

16.22 hrs

ALL-INDIA SERVICES (AMEND-
MENT) BILL

THE DEPUTY MINISTER IN THE
MINISTRY OF HOME AFFAIRS (SHRI
F H MOHSIN) Sir, I beg to move*.

"That the Bill further to amend
the All-India Services Act, 1951, as
passed by Rajya Sabha, be taken
into consideration"

As the House is aware, the All India Services Act, 1951, which has been enacted in pursuance of Article 312 of the Constitution, empowers the Central Government to make rules for regulating the recruitment and conditions of service, of the members of the All India Services. The Act does not specifically provide that the rules so framed will have only prospective effect, nor does it expressly state that no rules framed there under can be given retrospective effect. It was, therefore, assumed that rules could also be framed retrospectively to meet the exigencies of certain unavoidable situations. Accordingly, whenever it was absolutely necessary, some of the rules were amended with retrospective effect. However, in view of the opinion expressed by the Attorney General in connection with the Central Excise and Salt Act, 1944, we were advised that it would not be in order to give retrospective effect to subordinate legislation, unless the statute itself provided for such retrospective effect, either expressly, or by implication. The practice of amending the rules retrospectively was then discontinued and the State Governments were advised suitably in February, 1971.

The opinion of the Attorney General was also accepted and reiterated by the Committee on Subordinate Legislation of the Rajya Sabha, in their Fifteenth Report. In that report, the Committee recommended that if in any particular case, the rules had to be given retrospective effect due to un-

avoidable circumstances, Government should take immediate action to clothe it with legal sanction. Again, the Committee on Subordinate Legislation (Fourth Lok Sabha) in its second report presented to Parliament also suggested that where rules have to be given retrospective effect due to unavoidable circumstances, a clarification should be given to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.

It was decided to give effect to the recommendations of the Third Pay Commission concerning the All India Services, with regard to the revision of pay scales, death-cum-retirement benefits etc, from the same date as has been adopted for the Central Services, namely, 1st January 1973. This necessitated the amendment of the relevant rules with retrospective effect, because while the officials belonging to the services other than All India Services were given some of the revised benefits retrospectively from 1st January, 1973, it would have been an invidious distinction to deny similar benefits to the members of the All India Services. In order to give effect to the recommendations of the Third Pay Commission as regards All India Services Officers, five notifications were issued having retrospective effect. The matter was examined in detail, in consultation with the State Governments and the various authorities concerned. It was felt that the Government should have the power to amend rules retrospectively, to meet such exigencies.

In the present Bill, it is proposed to amend section 3 of the All India Services Act, 1951, so as to empower the Central Government to make rules with retrospective effect subject to the safeguard that no rule shall be made retrospectively so as to affect prejudicially the interests of any person. A provision has also been made in the Bill to give legal sanction to such existing rules as have been made with retrospective effect.

*Moved with the recommendation of the President.

I commend the Bill for the consideration of the House.

MR. CHAIRMAN: As there are no speakers, I will put the consideration motion to the House.

The question is:

"That the Bill further to amend the All India Services Act, 1951, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: We will now take up clause by clause consideration.

There are no amendments. The question is:

"That clauses 2 and 3 stand part of the Bill."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

MR. CHAIRMAN: The question is:

"That clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI F. H. MOHSIN: I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed".

The motion was adopted.

16.27 hrs.

FORMER SECRETARY OF STATE SERVICE OFFICERS (CONDITIONS OF SERVICE) AMENDMENT BILL

MR. CHAIRMAN: Now, we take up the Former Secretary of State Service Officers (Conditions of Service) (Amendment) Bill. Shri Mohsin.

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI F. H. MOHSIN): I beg to move:*

"That the Bill to amend the Former Secretary of State Service Officers (Conditions of Service) Act, 1972, as passed by Rajya Sabha, be taken into consideration."

Section 8 of the Principal Act not only extinguished the right of the Former Secretary of State Service Officers to claim pension in sterling but also imposed a statutory obligation on such officers to refund to the Government the pension drawn by them at a rate in excess of rate of rupees thirteen and one third to the pound sterling. This provision was made mainly to prevent certain retired I. C. S. Officers to claim higher pensions through courts after the devaluation of rupee. However, certain officers were entitled to higher rate of pension under the Civil Service Regulations. Because of the retrospective operation of Section 8 of the principal Act these officers not only lose heavily in their future pensions but are also required to refund excess pension drawn by them in the past for several years. The average age of these 9 officers is about 84 years. They deserve sympathetic consideration. A few retired officers who are foreigners, have been residing abroad prior to the 1st October, 1972. 3 of these officers have been receiving their pension in sterling through the High Commission India in London. The remaining few (according to the information available, their number is also 3) officers could not, however,

*Moved with the recommendation of the President.