after attaining the age of forty years."

39. The Ministry of Planning were asked to state (i) the principle followed in making above provision in the Rules, and (ii) whether such a liability is for all degree holders in Engineering or for only those serving in the Planning Commission. The Ministry stated in their reply that it had been decided by them, in consultation with the Department of Personnel, to delete Rule 6 of the above Rules.

40. The Committee on Subordinate Legislation (1973-74), which considered the reply of the Ministry, observed in paragraph 141 of their Twelfth Report (Fifth Lok Sabha) as under:—

"The Committee note with satisfaction that the Ministry of Planning have agreed to delete the rule regarding liability to serve in the Defence Services as such a provision is required to be made only in Rules for recruitment of graduate engineers and doctors. The Committee desire the Department of Personnel and Administrative Reforms to issue necessary instructions to all the Ministries/Departments to examine the recruitment Rules with which they are concerned, and delete therefrom the provision regarding liability to serve in Defence Service where it is not necessary to keep it in order to maintain uniformity in the Rules."

41. In compliance with Committee's recommendation, the Planning Commission furnished a copy of their Notification No. A. 12011/2/71-Adm. II dated 30 March, 1974 containing the amendment to delete the clause regarding liability to serve in the Defence Services from the Recruitment Rules for the post of Veritype Operator in the Planning Commission. When asked to furnish the G.S.R. number and the date of publication of the said notification in the Gazette of India, the Planning Commission stated as under:—

" the Planning Commission have not received any communication from Government of India Press indicating the G.S.R. number under which the Planning Commission (Veritype Operator) Recruitment (Amendment) Rules, 1974 have been published in the Gazette of India. They have, however, been requested to indicate the said G.S.R. number. It will be communicated to the Lok Sabha Secretariat as and when received.

42. After protracted correspondence with the Planning Commission in this regard, the Committee were ultimately informed by the

Planning Commission vide their reply dated 4 February, 1981 as under:—

“....Planning Commission have made all the efforts in tracing out the G.S.R. number under which the Planning Commission's Veritype Operator Amendment Recruitment Rules have been published by the Government of India Press. In this connection it may be mentioned that Government of India Press, Ring Road have informed Planning Commission that they have not been able to locate the said G.S.R. number. An official of Planning Commission was deputed to go to the Department of Publication to trace out the said G.S.R. number. That effort also failed. In the circumstances the only way out seems to be to send the amendment Notification again to the Government of India Press for publication in Gazette of India. But the Staff Inspection Unit of Ministry of Finance had some time back studied the work load of Planning Commission's Sections/Branches and had not recommended the post of Veritype Operator in Planning Commission. In view of it the cadre of Veritype Operator which had only one incumbent has since been abolished w.e.f. 30th September, 1977. The services of the incumbent were placed at the disposal of Central (Surplus Staff) Cell and the incumbent, who opted for voluntary retirement, has since been retired from Government service w.e.f. the forenoon of 1st October, 1977. In view of it, it is felt that there is no need of notifying the said Amendment Recruitment Rules, again....”

43. According to the Planning Commission they had sent to the Government of India Press a Notification No. 12011/2/71-Adm.II dated 30 March, 1974 containing the amendment to decide the rule regarding liability to serve in the Defence Services from the Recruitment Rules for being published in the Official Gazette. The Committee are surprised that neither the Planning Commission nor the Government of India Press could trace the publication of the aforesaid notification in the Gazette. The Committee deplore this gross negligence on the part of the concerned authorities in the important matters of publication of statutory Rules in the Gazette and desire the Planning Commission that the whole case should be thoroughly inquired into and to apprise the Committee about the corrective measures taken in this regard to avoid recurrence of such incidents in future.

44. In view of the subsequent development the post of Veritype Operator has since been abolished in the Planning Commission and that the incumbent holding the post has voluntarily retired with effect from 1 October, 1977 rendering the Recruitment Rules for Veritype Operator virtually inoperative, the Committee will like the Planning Commission to examine the need to retain these Rules.

(ii) IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARAGRAPHS 49—51 OF THE ELEVENTH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) RE: INDIAN CIVIL ACCOUNTS SERVICE (GROUP 'A') RECRUITMENT RULES, 1977 (G.S.R. 537 OF 1977).

45. Rule 22(2) (a) of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 provides that *inter-se* seniority of the persons falling under clauses (a) and (b) of sub-rule (1) of rule 6 appointed to the service after the initial constitution shall be determined in accordance with the general orders regulating seniority of Government employees issued by Government from time to time.

46. It was felt that principles of determining seniority being basic ingredient of recruitment rules should be laid down in the rules. In this connection, while drawing attention of the Ministry of Finance (Department of Expenditure) to the following observations of the Committee made in paragraph 64 of their Second Report (Sixth Lok Sabha), they were requested to state whether they had any objection to incorporate the principles of determining seniority in the above rules:—

“..... The Committee feel that the criteria for determining seniority, being a basic ingredient of the recruitment rules, should be incorporated in the rules and not left to be determined through executive instructions, as the executive instructions issued by Government are not published in the Gazette and therefore, their reasonableness or fairness cannot be judged by the Committee. The Committee note in this connection that criteria for determining seniority have been laid down in a number of rules including the Indian Economic/Statistical Service Rules, 1961. The Committee, therefore, desire the Ministry of Defence to amend the Defence Science Service Rules to incorporate therein the criteria for determining seniority.”

47. The Ministry of Finance, in their reply dated 10 January, 1978, stated as under:—

“Incorporation of principles for determining the seniority in the Recruitment Rules. The Cadre authorities have, gene-

rally the option either to follow the general principles for seniority laid down by the Department of Personnel and Administrative Reforms or to evolve their own seniority principles to suit the requirements of the individual service. Wherever the cadre authorities formulate their own principles of seniority as in the example quoted, these principles are spelt out in the service rules. Wherever the cadre authorities follow the general principles of seniority laid down by the Department of Personnel, it is not customary to lay down these principles in the Service Rules. In fact the vast majority of Recruitment Rules do not spell out the principles of seniority because they follow the general principles laid down by the Department of Personnel and Administrative Reforms."

48. After considering the matter in all aspects, the Committee in paragraphs 49—51 of their Eleventh Report (Sixth Lok Sabha) observed as under:—

"The Committee are unable to appreciate the contention of the Ministry of Finance (Department of Expenditure) that wherever the cadre authorities follow the general principles of seniority laid down by the Department of Personnel, it is not customary to incorporate them in the Service Rules. The Committee note that general principles of seniority laid down by the Department of Personnel are in the form of executive instructions and as such they do not come to the notice of the Committee for adjudging their fairness or otherwise.

In paragraph 64 of their Second Report (Sixth Lok Sabha) the Committee had recommended that the criteria for determining seniority, being a basic ingredient of the recruitment rules should be incorporated in the rules and not left to be determined through executive instructions.

The Committee reiterate their earlier recommendation and desire the Ministry of Finance to incorporate the principles of determining seniority in the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977."

49. In their action taken note dated 15 December, 1978 the Ministry of Finance (Department of Expenditure) stated as under:—

"Paragraphs 49—51:—The criteria for determining the seniority decide only the list to be considered by the DPC for promotion and does not materially affect the

important ingredients of recruitment, i.e. method of recruitment, various feeder groups from which the posts are to be filled up, the educational qualifications and the experience required, the zone of consideration, the composition of the DPC etc. Incorporating the criteria for determining seniority in the Recruitment Rules would encumber these Rules with a large number of details. The general principles of seniority laid down by the Department of Personnel run to seven pages and would make the Recruitment Rules cumbersome. These factors have already been placed before the Committee on Subordinate Legislation of Rajya Sabha by the Jt. Secretary (E) D.P.A.R. on 17-4-78. It is, therefore, considered that it may not be desirable to include the principles of seniority in the recruitment rules."

50. At their sitting held on 5 January, 1981, the Committee considered the action taken note of the Ministry of Finance (Department of Expenditure) and decided to hear evidence of the representatives of the Department of Personnel and Administrative Reforms for not incorporating in the Recruitment Rules the principles of determining seniority of persons appointed under the Indian Civil Accounts Service (Group A) Recruitment Rules, 1977.

51. At their sitting held on 4 August, 1981, the Committee heard evidence of the representatives of the Department of Personnel and Administrative Reforms on this matter.

52. On being enquired whether the Ministry of Finance sought the advice of the Department of Personnel and Administrative Reforms regarding inclusion of principles determining the seniority in the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977, the representative of the Department of Personnel and Administrative Reforms explained that the Department of Expenditure had referred the matter to them through a D.O. note on 9 September, 1978. On 8 November, 1978, they advised the Ministry of Finance that the recruitment rules and seniority rules were two different things and it would not be proper to include the same in the recruitment rules. It was suggested that this position might be explained to the Lok Sabha Secretariat.

53. The representative of the Department of Personnel and Administrative Reforms further stated that a somewhat similar point was raised by the Committee on Subordinate Legislation of

Rajya Sabha in regard to the recruitment rules for the post of Administrative Officer of the Delhi Milk Scheme. The Rajya Sabha Committee had observed that the general principles for preparing eligibility list for promotion purposes should be incorporated in the recruitment rules. On a reference made by the Department of Agriculture, they were advised to inform the Rajya Sabha Secretariat that it would not be feasible to accept the recommendation because eligibility list was prepared in accordance with the general practice followed in the Government of India. On 17 April, 1978, representative of the Department of Personnel and Administrative Reforms appeared before the Rajya Sabha Committee and explained to them the position in the matter. According to the representative of the Department of Personnel and Administrative Reforms, the Rajya Sabha Committee had since dropped the matter.

54. The representative of the Department of Personnel and Administrative Reforms also quoted the following advice given by the Ministry of Law in another case:

"The decision in Nagarajan's and Sant Ram's cases have to be taken as determining only the question adjudicated upon therein. While the former had *inter alia* laid down that the State Government has executive power to make appointments without any obligation to make rules of recruitment etc. under Article 309 for the purpose of constitution a service or creation of posts or filling them, the latter enunciated the legal principles that while Government cannot amend or supersede statutory rules by administrative instructions, if rules are silent on any particular point, Government can fill up gaps and supplement rules already framed."

55. When pointed out that the executive instructions could not take the place of statutory rules and the Committee could not go into them as they were not published in the official Gazette, the representative of the Department stated that where statutory rules were silent, executive instructions could be issued to fill in the gaps, and this position had been accepted by Law Courts including the Supreme Court. He added that instructions governing seniority rules were issued by Government in consultation with the Union Public Service Commission who had agreed to that arrangement.

56. When asked as to what the difficulty was in incorporating the executive instructions in the rules, the representative stated that if seniority rules were to be incorporated as part of statutory recruitment rules whenever there was any change in any part of the

seniority rules it would become necessary to carry out amendment to all the 55 or 60 recruitment rules for various services as also the isolated posts which were governed by similar seniority rules. He added that basic principles of seniority were laid down by the Home Ministry in 1959.

57. When asked to indicate the latest court judgement other than the one of 1972, the representative stated that he had not come across any other such judgement. He agreed that the Supreme Court had not debarred the Government from making the executive instructions a part of the rules. He felt that Constitution did not make it obligatory or otherwise compulsory that every thing pertaining to recruitment rule or conditions of service be made by way of statutory rules.

58. When pointed out that Article 309 did not provide for issuance of executive instructions and that Committee could not apply their mind as to the soundness of such instructions, the representative stated that it was a permissive provision and the Courts had accepted this position. He felt that Article 309 did not debar Government from issuing executive orders on a matter on which the rules and law were silent.

59. The representative explained that it was not the intention of the Government to keep anything deliberately out of the purview of the Committee. According to him, it was hardly possible that every thing pertaining to a service could be codified under statutory rules. He felt that certain matters could be best left to be determined by executive instructions.

60. The representative admitted that there were a few exceptional cases where there was a deviation and the seniority rules were incorporated in the statutory rules for a special kind of service e.g. All India Services like Indian Administrative Service, Indian Police Service and so on. For certain grades in the Central Secretariat Service, there were certain statutory rules. But, by and large, for about 55 Class I Central Civil Services, the recruitment rules did not incorporate the seniority rules.

61. The Committee are not convinced with the reply of the Ministry of Finance (Department of Expenditure) and the arguments advanced by the representatives of the Department of Personnel and Administrative Reforms during their evidence before the Committee for not incorporating in the Indian Civil Accounts Service (Group A) Recruitment Rules, 1977, the principles of determining seniority of persons appointed to that service. The Com-

mittee feel that it should not be difficult for the Ministry of Finance (Department of Expenditure) to give the details regarding determination of seniority in concise form as an Annexure to the recruitment Rules. The Committee, therefore, reiterate their earlier recommendation that all statutory orders should be self-contained and no matter be governed by executive instructions and desire the Ministry of Finance (Department of Expenditure) to amend the Indian Civil Accounts (Group A) Recruitment Rules, 1977 by incorporating therein the principles of determining seniority of persons appointed to that service.

(III) IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARAGRAPHS 39-40 OF THE SIXTEENTH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) RE: THE JUDGES OF THE GAUHATI HIGH COURT (ALLOCATION OF SALARIES AND ALLOWANCES) ORDER, 1975 (S.O. 4932 OF 1975)

62. The Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 was published in the Gazette of India, Part II Section 3(ii) dated 22 November, 1975 but retrospective effect had been given to the Order w.e.f. 21 January, 1972. The North Eastern Areas (Reorganisation) Act, 1971, under which the Order has been issued does not provide for giving retrospective effect to Orders issued thereunder.

63. The Ministry of Law, Justice and Company Affairs (Department of Justice) were asked to state the reasons for giving retrospective effect to the above Order without any authority to do so under the enabling Act. In this connection, attention of the Ministry was also invited to an observation of the Attorney General that no subordinate legislation could have any retrospective effect unless the Act under which it was framed itself empowered such legislation to be operative retrospectively.

64. In their reply dated 16 September, 1978, the Ministry of Law, Justice and Company Affairs (Department of Justice) stated as follows:

“.....the Judge of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 (S.O. 4932 of 1975) was made in exercise of the powers conferred by Section 33 of the North Eastern Areas (Reorganisation) Act, 1971 for allocating expenditure in respect of the salaries and allowances of the Judges of the Gauhati High Court amongst the States of Assam, Nagaland, Meghalaya, Manipur, Tripura and the Union Territories of Arunachal

Pradesh and Mizoram for which a common High Court was provided under the Act. Since the expenditure had to be apportioned with effect from the date the common High Court had come into existence i.e. 21st January, 1972, the Order was made effective from that date.

As regards the delay in issuing the above Order, it may be stated that protracted correspondence took place between the Government of India and the North Eastern States to decide the basis of allocation of expenditure in respect of Gauhati High Court. A meeting was convened at Shillong on 27th July, 1974 to discuss the question. A formula for allocation of expenditure was evolved at the meeting. Since the matter involved financial implications, the same was referred to the Ministry of Finance for their concurrence/comments on 7th August, 1974. After examining the case, the Ministry of Finance referred back the case to this Department on 30th April, 1975 making certain suggestions and advising consultation with the Ministry of Law on the constitutional position. After further examining, the draft of the Order was referred to the Ministry of Finance on 17th June, 1975. The file was received that in the department on 23rd July, 1975 whereafter the draft Order was sent to the Legislative Department on 30-7-1975. Certain clarification sought by the Legislative Department were given on 16th August, 1975. The draft Order was concurred in by the Legislative Department on 29th September, 1975 and the same was issued on 27th October, 1975.

Since the matter was important, complicated and involved five States and two Union Territories, the delay in the issue of the Order could not be avoided. An explanatory note stating the reasons for giving retrospective effect to the Order could not be published along with the Order through oversight which is regretted. It may, however, be stated that by giving the order retrospective effect, nobody is adversely affected."

65. Not satisfied with the reply of the Ministry of Law, Justice and Company Affairs (Department of Justice), the Committee in paragraphs 39-40 of their Sixteenth Report (Sixth Lok Sabha) observed as under:

"Although the reasons explained by the Ministry of Law, Justice and Company Affairs (Department of Justice) for

giving retrospective effect to the judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975, appear to be plausible yet no Subordinate Legislation can have retrospective effect unless the Act under which it has been framed empowers such legislation to be operative retrospectively. The reply of the Ministry that Explanatory Note that nobody would be adversely affected by the retrospective effect given to the Order could not be published along with the Order through oversight is not convincing and relevant to the point at issue.

The Committee are of the view that giving of Explanatory Note stating the reasons for giving retrospective effect to the Order does not validate the retrospective effect unless it is authorised by the parent statute. The Committee, therefore, desire the Ministry of Law (Department of Justice) to bring an amending legislation at an early date so that the power to give retrospective effect to the Order flows from the North Eastern Areas (Reorganisation) Act, 1971."

66. In their action taken note dated 6 September, 1979, the Ministry stated as under:

".....Section 33 of the North Eastern Areas (Reorganisation) Act, 1971 provides that the expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union in such proportion as the President may, by order, determine. Pursuant to the above provision, the President issued an order called the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 on 22-11-75. It is stated in the Order that it shall be deemed to have come into force on 21-1-72. The Order refers to the allocation of the expenditure by laying down certain criteria set out therein.

The Committee on Subordinate Legislation (Sixth Lok Sabha) have pointed out that no subordinate legislation could have retrospective effect unless the Act under which it has been framed empowered such legislation to be operative retrospectively. The Committee has, therefore, suggested that an amending legislation should be made so that the power

to give retrospective effect to the Order would be contained in the Act itself.

It may be pointed out that in the various enactments dealing with reorganisation of States similar powers have been conferred on the President to make an Order without specifying as to whether the power is to be exercised prospectively or retrospectively. In this connection, reference may be made to section 92 of the States Reorganisation Act, 1956, section 66 of the Bombay Reorganisation Act, 1960, section 65 of the Punjab Reorganisation Act, 1966 and section 56 of the Assam Reorganisation Act and Meghalaya Act, 1969. The above provision dealing with the powers of the Central Government to order allocation or adjustment in certain cases, cannot be viewed as instances of subordinate legislation. There is also a provision similar to section 33 of the 1971 Act in section 29(2) of the Punjab Reorganisation Act, 1966 dealing with the allocation of the expenditure in respect of the Salaries and allowances of the judges of the common High Court of Punjab and Haryana. Government are advised that the legal position is that where the legislature does no more than enable a duly authorised officer (in the present case the President) to meet the contingencies and deal with various situations as they arise, there is no delegation of legislative authority. No authority is vested in the President to enact any subordinate Legislation. What the provision contemplates is only to issue an executive order by the President. It is inherent in the provision that such an order may date back to the time when the common High Court envisaged in section 33 was established.

Since the provisions dealing with the powers of Central Government to order allocation or adjustment in certain cases cannot be viewed as instances of subordinate legislation Government are advised that it is not necessary to bring legislation amending the North Eastern Areas (Reorganisation) Act, 1971 to enable the President to issue an Order under section 33 of that Act for allocation expenditure on the common High Courts between the concerned States and the Union Territories retrospectively.

This issues with the approval of the Minister of Law, Justice and Company Affairs."

67. At their sitting held on 5 January, 1981, the Committee considered the above action taken note of the Ministry of Law, Justice and Company Affairs (Department of Justice) and decided to hear evidence of the representatives of the Ministry in the matter.

68. At their sitting held on 5 August, 1981, the Committee heard evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Justice).

69. At the outset, the Committee desired to know from the representatives of the Ministry the reasons for delay of over two years on their part in replying to a reference made to them on 7 May, 1976. The representative of the Ministry regretted that there had been delay by the Ministry in giving a reply. He submitted that the Department of Legal Affairs had to be consulted in the matter. The matter had to be reviewed in the Department of Justice also.

70. When asked as to the procedure adopted in the Ministry to deal with Parliamentary references, the representative stated that the first noting was that of the Assistant. He further conceded that initially the matter was lost sight of and it was only when a reminder came from the Lok Sabha Secretariat that the action started.

71. When enquired whether the reply dated 16 September, 1978 could be taken as the considered opinion of the Ministry after examining the matter in all aspects, the representative stated that it was based on a precedent in an identical case pertaining to the Punjab and Haryana High Court. He added that the point at issue was whether an Order could be issued by the President with retrospective effect. The view taken by the Ministry of Law (Department of Legal Affairs) had been that the giving of retrospective effect, in the particular case, was inherent in the Act itself. Moreover, it was not a case of subordinate legislation. The President issued the Order in pursuant to the provisions contained in Section 33 of the North-Eastern Areas (Reorganisation) Act, 1971, which would not be viewed as an instance of subordinate legislation. What the provision contemplated was only to issue an executive order by the President.

72. When pointed out that the position now taken by the Ministry was different from what they had stated earlier in their reply dated 16 September, 1978, the representative regretted that they had not consulted the Department of Legal Affairs at that stage and the

necessity of giving reasons for retrospective effect was accepted by them out of deference to the wishes of the Committee.

73. The Committee have reconsidered the matter in the light of the evidence given by the representatives of the Ministry of Law, Justice and Company Affairs (Department of Justice). The Committee are inclined to accept the plea of the Ministry that the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 (S.O. 4932 of 1975) was in the nature of an executive order and did not involve subordinate legislation. The Committee, therefore, do not desire to pursue their earlier recommendation made in paragraphs 39-40 of their Sixteenth Report (Sixth Lok Sabha).

74. The Committee are, however, constrained to observe that initially the Department of Justice had not obtained the opinion of the Department of Legal Affairs before furnishing their comments on the reference made by the Committee which resulted in inordinate delay in finalisation of the matter by the Committee.

75. In order to avoid recurrence of such situations in future the Committee recommend that whenever any reference is made by the Committee to the Ministries/Department, they should give it prompt attention and consider the matter in all aspects including obtaining the opinion of the Department of Legal Affairs, if considered necessary, before furnishing their comments for consideration of the Committee.

NEW DELHI;
4 September, 1981.

MOOL CHAND DAGA,
Chairman,
Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(Vide paragraph 5 of the Report)

SUMMARY OF MAIN RECOMMENDATIONS/OBSERVATIONS MADE BY THE COMMITTEE

S. No.	Para No.	Summary
(1)	(2)	(3)
1 (i)	9	The Committee note that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have amended the Note below Appendix 'J' to the Indian Boiler Regulations, 1950 (Vide G.S.R. 251 of 1981) to provide for recording of reasons in writing for granting relaxation in inspection by the Inspection Authority. However, the Committee are of the view that suitable guidelines should also be laid down for granting such relaxation in order to make the Regulations self-contained.
(ii)	10	The Committee are not happy over the unusually long time of more than 2 years taken by the Ministry in processing a routine amendment and desire them to streamline the procedure in this regard to obviate recurrence of such avoidable delays.
2	13	The Committee note with satisfaction that, on being pointed out, the concerned Ministry of Labour have amended the entry under Column 11 of the Schedule appended to the Directorate of Training, Directorate General of Employment and Training (Class I and Class II posts) Recruitment (Amendment) Rules, 1978 relating to the post of Training Officer (Secretarial Practices) (Vide G.S.R. 193, dated 13 February, 1981)

(1)	(2)	(3)
		so as to indicate that period of deputation shall ordinarily not exceed three years.
3. (i)	17	The Committee are not convinced with the arguments advanced by the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) for not framing separate set of Rules. The Committee have time and again emphasised that the Rules should, as far as possible, be self-contained and self-explanatory and 'legislation by reference' should be scrupulously avoided. The Committee, therefore, desire the Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) to frame a compact set of Rules governing the conditions of service of the employees of the Oil Industry Development Board at an early date.
(ii)	21	The Committee note that Contributory Provident Fund Rules made by the Board have been published in the Gazette of India as also laid on the Table of the House. The Committee, however, observe that as the practice of publishing of Rules in the Official Gazette and laying them on the Table of the House is already followed, the Ministry of Petroleum, and Chemicals (Department of Petroleum) should have no objection to giving if a statutory footing by incorporating a suitable provision in the Oil Industry Development Board Employees' (General Conditions of Service) Rules, 1978.
4 (i)	25	The Committee note that, on being pointed out, the Ministry of Shipping and Transport (Ports Wing) have agreed to amend sub-regulation (b) of regulation 5 of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979 so as to lay down the limit of age relaxation for appointment of the Probation Pilots in respect of Ex-servicemen and Scheduled Caste/Scheduled

(1)	(2)	(3)
		<p>Tribe candidates. The Committee concur in with the amendments proposed by the Ministry in this regard excepting clause (iii) thereof which the Committee feel is again in the nature of vaguely defined provisions of law. The Committee, therefore, desire the Ministry to issue the proposed amendment at an early date omitting clause (iii) thereof.</p>
(ii)	29	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Ports Wing) have decided to delete regulation 6(2) of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979. The Committee desire the Ministry to notify the amendment in this regard to an early date.</p>
5	33	<p>The Committee are not convinced with the argument advanced by the Department of Space that if all the detailed terms and conditions of recruitment were to be incorporated in the Rules, it would make them unwieldy and cumbersome. The Committee have time and again emphasised that Rules should, as far as possible, be self-contained. Apart from that, the terms and conditions outside the Rules through the Departmental Instructions, are not published in the Official Gazette and, therefore, escape the scrutiny of the Committee. The Committee desire the Department of Space to indicate the terms and conditions in brief by way of an annexure to the Department of Space Employees' (Classification, Control and Appeal) Rules, if these tend to make the Rules unwieldy and cumbersome.</p>
6	37	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Commerce have amended the relevant rules, namely, Rule</p>

(1)	(2)	(3)
		<p>3 of the Export of Roasted and Salted Cashew Kernels (Inspection) Rules, 1978 and Rule 3 of the Export of Rosin (Inspection) Rules, 1978, <i>vide</i> S.O. 7 dated 6 January, 1979 and S.O. 2210 dated 30 June, 1979 respectively, indicating therein the S.O. numbers and the dates of their publication in the Gazette under which the specifications recognised by Government were published. The Committee, however, desire the Ministry to take care in future to ensure that whenever similar Rules are notified, they invariably indicate the relevant S.O. number and the date of its publication, containing the specifications recognised by Government in that behalf, without waiting for the Committee to point it out.</p>
7 (i)	43	<p>According to the Planning Commission they had sent to the Government of India Press a Notification No. A.12011/2/71-Adm.II dated 30 March, 1974 containing the amendment to delete the rule regarding liability to serve in the Defence Services from the Recruitment Rules for being published in the Official Gazette. The Committee are surprised that neither the Planning Commission nor the Government of India Press could trace the publication of the aforesaid notification in the Gazette. The Committee deplore this gross negligence on the part of the concerned authorities in the important matter of publication of statutory Rules in the Gazette and desire the Planning Commission that the whole case should be thoroughly inquired into and to apprise the Committee about the corrective measures taken in this regard to avoid recurrence of such incidents in future.</p>
(ii)	44	<p>In view of the subsequent developments the post of veritype Operator has since been abolished in the Planning Commission and that the incumbent holding the post has voluntarily re-</p>

(1)	(2)	(3)
		tired with effect from 1 October, 1977 rendering the Recruitment Rules for Veritype Operator virtually inoperative, the Committee will like the Planning Commission to examine the need to retain these Rules.
8	61	The Committee are not convinced with the reply of the Ministry of Finance (Department of Expenditure) and the arguments advanced by the representatives of the Department of Personnel and Administrative Reforms during their evidence before the Committee for not incorporating in the Indian Civil Accounts Service (Group A) Recruitment Rules, 1977, the principles of determining seniority of persons appointed to that service. The Committee feel that it should not be difficult for the Ministry of Finance (Department of Expenditure) to give the details regarding determination of seniority in concise form as an Annexure to the recruitment Rules. The Committee, therefore, reiterate their earlier recommendation that all statutory orders should be self-contained and no matter be governed by executive instructions and desire the Ministry of Finance (Department of Expenditure) to amend the Indian Civil Accounts (Group A) Recruitment Rules, 1977 to incorporate therein the principles of determining seniority of persons appointed to that service.
9 (i)	73	The Committee have reconsidered the matter in the light of the evidence given by the representatives of the Ministry of Law, Justice and Company Affairs (Department of Justice). The Committee are inclined to accept the plea of the Ministry that the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 (S.O. 4932 of 1975) was in the nature of an executive order and did not involve subordinate legislation. The Committee, therefore, do not desire to pursue their earlier recommen-

(1)	(2)	(3)
		dation made in paragraphs 39-40 of their Sixteenth Report (Sixth Lok Sabha).
(ii)	74	The Committee are, however, constrained to observe that initially the Department of Justice had not obtained the opinion of the Department of Legal Affairs before furnishing their comments on the reference made by the Committee which resulted in inordinate delay in finalisation of the matter by the Committee.
(iii)	75	In order to avoid recurrence of such situations in future the Committee recommend that whenever any reference is made by the Committee to the Ministries/Departments, they should give it prompt attention and consider the matter in all aspects including obtaining the opinion of the Department of Legal Affairs, if considered necessary, before furnishing their comments for consideration of the Committee.

APPENDIX II

(Vide para 32 of the Report)

A copy of Department of Space's O.M. No. 2|10(32)|76-I dated
7 September, 1977

No. 2|10(32)|76—I
Government of India
Department of Space

Bangalore-560009.
September 7, 1977

OFFICE MEMORANDUM

Subject: Department of Space Employees' (Classification, Control and Appeal) Rules, 1976—Question whether retired Government servants can be allowed to assist Government servants involved in disciplinary proceedings.

The undersigned is directed to state that Rule 11(8) of the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 provides that an employee involved in disciplinary proceedings may take the assistance of other employees or a Government servant belonging to any other Central or State Government Department to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority, having regard to the circumstances of the case, so permits. The question whether Government servants involved in disciplinary proceedings can take the assistance of retired Government servants to present their case on their behalf has been considered and it has been decided that Government servants involved in the disciplinary proceedings may also take assistance of retired Government servants subject to following conditions:

- (i) The retired Government servant concerned should have retired from service under the Central Government.
- (2) No retired Government servant can take up more than two cases at a time. At the time of appearance before the Inquiring Officer the retired Government servant should certify that he has only two cases on hand at that time.
- (3) A retired Government servant cannot assist Government servant in disciplinary proceedings after the expiry of

three years from the date of his retirement. The retired Government servant should produce before the Inquiring Officer, a declaration regarding his date of retirement.

- (4). If the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, contained in Rule 11(8) of the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 would apply. In the matter of payment of travelling and other expenses to the retired Government servant assisting a government servant in disciplinary proceedings, the instructions contained in the Ministry of Home Affairs Office Memorandum No. 16/122/66-AVD dated August 18, 1960 (Annexure) will apply. The retired Government servant concerned will be deemed to belong to the grade of Government servants to which he belonged to immediately before his retirement for the purpose of these instructions. The expenditure on account of travelling and other expenses will be borne by the Department or Offices to which the delinquent Government servant belongs.

Formal amendment to the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 to give effect to the above decision will be issued separately.

The decisions contained in this Office Memorandum may be brought to the notice of all concerned.

The Hindi version will follow.

Sd/-

(P. A. Menon)

Under Secretary to the Government of India

To

All Centres/Units.

Copy also to:

All concerned as per General Circulation List.

C.C. to: Administrative Officer (R), Department of Space Bangalore.

ANNEXURE

(Vide paragraph 1(4) of Appendix-II)

A Copy of the Ministry of Home Affairs letter No. F. 16|122|56-AVD, dated 18 August, 1960.

I am directed to say that for some time past the question of evolving uniform procedure in regard to the payment of Travelling Allowance and other expenses to persons appearing as witnesses in Departmental Inquiries to tender evidence has been under consideration of the Government of India. A copy of the instructions formulated on the subject, in consultation with the Ministries of Finance and Law and the Comptroller & Auditor General, is enclosed for information and guidance.

INSTRUCTIONS RELATING TO PAYMENT OF TRAVELLING AND OTHER EXPENSES TO WITNESSES IN DEPARTMENTAL INQUIRIES

The following instructions are issued to regulate the payment of travelling and other expenses to persons appearing as witnesses in Departmental Inquiries:—

1. Every person, whether he is a Central or State Government servant or not, who is called to give evidence in a departmental inquiry by either the Government or the Government servant against whom the inquiry is being held, shall be entitled to payment of travelling and other expenses as laid down in these instructions.

2. The Officer or Board holding the inquiry shall furnish a certificate in Form (... Section E) to every person appearing before him or it to give evidence.

3. (1) Where the witness is a Central Government servant he shall be entitled to receive, in respect of the attendance before the authority holding the departmental inquiry from the Department or Ministry under which he is serving for the time being payment of a travelling allowance as on tour under S.R. 154.

(2) Where the Government servant is called in the Departmental inquiry to give evidence as to facts which have come to his knowledge in the discharge of his public duties, the minimum time required to be spent by him on the journey to and from the place

where the inquiry is held and the days on which he is required to remain present before the authority holding the inquiry shall be treated as duty;

Provided that if the Government servant is on leave, the entire-time spent shall be treated as a part of the leave and he shall not be deemed to have recalled to duty.

(3) Where a Government servant is called by any authority holding the departmental inquiry to give evidence as to facts which have come to his knowledge at a time when he was not in Government service, he may be paid travelling allowance as provided in sub-rule (1).

(4) Where the witness is a State Government servant, he shall be entitled to receive, in respect of the attendance before the authority holding the departmental inquiry, from the State Government such travelling allowance and or daily allowance as may be admissible to him under the rules applicable to him in that behalf in respect of a journey undertaken on tour and the amount so paid shall be paid by the Central Government to the State Government, who shall raise a debit in respect thereof against the Central Government.

(5) Where a person who has been a Government servant is called to give evidence as to facts which have come to his knowledge in the discharge of his public duties, or a person who is not a Central Government or a State Government servant, is called to give evidence before any authority holding a departmental inquiry such person shall be entitled to claim from the Ministry of Department under whom the Government servant against whom the enquiry is being held is for the time being serving, travelling allowance under S.R. 190.

(6) The foregoing instructions shall also apply to a person nominated by the Disciplinary Authority to present the case in support of the charge before the authority holding the departmental inquiry, or assisting the Government servant against whom the inquiry is held in presenting his case, as provided in sub-rule (5) of rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. Such person shall be granted a certificate in form (Section E) by the authority holding the departmental inquiry.

(7) All expenditure on travelling allowance paid to a Government servant under these instructions shall be charged to the head of account to which such Government servant's salary is debitable.

MINUTES

APPENDIX III

(Vide paragraph 4 of the Report)

MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1980-81)

The Committee met on Monday, the 5 January, 1981 from 11.30 to 13.35 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri M. Ankineedu
3. Shri Eduardo Faleiro
4. Shri Harish Kumar Gangawar
5. Shri K. Lakkappa
6. Shri T. Nagaratnam
7. Shri M. Ramanna Rai
8. Shri Ratansinh Rajda
9. Shri Ajit Pratap Singh

SECRETARIAT

1. Shri S. D. Kaura—*Senior Legislative Committee Officer*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2 to 17 * * * *

(x) *Implementation of recommendations contained in paras 49—51 of the Eleventh Report of Committee on Subordinate Legislation (Sixth Lok Sabha) re: Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977—(Memorandum No. 47).*

18. The Committee considered the above Memorandum and decided to hear evidence of the representatives of the Department of Personnel and Administrative Reforms for not incorporating in the Recruitment Rules the executive instructions relating to principles of determining seniority of persons appointed to the services under the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977.

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

19.

(xii) Implementation of recommendations contained in para 39-40 of the Sixteenth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) re: The Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 (S.O. 4932 of 1975)—(Memorandum No. 49)

20. The Committee considered the above Memorandum and decided to hear evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Justice) in the matter.

21.

The Committee then adjourned.

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1981-82)

The Committee met on 27 June, 1981 from 11.00 to 12.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri M. Ankineedu
3. Shri Ashfaq Husain
4. Shri Eduardo Faieiro
5. Shri K. Lakkappa
6. Shri Ratansinh Rajda
7. Shri Ajit Pratap Singh

SECRETARIAT

Shri Gian Chand—*Additional Secretary*

Shri S. D. Kaura—*Chief Legislative Committee Officer*

2. The Chairman welcomed the members of the Committee and explained to them broadly the scope and functions of Committee (Annexure).

3. The Committee then adjourned to meet again on 29 June, 1981, at 11.00 hours.

ANNEXURE

(Vide paragraph 2 of the Minutes dated 27 June, 1981)

ADDRESS BY THE CHAIRMAN TO THE MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1981-82) (27 June, 1981)

Friends,

It gives me immense pleasure to be amongst you and to welcome you to this first sitting of the newly constituted Committee of Subordinate Legislation of the Seventh Lok Sabha.

2. With the concept of the Welfare State getting deep and deeper roots in our society, the functions of the Government have undergone a radical change. It is difficult to imagine a sphere of a citizen's life which is not regulated by the State directly or indirectly. The Parliament too is burdened with still greater responsibilities both in the matter of legislation and control over public expenditure. Over the years, Parliament has passed an ever-increasing volume of legislation, extending Government activities into an appreciable number of fields and often involving considerable complexity. With the dual object of saving the valuable time of Parliament on matters of essentially subsidiary or procedural character and diverting it to the discussions on the matters of major public concern for still better appreciation of vital problems of the nation by the legislators, legislative power is often delegated to the executive by the statutes to deal with those subsidiary matters. Apart from the pressure on the parliamentary time the technicality of the subject-matter, the need to meet unforeseen contingencies and the requirement of flexibility go to make the delegated legislation an order of the day. The justification and advantages of delegated legislation in normal times arise from its speed, flexibility and adaptability. Once Parliament lays down and often in some detail the principles of a new law in a statute, it is for the executive to work out the application of the law in greater detail within those principles, so as to adapt it to any changing circumstances. A principle thus enacted in a statute, can be extended by delegated legislation in a cognate direction.

3. Delegation of legislative power, howsoever 'inevitable and indispensable' it may be, is always fraught with certain inherent risks. One of the apparent risks as are often pointed out, is that

the parliamentary statute may tend to be skeletal, containing only the barest general principles and omitting matters of substance which may have a vital bearing on the life of the community. Secondly, the powers delegated to the executive may sometime be so wide as to subject the citizen to harsh or unreasonable action by the administration. Thirdly, some powers may be so loosely defined that the areas they intend to cover, may not be clearly known. All these risks are there. Our function is to evolve safeguards against the probable risks.

4. An important safeguard against assumption of arbitrary powers by the executive is that the legislation framed by it in exercise of the delegated powers should not only be required to be laid before Parliament but Parliament should also always reserve the inherent statutory right of annulling or modifying such legislation. The Committee on Subordinate Legislation of Lok Sabha, in consultation with the Ministry of Law, have evolved the following standard provision for incorporation in all Acts|Bills providing for rule-making power:—

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

All Bills which are introduced in Lok Sabha or transmitted by Rajya Sabha, are scrutinised by the Committee to ensure that they contain requisite provisions for laying and modification of the rules, regulations, etc. to be framed thereunder. In their Fourteenth Report (Fifth Lok Sabha), the Committee have insisted for inclusion of similar provisions even in old Acts providing for rule-making power as do not contain such provisions.

5. Under Direction 103A of the Directions by the Speaker, the Speaker may refer a Bill, containing provisions for delegation of legislative powers, to the Committee on Subordinate Legislation. When a Bill is so referred, the Committee then examine the extent

of the powers sought to be delegated; and if the Committee are of opinion that the provisions contained in the Bill delegating legislative powers should be annulled in whole or in part, or should be amended in any respect, the Committee may report that opinion and the grounds therefor to the House before the Bill is taken up for consideration in the House. A special responsibility is cast on the members of this Committee to see that full use is made of this Direction. The members will have to be ever-watchful and vigilant. If they find that any Bill, introduced in the House, seeks to make excessive or abnormal delegation of powers, they may raise the matter in the House or otherwise draw the attention of the Hon'ble Speaker for referring it to our Committee under the same Direction.

6. Rule 320 of the Rules of Procedure and Conduct of Business in Lok Sabha lays down the basic principles governing the scrutiny of subordinate legislation. However, with the valuable experience gained by the Committee over the years, some more guiding principles have been evolved by the Committee for their working. Some of these principles may be enumerated as under:

- (i) Often cases have come to the notice of the Committee wherein fee has been levied by the executive without any specific authorisation therefore in the enabling statute. In such cases, the Committee have no alternative but to suggest for removal of such provisions unless an express power to that effect is obtained by the executive through an amendment of the parent statute.
- (ii) With the objective to ensure that the power of search and seizure is not abused, the Committee have always insisted on providing for precautions, e.g., specifying the minimum rank of the competent officer, presence of witnesses, preparation of inventories and handing over a copy thereof to the persons concerned.
- (iii) A well-known maximum that a delegate cannot sub-delegate the legislative powers without specific authorisation to that effect in the statute is always upheld by the Committee.

As and when new situations arise, the Committee have to evolve still new concepts and thus the process continues.

7. Much of the abuse of subordinate or delegated legislation may be attributed to the unfettered, unguided discretionary powers

generally vested in the executive. A foremost duty, therefore, cast upon our Committee is to devise ways and means to check the possible abuse of such powers. For this purpose, certain safeguards can best be provided in the rule itself. An appreciable number of the Committee's recommendations is directed to achieve this very end. Some of the significant observations/conclusions of the Committee can be summed up as follows:—

- (i) As far as possible, guidelines/criteria to be followed by the authority vested with the discretionary powers should be laid down in the rules.
- (ii) In cases where the authority concerned deviates from a norm, it should be required to record in writing the reasons for such deviation.
- (iii) In order that the persons similarly placed are not treated differently, the powers of exemption/relaxation should be exercisable in respect of 'categories or class of persons' as contradistinguished from individuals.
- (iv) Before taking any adverse action, the party concerned should be given a reasonable opportunity of being heard, and after a decision adversely affecting a party has been taken, that party should have the right of appeal or representation, as the case may be.
- (v) In case where an authority is vested with the power to suspend a licence or supplies, pending institution of regular proceedings, a maximum time-limit for suspension should be laid down in the rules.
- (vi) In case of rules relating to disciplinary proceedings, not only the punishing powers of the competent authority should be precisely defined but the procedure to be followed by the competent authority should also be laid down in the rules.
- (vii) The conditions of service should be determined through statutory rules and not through executive Orders. The executive Orders are not published in the Gazette and, therefore, escape scrutiny by the Committee.

8. The Committee are not content merely with the legality of the rules framed under the authority of subordinate or delegated powers. The Committee aim far beyond that the ultimate goal of all legislation (including subordinate or delegated legislation) is the

larger public good. The Committee ensure, on the one hand, that the subordinate legislation framed by the executive does not transgress the limits laid down in the parent statutes, and watch, on the other hand, that it is in conformity with the canons of equity and natural justice and does not in any way result in unnecessary hardship, harassment or inconvenience to the public at large.

9. Now I shall like to focuss the attention of the hon'ble members to some of the matters about which the Committee emphasised rather strongly in their recent Reports:—

- (i) Certain statutes provide for pre-publication of the rules for eliciting public opinion. In such cases it is but reasonable that adequate time should be given to the public to study the draft rules, regulations etc. before submitting their objections/suggestions thereon. The Committee have, therefore, recommended that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Official Gazette and despatching the Gazette copies to various parts of the country, should be given to the public to offer their comments on such draft rules. The Committee made a recommendation to this effect as far back as December, 1956. Often cases come to the notice where the requirement of minimum 30 clear days has not been scrupulously followed. The Committee, therefore, reiterated the recommendation in their First Report (Sixth Lok Sabha), presented to the House on 16 July, 1977.
- (ii) In cases where statutes provide a right of appeal to an aggrieved party, it is but fair that such a right is not rendered just illusory in actual practice. In this connection, the Committee, in their Second Report (Sixth Lok Sabha), presented to the House on 18 November, 1977, have recommended for prescribing a reasonable time-limit in the rules for purposes of filing an appeal.
- (iii) One disquieting feature in regard to issue of the statutory Orders by Government had been the enormous delay in most of the cases in laying them on the Table of the House. The Committee on Subordinate Legislation had always been very critical of such delays. In their Third Report (Sixth Lok Sabha), the Committee have highlighted a few cases of inordinate delay. As a measure of greater

compliance with Committee's recommendations in this regard, the Committee summoned the Heads of the Departments for tendering oral evidence to explain the reasons for delays exceeding six months. This had a salutary effect in minimising delays on this score.

- (iv) An appreciable number of statutes generally provide for laying of rules before Parliament framed thereunder. Such statutes were silent about the laying of regulations, bye-laws, etc. framed thereunder, before Parliament. In their Seventh Report (Sixth Lok Sabha), the Committee called upon all Ministries/Departments to review all such Acts delegating power to make regulations, etc. and to incorporate suitable provisions for laying them before Parliament in those Acts which did not contain such provisions.
- (v) The Committee have always taken note with concern of rules which have retrospective effect without an express authorisation for the purpose in the enabling statute. Even in cases where statutes confer such a power on the executive, the Committee have been insisting that such power should be exercised only in unavoidable circumstances and in each case the rules etc. should be accompanied by an explanatory note or memorandum affirming that no one would be adversely affected as a result of retrospective effect.
- (vi) Often statutes delegate rule-making power to State Governments. However, barring a few, there is no provision for laying of the rules framed thereunder by State Government either before State Legislatures or Parliament. As a consequence, such rules completely escape legislative scrutiny. In their Twentieth Report (Sixth Lok Sabha), the Committee dealt with the matter in *extenso* and concluded that such rules should better be examined by the State Committees on Subordinate Legislation.

10. The secretarial assistance to the Committee is rendered by the Lok Sabha Secretariat. The Secretariat examines all Orders, whether laid on the Table of the House or not, framed in pursuance of the provisions of the Constitution or any statute delegating power to any subordinate authority to make such Orders, culls out important points; obtains comments of the concerned administrative

Ministries/Departments on those points and then prepares self-contained Memoranda for consideration of the Committee. However, this does not in any way precludes the members of the Committee from scrutinising the Orders and giving suggestions on their own. For their facility, copies of all Orders laid on the Table of the House, are circulated to the members of the Committee in convenient batches from time to time.

11. The Committee on Subordinate Legislation (1980-81) held 18 sittings and considered 63 Memoranda during their term. The Committee had presented Six Reports to the House. The Committee also undertook on-the-spot study visits to Goa, Bombay and Madras; and Hyderabad, Bangalore, Kottayam and Trivandrum, for informal discussions with the authorities of certain Statutory Bodies on Rules, Regulations etc. concerning them. The visits were also utilised for bilateral exchange of views with the respective State Committees on Subordinate Legislation on common problems.

12. I shall also like to mention that the decisions in the Committee are arrived at unanimously and party considerations are never allowed to affect their deliberations. This can be said as a very healthy tradition. I hope and trust that the members of this Committee too would always keep up this time-honoured convention.

13. I must emphasise on members that in the discharge of their duties in the Committee, they should not act in hostility to the executive. The sole purpose of the Committee is to ensure that the will of Parliament as expressed through its statutes is fully respected. The efforts put in by the Committee in this direction should be complementary to that of the executive.

14. Before I conclude, I would like to enlighten the members that I, in my capacity as Chairman, Committee on Subordinate Legislation of Lok Sabha, was invited to the Commonwealth Conference of Delegated Legislation Committees held at Canberra, Australia, in September-October, 1980. I was also elected as a member of the Commonwealth Delegated Legislation Committee.

15. It may be of interest to you that a Conference of the Committees on Subordinate Legislation of Parliament and State Legislatures is going to take place at New Delhi on 25 and 26 July, 1981. At this Conference, many problems of common interest faced by our Committees will be discussed.

Thank you.

MINUTES OF THE TWENTY-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (1981-82)

The Committee met on Wednesday, 8 July, 1981 from 15.00 to 16.45 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Xavier Arakal
3. Shri Ashfaq Husain
4. Shri K. Lakkappa
5. Shri M. Ramanna Rai
6. Shri Ratansinh Rajda
7. Shri Chandra Shekhar Singh

SECRETARIAT

1. Dr. D. N. Gadhok—*Chief Legislative Committee Officer.*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Committee considered Memoranda Nos. 64 to 71 on the following subjects:—

(i) *The Indian Boiler (First Amendment) Regulations, 1978 (G.S.R. 192 of 1978)—(Memorandum No. 64).*

3. The Committee considered the above Memorandum and noted, that, on being pointed out, the Ministry of Industry (Department of Industrial Development) had amended the Note below Appendix 'J' to the Indian Boiler Regulations, 1950 to provide for recording of reasons in writing for granting relaxation in inspection by the Inspecting Authority *vide* G.S.R. 251 dated 7 March, 1981. The Committee were further of the opinion that suitable guidelines might also be laid down for grant of such relaxation to make the regulations self-contained.

4. The Committee also noted that the suggestion for amending the aforesaid regulations was initially made to the Ministry

on 20 November, 1978. The Ministry had taken more than 2 years to finally publish the amendment in the Official Gazette on 7 March, 1981. The Committee were not happy over the unusually long time taken by the Ministry in processing a routine amendment and urged the Ministry to streamline their procedure in this regard to obviate recurrence of such avoidable delays in future.

(ii) *The Directorate of Training, Directorate General of Employment and Training (Class I and Class II posts) Recruitment (Amendment) Rules, 1978 (G.S.R. 1356 of 1978)—(Memorandum No. 65).*

5. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Labour had amended the entry under Column 11 of the Schedule appended to the Recruitment Rules, relating to the post of Training Officer (Secretariat Practice) vide G.S.R. 193 dated 14 February, 1981 so as to indicate that the period of deputation shall ordinarily not exceed three years.

(iii) *The Oil Industry Development Board Employees' (General Conditions of Service) Rules, 1978 (G.S.R. 428-E of 1978)—(Memorandum No. 66).*

(A)

6. The Committee considered the above Memorandum and were not convinced with the arguments of the Department of Petroleum. The Committee observed that they had time and again emphasized that the rules should, as far as possible, be self-contained and self-explanatory and 'legislation by reference' should be scrupulously avoided. The Committee urged the Ministry of Petroleum and Chemicals (Deptt. of Petroleum) to frame a compact set of rules governing the conditions of service of the employees of the Oil Industry Development Board at an early date.

(B)

7. The Committee observed that as the practice of publishing the rules in the Official Gazette and laying them on the Table of the House had already been in vogue, the Ministry of Petroleum and Chemicals (Deptt. of Petroleum) should have no objection to placing the same on a statutory footing by incorporating a suitable provision in the Oil Industry Development Board Employees' (General Conditions of Service) Rules, 1978.

8. * * * * *
9. * * * * *

(vi) *Implementation of recommendation contained in para 141 of the Twelfth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Planning Commission (Veritype Operator) Recruitment Rules, 1971 (G.S.R. 1651 of 1971)—(Memorandum No. 69).*

10. The Committee considered the above Memorandum and noted that the Planning Commission had sent to the Government of India Press a Notification No. A.12011/2/71-Adm. II dated 30 March, 1974 containing the amendment to delete the clause regarding liability to serve in the Defence Services from the Recruitment Rules for Veritype Operator in the Planning Commission, for being published in the Official Gazette. The Committee were surprised to learn that neither the Planning Commission nor the Government of India Press could give any clue whether the notification was at all published in the Gazette. Thus a state of dilemma had been created as to whether the provisions regarding liability to serve in the Defence Services continued to form part of the Recruitment Rules or not. The Committee deplored the gross negligence displayed by the concerned authorities in the important matters of statutory rules. The Committee desired that the whole case should be thoroughly inquired and analysed and corrective measures taken to avoid recurrence of such incidents in future.

11. The Committee further noted that the post of Veritype Operator had since been abolished in the Planning Commission and the incumbent holding the post had sought voluntary retirement with effect from 1 October, 1977. Thus the Recruitment Rules for Veritype Operator in the Planning Commission had been rendered virtually inoperative. The Committee felt that no useful purpose was likely to be served by issue of another amendment at this stage. In the circumstances, the Committee decided not to insist upon an amendment of the Recruitment Rules immediately. The Committee, however, expected the Planning Commission to delete the rule regarding liability to serve in the Defence Services from the Recruitment Rules if the post of Veritype Operator was re-introduced in the Commission at a later stage.

12. and 13. * * * * *

The Committee then adjourned.

MINUTES OF THE TWENTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1981-82)

The Committee met on Thursday, 9 July, 1981, from 11.30 to 12.45 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri M. Ankineedu
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri K. Lakkappa
6. Shri Balasaheb Vikhe Patil
7. Shri M. Ramanna Rai
8. Shri Ratansinh Rajda

SECRETARIAT

1. Dr. D. N. Gadhoek—*Chief Legislative Committee Officer.*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Committee considered Memoranda Nos. 72 to 76 on the following subjects:—

- (i) *The Tuticorin Port (Authorisation of Pilots) Regulations, 1979 (G.S.R. 98-E of 1979)—(Memorandum No. 72).*

(A)

3. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Shipping and Transport (Ports Wing) had agreed to amend sub-regulation (b) of regulation 5 of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979 so as to lay down the limit of age relaxation for appointment of the Probationer Pilots in respect of Ex-servicemen and Scheduled Castes/Scheduled Tribes candidates. The Committee concurred with the amendments proposed by the Ministry in this regard excepting clauses (iii) of their reply dated 20 January, 1980 which the Committee felt, was again in the nature of vaguely defined pro-

visions of law. The Committee desired the Ministry to issue the amendments at an early date omitting clause (iii) thereof as approved by the Committee.

(B)

4. The Committee noted with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Ports Wing) had decided, in consultation with the Ministry of Law, to delete sub-regulation (2) of regulation 6 of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979. The Committee desired the Ministry to notify the amendment in this regard at an early date.

5 to 11. * * * *

(iii) *The Department of Space Employees' (Classification, Control and Appeal) First Amendment Rules, 1978 (S.O. 585 of 1978) — (Memorandum No. 74).*

12. The Committee considered the above Memorandum and were not convinced with the argument of the Department of Space that if all the detailed terms and conditions of recruitment were to be incorporated in the rules, it would make them unwieldy and cumbersome. The Committee had time and again emphasised that rules should as far as possible be self-contained. Apart from that, the terms and conditions outside the rules through Departmental Instructions were not published in the Official Gazette and, therefore, escaped the scrutiny of the Committee. The Committee desired the Department of Space to indicate the terms and conditions in brief by way of an annexure to the Department of Space Employees' (Classification, Control and Appeal) Rules if they tend to make the rules unwieldy and cumbersome.

13. * * * *

(v) (a) *The Export of Roasted and Salted Cashew Kernels (Inspection) Rules, 1978 (S.O. 276 of 1978); and*

(b) *The Export of Rosin (Inspection) Rules, 1978 (S.O. 576 of 1978) — (Memorandum No. 76).*

14. The Committee noted with satisfaction that, on being pointed out, the Ministry of Commerce had amended rule 3 of (i) the Export of Roasted and Salted Cashew Kernels (Inspection) Rules, 1978; and (ii) the Export of Rosin (Inspection) Rules, 1978, vide S.O. 7 dated 6 January, 1979 and S.O. 2210 dated 30 June, 1979 respectively,

incorporating the S.O. numbers with the dates of their publication in which the specifications recognised by Government had earlier been published. The Committee, however, desired the Ministry to be careful in such matters in future and to ensure that whenever similar rules were notified, they invariably contained the relevant S.O. number together with the date of its publication, containing the specifications recognised by Government in that behalf, without waiting for the Committee to point it out.

The Committee then adjourned.

MINUTES OF THE TWENTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA (1981-82))

The Committee met on Tuesday, 4 August, 1981, from 15.30 to 17.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri M. Ankincedu
3. Shri Xavier Arakal
4. Shri Eduardo Faleiro
5. Shri K. Lakkappa
6. Shri M. Ramanna Rai
7. Shri Ratansinh Rajda
8. Shri Chandra Shekhar Singh

**REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)**

1. Shri A. C. Bandopadhyay, *Secretary*.
2. Shri K. C. Sharma, *Joint Secretary*.

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer*.
2. Shri S. S. Chawla—*Senior Legislative Committee Officer*.

2. The Committee examined the representatives of the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) regarding the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 1977 (G.S.R. 537 of 1977) [Implementation of recommendations contained in paras 49-51 of the Eleventh Report of the Committee on Subordinate Legislation (Sixth Lok Sabha)].

3. On being enquired whether the Ministry of Finance sought the advice of the Department of Personnel and Administrative Reforms regarding inclusion of principles determining the seniority in the Indian Civil Accounts Service (Group 'A') Recruitment Rules,

1977, the representative explained that the Department of Expenditure had referred the matter to them through a U.O. note on 9 September, 1978. On 8 November, 1978, they advised the Ministry of Finance that the recruitment rules and seniority rules were two different things and it would not be proper to include the same in the recruitment rules. It was suggested that this position might be explained to the Lok Sabha Secretariat.

4. The representative of the Department of Personnel and Administrative Reforms further stated that a somewhat similar point was raised by the Committee on Subordinate Legislation of Rajya Sabha in regard to the recruitment rules for the post of Administrative Officer of the Delhi Milk Scheme. The Rajya Sabha Committee had observed that the general principles for preparing eligibility list for promotion purposes should be incorporated in the recruitment rules. On a reference made by the Department of Agriculture, they were advised to inform the Rajya Sabha Secretariat that it would not be proper to accept the recommendation because eligibility list was prepared in accordance with the general practice followed in the Government of India. On 17 March, 1978, representative of the Department of Personnel and Administrative Reforms appeared before Rajya Sabha Committee and explained to them the position in the matter. According to the representative of the Department of Personnel and Administrative Reforms, the Rajya Sabha Committee had since dropped the matter.

5. The representative of the Department also referred to the advice given by the Ministry of Law in another case:

"The decision in Nagarajan's and Sant Ram's cases have to be taken as determining only the question adjudicated upon therein. While the former had *inter alia* laid down that the State Government has executive power to make appointments without any obligation to make rules of recruitment etc. under Article 309 for the purpose of constituting a Service or creation of posts or filling them, the latter enunciated the legal principles that while Government cannot amend or supersede statutory rules by administrative instructions, if rules are silent on any particular point, Government can fill up gaps and supplement rules already framed."

6. When pointed out that the executive instructions could not take the place of statutory rules and the Committee could not go into them as they were not published in the official Gazette, the

representative of the Department stated that where statutory rules were silent, executive instructions could be issued to fill in the gaps, and this position was accepted by Law Courts including the Supreme Court. He added that instructions governing seniority rules were issued by Government in consultation with the Union Public Service Commission who had agreed to that arrangement.

7. When asked as to what the difficulty was in incorporating the executive instructions in the rules, the representative stated that if seniority rules were to be incorporated as part of statutory recruitment rules, whenever there was any change in any part of the seniority rules, it would become necessary to carry out amendment to all the 55 or 60 recruitment rules for various services as also the isolated posts which were governed by similar seniority rules. He added that basic principles of seniority were laid down by the Home Ministry in 1959.

8. When asked to indicate the latest court judgement other than the one of 1972, the representative stated that he had not come across any other such judgement. He agreed that the Supreme Court had not debarred the Government from making the executive instructions as part of the rules. He felt that Constitution did not make it obligatory or otherwise compulsory that every thing pertaining to recruitment rules or conditions of service be made by way of statutory rules.

9. When pointed out that Article 309 did not provide for issuance of executive instructions and that Committee could not apply their mind as to the soundness of such instructions, the representative stated that it was a permissive provision and the Courts had accepted this position. He felt that Article 309 did not debar Government from issuing of executive orders on a matter on which the rules and law were silent.

10. The representative explained that it was not the intention of the Government to keep anything deliberately out of the purview of the Committee. According to him, it was hardly possible that every thing pertaining to the service could be codified under statutory rules. He felt that certain matters could be best left to be determined by executive instructions.

11. The representative admitted that there were a few exceptional cases where there was a deviation and the seniority rules were incorporated in the statutory rules for a special kind of service e.g. All India Services like Indian Administrative Service, Indian

Police Service and so on. For certain grades in the Central Secretariat Service, there were certain statutory rules. But, by and large, for about 55 Class I Central Civil Services, the recruitment rules did not incorporate the seniority rules.

12. The representative denied that the Department of Personnel and Administrative Reforms had issued any further instructions after the judgement of the Supreme Court in 1972. According to him, there was no need for that because the position had been known to all the Departments. A copy of these instructions issued on 22 December, 1959 had also been submitted to the Lok Sabha Secretariat.

13. When pointed out that besides judicial review, the executive instructions should also be subject to scrutiny by the Committee and how giving them statutory footing would make them cumbersome, the representative of the Department stated that if any change had to be made in the statutory rules of seniority, it would have to be carried out in all the 55 Services together as also in all the isolated posts not included in the Services.

14. The Chairman emphasized that the legislature never abdicated its rights in favour of any body and always retained its supervisory control. The objective laid down by the legislature had to be followed by Government. If certain executive instructions had been issued to fill in the gap, those should be put in the form of rules or by way of an appendix to the statutory rules. Government should not resort to issuing of executive instructions and amending them time and again to suit their convenience without the knowledge of the Committee.

15. When enquired if the Ministry could send a note on the judgements of the Court on the issue, the representative of the Ministry stated that a complete set of whatever papers were available, had already been submitted.

(The witnesses then withdrew)

16. The Committee then considered the matter in the light of the evidence given by the representatives of the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) and decided to reiterate their earlier recommendation that all statutory Orders should be self-contained and no matter be governed by executive instructions. Further, the principles governing seniority of employees should invariably be provided for in the statutory rules, etc.

The Committee then adjourned.

MINUTES OF THE TWENTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA)
(1981-82)

The Committee met on Wednesday, 5 August, 1981 from 11.30 to 12.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Xavier Arakal
3. Shri Eduardo Faleiro
4. Shri K. Lakkappa
5. Shri M. Ramanna Rai
6. Shri Ratansinh Rajda
7. Shri Chandra Shekhar Singh

Representatives of the Ministry of Law, Justice and Company Affairs (Department of Justice)

1. Shri P. K. Kathpalia, *Additional Secretary.*
2. Shri K. S. Parthasarathy, *Under Secretary.*

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Committee heard oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Justice) regarding the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 [Implementation of recommendations contained in paras 9-10 of the Sixteenth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha)].

3. At the outset, the Committee desired to know from the representatives of the Ministry the reasons for delay of over two years on their part in replying to a reference made to them on 7 May, 1976. The representative of the Ministry confessed that there had been delay by the Ministry in giving a reply. He submitted that the Department of Legal Affairs had to be consulted in the matter. The matter had to be reviewed in the Department of Justice also.

4. When asked as to the procedure adopted in the Ministry to deal with Parliamentary references, the representative stated that the first noting was that of the Assistant. He further conceded that initially the matter was lost sight of and it was only when a reminder came from the Lok Sabha Secretariat that the action started.

5. When enquired whether the reply dated 16 September, 1978 could be taken as the considered opinion of the Ministry after examining the matter in all aspects, the representative stated that it was based on a precedent in an identical case pertaining to the Punjab and Haryana High Court. He added that the point at issue was whether an Order could be issued by the President with retrospective effect. The view taken by the Ministry of Law (Department of Legal Affairs) had been that the giving of retrospective effect in the particular case, was inherent in the Act itself. Hence, it was not a case of subordinate legislation. The President issued the Order in pursuant to the provisions contained in Section 33 of the North-Eastern Areas (Reorganisation) Act, 1971.

6. When pointed out that the position now taken by the Ministry was different from what they had stated earlier in their reply dated 16 September, 1978, the representative regretted that they had not consulted the Department of Legal Affairs at that stage and the necessity of giving reasons for retrospective effect was accepted by them out of deference to the wishes of the Committee.

7. The Chairman observed that the stand now taken by the Ministry might be correct and if the Ministry had come forward with that position earlier, the matter would have been settled long ago. He added that any reference made by the Committee must be given proper and prompt attention and only the considered comments be sent to them with a view to avoid similar situation in future.

(The witnesses then withdrew)

8. In view of the regrets shown by the representative of the Ministry of Law, Justice and Company Affairs (Department of Justice) for having failed to furnish their considered views to the Committee at the very first instance as also accepting the plea of the Ministry that the Order was of executive nature and in no way was in the character of the subordinate legislation, the Committee decided not to pursue their earlier recommendations contained in paras 39-40 of their Sixteenth Report (Sixth Lok Sabha).

The Committee then adjourned.

MINUTES OF THE TWENTY-SIXTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (1981-82)

The Committee met on Friday the 4 September, 1981 from 16.00 to 16.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Xavier Arakal
3. Shri Ashfaq Husain
4. Shri T. V. Chandrashekarappa
5. Shri Eduardo Faleiro
6. Shri Balasahab Vikhe Patil
7. Shri M. Ramanna Rai
8. Shri Ratansinh Rajda
9. Shri Chandra Shekhar Singh

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer.*

2. The Committee considered their draft Seventh Report and adopted it.

3. The Committee authorised the Chairman and, in his absence, Shri Chandra Shekhar Singh to present the Seventh Report to the House on their behalf on 8 September, 1981.

4. to 11.

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The Committee then adjourned.

* Omitted portions of the Minutes are not covered by the Report