

CB-II (JCOP) No.

**JOINT COMMITTEE ON OFFICES OF PROFIT  
(SIXTEENTH LOK SABHA)**

**TWENTY FIRST REPORT**

Presented to Lok Sabha on 28-07-2017

Laid in Rajya Sabha on 28-07-2017



**LOK SABHA SECRETARIAT  
NEW DELHI**

**July, 2017 / Shravana, 1939 (Saka)**

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**COMPOSITION OF THE JOINT COMMITTEE ON OFFICES OF PROFIT  
(SIXTEENTH LOK SABHA)**

**\$ Dr. Satya Pal Singh** - **Chairperson**

**MEMBERS**

**LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Shri Bhagwant Maan
6. Shri M.K. Raghavan
7. Prof. Saugata Roy
8. Smt. Supriya Sule
- #9. Kunwar Pushendra Singh Chandel
- #10. Shri Janardan Mishra

**RAJYA SABHA**

11. Shri Naresh Agrawal
12. Shri C.P. Narayanan
13. Shri Dilipbhai Pandya
14. Shri Sukhendu Sekhar Roy
- \*15. Shri Sharad Yadav

**SECRETARIAT**

- |    |                       |                     |
|----|-----------------------|---------------------|
| 1. | Dr. Preeti Srivastava | Joint Secretary     |
| 2. | Smt Rita Jaikhani     | Director            |
| 3. | Smt. Maya Lingi       | Additional Director |
| 4. | Smt. Seema Sharma     | Committee Assistant |

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**\$** Appointed as Chairperson *vide* Bulletin Part-II dated 19.07.2016 (Para No.3780) vice Shri P.P. Chaudhary resigned from the Chairpersonship of the Committee w.e.f. 05.07.2016.

**#** Nominated as Member of the Committee *vide* Bulletin Part-II dated 02.08.2016 (Para No.3952) vice Shri P.P. Chaudhary and Shri Arjun Ram Meghwal resigned from the membership of the Committee consequent upon their appointment as Minister w.e.f. 05.07.2016.

**\*** Shri Sharad Yadav nominated as Member of the Committee *vide* Bulletin Part-II dated 02.08.2016 (Para No.3952).

## INTRODUCTION

I, the Chairperson of the Joint Committee on Offices of Profit, having been authorized by the Committee to present the Report on their behalf, present this Twentieth Report of the Committee.

2. At their sitting held on Friday, 07<sup>th</sup> April, 2016 the Committee examined the term, composition, character, functions, etc., of the Himachal Pradesh Tribes Advisory Council with a view to consider as to whether the nomination of Shri Ram Swaroop Sharma, Member of Parliament to the Himachal Pradesh Tribes Advisory Council would attract disqualification from the angle of 'office of profit' under Article 102 (1) (a) of the Constitution of India.

3. The Committee considered and adopted this Report at their sitting held on Tuesday, 20<sup>th</sup> June, 2017.

4. The Committee wish to express their thanks to the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for furnishing the information desired by the Committee for detailed examination of the issues involved in the matter.

5. The Observations/Recommendations made by the Committee in respect of the matter considered by them are given at the end of this Report in bold letters.

**NEW DELHI:**

**24<sup>th</sup> June, 2017**

**2 Ashadha, 1939 Saka**

**DR. SATYAPAL SINGH**

**Chairperson,**

**Joint Committee on Offices of Profit**

## REPORT

### **Nomination of Shri Ram Swaroop Sharma, Member of Parliament to the Himachal Pradesh Tribes Advisory Council.**

.....

The Government of Himachal Pradesh has sought the approval of Hon. Speaker, Lok Sabha for nomination of Shri Ram Swaroop Sharma, MP as member in the Himachal Pradesh Tribes Advisory Council.

2. During 2<sup>nd</sup> Lok Sabha the matter of nomination of MPs to the Himachal Pradesh Tribes Advisory Committee was examined by the Joint Committee on Offices of Profit and presented Report (4<sup>th</sup> Report) in 1961 and in that Report it was recommended by the Committee that Members, Chairman or Secretary ought not to disqualify for being chosen as, or for being chosen as Members of Parliament under Article 102(1)(a) of the Constitution. But the instant case relates to nomination of Shri Ram Swaroop Sharma, MP as Member in the Himachal Pradesh Tribes Advisory Council constituted under the Himachal Pradesh Tribes Advisory Council Rules, 1976 as amended from time to time.

3. Article 102(1)(a) of the Constitution of India reads as under:

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -

If he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder"

4. Parliament has passed a law, namely the Parliament (Prevention of Disqualification) Act, 1959 (**Annexure-I**) laying down which offices would not disqualify holders thereof from the membership of Parliament. This Act also provides that if a chairman or director or member of any statutory or non-statutory body is not entitled to any remuneration other than the compensatory allowance, he would not incur disqualification for being chosen as, or for being, a member of Parliament. Under Section 2(a) of the said Act, "compensatory allowance" has been defined as any sum of "money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a Member of Parliament is entitled under the Salary, Allowance and Pension of Members of Parliament Act, 1954), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office".

5. The expression "holds any office of profit under the Government" occurring in Article 102 (1) (a) has nowhere been defined precisely. However, in order to determine whether an office held by a person is an office of profit under the Government, the Joint Committee on Office of Profit, in their Tenth Report (7<sup>th</sup> Lok Sabha), presented to Lok Sabha on 7<sup>th</sup> May, 1984 (**Annexure-II**), laid down the following guiding principles: -

*"The broad criteria for the determination of the question whether an office held by a person is an office of profit have been laid down in judicial pronouncements. If the Government exercises control over the appointment to an dismissal from the office and over the performance and functions of the office and in case the remuneration or pecuniary gain, either tangible or intangible in nature, flows from such office irrespective of whether the holder for the time being receives such remuneration or gain or not, the office should be held to be an office of profit under the Government. Otherwise, the object of imposition of the disqualifications as envisaged in the Constitution will become frustrated. This first basic principle should be the guiding factor in offering positions to a member of the Legislature."*

6. Keeping the above position in view, the Joint Committee on Office of Profit have been following the undernoted criteria to test the Committees, Commissions, etc., for deciding the question as to which of the offices should disqualify and which should not disqualify a person for being chosen as, and for being a Member of Parliament: -

- (i) whether Government exercise control over the appointment to and removal from the office an over the performance and functions of the office;
- (ii) Whether the holder draws any remuneration, like sitting fee, honorarium, salary, etc. i.e. any remuneration other than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;

(The Principle thus is that if a member draws not more than what is required to cover the actual out of Pocket expenses and does not give him pecuniary benefit, it will not act as a disqualification).

- (iii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licences, etc., or gives powers of appointment, grant of scholarship, etc.; and
- (iv) Whether the body in which an office is held wields influence or power by way of patronage.

If reply to any of the above criteria is in affirmative then the office in question will entail disqualification.

7. The Himachal Pradesh Tribes Advisory Council is a Constitutional Body under Rule 3(1) of the Himachal Pradesh Tribes Advisory Council, Rules, 1976 as

amended from time to time (**Annexure-III**). The composition of the Council consist of 20 members as follows:-

- (i) Chief Minister Ex-officio Chairman
- (ii) The Minister incharge, Social Welfare Ex-officio Vice Chairman
- (iii) The Minister incharge, Tribal Development Department; Member
- (iv) Member of Lok Sabha, Representing Tribal Area; Member
- (v) Three members who are representatives of the Scheduled Tribes in the Assembly.
- (vi) 12 Members to be nominated by the Governor out of the persons of Scheduled Tribes.
- (vii) One member to be nominated by the Governor from amongst persons, who in his opinion has special knowledge and experience of the needs of the Scheduled Tribes or the Schedule Areas of the State.

8. The functions of the Council will be as follows :-

- (i) The Council shall discuss only such matters as may be referred to it by the Governor for advice under sub-paragraph (2) of paragraph 4 of the Fifth Scheduled of the Constitution of India. However, the Chairman may permit discussion on matter not so referred if he considers that such discussions will be in the general interest of the work of the Council.
- (ii) The decision and opinion of the Council on matters referred to them by the Governor shall be in the form of recommendations adopted by the Council and such minutes shall be added to and form part of the proceedings of the meeting.
- (iii) The validity of any proceedings in the Council shall not be called in question on the ground of any allegiant irregularity of procedure of merely by reason of any vacancy in the membership of the Council.

9. According to Rule 5(1) of the Himachal Pradesh Tribes Advisory Council Rules, 1976, the term of the Member of Parliament as *non-official* member in the Tribes Advisory Council will be till his / her tenure as Member of Lok Sabha. The other members shall hold office for a period of two years from the date of their nomination as provided under Rule 5(1)(2) provided that such nominated member may be removed from his office before the expiry of his term of two years at the pleasure of the Governor. The MPs / MLAs who are the members of the Himachal

Pradesh Tribes Advisory Council shall not be entitled to draw travelling allowance for attending any meeting of the Council, more than the sum which he is entitled as a member of Assembly/Parliament for attending such official business as provided in the proviso to Rule-31.

10. As per the Himachal Pradesh Welfare Department Notification dated 17<sup>th</sup> June, 1976, the *non-official Members of the Council will be entitled to daily allowance* in respect of the journeys etc., that may be performed in connection with the affairs of the Council. The non-official members will be entitled to Daily Allowance for each day of meeting at the highest rate admissible to a Government servant of First Grade for the respective locality. Further, in addition to DA for the day(s) of the meeting, a member shall also be entitled to DA for halt on tour at outstation in connection with the affairs of the Council as under :-

- (i) If the absence from headquarters does not exceed 06 hours - 30%;
- (ii) If the absence from headquarters exceeds 06 hours but does not exceed 12 hours -50%;
- (iii) If the absence from headquarters exceeds 12 hours - full.

11. The Fifth Schedule, [Article 244 (1)] of the Constitution of India provides that it shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

12. In its opinion, the Ministry of Law and Justice (Department of Legal Affairs) *vide* their UO Note No. (E.O. No.) 264709/LS/2017 dated 27<sup>th</sup> January, 2017 *inter-alia* has stated as under :-

2. "..... as per Rule 3(1) of the H.P. Tribes Advisory Council Rules, 1976 (the Rules), the Council is constituted of 20 members, of whom Chief Minister (Chairman), Minister Incharge of Tribal Development (Vice Chairman), Member Lok Sabha (1) and MLAs of Tribal Area (3) are official members of the Council, while, remaining (14) are the Non-Official members. As per Rule 5 of the said Rules, the MPs and the MLAs will hold office as members of the Tribes Advisory Council during the tenure of their Membership in the Parliament and Assembly as the case may be.

3. It is stated that the MPs, MLAs who are the members of the Council shall be entitled for TA/DA in respect of journeys performed by them in connection with the work of the Council of the same scale as is admissible to them under salaries and allowances of MPs/MLAs as amended from time to time. Further, the functions of the Council will be as per Rule 14 of the H.P. Tribes Advisory Council Rules, 1976, which are as under:

- (1) The Council shall discuss only such matters as may be referred to it by the Governor for advice under sub-paragraph (2) of paragraph 4 of



the Fifth Schedule of the Constitution of India. However, the Chairman may permit discussion on matters not so referred if he consider that such discussions will be in the general interest of the work of the Council.

(2) The decision and opinions of the Council on matters referred to them by the Governor shall be in the form of recommendations but any member may, within 24 hours, submit a minute of dissent in regard to any recommendation adopted by the Council and such minute shall be added to and form part of the proceedings of the meeting.

(3) The validity of any proceedings in the Council shall not be called in question on the ground of any alleged irregularity of procedure or merely by reason of any vacancy in the membership of the Council.

4. Attention is drawn towards Article 102(1) in the Constitution of India, which provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament (a) if he holds any office of profit under the Government of India or the government of any State, other than an office declared by Parliament by law not to disqualify its holder. The essential ingredients for attracting the said article, as settled by numerous cases, are that there must be an office, such office must be an office of 'Profit', it must be under the Government of India or the Government of a State, such office must not be excluded from the operation of this sub-clause by a law made by Parliament. To decide the issue, therefore, it is imperative to examine the nature of Government control, functions the Council and the allowances receivable by the member.

5. It is noted that in the present matter, the Council is a statutory body with a fixed composition and the Member of Lok Sabha representing the Tribal Area by virtue of such position becomes Member of the Council and his term is co-terminus with his being an MP, therefore, there appears to be no Government control with respect to his appointment/removal. Functions of the Council appear to be consultative and advisory in nature. As TA/DA in respect of journeys performed by the Members in connection with the work of the Council is as admissible to them under salaries and allowance of MPs/MLAs, thus the requirement of presence of the essential ingredient of 'profit' or 'pecuniary gain', as settled by numerous cases, is absent in the present case.

6. In view of the above and on the basis of the documents made available to this Department, we are of the view that the nomination of a Member of Lok Sabha to the Council may not be considered as an 'office of profit' under the Government."

13. Further, the Ministry of Law and Justice (Legislative Department) *vide* their OM No. F.No.17(3)/2017-Leg.III dated 7<sup>th</sup> February, 2017 has opined that :-

2. ...., it is seen that in exercise of the powers conferred by sub-paragraph (3) of paragraph 4 of the Fifth Schedule to the Constitution, the Governor has notified the Himachal Pradesh Tribes Advisory Council Rules, 1976 (hereinafter referred to as the Rules, 1976). Rule 3 of the said rule provide for Constitution of Himachal Pradesh Tribes Advisory Council (hereinafter referred to as Council). Further, clause (iv) of sub-rule (1) of rule 3

of the Himachal Pradesh Tribes Advisory Council, 1976 provide that a Member of Lok Sabha representing the Tribal Area of the State of Himachal Pradesh shall be member of the Council. As per rule 5 of the Rules, 1976 a member nominated to the Council shall continue to hold office during the tenure of his membership of the Lok Sabha and rule 4 of Rules, 1976 provides for Disqualification of Members. Further rule 14 of the said rules provides for the Conduct and business of the Council and it reads as follows-

"14. Conduct and business of the Council.-(1) The Council shall discuss only such matters as may be referred to it by Governor for advice under sub-paragraph (2) of paragraph 4 of the Fifth Schedule to the Constitution of India. However, the Chairman may permit discussion on matters not so referred if he consider that such discussions will be in the general interest of the work of the Council.

(2) The decision and opinion of the council on the matters referred to them by the Governor shall be in the form of recommendations but any member may, within 24 hours, submit a minute of dissent in regard to any recommendation adopted by the Council and such minute shall be added to and form part of the proceedings of the meeting.

(3) The validity of the proceedings in the Council shall not be called in question on the ground of any alleged irregularity of procedure or merely by reason of any vacancy in the membership of the Council."

5. On a bare reading of the clause (iii) of sub-rule (1) of rule 3 of Rules, 1976 shows that a member representing the Tribal Area of the Himachal Pradesh Lok Sabha Constituency will be eligible to be a member of the Council by Virtue of the statutory provisions. Thus, his appointment as member to the Council is automatic by virtue of law and the Government has no discretion over their appointment. The Rules, 1976 further provides that they shall continue to be members of the Council so long as they continue to be the members of Lok Sabha and the Government has no power to remove him from his office.

6. In this context, it is noteworthy to mention that the language used in the amendment rules, namely, the H.P. Tribes Advisory Council (Second Amendment) Rules, 1978, may give a meaning that a member of Lok Sabha representing the Tribal area of the State will *ipso facto* become a member of the Council by virtue of the Rules, 1976.

7. With regard to the functions of the Council envisaged in rule 14 of the rules, 1976 reproduced above it is evident that they are only recommendatory in nature. In this context, attention of the Committee is invited to the point wise reply received from the State Government of Himachal Pradesh, wherein they have referred to rule 14 of the Rules, 1976 with regard to the question relating to the functions of the Council (refer reply to serial number 8 of the list of points).

8. In so far as the allowances are concerned, rule 31 of the Rules, 1976 reads as follows:-

"31. Travelling allowance to the members.- Members whether they are members of Assembly Parliament or not shall be eligible for such

travelling allowance as may, from time to time, be prescribed by the State Government:

Provided that a member who is also member of Assembly/Parliament shall not be entitled to draw travelling allowance for attending any meeting of the Council, more than the sum which he is entitled as such member of Assembly/Parliament for attending such official business."

9. From the above, it is evident that travelling allowance payable to the member of the Council does not exceed the 'compensatory allowance' as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959).

10. Keeping in view the above, this Department is of the view that the member of Lok Sabha nominated to the Himachal Pradesh Tribal Advisory Council may not entail disqualification for being a member of Parliament."

14. In this connection, the Joint Committee on Offices of Profit called the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for oral evidence on Friday, 07<sup>th</sup> April, 2017. During the evidence, the representatives of the Legislative Department briefed the Committee as under :

"Sir, as per the rule 3 sub-rule (1) clause 4(iv) of the Himachal Pradesh Tribes Advisory Council Rules, 1976, Hon. Member of the Lok Sabha representing the Tribal Area of the Himachal Pradesh Shall be the Member of the Council.

Rule 5 of the said Rule states that the Member nominated to the Council shall continue to hold office during the tenure of his membership of the Lok Sabha.

So, in this regard, there is no discretion over their appointment and the Government has no power to remove him from his office. Their functions are recommendatory in nature.

So far as allowances are concerned, Rule 31 of the Rules states that the Members shall be eligible for such travelling allowances as may from time to time be prescribed by the said Rules and under the proviso thereof, the travelling allowance payable to the Hon. Member of Parliament does not exceed the compensatory allowance. So it will not incur any disqualification for the Member of Parliament. So, the Member of Lok Sabha nominated to the said Council, may not entail disqualification."

15. When asked about daily allowance payable to Members of Parliament, the representative of the Ministry of Law and Justice, Legislative Department stated as under :

"Actually Rule 31 deals with Travelling Allowance only. Regarding daily allowance, the notification of Government of Himachal Pradesh Welfare Department dated 17-06-1976 annexure says that the non-official members who are members of the Vidhan Sabha shall be entitled to TA and DA in

respect of the journeys performed in connection with the work of the Council on this scale as is admissible to them under the Salaries and Allowances of Members of Legislative Assemblies as amended from time to time."

The representative further clarified as under :

"Sir, this notification was issued in the year 1976 but the Member of Parliament was nominated in 1978 by amending the rules. At that time, Hon. Member of Parliament was not the member of the Council."

In this context, the representative stated as under :

"Sir, since 1976 amendment provides for this kind of DA and the Member of Lok Sabha was made a member by amending the rules in 1978, the State Government of Himachal Pradesh should be asked whether they have exempted the MPs from application of DA rules. So, we need clarification from the State Government."

## Observations/Recommendations

16. The Committee note that Himachal Pradesh Tribes Advisory Council is constituted under Rule 3(1) of the Himachal Pradesh Tribes Advisory Council Rules, 1976 as amended from time to time. The Council shall consists of 20 members. Chief Minister and Minister incharge, Social Welfare are ex-officio Chairman and ex-officio Vice-Chairman of the Council. Member of Lok Sabha representing tribal area and 03 Members who are representatives of the Scheduled Tribes in the Assembly are Members of the Council. The Minister incharge Tribal Development Department is also member of the Council. Rest of the Members are nominated by the Government to the Council. As per Rule 14 of Rule 1976, the Council discuss only such matters as may be referred to it by the Governor for advice under sub-paragraph (2) of paragraph 4 of the Fifth Scheduled of the Constitution of India. However, the Chairman may permit discussion on matters not so referred if he considers that such discussions will be in the general interest of the work of the Council. The decision and opinion of the Council on matters referred to them by the Governor are in the form of recommendations.

17. As per the opinion expressed by the Ministry of Law and Justice (Department of Legal Affairs), the Council is a statutory body with a fixed composition and the Member of Lok Sabha representing the Tribal Area by virtue of such position becomes Member of the Council and his term is co-terminus with his being a MP. Therefore, there appears to be no Government control with respect to his appointment/removal. Functions of the Council appear to be consultative and advisory in nature. As TA/DA in respect of journeys performed by the Members in connection with the work of the Council is as admissible to them under salaries and allowance of MPs/MLAs. Thus, the requirement of presence of the essential ingredient of 'profit' or 'pecuniary gain', as settled by numerous cases, is absent in the present case. The Department of Legal Affairs is, therefore, of the view that the nomination of a Member of Lok Sabha to the Council may not be considered as an 'Office of Profit' under the Government.

18. According to the Ministry of Law and Justice (Legislative Department), Rule 3 (i) of Rules, 1976 shows that a member representing the Tribal Area of the Himachal Pradesh Lok Sabha Constituency will be eligible to be a member of the Council by virtue of the statutory provisions. Thus, his appointment as member to the Council is automatic by virtue of law and the Government has no discretion over their appointment. Rules, 1976 further provide that they shall continue to be members of the Council so long as they continue to be the members of Lok Sabha and the Government has no power to remove him from his office. With regard to the functions of the Council envisaged in rule 14 of the Rules, 1976 it is evident that they are only recommendatory in nature. Legislative Department has further stated that it is evident that travelling allowance payable to the member of the Council does not exceed the 'compensatory allowance' as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959). The Legislative Department is, therefore, of the view that the Member of Lok Sabha nominated to the Himachal Pradesh Tribes Advisory Council may not entail disqualification for being a Member of Parliament.

19. The Committee also note that Member of Parliament representing tribal area was made member of the Council by the State Government of Himachal Pradesh *vide* notification dated 04<sup>th</sup> November, 1978 amending the Himachal Pradesh Tribes Advisory Council Rules, 1976. As per notification dated 17-06-1976 issued by the Government of Himachal Pradesh, non-official members of the Council is entitled to draw TA/DA. The rate of DA for each day of the meeting will be at the highest rate admissible to a Government of First Grade for the respective locality. Further, in addition to DA for the day(s) of the meeting, a member is also entitled to DA for halt on tour at out station in connection with affairs of the Council. Thus, it is evident that DA admissible to the Member of Parliament as non-official member of the Council is not covered under Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959 which defines 'Compensatory Allowance' admissible to Member of Parliament. This is contrary to the opinion expressed by the Department of Legal Affairs that DA is payable to the Member is admissible under Salaries and allowances of Member.

20. Since the appointment of Member of Parliament representing tribal area of Himachal Pradesh to the Council is automatic and the State Government has no control / discretion over his / her appointment / removal, the Committee are of the considered opinion that the nomination of Shri Ram Swaroop Sharma, MP to the Himachal Pradesh Tribes Advisory Council may not entail disqualification for being a Member of Parliament under Article 102 (1) (a) of the Constitution of India. However, he may not be entitled for any remuneration other than Compensatory Allowance as defined under Section 2(a) of the Act of 1959.

New Delhi

20 June, 2017  
30 Jyaistha, 1939 (Saka)

DR. SATYA PAL SINGH

Chairperson,  
Joint Committee on Offices of Profit

**EXTRACTS OF THE MINUTES OF THE FORTY FOURTH SITTING OF  
THE JOINT COMMITTEE ON OFFICES OF PROFIT  
(SIXTEENTH LOK SABHA) HELD ON 07 APRIL, 2017**

The Committee met on Friday, 07<sup>th</sup> April, 2017 from 1500 hrs to 1545 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

**PRESENT**

Dr. Satya Pal Singh - Chairperson

**MEMBERS**

**LOK SABHA**

2. Smt. Meenakshi Lekhi
3. Smt. Supriya Sule

**RAJYA SABHA**

4. Shri C.P. Narayanan
5. Shri Dilipbhai Pandya

**SECRETARIAT**

1. Shri U.B.S. Negi - Joint Secretary
2. Smt. Rita Jaikhani - Director
3. Smt. Maya Lingi - Additional Director

**REPRESENTATIVES OF THE MINISTRY**

**MINISTRY OF LAW AND JUSTICE  
(i) DEPARTMENT OF LEGAL AFFAIRS**

1. Shri Suresh Chandra Law Secretary
2. Shri Inder Kumar Additional Secretary
3. Shri P.K. Behara Deputy Legal Adviser



## (ii) LEGISLATIVE DEPARTMENT

- |    |                        |                                |
|----|------------------------|--------------------------------|
| 1. | Dr. N.R. Battu         | Joint Secretary                |
| 2. | Ms. Veena Kothavale    | Additional Legislative Counsel |
| 3. | Shri R.S. Jayakrishnan | Assistant Legislative Counsel  |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and briefly apprised them about the agenda of the sitting, i.e. Draft Twentieth Report regarding the Review of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 in respect of Bodies under the Ministry of Development of North Eastern Region and to take oral evidence of the Ministry of Law and Justice (legislative Department and Department of Legal Affairs) regarding the nomination of Shri Ram Swaroop Sharma, MP Lok Sabha as Member in the Himachal Pradesh Tribes Advisory Council.

3. XX XX XX XX

4. Thereafter, the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) ushered in.

5. At the outset the Chairperson welcomed the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) to the sitting of the Committee and apprised them about the agenda. The representatives of the Ministry of Law and Justice (Legislative Department) stated that as per Rule 3 Sub-Rule (1) clause 4(i) of the Himachal Pradesh Tribes Advisory Council Rules, 1976, Hon'ble Member of the Lok Sabha representing the Tribal Area of the Himachal Pradesh shall be the Member of the Council. Further, Rule 5 of the said Rules state that the Member nominated to the Council shall continue to hold office during the tenure of his membership of the Lok Sabha. So, there would be no discretion over their appointment and the Government has no power to remove him from his office.

6. With regard to allowances, Rule 31 of the Rules state that the Members shall be eligible for such travelling allowances as may from time to time be prescribed by the said Rules. So, the allowances payable to the Hon'ble Member do not exceed the compensatory allowances so it will not incur any disqualification from the Member of Parliament. Hence, the Member of the Lok Sabha nominated to the said Council, may not entail disqualification. Regarding daily allowance, the notification of

Government of Himachal Pradesh Welfare Department dated 17<sup>th</sup> June, 1976 state that the non-official members who are members of the Vidhan Sabha shall be entitled to TA and DA in respect of the journeys performed in connection with the work of the Council on the scale admissible under the Salaries and Allowances of Members of Legislative Assemblies as amended from time to time.

7. The representatives of the Ministry of Law and Justice further stated that order dated 17<sup>th</sup> June, 1976 of Himachal Pradesh clearly mentions that Member of Parliament would be the non-official Member of the Council and will be entitled to draw travelling and daily allowance in respect of journeys etc. that may be performed in connection with the affairs of the Council. It is further stated that the non-official Member will be entitled to daily allowance for each day of the meeting at the highest rate admissible to a Government servant of the first grade officer for the respective locality. The notification was issued in the year 1976 and the Member of Parliament was nominated in 1978 by amending the rules.

8. With regard to the query about any amendments made after the year 1978, the representatives of the Ministry of Law and Justice responded that the State Government of Himachal Pradesh has not provided any material on the matter. The Committee pointed out that there is no problem about Travelling Allowance but DA has not been specified. They have mentioned that what is admissible to the first grade officer would be admissible to him. At this instant, representatives of the Ministry of Law and Justice stated the State Government of Himachal Pradesh should be asked to whether they have exempted the Member of Parliament from application of DA Rules.

9. Thereafter, the Chairperson thanked the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs).

10. The Committee then adjourned.

11. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.



Parliament to the Himachal Pradesh Tribes Advisory Council and (ii) Draft Report on nomination of Shri Dushyant Singh, Member of Parliament as a Member to the re-constitution of Saharia Vikas Samittee, Jaipur.

3. The Committee then considered the above mentioned draft Reports of the Committee and adopted without any modification. The Committee authorised the Chairperson to finalise and present the same to the Parliament during the ensuing Monsoon Session 2017.

4. XX XX XX XX

5. The Committee then adjourned.

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XX Does not pertain to this Report.