

**COMMITTEE ON SUBORDINATE LEGISLATION**

**(THIRTEENTH LOK SABHA)**

**(2002-2003)**

**SEVENTH REPORT**

**(PRESENTED ON 21.11.2002)**

**LOK SABHA SECRETARIAT**

**NEW DELHI**

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**

**(2002-2003)**

1. Shri P.H. Pandian - Chairman
2. Shri Bhim Dahal
3. Shri Ramdas Rupala Gavit

4. Shri Paban Singh Ghatowar
5. Dr. M. Jagannath
6. Shri Ram Singh Kaswan
7. Shri Suresh Kurup
8. Shri Ashok N. Mohol
9. Shri Pravin Rashtrapal
10. Shri Anadicharan Sahu
11. Prof. I.G. Sanadi
12. Smt. Sushila Saroj
13. Shri Ramjiwan Singh
14. Dr. Ram Lakhan Singh
15. Dr. N. Venkataswamy

SECRETARIAT

1. Shri John Joseph - Additional Secretary
2. Shri Ram Autar Ram - Joint Secretary
3. Shri A.K. Singh - PCPI
4. Shri J.S. Chauhan - Under Secretary

## **INTRODUCTION**

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

The matters covered by this Report were considered by the Committee at their sitting held on 15.5.2002.

The Committee considered and adopted this Report at their sitting held on 2.8.2002. The Minutes\* of the sittings relevant to this Report are appended to it.

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

**(P.H. PANDIAN)**

**CHAIRMAN, COMMITTEE ON SUBORDINATE LEGISLATION**

**NEW DELHI;**



## **I. THE CENTRAL SUPERVISORY BOARD (TRANSACTION OF BUSINESS) REGULATIONS, 1999 (GSR 73-E OF 1999)**

The Central Supervisory Board (Transaction of Business) Regulations, 1999 were published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 8 February, 1999. It was observed therefrom that Rule 3 & 4 of the rules prescribe the procedure for transaction of business in meetings of the Central Supervisory Board. However, the regulations were not found to contain any provision for circulation of minutes of the meeting of the Supervisory Board. It was felt that the same should be provided in the regulations so as to enable the absentee member to know about the proceedings of the meeting. Accordingly, the Ministry of Health and Family Welfare were asked to state whether they had any objection in amending the regulations to this effect.

1.2. In their reply dated 11 August, 1999, the Ministry of Health and Family Welfare stated that they had no objection for making additional provisions in the Central Supervisory Board (Transaction of Business) Regulations for circulation of Minutes of the meetings of the Central Supervisory Board.

1.3. The Ministry vide their O.M. dated 22.9.2000 have now furnished a printed copy of the Gazette Notification carrying the desired amendment in the rules issued by them vide GSR 704-E dated 31.8.2000.

**1.4 The Committee note from the above regulations that it prescribed the procedure for transaction of business in meetings of the Central Supervisory Board but there was no provision for circulation of minutes of the meeting so as to enable the absentee members to know about the proceedings of the meetings. The Committee note with satisfaction that on being pointed out, the Ministry of Health and Family Welfare have amended the regulations to the desired effect by incorporating a provision for circulation of Minutes vide GSR No. 704-E dated 31.8.2000.**

## **II .The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000 (GSR 639-E of 2000)**

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000 were published in the Gazette of India, Extraordinary, Part II, Section 3(i) dated 27 July, 2000. The Ministry of Social Justice and Empowerment were requested to furnish their comments on the following points which arose therefrom:-

“i) Sub-rule (3) of Rule 10

The above sub-rules provided that no quorum shall be necessary for the adjourned meeting. The Ministry were asked to state the rationale behind prescribing that ‘No quorum shall be necessary for the adjourned meeting’ as such a provision was likely to defeat the very purpose of the requirement of quorum.

ii) Sub-rule (5)(i) of Rule 10

It had been prescribed that if the meeting is adjourned to the following day, the Notice would be given to only those members available at that place. This provision seemed unjustified as the meeting had been adjourned only on the ground of lack of quorum and, therefore, it was felt that every effort must be made to ensure the required quorum at the subsequent meeting. Therefore, the Notice/message for the adjourned meeting should be sent to all the members by messenger/telephone/telex/fax/telegram etc.

2.2 The Ministry of Social Justice and Empowerment in their reply dated 19 March, 2001 stated as under:-

“The provision relating to quorum in the National Trust rules is quite elaborate. Generally, quorum is not required for adjourned meetings because it may result in delay in taking decisions. As far as the question of giving notice to the members available at the place of meeting is concerned, it is only in those cases where the adjourned meetings is called on the following day. For those situations where adjourned meetings are fixed up with a gap, the provision is of giving notice to all the members. For an adjourned

meeting to be held on the following day, it is not possible to give notice to all the Members.”

**2.3 The Committee observe that sub- rule (3) of Rule 10 of the above rules prescribed that a meeting could be adjourned for want of quorum to the following day or to some other future date. Further where a meeting was adjourned for want of quorum to the following day, notice would be served only to the Members available at the place of meeting and not to all the Members as the Ministry of Social Justice and Empowerment felt that it was not possible to give notice to all the Members. According to them this provision might curtail the likely delay in taking the decisions.**

2.4 The Committee do not find the provisions justified as it seems illogical to hold a meeting even without the quorum which was earlier adjourned for want of quorum as it was likely to defeat the very purpose of the requirement of quorum. The Committee, therefore, desire that the Ministry should amend the aforesaid rules so as to meet the requirement of the quorum as far as possible for all the sittings and should also serve notice of meetings adjourned to the following day to all the Members of the Trust whether available at the place of meeting or not with the exception of adjourned meetings for the same day.

### **III. The Notaries (Second Amendment) Rules, 2000 (GSR 262-E of 2000)**

The Notaries (Second Amendment) Rules, 2000 were published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 28 March, 2000. It was observed therefrom that the rules did not contain the commencement clause to denote the date of commencement of the amendment rules. Normally all rules are brought into force w.e.f. the date of their publication in the Gazette or from a specified date to be mentioned in the rules, by way of a commencement clause. The matter was, therefore, referred to the Ministry of Law, Justice and Company Affairs for getting the clarification thereon.

3.2. The Ministry in their communication dated 13 December, 2000 stated as under:-

“..... that as per the law laid down in State of Madhya Pradesh Vs. Abdul Khalil, 1974 C.R.L.J. 1113, where no express provision is made regarding commencement of a particular rules, they are deemed to have come into effect from the date of their publication in the Official Gazette. Accordingly, the date of commencement of the Notaries (second Amendment) Rules, 2000 (GSR 262-E of 2000) is the date of their publication in the Official Gazette, i.e., 28.3.2000. No amendment in the said Rules is considered necessary.”

3.3. Since the reply of the Ministry was not satisfactory, the attention of the Ministry was drawn to the recommendation of the Committee on Subordinate Legislation contained in para 12 of their Second Report (Seventh Lok Sabha) where the Committee had recommended that all rules should invariably contain a commencement clause to indicate the date of their coming into force so as to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. The Ministry were stressed upon to follow such practice uniformly in the case of statutory `Orders` notified by various Ministries/Departments of the Government of India.

3.4 The Ministry vide their communication dated 4.6.2001 enclosed a copy of the corrigendum published by them in the Gazette of India Notification No. GSR 255-E dated 11.4.2001 containing the sub-clause to denote the date of commencement of the rules.

**3.5 The Committee observe that the above rules does not contain the usual commencement clause which is normally incorporated in all statutory `orders` to denote the date of their commencement. The Committee are happy to note that though initially reluctant, once their attention was drawn to the recommendation of the Committee on Subordinate Legislation contained in para 12 of their Second Report (Seventh Lok Sabha) that all rules should invariably contain a commencement clause to indicate the date of their coming into force so as to obviate any scope of confusion in the minds of persons for whose benefits the rules are framed, the Ministry have issued the desired corrigendum vide GSR 255-E dated 11.4.2001 so as to indicate the date of commencement of the rules by way of a sub-clause in the extant amendment rules. The Committee desire the Ministry to follow this practice in future also.**

#### **IV The Telecom Disputes Settlement and Appellate Tribunal (Salaries, Allowances and other Conditions of Service of Chairperson and Members) Rules, 2000 (GSR 778-E of 2000)**

The Telecom Disputes Settlement and Appellate Tribunal (Salaries, Allowances and other Conditions of Service of Chairperson and Members) Rules, 2000 were published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 9 October, 2000. It was observed therefrom that under rule 12 the Government could relax any of the provisions of the rules. It was felt that in order to avoid any misuse of the provisions, wherever any relaxation was made in the rules, the reasons therefor be recorded in writing. The matter was therefore referred to the Ministry of Communications for obtaining their comments thereon.

4.2. The Ministry in their communication dated 7 March, 2001 stated as under:-

“..... this Department has no objection to the amendments suggested by the Committee on Subordinate Legislation to Rule 12 of the Telecom Disputes Settlement and appellate Tribunal (Salaries, Allowances and other Conditions of Service of Chairperson and Members) Rules, 2000 dated 9<sup>th</sup> October, 2000.

Further, to avoid anomaly, similar modifications are also being made in the other rules notified by this Department under the TRAI Act, i.e. Telecom Regulatory Authority of India (Allowances to part-time Members) Rules, 2000 dated 18.8.2000 and the Telecom Regulatory Authority of India (Salaries Allowances and other Conditions of Service of Chairperson and whole-time Members) Rules, 2000 dated 26<sup>th</sup> June, 2000.”

4.3 **The Committee observe that Rule 12 of the above rules prescribe that the Government can relax any of the provisions of the rules and feel that in order to avoid any misuse of the provision, wherever any relaxation is made in the rules, the reasons therefor should be recorded in writing. The Committee note with satisfaction that on being pointed out, the Ministry of Communications have amended rule 12 of the above rules accordingly by incorporating the provision for recording in writing the reasons before giving any relaxation vide Gazette of India notification GSR 291-E dated 25 April, 2001. The Committee also appreciate the Ministry for having carried out similar amendments in some other rules also which contained similar provisions as contained in rule 12 of the extant rules.**

**The Committee desired that the rules so amended be placed on the Table of the Lok Sabha.**

#### **V. The Bureau of Police Research and Development Documentation Assistant (Group `C' Posts) Recruitment rules, 1999 (GSR 16 of 2000)**

**The Bureau of Police Research and Development Documentation Assistant (Group `C' Posts) Recruitment Rules, 1999 were published in the Gazette of India, Part-II, Section 3(i) dated 15 January, 2000. It was observed therefore that under Col. 7 read with Col. 8 of the Schedule appended thereto, the lower age limit of 18 years prescribed for direct recruits appeared to be redundant as the educational qualification and experience so prescribed, cannot be achieved at that age. The Ministry of Home Affairs were, therefore, requested to furnish the rationale behind prescribing the lower age limit of 18 years. The Ministry, were also requested to state whether they had any objection in amending the Recruitment Rules to the desired effect.**

5.2. The Ministry in their reply dated 26 June, 2000 inter-alia submitted that the lower age limit of 18 years was proposed in accordance with the broad criteria laid down for Group `C' posts by the Department of Personnel and Training in the guidelines for framing the recruitment

rules under the Government. The further stated that BPR&D is an attached office of the Ministry of Home Affairs and the matter was being referred to them.

5.3 In a further communication dated 6 September, 2000 the Ministry stated that the recruitment rules have been revised as suggested by this Secretariat and the draft notification to this effect has been vetted by the Ministry of Law and has been sent for Hindi translation and that the intimation regarding notification of these rules in the Gazette would be sent to Lok Sabha Secretariat.

5.4. The Ministry vide their reply dated 25 October, 2000 furnished a copy of the notification sent by them to the Government of India press carrying out the requisite amendment.

5.5. The Ministry was subsequently asked to furnish the printed copy of the Gazette Notification carrying the requisite amendment. In their final reply dated 15 February, 2001, the Ministry enclosed a copy of the Gazette Notification carrying the desired amendment in the Recruitment Rules issued vide GSR No. 428 dated 4.11.2000.

**5.6 The Committee observe that in the aforesaid rules under col. 7 read with col. 8 of the schedule appended thereto, the lower age limit of 18 years prescribed for direct recruits to the post of Documentation Assistant appears to be redundant as the educational qualifications namely degree and experience of 2 years in indexing and documentation course in a Library of Standing so prescribed are difficult to be achieved at that age. The Committee note with satisfaction that on being pointed out, the Ministry of Home Affairs have now under column 7 of the schedule, prescribed 21-27 years of age for the direct recruits to the said post so as to do away with the redundancy in the age limit as pointed out vide Gazette of India Notification No. GSR 428 dated 4.11.2000.**

**(P.H. PANDIAN)**

**CHAIRMAN, COMMITTEE ON SUBORDINATE LEGISLATION**

New Delhi;