C. B. II No. 255-Vol. IV

COMMITTEE
ON
SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

FOURTH REPORT

(Presented on the 30th August, 1972)

LOK SABHA SECRETARIAT
NEW DELHI

August, 1972/Bhadra, 1894 (Saka)

Price : Rs. 1·50

LOK SABHA SECRETARIAT

Corrigenda to the Fourth Report of Committee on Subordinate Legislation (Fifth Lok Sabha).

Page	Para	Line	For	Read
(i)	item IX	1	lass	Class
9	32	14	priod	period
17	55	7	recokned	reckoned
18	-	8 from bottom	madt	made
19	Heading (iii)	1	CREAMIC	CERAMIC
	58	7	Government	Government.
20	61	10	commend	command
		14	two-thrids	two-thirds
21	Heading	3	omit '(MEMORANDUM NO. 31)'	
	65	16	Rule	Rules.
22	-	11	ensured	enured
23	-	14 from bottom	reasons	reason
24	-	10 from bottom	respected	respect
25	70	2	sub-rule(5)	sub-rule(5A)
	71	9	clapsed	elapsed
27	S.No.1 (Col.3)	1	Post Office Savings Banks Rule, 1965. In then	The Committee are not convinced by the rea-
28	S.No.5 (Col.3)	1	incite	invite
29	S.No.7 (Col.3)	1	Firtst	First

P.T.O.

Page	Para	Line	For	Read
30	S.No.9 (Col.3)	11	deseire	desire
	S.No.12 (Col.3)	1	Reports	the Report
31	Col.3	2	Licence	licence
	S.No.14 (Col.3)	6	(Fifth Lok Sabha). That	(Fifth Lok Sabha) that
37	3	6	S.Q.	S.O.
38	-	3 (Col.3)	Stores,	Stores
	S.No.6	4 (Col.3)	vinyl	Vinyl
		5	rules	Rules
			497	457
39	-	28	ensured	enured
40	-	9	reguiarise	regularise
44	16	5	servant	servants
	17	1	Subbordinate	Subordinate
45	-	6	reasons	reason
	-	13	keeping in	keeping
	-	16	concultation	consultation
69	4	6	6	6%
72	1	11	Paranje	Paranjpe

CONTENTS

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1972-73)

Shri Vikram Mahajan—*Chairman*

2. Shri Frank Anthony
3. Shri M. C. Daga
4. Shri Dharnidhar Das
5. Shri T. H. Gavit
6. Shri Samar Guha
7. Shri Subodh Hansda
8. Shri Dinesh Joarder
9. Shri S. A. Kader
10. Shri G. Y. Krishnan
11. Shri Y. S. Mahajan
12. Shri S. N. Misra
13. Shri D. K. Panda
14. Shri K. Narayana Rao
15. Shri Tulmohan Ram

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

8. In their reply, the Ministry of Finance, *inter alia,* stated as follows:—

> ".....a case arose where the depositor went to the court alleging less payment than that was entered in the warrant of payment on the application form for withdrawal. Actually, the depositor had left the space for the amount to be withdrawn unfilled on the withdrawal form and the amount was filled in by the post office. The Court believed the evidence of the depositor for having sought to withdraw only the amount which had been actually paid to her and not the amount shown on the withdrawal form.
>
> When this question was referred to the Ministry of Law, they advised that to safeguard the Deptt's interests, the rules should be amended to provide specifically that the depositor must ensure that the amount sought to be withdrawn is entered in the application form for withdrawal and that the Department will not be liable if any fraud takes place whether by a Departmental employee or by an outsider due to the failure of the depositor to comply with this requirement of filling in the amount to be withdrawn in the application form for withdrawal before the same is submitted duly signed by him to the Post Office for withdrawal.
>
> It is in these circumstances that notification No. G.S.R. 956 of 1969 was issued."

9. The Committee are not convinced by the reasons given by the Ministry of Finance for the introduction of sub-rule (2) of Rule 18 of the Post Office Savings Banks Rules, 1965. In their opinion, Government owes a duty to safeguard the interests of illiterate depositors who deposit their hard-earned savings with Government in good faith. The Committee desire that the sub-rule in question should be omitted, and the postal employees instructed not to accept a form which is not complete in all respects.

III

THE CENTRAL CIVIL SERVICES (LEAVE) RULES, 1972 (S.O. 940 OF 1972)

10. Rule 50(5)(ii) of the Central Civil Services (Leave) Rules, 1972 provides that study leave shall not ordinarily be granted to a

Government servant who does not hold a Gazetted post under the Government.

11. The Ministry of Finance (Department of Expenditure) were asked to state the considerations for drawing a distinction between Gazetted and non-Gazetted Government servants in the matter of grant of study leave. They were also asked whether they had any objection to omitting this provision from the Rules.

12. In their reply, the Ministry of Finance (Department of Expenditure) have *inter alia* stated as follows:—

> "The provisions now contained in rule 50(5)(ii) of the Central Civil Services (Leave) Rules have been in existence for a number of years. In the absence of the file of 1925 in which the Government of India decision quoted above was taken, it is not possible to state categorically the considerations which underlay the decision.
>
> The provision in question does not entirely rule out the grant of study leave to non-gazetted Government servants and in practice, the provision in rule 3(5)(ii) of the Study Leave Rules, 1962 [corresponding to new rule 50(5)(ii)] has been relaxed in deserving cases and study leave has been granted to non-gazetted Government servants for higher studies, for specialised training in professional subjects or for specialised training in technical subjects having direct and close connection with the spheres of duty of the Government servants. These relaxations were agreed to by this Ministry on the basis of recommendations of the administrative Ministries on grounds such as equipping the Government servant for better performance of his duties or non-availability of persons possessing requisite qualifications to serve in remote areas like NEFA and LMA Islands.
>
> The Ministry have no objection to the provision referred to above being omitted from the rules."

13. The Committee see no justification for a differentiation between Gazetted and non-Gazetted Government servants in the matter of grant of study leave. They desire that Clause 50(5)(ii) of the Central Civil Services (Leave) Rules, 1972 providing for such differentiation should be omitted from the Rules.

IV

THE IRON AND STEEL (CONTROL) AMENDMENT ORDER, 1972 [S.O. 195(E) OF 1972]

14. Clause 11A of the Iron and Steel (Control) Order, 1956, as inserted by the Iron and Steel (Control) Amendment Order, 1972, empowers the Steel Controller to order suspension of supplies of iron and steel forthwith to any person against whom there exists a credible information, or a reasonable suspicion, of the contravention of any conditions laid down under the Iron and Steel (Control) Order, 1956 or the directions issued thereunder. A 'Note' below the new clause provides that the provisions of the clause shall be invoked only as an interim action, and shall be followed up with further action, regard being had to the circumstances of the case.

15. In order that the follow-up action against the persons suspected of contravention of the prescribed conditions was not inordinately delayed, the Ministry of Steel and Heavy Engineering (Department of Steel) were asked whether they had any objèction to laying down a time-limit within which the follow-up proceedings would be initiated. It was also suggested that the time-limit so prescribed could, for reasons to be recorded in writing, be further extended by a fresh order to be issued by the Steel Controller. In case, however, the Steel Controller was unable to initiate the follow-up proceedings within the prescribed time-limit or the extended time-limit, as the case may be, the supplies to the person concerned may be resumed.

16. The Ministry were also asked whether they had any objection to providing in the clause that reasons be recorded in writing by the Controller before he issued an order under the clause.

17. In their reply, the Ministry of Steel and Heavy Engineering (Department of Steel) have stated that the change suggested in paras 15 and 16 above are acceptable and suitable action to amend the clause accordingly would be taken by them in consultation with the Ministry of Law and Justice.

18. The Committee note with satisfaction the above reply of the Ministry of Steel and Heavy Engineering (Department of Steel). They desire that early effect should be given to the suggestions contained in paragraphs 15 and 16 above, and the clause in question amended accordingly.

V

THE INDIAN RAILWAY STORES SERVICE RECRUITMENT RULES, 1969 (G.S.R. 11 OF 1969)

19. Item 9 of the Appendix to the Indian Railway Stores Service Recruitment Rules, 1969 provided that the relative seniority of

officers recruited to the Service by the competitive examination held by the Union Public Service Commission will ordinarily be determined by the order of merit in the examination. However, the Government of India reserved the right of fixing seniority *at their discretion* in individual cases. The Government also reserved the right of assigning to officers appointed by other methods of recruitment positions in the seniority list *at their discretion*.

20. The Sub-Committee of the Committee on Subordinate Legislation, which considered the Rules at their sitting held on the 26th October, 1970, desired to know the genesis of item 9 of the Appendix.

21. The Ministry of Railways (Railway Board) to whom the matter was referred, have *inter alia*, stated as follows:

> "....item 9 of the Appendix to the Recruitment Rules for the Indian Railways Stores Service is based on a similar provision appearing in the Recruitment Rules for the various Railway Engineering Services, *viz.* Indian Railway Service of Engineers, Indian Railway Service of Mechanical Engineers, Indian Railway Service of Electrical Engineers and Indian Railway Service of Signal Engineers, which have been in vogue for a long time.....
>
> It may be mentioned that recently the Hon'ble High Court, Allahabad, while dismissing the writ petition No. 964 of 1969 filed by Shri K. K. Gupta, Deputy Director, Research Designs and Standards Organisation, Ministry of Railways, Lucknow, *Vs.* the Union of India and others, have held as invalid the above mentioned *clause of the Recruitment Rules for the Indian Railway Service of Signal Engineers so far as it empowers the Government to fix seniority of officers recruited otherwise than through Competitive Examination at their discretion. The reasons for declaring the above-mentioned clause invalid, as given by the Hon'ble High Court, are that an unguided power has been given to Government to fix seniority of officers at its discretion and the rule as framed can enable the Government to discriminate among persons similarly placed. As already stated above, a similar clause exists in the Recruitment Rules for all the Railway Engineering Services and the Indian Railway Stores Service. Therefore, action has

*Item 8 of Appendix I to the Indian Railway Service of Signal Engineers Recruitment Rules, 1962 (Appendix II).

been initiated in the Ministry of Railways to amend the above-mentioned clause in the Recruitment Rules for all the Services, in consultation with the Union Public Service Commission and the Ministry of Law."

22. The Committee note that the Ministry of Railways have since issued notifications* omitting item 9 of Appendix to the Indian Railway Stores Service Recruitment Rules, 1969 and similar provisions contained in Recruitment Rules relating to Railway Engineering Services. They desire that new provisions for regulating seniority of officers to be appointed to these services should be framed at an early date and furnished to the Committee for information.

23. The Committee would also like to invite the attention of the Ministries/Departments of Government to the former provision governing seniority of officers appointed to the Indian Railway Service of Signal Engineers otherwise than through competitive examination, which has been held to be invalid by the Allahabad High Court on the ground that it gave unguided power to Government to fix seniority in their discretion and could thus enable them to discriminate among officers similarly placed. The Committee would like the Ministries/Departments to examine whether they have any Rules containing a similar seniority provision giving unguided power to Government, and if so, to amend it in the light of the observations of the Allahabad High Court.**

VI

THE CENTRAL BUREAU OF INVESTIGATION (CLASS III POSTS) RECRUITMENT RULES, 1969 (G.S.R. 1630 OF 1969)

24. Proviso to Rule 3 of the Central Bureau of Investigation (Class III Posts) Recruitment Rules, 1969 provided that the upper age limit specified in the Schedule to the Rules "may be relaxed in the case of persons belonging to the Scheduled Castes, Scheduled Tribes or other special categories of persons in accordance with the general orders issued by the Central Government from time to time."

25. The Sub-Committee of the Committee on Subordinate Legislation (1970), which examined the aforesaid rules at their sitting held on the 26th October, 1970, desired to know whether the general

---

*Vide Notifications Nos. 72|E(GR)|I, 70|E(GR)|I|17|1, 72|E(GR)|I|19|1, 72|E(GR)|I|15|1 and 72|E(GR)|I|20|2, dated the 22nd May, 1972.

**Item 8 of Appendix I to the Indian Railway Service of Signal Engineers Recruitment Rules, 1962 (Appendix II).

orders, issued by the Central Government from time to time, relaxing the upper age limit in respect of persons belonging to the Scheduled Castes and Scheduled Tribes or other special categories of persons were published in the Gazette of India for the information of the general public.

26. The Ministry of Home Affairs, to whom the matter was referred, have stated as under:

> "....the orders providing for relaxation of age limit by 3 years in the case of candidates belonging to Scheduled Castes and Scheduled Tribes for recruitment to services under the Government of India were first issued in the Ministry of Home Affairs Resolution No. 42/21/49-NGS, dated the 13th September, 1950. The limit of relaxation was later raised from 3 years to 5 years in the case of non-gazetted and also gazetted posts *vide* Resolutions Nos. 42/19/51-NGS, dated the 25th June, 1952 and No. 15/1/55-SCT, dated the 30th April, 1955. These Resolutions were published in the Gazette of India. For other special categories of persons, orders were issued by executive insructions."

27. The Committee note that while age concessions relating to the Scheduled Castes and Scheduled Tribes were published in the Gazette in 1950 and 1955, those relating to 'other special categories of persons' were not published. The Committee desire that age concessions in respect of these categories should also be published in the Gazette. They further desire that wide publicity in newspapers, etc. should be given to all such orders so that the persons belonging to these categories could take full benefit of the age concessions allowed by Government.

VII

PUBLICATION OF RULES ETC. IN DRAFT FORM—TIME GIVEN TO PUBLIC TO SEND THEIR COMMENTS/SUGGESTIONS ETC.

28. In para 31 of their Sixth Report (First Lok Sabha), the Committee on Subordinate Legislation had observed as follows:—

> "The Committee feel that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to them to study the draft rules and send their comments before they are finalised. The Committee are of the opinion that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the gazette copies to various parts

of the country, should be given to the public to send their comments on such draft rules."

29. It was noticed that in the following cases, the time allowed to the public to send their comments/suggestions on the draft rules was less than 30 clear days:

No.	Name & Number of 'Order'	Date of publication of draft rules	Date on which Gazette containing draft rules was made available to the public	Date by which comments were invited	Time given to the public for sending comments
(1)	(2)	(3)	(4)	(5)	(6)
1	Ajowan Seeds (Whole) Grading and Marking Rules, 1970 (S.O. 536 of 1970).	19-10-68	2-11-68	20-11-68	17 days.
2	Chillies Grading and Marking (Amendment) Rules, 1970 (S.O. 2579 of 1970)	3-10-69	11-10-69	2-11-69	21 days.
3	Babina Cantonment (Division into Wards) Rules, 1970 (S.R.O. 242 of 1970)	18-2-70	28-2-70	18-3-70	17 days.
4	Ahmednagar Cantonment (Division into Wards) Rules, 1970 (S.R.O. 248 of 1970) . . .	13-2-70	21-2-70	13-3-70	19 days.
5	Ahmedabad Cantonment (Division into Wards) Rules, 1970 (S.R.O. 249 of 1970) . . .	10-3-70	21-3-70	10-4-70	19 days.
6	Saugor Cantonment (Division into Wards) Rules, 1970 (S.R.O. 278 of 1970)	3-3-70	14-3-70	3-4-70	19 days.

30. The Ministry of Agriculture whose attention was invited to the aforesaid recommendation of the Committee stated as under in respect of the rules specified at S. Nos. 1 and 2:—

"....the time given for public in the notification was no doubt just a month, and the Government of India Press took sometime in actual publication of the Notification. However, the requirement of sufficient period to be given to the public for inviting objections/suggestions has been noted for careful action in future."

31. The Ministry of Defence who were concerned with the rules at S. Nos. 3—6 stated as under:—

> ".....The practice followed hitherto by this Ministry has been to give 30 days' time from the date of publication of the draft rules in the Gazette for the submission of objections/suggestions by the public. In actual fact, however, objections are considered even if received later than the time limit. However, in view of the observation made in the office Memorandum under reference, it has been decided hereafter to give 60 days' time instead of 30 days as at present so that the public have not less than 30 clear days, excluding the time taken in the despatch of the Gazette notifications to the Cantonments concerned for the submission of objections/suggestions."

32. In para 31 of the Sixth Report (First Lok Sabha), the Committee on Subordinate Legislation had stressed that when the Acts gave a right to the public to send their comments on draft rules, it was only reasonable that sufficient time should be given to them to study the draft and send their comments on the provisions contained therein. To this end, the Committee had suggested that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the Gazette to various parts of the country, should be given to the public to send their comments on such draft rules. The Committee, however, regret to observe that in quite a number of cases, the above recommendation of the Committee has not been complied with, and the period allowed to the general public to send their comments/suggestions on the draft rules was well below the minimum priod of 30 days recommended by the Committee. The Committee will like to re-impress upon Ministries/Departments of Government the need for strict compliance with their afore-mentioned recommendation.

VIII

THE DELHI MILK SCHEME (PERSONNEL OFFICER) RECRUITMENT RULES, 1972 (G.S.R. 486 OF 1972)

33. Under the relaxation provision normally occurring in recruitment rules relating to Gazetted posts, the Central Government are empowered to relax, for reasons to be recorded in writing, any provision of the rules with respect to any class or category of persons; but this power has to be exercised *in consultation with the Union Public Service Commission.*

34. It was noticed that even though the rules in question related to a Gazetted post, the relaxation rule contained therein *viz.*, rule 6— did not provide for consultation with the U.P.S.C.

35. The Ministry of Agriculture (Department of Agriculture) who were asked to state the reasons for not following the normal practice in this case, have in their reply stated as follows:—

> "....There is no deviation from the normal practice. The mistake pointed out is a printing mistake. A corrigendum is being issued to rectify the printing error."

36. In the opinion of the Committee, the case underscores the need for utmost care in printing of rules, regulations, etc., which are nothing but law in force. They also feel that the responsibility of Ministry/Department should not cease with the sending of a notification to the Press. After the rules, regulations, etc., have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and, if necessary, to issue a corrigendum thereto.

IX

THE MINISTRY OF IRRIGATION AND POWER CLASS I AND CLASS II (GAZETTED) TECHNICAL POSTS RECRUITMENT RULES, 1972 (G.S.R. 485 OF 1972)

37. Rule 7 of the Ministry of Irrigation and Power Class I and Class II (Gazetted) Technical Posts Recruitment Rules, 1972 provided for relaxation of standard for candidates belonging to Scheduled Castes and Scheduled Tribes to make up the deficiency in the reserved quota, *irrespective of their ranks in the order of merit at the examination.*

There was, however, no provision in the Rules or the Schedule thereto for holding an examination for recruitment to posts covered thereby.

38. The Ministry of Irrigation and Power to whom the matter was referred have stated as follows:—

> "Rule 7 of the Ministry of Irrigation and Power Class I and Class II (Gazetted) Technical Posts Recruitment Rules, 1972 (G.S.R. 485 of 1972) was added on the advice of the Ministry of Law and Justice, as referred to in the Ministry

of Home Affairs O.M. No. 8/12/71-ESTS(SCT) dated 19-10-71. It has now been checked that the various posts referred to in the above mentioned recruitment rules which are to be filled by direct recruitment, have not to be filled on the basis of an examination but by interviews conducted by the U.P.S.C. Rule 7 of the Recruitment Rules, referred to above, is, therefore, being amended in the light of the Department of Personnel's O.M. No. 8/12/71-ESTS (SCT), dated 21-9-1971, in consultation with the Ministry of Law and Justice. A copy of the amending rules will be supplied to the Lok Sabha Secretariat soon after amendment to the Rules is issued."

39. The Committee note that even though the various posts referred to in the Ministry of Irrigation and Power Class I and Class II (Gazetted) Technical Posts Recruitment Rules, 1972 were intended to be filled by interview, Rule 7 thereof indicated that these were to be filled on the basis of an examination. In the opinion of the Committee, this was a regrettable case of carelessness. The Committee would like to emphasise the need for utmost care in drafting of subordinate Legislation. They desire that the Rule in question should be amended to the necessary effect at an early date.

X

THE RAILWAY SERVANTS (DISCIPLINE AND APPEAL) AMENDMENT RULES, 1969 (S.O. 1531 OF 1969)

40. S.O. 1531 of 1969, *inter alia,* added the following new rule to the Railway Servants (Discipline and Appeal) Rules, 1968:

> "32. Power of General Managers to frame subsidiary rules.— The General Manager may, in respect of non-gazetted railway servants under his administrative control make subsidiary rules not inconsistent with these rules or any rules made by the Railway Board, for the purpose of giving effect to the provisions of these rules, in so far as it is applicable to such non-gazetted railway servants."

41. The Sub-Committee of the Committee on Subordinate Legislation which considered the new Rule 32 at their sitting held on the 27th October, 1970 *inter alia, desired,* to be furnished with the following information:—

(i) The genesis of the new Rule 32; and

(ii) the reasons for empowering the General Managers to frame subsidiary rules in respect of non-Gazetted railway servants.

42. In their reply, dated the 14th June, 1971 the Ministry of Railways stated at follows:—

> ".....the relevant records have been looked into as far back as 1929, from which it is, observed that even in the then rules there was a provision empowering the General Managers (then called Agents) to frame subsidiary rules to give effect to the main rules. The old records do not throw any light on the reasons for framing this rule. The old rules were not exhaustive and did not cover all contingencies. Perhaps, it was for this reason that the General Managers were given powers to frame subsidiary rules for giving effect to the main rules, as too much centralisation in this respect could lead to confusion and delay in finalising the disciplinary cases. The existing rules are quite exhaustive as compared to the old rules but the question whether it was necessary to continue the aforesaid provision was not specifically examined keeping this point in view. The entire question whether or not the existing provision in rule 32 should be continued is being examined in consultation with the Railway Administrations and a suitable reply will be sent to your Secretariat as soon as a decision is taken in the matter."

43. In a further communication dated the 9th November, 1971, the Ministry of Railways, *inter alia*, stated as follows:—

> "Replies received from all the Railway Administrations revealed that none of them have framed any subsidiary rules subsequent to the introduction of the Railway Servants (Discipline and Appeal) Rules, 1968, in exercise of the powers vested in the General Managers by rule 32 thereof.
>
> Prior to the introduction of the Railway servants (Discipline and Appeal) Rules, 1968, certain Railway Administrations had published booklets containing the then Discipline and Appeal Rules, instructions issued in connection therewith and 'subsidiary rules' framed by the General Managers, in terms of the rules then in force. An examination of the booklets revealed that they contained mostly the instructions issued by the Railway Board from time to time

and there were hardly any rules as such in its true sense. The General Managers are also of the view that since the existing rules are exhaustive enough to cover all contingencies, it may not be necessary for them to frame any subsidiary rules.

Taking all the facts into consideration, the Railway Board have decided that it is not necessary to give powers to the General Managers to frame subsidiary rules and Rule 32 of the existing rules should be deleted.

The above position may be brought to the notice of the Committee on Subordinate Legislation. Necessary action to delete the rule will be taken only after hearing from the Lok Sabha Secretariat."

44. The Committee desire the Ministry of Railways (Railway Board) to take necessary action to delete Rule 32 of the Railway Servants (Discipline and Appeal) Rules, 1968 as inserted by S. O. 1531 of 1969.

XI

IMPLEMENTATION OF RECOMMENDATIONS

(i) Explosives Rules, 1940 [Paragraphs 40, 41 and 43 of Sixth Report (Fourth Lok Sabha)]

45. During the course of examination of the Explosives Rules, 1940, as amended from time to time, the following two points were noticed:

(i) There was no provision in Rules 92 and 93, *ibid*, requiring the licensing authority to give an opportunity of being heard to the applicant, before his application for amendment or renewal of licence was rejected or to a licence holder before his licence was suspended or cancelled, and if the Central Government happened to be a licensing authority, even the requirement of recording the reasons in writing had been dispensed with; and

(ii) the fee to be charged for the grant of licence, etc. for purposes specified in column 3 of Schedule IV of the said Rules, was not mentioned against serial Nos. 8 and 9 in column 5 thereof and it was left to be prescribed by the Central Government, but it was not clear whether such

fee would be prescribed by a general notification published in the Gazette or prescribed from time to time by *ad hoc* Orders of the Central Government.

46. The above points were referred to the erstwhile Ministry of Industrial Development and Company Affairs (Department of Industrial Development) on 3-5-1968. But it was only on 29-7-1970— one day before the representative of the Ministry was summoned to appear before the Committee for evidence— that Government issued draft amendments to Rules inviting objections and suggestions from the affected parties. The reason given by the Ministry for the delay of more than two years in issuing the draft amendments to the Rules was that it took a longer time than it should have taken in getting the above rules vetted from two or three Ministries/Departments.

47. The Committee (1970-71) which considered the matter, made the following observations in paras 40, 41 and 43 of their Sixth Report (Fourth Lok Sabha):—

(i) "The Committee regrets to observe that it took Government more than two years to issue draft rules for amending rules 92 and 93 and Article Nos. 8 and 9 in Schedule IV appended to Explosives Rules, 1940. Even the communications received from Government did not give straight replies to the queries raised by the Committee. The Committee deplores this tendency on the part of a Ministry of the Government of India to treat queries from a Parliamentary Committee in such a light-hearted manner."

(ii) "The Committee is not convinced with explanation given by the representative of the Ministry during the course of his evidence that 'it took a longer time than it should have taken in getting the rules vetted from two or three Ministries/Departments', particularly when the draft rules have been published in the Gazette only on the 29th July, 1970, i.e., one day before the Ministry was summoned to appear before the Committee for evidence. The Committee feels that Government should have taken prompt action when it was brought to its notice that the Rules framed by it denied the applicants/licence holders an

opportunity of being heard when their applications for amendment or renewal or licences were rejected or their licences were suspended or cancelled."

(iii) "The Committee also recommends that a provision should be made in the Explosives Rules, 1940, making it incumbent on the Licensing Authority to give a speaking order to the licence-holder, whose licence is suspended or cancelled so that he may know the reasons for such an order and may seek legal remedies, if he so desires."

48. In their action taken note on the above observations|recommendations of the Committee, the Ministry have stated as follows:—

"..... the recommendations contained in the Sixth Report of Committee on Subordinate Legislation (Fourth Lok Sabha) relating to the amendments in rules 92 and 93 of the Explosives Rules, 1940 and in Schedule IV to the above Rules regarding prescribing of fees etc., have since been implemented. In this connection a copy each of the two notifications No. 11(17)|71-LI(II) dated the 24th June, 1971 issued by this Ministry is*forwarded herewith for ready reference."

49. From a perusal of the two notifications dt. 24-6-1971 referred to by the Ministry in their reply, the Committee observe that Rules 92 and 93 and Schedule IV have been amended to the following effect:

(a) The Central Government, which under the original Rules, was not required to record in writing the reasons for refusing to grant, amend or renew a licence or for suspending or cancelling a licence, will have to fulfil this requirement.

(b) Rates of fees in respect of Article 8 have been laid down in Schedule IV. Article 9, together with the relevant entries, has been omitted from Schedule IV.

(c) Before refusing to grant, amend or renew a licence, the licensing authority shall give to the applicant an opportunity of being heard.

(d) Likewise, before suspending or cancelling a licence, the licensing authority shall give to the licence-holder an opportunity of being heard. However, no such opportunity shall be given in cases,—

(i) Where the licence is being suspended for violation of any of the provisions of the Act or these rules, or of

*Not printed.

any condition contained in such licence and in the opinion of the licensing authority, such violation is likely to cause danger to the public; or

(ii) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interests of the security of the State, such opportunity should not be given.

50. The Committee are satisfied with the action taken by Government as per (a) to (c) of the preceding paragraph.

51. As regards (d), ibid., the Committee feel that while the authority concerned might not give an opportunity of being heard to a licence-holder in the circumstances mentioned in (i) and (ii) above in cases of suspension, a reasonable opportunity of being heard must be given to a licence-holder before his licence is cancelled. They also feel that the maximum period for which a licence could be suspended by the competent authority should also be laid down in the Rules.

(ii) COTTON TEXTILE COMPANIES (MANAGEMENT OF UNDERTAKINGS AND LIQUIDATION OR RECONSTRUCTION) RULES, 1968 (G.S.R. 619 OF 1968) [PARA 22 OF THE SECOND REPORT (FIFTH LOK SABHA)]

52. Rule 4(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, provided that a member or a creditor of a textile company proposed to be wound up may, within a period of 15 days from the date on which a notice is sent to him, make representation to the Central Government regarding the reserve price for the sale of the undertaking as a running concern, as determined by the authorised person. Likewise, under Rule 5(3), a member or a creditor may, within a period of 15 days from the date on which the notice is sent to him, make suggestions and objections to the authorised person regarding the draft scheme for the reconstruction of the textile company.

53. As under the above Rules, the period of 15 days was to be reckoned with reference to the date of issue of notices, it was felt that a member or a creditor might not get a fair opportunity of making representations, etc., in case there was an undue delay in the delivery of notices to him.

54. The Ministry of Foreign Trade, with whom the matter was taken up, stated as follows in their reply:—

> ".....it has been decided to extend the period of notice mentioned in Rules 4(3) and 5(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, from 15 days to 21 days and at the same time to authorise the authorised person to grant extension of the period in cases where he is satisfied that there was undue delay in the delivery of notice to the members|creditors concerned."

55. Commenting upon the above reply of the Ministry of Foreign Trade, the Committee observed as follows in para 22 of their Second Report (Fifth Lok Sabha):

> ".....The Committee feel that these steps, though in the right direction, are not adequate enough. They desire that the period allowed for making representations, etc. should be recokned with reference to the date of receipt of notices by the members|creditors concerned, and, in case they refuse to receive the notices or sign the acknowledgement, with reference to the date of such refusal. In case, the postal authorities, in pursuance of the normal procedure, cannot find the members/creditors concern or any of their agents duly empowered to receive the notices on their behalf, arrangements may be made for the affixation of notices on the outer door or some other conspicuous part of the premises shown in the last address of the members|creditors concerned, and the relevant period reckoned with reference to the date of affixation."

56. In their action taken note on the above recommendation of the Committee, the Ministry of Industrial Development have stated as follows:—

> ".....the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Act, 1967 has been repealed by the Industries (Development and Regulation) Amendment Act, 1971. As the provisions of the Cotton Textile Companies Act have now been incorporated in the Industries Act, action is being taken to frame a fresh set of rules so that they become applicable to all Scheduled Industries including the cotton textile industry. The proposed rules will mainly have to be on

the lines of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968.

The recommendation made by the Committee on Subordinate Legislation (Fifth Lok Sabha) in its Second Report that the notice period of 21 days laid down in rule 4(3) and 5(3) of the Cotton Textile Companies Rules should be reckoned with reference to the date of receipt of the notice by the members|creditors concerned and in case they refuse to receive the notice or sign the acknowledgement, with reference to the date of such refusal, has been examined. Similarly, the recommendation that in case the postal authorities cannot find the members|creditors concerned or any of their agents duly empowered to receive the notice on their behalf, arrangements may be made for the affixation of the notice on the outer door or some other conspicuous part of the premises shown in the last address of the members|creditors and the relevant period of notice should be reckoned with reference to the date of affixation, has also been examined. It appears that acceptance of the aforementioned recommendations is likely to lead to certain practical difficulties for there will not be one date of receipt of such notice and different creditors and members may receive the notice on different dates; in some cases it would be reckoned from the date of refusal of the notice, in some cases it would be from the date of affixation of the notice on the outer door of the premises of the creditors and members. In the interest of speedy rehabilitation of sick units, Government would be anxious that the scheme of reconstruction or sale should be put into effect at the earliest. We are, therefore, finding it somewhat difficult to accept the recommendation of the Committee on Subordinate Legislation. In this connection, however, it may be mentioned that earlier the notice period was for 15 days and it was mainly with a view to meeting the objection madt by the Committee on Subordinate Legislation that some members do not get fair opportunity of making representations etc., that the aforesaid period of 15 days was extended to 21 days. It was also provided in the rules that where the authorised person is satisfied that there was undue delay in the delivery of the notice to the members|creditors concerned, he may grant extension of the notice period."

57. The Committee are not convinced by the argument advanced by the Ministry of Industrial Development for not accepting the recommendation of the Committee contained in para 22 of their Second Report (Fifth Lok Sabha). The Committee would like to reiterate that the period allowed for making representations, etc. should be reckoned with reference to the dates of receipt of notices by the members|creditors concerned and, in case they refuse to receive the notices or sign the acknowledgement with reference to the date of such refusal. The Committee desire that the relevant provision in the new rules to be framed by Government under the Industries (Development and Regulation) Amendment Act, 1971 should be in accord with the above-mentioned recommendation of the Committee.

(iii) EXPORT OF CREAMIC PRODUCTS (INSPECTION) RULES, 1969 (S.O. 2335 OF 1969) AND THE EXPORT OF VINYL FILM AND SHEETING (INSPECTION) RULES, 1969 (S.O. 457 OF 1969) [PARA 28 OF THE SECOND REPORT (FIFTH LOK SABHA)]

58. Rule 7(1) of the Export of Ceramic Products (Inspection) Rules, 1969 provides that any person aggrieved by the refusal of the Export Promotion Agency to issue a certificate declaring a consignment as export-worthy could, within ten days of receipt of such refusal by him, prefer an appeal to a panel of experts, consisting of not less than three persons, appointed for the purpose by the Central Government Sub-Rule (3) of Rule 7 provides that "the decision of experts shall be final."

59. The provisions of Rule 7 of the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 are similar to those of Rule 7 of the Export of Ceramic Products (Inspection) Rules, 1969.

60. The Ministry of Foreign Trade, who were requested to indicate their views regarding the making of a specific provision in the Rules for inclusion of a non-official/non-officials in the panel of experts, *inter alia*, stated as follows:—

> "Regarding the suggestion for stipulating a specific provision in the rules for inclusion of non-official(s) in the panel of experts, this Ministry are of the view that the same does not appear to be necessary. *Appellate panels invariably contain the names of non-officials who are expert in the line.*"

61. The Committee were not satisfied with the above reply of the Ministry of Foreign Trade, and observed as follows in para 28 of their Second Report (Fifth Lok Sabha):—

> "The Committee note that under Section 7(5) of the Export (Quality Control and Inspection) Act, 1963, the decisions of the panel of experts on appeals to be preferred against the decisions of the Agency are to be final and are not to be questioned in any court of law. The Committee, therefore, consider it important that the constitution of the panel of experts is such as to commend the confidence of the aggrieved parties for its impartiality. They, therefore, feel that there should not be a specific provision in the rules for inclusion of non-officials in the panel of experts but that they should comprise at least two-thrids of the total membership of the panel of experts. The Committee desire that the rules should be suitably amended to include such a provision."

62. In their reply, the Ministry of Foreign Trade have submitted as follows:—

> ".....the recommendations made by the Committee on Subordinate Legislation in paras 23-28 of its report regarding inclusion of 2|3rd non-official members in the appellate panel have been noted.
>
> In this context it may be stated that non-official members are invariably included in the appellate panels by the Government of India with a view to seeing that panel's decision is objective. The Committee's recommendations that 2/3rd of membership of appellate panel should consist of non-official members is not likely to serve the purpose as the members of the trade have rivalries between them with the result that they may not take a just decision.
>
> The above fact may also kindly be brought to the notice of the Committee to consider the desirability of reviewing its decision to allow the present constitution of the panel."

63. The Committee are not convinced by the above arguments of the Ministry of Foreign Trade and would like to reiterate their earlier recommendation contained in para 28 of their Second Report (Fifth Lok Sabha).

XII

GIVING OF RETROSPECTIVE EFFECT TO RULES—THE INCOME-TAX (SECOND AMENDMENT) RULES, 1968 (S.O. 1112 OF 1968) (MEMORANDUM NO. 31)

64. The above mentioned S.O. *inter alia* provided that "the following rule shall be, and shall be deemed always to have been inserted" in Rule 19 of the principal rules:

> "(5A) The capital employed in a ship shall be taken to be the written down value of the ship."

65. The Ministry of Finance (Department of Revenue and Insurance), who were asked to state the reasons for the insertion of the above sub-rule with retrospective effect, stated as follows in their reply:—

> "Under section 84 of the Income-tax Act, 1961, newly established industrial undertakings owned by any assessee and approved hotels owned by an Indian company were eligible for a 'tax holiday' for a specified period. As a result of an amendment to this section through the Finance (No. 2) Act, 1967, the 'tax holdiay' concession was extended to Indian companies deriving profits from ships, retrospectively with effect from 1st April, 1962, *i.e.*, for and from the assessment year 1962-63. The concession consisted of the exemption from tax of profits upto 6 per cent per annum of the capital employed in the ship: the capital employed being computed in the manner to be prescribed in the Income-tax Rule In order to make a provision in the Income-tax Rules fo the purpose, sub-rule (5A) was added to rule 19 of the Income-tax Rules, 1962 which provided that the capital employed in a ship would be taken as the written down value of the ship. As stated above, the 'tax holiday' concession was extended to Indian companies deriving profits from ships with retrospective effect from 1st April, 1962. In order to make this concession meaningful, sub-rule (5A) of rule 19 of the Income-tax Rules, 1962 was also given retrospective effect from the same date. In this connection, it may be mentioned that although prior to 1st April, 1962, the tax holiday concession was not available under the law with reference to profits derived by Indian companies from ships, this concession had, in fact, been extended by executive instructions in respect of ships acquired by Indian companies after 31st March, 1948. For this purpose, the profit attributable to each such newly acquired

ship were computed rateably by taking so much of the company's entire shipping profits as freight earnings of the company in a year. The proportionate profits thus arrived at were then compared to the capital cost of the particular ship and such profits up to 6 per cent of the capital cost of the ship in question were treated as exempt from tax. The introduction of sub-rule (5A) in rule 19 of the Income-tax Rules with retrospective effect thus sought to regularise the position that broadly obtained under the pre-existing executive instructions. Further, the concession allowed under the rule ensured to the benefit of taxpayers and, as such, no person has been/would be adversely affected by the retrospective operation of the rule."

66. At their sitting held on the 24th June, 1972, the Committee considered the above reply of Ministry of Finance (Department of Revenue and Insurance) and desired to be furnished with further information *inter alia* on the following points arising therefrom:—

(i) whether it was permissible for the Central Board of Revenue to have given, under executive instructions, tax-concessions which, according to the Department's own admission, were not available under the law;

(ii) whether sub-rule (5A) of Rule 19, in so far as it seeks to regularise past concessions, had due statutory backing.

67. In their reply, the Ministry of Finance (Department of Revenue and Insurance) stated as follows:—

(i) "It was legally not permissible for the Central Board of Revenue to have extended under the executive instructions the 'tax holiday' concession under section 15C of the Indian Income-tax Act, 1922 to profits derived by Indian companies from ships."

(ii) "Sub-rule (5A) was inserted in rule 19 of the Income-tax Rules, 1962 with effect from 1st April, 1962 and, therefore, does not seek to regularise the pre-April, 1962 concession.

"Like section 84 of the Income-tax Act, 1961, as amended retrospectively with effect from 1st April, 1962 by the Finance (No. 2) Act, 1967, sub-rule (5A) of rule 19, also inserted with effect from the same date, seeks to regularise the tax holiday concession granted to shipping industry under executive instructions for the assessment years 1962-63 to

1966-67. The reasons for giving retrospective effect to sub-rule (5A) of rule 19 and the statutory validity of the said sub-rule are discussed hereunder.

"The Indian Income-tax Act, 1922 was repealed and replaced by the Income-tax Act, 1961 with effect from 1st April, 1962. Even though section 84 of the Act of 1961 (corresponding to section 15C of the Act of 1922) did not contain any provision for the grant of tax exemption in respect of profits derived by Indian companies from the operation of ships, the instructions contained in Board's circular of 1951 referred to above were continued to be followed by the Income-tax Department. As the grant of this 'tax holiday' concession under administrative instructions was open to objection, the position was regularised by amending section 84 of the Income-tax Act, 1961 through the Finance (No. 2) Act, 1967 with effect from 1st April, 1962, specifically extending the tax exemption under that section also to profits derived by Indian companies from the operation of ships. Under section 84, as amended as aforesaid, profits derived by Indian companies from ships were exempt from tax upto 6% per annum of the *'capital'* employed in the ship *computed in the prescribed manner.* In view of the position that the amendment of section 84 extending the 'tax holiday' concession to profits derived from a ship was extended retrospectively from 1st April, 1962, it was necessary in order to fully effectuate this provision to also prescribe in the rules the method of computing the capital employed in a ship, retrospectively, from the same date. It is for this reasons that sub-rule (5A) relating to computation of capital employed in a ship was inserted in rule 19 with effect from 1st April, 1962.

"It is well-settled that subordinate legislation cannot be made with retrospective effect unless the power to do so is either specifically conferred by the statute on the rule making authority or it can be inferred therefrom by necessary intendment. Section 295 of the Income-tax Act which confers the rule making power on the Board does not admittedly authorise the Board to make rules with retrospective effect. In the instant case, however, the power to frame a rule for the computation of 'capital' employed in a ship with retrospective effect can be said to follow by necessary implication from the provision in section 84.

"In this context, reference is invited to the decision of the Supreme Court in the case of *S.A.L. Narayana Row* vs. *Ishwarlal Bhagwandass* (1965) 57 *ITR* 149. Under section 18A (6) of the Indian Income-tax Act, 1922, an assessee who unter-estimated his liability to pay advance tax was liable to pay interest on the amount by which the estimated advance tax paid by him fell short of eighty per cent. of the tax determined on regular assessment. Sub-section (6) of section 18A, as originally enacted, left no discretion with the Income-tax Officer and if the estimate of advance tax made by the assessee fell below the specified limit, the I.T.O. was obliged to charge interest under the aforesaid provision. By the Indian Income-tax (Amendment) Act, 1953, the following proviso was added as the fifth proviso to section 18A(6) with retrospective effect from April 1, 1952:—

"Provided that in such cases and in such circumstances *as may be prescribed*, the Income-tax Officer may reduce or waive the interest payable by the assessee."

In pursuance of the aforesaid proviso, the Central Board of Revenue prescribed the cases and circumstances in which the interest payable could be reduced or waived by the Income-tax Officer under rule 48 of the Income-tax Rules, 1922 which was notified in December, 1953. Commenting on this amendment, the Supreme Court observed that even though the relevant rule was framed only in December, 1953, as soon as the rule was framed, which effectuated the purpose for which the proviso was enacted with retrospective effect from April 1, 1952, the rule also became effective retrospectively from the said date. The *ratio decidendi* of this case would equally apply to the amendment made under sub-rule (5A) of rule 19. Section 84 of the Income-tax Act as amended by the Finance (No. 2) Act, 1967 with effect from 1st April, 1962 provided exemption from tax in respected of profits derived by Indian companies from ships, to the extent of 6% per annum of the 'capital' employed therein *computed in the prescribed manner*. Hence, even if the relevant rule prescribing the method of computing the capital employed in a ship had not been made to apply retrospectively from 1st April, 1962, in view of the *ratio decidendi* enunciated by the Supreme Court, this rule, which effectuated the purpose for which the main provision was enacted with retrospective effect from April 1, 1962, would also have become effective

from the said date. The retrospective amendment of rule 19 by the Income-tax (Second Amendment) Rules, 1968 is, therefore, in accordance with the legal position as enunciated by the Supreme Court."

68. At their sitting held on the 25th July, 1972, the Committee examined the representatives of the Ministeries of Finance (Department of Revenue and Insurance) and Law and Justice (Department of Legal Affairs) in regard to giving of retrospective effect to the provisions of sub-rule (5A) of Rule 19, as inserted by S.O. 1112 of 1968.

69. During his evidence, the Secretary, Ministry of Finance stated that the object underlying the extension of 'tax-holiday' concession to the profits derived by Indian companies from ships was to encourage Indian shipping. It was, however, not correct on the part of the Central Board of Revenue to have extended the concession under executive instructions. He further stated that subsequently, when the error came to the notice of Government, they took steps to amend the Act with retrospective effect. In reply to a question, he stated that while the concessions given to the shipping industry with effect from 1st April, 1962 had been regularised, pre-April, 1962 concessions had not yet been. In reply to another question, he stated that in addition to the shipping industry, 'tax holiday' concession had been given to the cold storage plants, under executive instructions.

70. During his evidence, the Secretary, Ministry of Law and Justice (Department of Legal Affairs) stated that sub-rule (5) of Rule 19 sought to effectuate the purpose of amendment of section 84(1) of the Income-tax Act, 1962, by the Finance (No. 2) Act, 1967, and had been made effective from the same date (*i.e.* 1st April, 1962) from which the main provision in the Act had been. In his view, retrospective amendment of Rule 19 of the Income-tax Rules, 1962 was strictly in accordance with the legal position as enunciated by the Supreme Court in several cases.

71. The Committee are not happy over the way the Central Board of Revenue had acted in this case. In their opinion, in extending by executive instructions the 'tax-holiday' concession to the profits derived by Indian companies from ships, which, according to the Government's own admission, was not legally permissible, the Central Board of Revenue had gravely erred. If Government wanted to give this concession to encourage Indian shipping, the proper course for them was to seek an amendment of the Income-tax law. This unfortunately was not done till 16 years had elapsed, when both the Act and the Rules were amended retrospectively. Even then, the concessions

given only during a part of the period (from 1st April, 1962) were regularised; and the concessions given during the preceding period still lack statutory support. The Committee take a serious note of grant of concessions by the executive without due legal authority, and trust that Government will take care to scrupulously avoid the recurrence of such cases.

VIKRAM MAHAJAN,
Chairman,
Committee on Subordinate Legislation.

NEW DELHI;
The 23rd August, 1972.

APPENDIX I

(*Vide* para 5 of the Report)

Summary of main Recommendations|Observations made by the Committee

S. No.	Para No.	Summary
1	2	3
1.	9	Post Office Savings Banks Rule, 1965. In their sons given by the Ministry of Finance for the introduction of sub-rule (2) of Rule 18 of the Post Office Savings Banks Rules, 1965. In their opinion, Government owes a duty to safeguard the interests of illiterate depositors who deposit their hard-earned savings with Government in good faith. The Committee desire that the sub-rule in question should be omitted, and the postal employees instructed not to accept a form which is not complete in all respects.
2.	13	The Committee see no justification for a differentiation between Gazetted and non-Gazetted Government servants in the matter of grant of study leave. They desire that Clause 50(5) (ii) of the Central Civil Services (Leave) Rules, 1972 providing for such differentiation should be omitted from the Rules.
3.	18	The Committee note with satisfaction that in their reply, the Ministry of Steel and Heavy Engineering (Department of Steel) have agreed to lay down a time-limit within which the follow-up proceedings would be initiated. They have also agreed to provide in Clause 11A that reasons will be recorded in writing by the Controller, before he issues an order under the Clause. The Committee desire that early effect should be given to the suggestions contained in

1	2	3
		paragraphs 16 and 17 of the Report, and the Clause in question amended accordingly.
4.	22	The Committee note that the Ministry of Railways have since issued notifications omitting item 9 of Appendix to the Indian Railway Stores Service Recruitment Rules, 1969 and similar provisions contained in Recruitment Rules relating to Railway Engineering Services. They desire that new provisions for regulating seniority of officers to be appointed to these services should be framed at an early date and furnished to the Committee for information.
5.	23	The Committee would like to incite the attention of the Ministries/Departments of Government to the former* provision governing seniority of officers appointed to the Indian Railway Service of Signal Engineers otherwise than through competitive examination, which has been held to be invalid by the Allahabad High Court on the ground that it gave unguided power to Government to fix seniority in their discretion and could thus enable them to discriminate among officers similarly placed. The Committee would like the Ministries/Departments to examine whether they have any Rules containing a similar seniority provision giving unguided power to Government, and if so, to amend it in the light of the observations of the Allahabad High Court.
6.	27.	The Committee note that while age concessions relating to the Scheduled Castes and Scheduled Tribes were published in the Gazette in 1950 and 1955, those relating to

*Item 8 of Appendix I to the Indian Railway Service of Signal Engineers Recruitment Rules, 1962 (Appendix II).

1	2	3
		'other special categories of persons' were not published. The Committee desire that age concessions in respect of these categories should also be published in the Gazette. They further desire that wide publicity in newspapers, etc. should be given to all such orders so that the persons belonging to these categories could take full benefit of the age concessions allowed by Government.
7	32	In para 31 of the Sixth Report (Firtst Lok Sabha), the Committee on Subordinate Legislation had stressed that when the Acts gave a right to the public to send their comments on draft rules, it was only reasonable that sufficient time should be given to them to study the draft and send their comments on the provisions contained therein. To this end, the Committee had suggested that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the Gazette to various parts of the country, should be given to the public to send their comments on such draft rules. The Committee, however, regret to observe that in quite a number of cases, the above recommendation of the Committee has not been complied with, and the period allowed to the general public to send their comments/suggestions on the draft rules was well below the minimum period of 30 days recommended by the Committee. The Committee will like to re-impress upon Ministries/Departments of Government the need for strict compliance with their afore-mentioned recommendation.
8	36	In the opinion of the Committee, the case underscores the need for utmost care in printing of rules, regulations, etc. which are nothing but law in force. They also feel that the responsibility of a Ministry/Department should not cease

1	2	3
		with the sending of a notification to the Press. After the rules, regulations, etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and, if necessary, to issue a corrigendum thereto.
9	39	The Committee note that even though the various posts referred to in the Ministry of Irrigation and Power Class I and Class II (Gazetted) Technical Posts Recruitment Rules, 1972 were intended to be filled by interview, Rule 7 thereof indicated that these were to be filled on the basis of an examination. In the opinion of the Committee, this was a regrettable case of carelessness. The Committee would like to emphasise the need for utmost care in drafting of subordinate legislation. They deseire that the Rule in question should be amended to the necessary effect at an early date.
10	44	The Committee desire the Ministry of Railways (Railway Board to take necessary action to delete Rule 32 of the Railway Servants (Discipline and Appeal) Rules, 1968, which empowers the General Managers to frame subsidiary rules in respect of non-Gazetted Railway servants.
11	50	The Committee are satisfied with the action taken by Government as per (a) to (c) of paragraph 49 of the Report.
12	51	As regards (d) of paragraph 49 of Reports, the Committee feel that while the authority concerned might not give an opportunity of being heard to a licence-holder under the Explosives Rules, 1940, in the circumstances mentioned in (i) and (ii) *ibid*, in cases of suspension, a reasonable opportunity of being heard *must* be given to a licence-holder before the licence is cancelled.

1	2	3
		They also feel that the maximum period for which a Licence could be suspended by the competent authority should also be laid down in the Rules.
13	57	The Committee are not convinced by the argument advanced by the Ministry of Industrial Development for not accepting the recommendation of the Committee contained in para 22 of their Second Report (Fifth Lok Sabha). The Committee would like to reiterate that the period allowed for making representations, etc. should be reckoned with reference to the dates of receipt of notices by the members/creditors concerned and, in case they refuse to receive the notices or sign the acknowledgement, with reference to the date of such refusal. The Committee desire that the relevant provision in the new rules to be framed by the Government under the Industries (Development and Regulation) Amendment Act, 1971 should be in accord with the above-mentioned recommendation of the Committee.
14	63	The Committee are not convinced by the arguments of the Ministry of Foreign Trade contained in paragraph 62 of the Report and would like to reiterate their earlier recommendation contained in para 28 of their Second Report (Fifth Lok Sabha). That there should not only be a specific provision in the rules for inclusion of non-officials in the panel of experts but that they should comprise at least two-thirds of the total membership of the panel of experts.
15	71	The Committee are not happy over the way the Central Board of Revenue had acted in this case. In their opinion, in extending by executive instructions the tax-holiday concession to the profits derived by Indian companies from

1	2	3
		ships, which, according to the Government's own admission, was not legally permissible, the Central Board of Revenue had gravely erred. If Government wanted to give this concession to encourage Indian shipping, the proper course for them was to seek an amendment of the Income-tax law. This unfortunately was not done till 16 years had elapsed, when both the Act and the Rules were amended retrospectively. Even then, the concessions given only during a part of the period (from 1-4-62) were regularised; and the concessions given during the preceding period still lack statutory support. The Committee take a serious note of grant of concessions by the executive without due legal authority, and trust that Government will take care to scrupulously avoid the recurrence of such cases.

APPENDIX II

(*Vide* paras 21—23 of the Report)

Item 8 of Appendix I to the Indian Railway Service of Signal Engineers Recruitment Rules, 1962

The relative seniority of officers appointed under rule* 4(a) will ordinarily be determined by their order of merit in the competitive examination. The Government of India, however, reserve the right of fixing seniority at their discretion in individual cases. *They also reserve the right of assigning to officers appointed under rules* @ 4(b) *and* (c) *and* 5 *positions in the seniority list at their discretion.*

*Appointed through a competitive examination held by the Union Public Service Commission.

@Appointed otherwise than through competitive examination.

MINUTES

APPENDIX III

(*Vide* paras 2 and 4 of the Report)

MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1972-73)

The Committee met on Saturday, the 24th June, 1972 from 11.00 to 13.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman.*

MEMBERS

2. Shri M. C. Daga
3. Shri Dharnidhar Das
4. Shri Subodh Hansda
5. Shri Dinesh Joarder
6. Shri S. A. Kadar
7. Shri S. N. Misra
8. Shri D. K. Panda
9. Shri K. Narayana Rao

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*
Shri H. G. Paranjpe—*Deputy Secretary.*

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

3. The Committee then considered Memoranda Nos. 31 to 36 on the following subjects and 'Orders':—

S. No.	Memo. No.	Subject
1	31	Giving of Retrospective Effect to Rules—The Income-tax (Second Amendment) Rules, 1968 (S.Q. 1112 of 1968).
2	32	The Cotton Textiles (Control) Sixth Amendment Order, 1968 (S.O. 4326 of 1968).

1	2	3
3	33	The Indian Railway Stores, Service Recruitment Rules, 1969 (G.S.R. 151 of 1969).
4	34	The Railway Servants (Discipline and Appeal) Amendment Rules 1969 (S.O. 1531 of 1969).
5	*	* *
6	36	Implementation of recommendations contained in para 28 of the Second Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Export of Ceramic Products (Inspection) Rules, 1969 (S.O. 2335 of 1969) and the Export of Vinyl Film and Sheeting (Inspection) rules, 1969 (S. O. 497 of 1969)

(i) *Giving of Retrospective Effect to Rules—The Income-tax (Second Amendment) Rules, 1968 (S.O. 1112 of 1968) (Memorandum No. 31).*

4. The above mentioned S.O. *inter alia* provided that "the following rule shall be, and shall be deemed always to have been inserted" in Rule 19 of the principal rules:

> "(5A) The capital employed in a ship shall be taken to be the written down value of the ship."

5. The Ministry of Finance (Department of Revenue and Insurance), who were asked to state the reasons for the insertion of the above sub-rule with retrospective effect, stated as follows in their reply:—

> "Under section 84 of the Income-tax Act, 1961, newly established industrial undertakings owned by any assessee and approved hotels owned by an Indian company were eligible for a 'tax holiday' for a specified period. As a result of an amendment to this section through the Finance (No. 2) Act, 1967, the 'tax holiday' concession was extended to Indian companies deriving profits from ships, retrospectively with effect from 1st April, 1962, i.e., for and from the assessment year 1962-63. The concession consisted of the exemption from tax of profits upto 6 per cent per annum of the capital employed in the ship: the capital employed being computed

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

in the manner to be prescribed in the Income-tax Rules. In order to make a provision in the Income-tax Rules for the purpose, sub-rule (5A) was added to rule 19 of the Income-tax Rules, 1962 which provided that the capital employed in a ship would be taken as the written down value of the ship. As stated above, the 'tax holiday' concession was extended to Indian companies deriving profits from ships with retrospective effect from 1st April, 1962. In order to make this concession meaningful, sub-rule (5A) of rule 19 of the Income-tax Rules, 1962 was also given retrospective effect from the same date. In this connection, it may be mentioned that although prior to 1st April, 1962, the tax holiday concession was not available under the law with reference to profits derived by Indian companies from ships, this concession had, in fact, been extended by executive instructions in respect of ships acquired by Indian companies after 31st March, 1948. For this purpose, the profits attributable to each such newly acquired ship were computed rateably by taking so much of the company's entire shipping profits as freight earnings of the company in a year. The proportionate profits thus arrived at were then compared to the capital cost of the particular ship and such profits up to 6 per cent of the capital cost of the ship in question were treated as exempt from tax. The introduction of sub-rule (5A) in rule 19 of the Income-tax Rules with retrospective effect thus sought to regularise the position that broadly obtained under the pre-existing executive instructions. Further, the concession allowed under the rule ensured to the benefit of taxpayers and, as such, no person has been/would be adversely affected by the retrospective operation of the rule."

6. The Committee considered the above reply, and decided to hear the representatives of the Ministry of Finance (Department of Revenue and Insurance) and the Ministry of Law and Justice (Department of Legal Affairs) on the following points arising therefrom:—

(i) Whether it was appropriate on the part of the Department of Revenue to have given, under executive instructions, tax-concessions which, according to the Department's own admission, were not available under the law;

(ii) (a) the circumstances in which the decision to extend by executive instructions the tax holiday concession to ships

acquired by Indian Companies prior to 1st April, 1962 was taken;

(b) the level at which the decision, mentioned at (ii) (a) above, was taken.

(iii) the number of Companies|assessees which got the benefit of tax holiday concession under the aforesaid executive instructions, and the total amount of revenue involved.

(iv) whether sub-rule (5A) of Rule 19, in so far as it seeks to regularise pre-April, 1962 concessions, had due statutory backing.

The Committee desired that written replies on the above points may be furnished to the Committee in advance.

(ii) *The Cotton Textiles (Control) Sixth Amendment Order*, 1968 (*S.O. 4326 of 1968*) (*Memorandum No. 32*).

7. Clause 20(1) of the Cotton Textiles (Control) Order, 1948, as amended by the above mentioned S.O., empowered the Textile Commissioner to issue, from time to time, directions in writing to *any manufacturer* or *class of manufacturers*, or manufacturers generally regarding—

(a) the classes or specifications of cloth or yarn which each manufacturer or class of manufacturers, or manufacturers generally shall manufacture, or

(b) the maximum or minimum quantities thereof which such manufacturer or class of manufacturers or manufacturers generally shall manufacture during such period as may be specified in the Order.

Under sub-clause (4) of clause 20, the Textile Commissioner was further empowered to direct, for reasons to be recorded in writing, that the directions shall not apply, or shall apply subject to such modifications as may be specified in the Order, to such manufacturer or class of manufacturers.

8. The Ministry of Foreign Trade were asked to furnish information on the following points:—

(i) Procedural or other safeguards evolved to ensure that the powers vested in the Textile Commissioner under the

amended clause 20(1) of the Cotton Textiles (Control) Order, 1948 to issue directions to any manufacturer as contradistinguished from *manufacturers generally* did not result in discriminatory treatment; and

(ii) whether the orders issued by the Textile Commissioner under the substituted clause 20(1) were of a general character or issued to individual manufacturers; and whether they were published for the information of the trade and|or the general public.

9. In their reply, the Ministry of Foreign Trade stated as follows:—

"Guidelines for issuing directions under Clause 20(1) of the Cotton Textiles (Control) Order, 1948 are provided in sub-clause (1) of clause 20 of the Cotton Textiles (Control) Order, 1948 itself. In issuing any direction under this sub-clause the Textile Commissioner shall have regard to:—

(i) the demand for cloth or yarn;

(ii) the needs of the general public;

(iii) the special requirements of the industry for such cloth or yarn;

(iv) the capacity of the manufacturer, or class of manufacturers, or manufacturers generally, to manufacture different descriptions or specifications of cloth or yarn; and

(v) the necessity to make available to the general public cloth of mass consumption.

At present there is no direction in respect of any individual manufacturer. However, when a direction of a general nature cannot be applied to an individual manufacturer and when it is feared that any such direction issued by him under this clause will cause undue hardship or difficulty to any such manufacturer, the Textile Commissioner under sub-clause (4) of clause 20 of the said order is empowered, for reasons to be recorded in writing, to direct that such directions shall not apply or shall apply with such modifications as may be specified in the order to such manufacturers or class manufacturers. A question arose whether for issuing such individual deviation

14. The Committee noted that the Ministry of Railways had since issued notification omitting item 9 of Appendix to the Indian Railway Stores Service Recruitment Rules, 1969 and similar provisions contained in Recruitment Rules relating to Railway Engineering Services.

15. The Committee decided to ask the other Ministries|Departments to examine whether they had any Rules containing a provision on the lines of the seniority provision contained in Recruitment Rules for the Indian Railway Service of Signal Engineers held invalid by the Allahabad High Court; and, if so, to amend them in the light of observations of the Allahabad High Court.

(iv) *The Railway Servants (Discipline and Appeal) Amendment Rules, 1969 (S. O. 1531 of 1969). (Memorandum No. 34)*

16. S. O. 1531 of 1969, *inter alia* added the following new rule to the Railway Servants (Discipline and Appeal) Rules, 1968:

> "32. Power of General Managers to frame subsidiary rules.— The General Manager may, in respect of non-gazetted railway servant under his administrative control, make subsidiary rules not inconsistent with these rules or any rules made by the Railway Board, for the purpose of giving effect to the provisions of these rules, in so far as it is applicable to such non-gazetted railway servants."

17. The Sub-Committee of the Committee on Subbordinate Legislation, which considered the new Rule 32 at their sitting held on the 27th October, 1970 desired to be furnished with the following information:

(i) The genesis of the new Rule 32;

(ii) the reasons for empowering the General Managers to frame subsidiary rules in respect of non-Gazetted railway servants; and

(iii) whether the subsidiary rules framed by the General Managers under the new rule would be published in the Gazette of India.

18. In their reply dated the 14th June, 1971, the Ministry of Railways stated as follows:—

> "..the relevant records have been looked into as far back as 1929, from which it is observed that even in the then

rules there was a provision empowering the General Managers (then called Agents) to frame subsidiary rules to give effect to the main rules. The old records do not throw any light on the reasons for framing this rule. The old rules were not exhaustive and did not cover all contingencies. Perhaps, it was for this reasons that the General Managers were given powers to frame subsidiary rules for giving effect to the main rules, as too much centralisation in this respect could lead to confusion and delay in finalising the disciplinary cases. The existing rules are quite exhaustive as compared to the old rules but the question whether it was necessary to continue the aforesaid provision was not specifically examined keeping in this point in view. The entire question whether or not the existing provision in rule 32 should be continued is being examined in concultation with the Railway Administrations and a suitable reply will be sent to your Secretariat, as soon as a decision is taken in the matter."

19. In a further communication dated the 9th November, 1971, the Ministry of Railways had stated as follows:—

"Replies received from all the Railway Administrations revealed that none of them have framed any subsidiary rules subsequent to the introduction of the Railway Servants (Discipline and Appeal) Rules, 1968, in exercise of the powers vested in the General Managers by rule 32 thereof. As such, the question of publishing the subsidiary rules in the Gazette of India did not arise.

Prior to the introduction of the Railway Servants (Discipline and Appeal) Rules, 1968, certain Railway Administrations had published booklets containing the then Discipline and Appeal Rules, instructions issued in connection therewith and 'subsidiary rules' framed by the General Managers, in terms of the rules then in force. An examination of the booklets revealed that they contained mostly the instructions issued by the Railway Board from time to time and there were hardly any rules as such in its true sense. The General Managers are also of the view that since the existing rules are exhaustive enough to cover all contingencies, it may not be necessary for them to frame any subsidiary rules.

Taking all the facts into consideration, the Railway Board have decided that it is not necessary to give powers to the

General Managers to frame subsidiary rules and Rule 32 of the existing rules should be deleted.

The above position may be brought to the notice of the Committee on Subordinate Legislation. Necessary action to delete the rule will be taken only after hearing from the Lok Sabha Secretariat."

20. The Committee noted the above reply of the Ministry of Railways (Railway Board), and desired that Ministry to take necessary action to delete Rule 32 of the Railways Servants (Discipline and Appeal) Rules, 1968, inserted by S. O. 1531 of 1969.

* * * * *

(vi) *Implementation of recommendations contained in para 28 of the Second Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Export of Ceramic Products (Inspection) Rules, 1969 (S.O. 2335 of 1969) and the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 (S.O. 457 of 1969). (Memorandum No. 36).*

26. Rule 7(1) of the Export of Ceramic Products (Inspection) Rules, 1969 provided that any person aggrieved by the refusal of the Export Promotion Agency to issue a certificate declaring a consignment as export-worthy could, within ten days of receipt of such refusal by him, prefer an appeal to a panel of experts, consisting of not less than three persons, appointed for the purpose by the Central Government. Sub-Rule (3) of Rule 7 provides that "the decision of panel of experts shall be final".

27. The provisions of Rule 7 of the Export of Vinyl Film and Sheeting (Inspection) Rules, 1969 were similar to those of Rule 7 of the Export of Ceramic Products (Inspection) Rules, 1969.

28. The Ministry of Foreign Trade, who were requested to indicate their views regarding the making of a specific provision in the Rules for inclusion of a non-official/non-officials in the panel of experts, *inter alia*, stated as follows:

"Regarding the suggestion for stipulating a specific provision in the rules for inclusion of non-official(s) in the panel

---

*Omitted portion of the Minutes are not covered by this report?

of experts, this Ministry are of the view that the same does not appear to be necessary. *Appellate panels invariably contain the names of non-officials who are expert in the line.*

29. The Committee were not satisfied with the above reply of the Ministry of Foreign Trade, and observed as follows in para 28 of their Second Report (Fifth Lok Sabha):—

"The Committee note that under Section 7(5) of the Export (Quality Control and Inspection) Act, 1963, the decisions of the panel of experts on appeals to be referred against the decisions of the Agency are to be final and are not to be questioned in any court of law. The Committee therefore, consider it important that the constitution of the panel of experts is such as to command the confidence of the aggrieved parties for its impartiality. They, therefore, feel that there should not only be a specific provision in the rules for inclusion of non-officials in the panel of experts but that they should comprise at least two-thirds of the total membership of the panel of experts. The Committee desire that the rules should be suitably amended to include such a provision."

30. In their reply, the Ministry of Foreign Trade have submitted as follows:—

".....the recommendations made by the Committee on Subordinate Legislation in paras 23-28 of its report regarding inclusion of 2/3rd non-official members in the appellate panel have been noted.

In this context it may be stated that non-official members are invariably included in the appellate panels by the Government of India with a view to seeing that panel's decision is objective. The Committee's recommendations that 2/3rd of membership of appellate panel should consist of non-official members is not likely to serve the purpose as the members of the trade have rivalries between them with the result that they may not take a just decision.

The above fact may also kindly be brought to the notice of the Committee to consider the desirability of reviewing its decision to allow the present constitution of the panel."

31. The Committee were not convinced by the above reply of the Ministry of Foreign Trade and decided to reiterate their earlier recommendation contained in para 28 of their Second Report (Fifth Lok Sabha).

The Committee then adjourned to meet again at 15.00 *hours on Monday, the* 24*th July,* 1972.

ANNEXURE

(*Vide* para 2 of the Minutes)

ADDRESS BY THE CHAIRMAN TO THE MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1972-73) (24-6-1972)

Friends,

It gives me great pleasure to welcome you to this first meeting of the newly-constituted Committee on Subordinate Legislation.

2. Our Committee has very important functions to perform. In a welfare State like ours, legislation that has to be undertaken by Parliament is so vast and varied that it is practically impossible for Parliament to lay down all the details. These details are worked out by the Executive. The greater the social welfare activities of the State, the greater is the delegation of powers to the Executive to make subordinate laws. The object of subordinate legislation is to carry out the purposes of the Act and not to lay down any policy.

3. While subordinate legislation is inevitable, there is a risk inherent in it that the Executive might assume powers and exercise jurisdiction which might not have even been conferred on it. Therefore the need for Parliament to provide safeguards against this risk.

4. Parliamentary control over subordinate legislation is exercised in four ways. Firstly, Parliament has an opportunity of examining the power to make such legislation when it appears in a Bill. Secondly, many subordinate laws are required by the parent Act to be laid before Parliament and in certain cases made subject to Parliamentary procedure and Parliamentary sanction. Thirdly, subordinate laws may in other ways be questioned or debated by Parliament. Lastly, Parliament keeps a watch over such legislation through the Committee on Subordinate Legislation which reports to the House whether the powers to make subordinate laws are being properly exercised. The most effective control that Parliament exercises over subordinate legislation is through this Committee in which we will have the privilege to work.

5. We shall have to see whether the authority delegated by Parliament in the statutes has been properly exercised to the extent permissible and in the manner envisaged. We shall be making our Reports to Lok Sabha from time to time.

6. The broad principles which are to govern the work of the Committee are enshrined in Rule 320. In addition, the Committee have over the years evolved some further guiding principles. To mention some of these:—

(i) The Committee not only see that the subordinate legislation does not transgress the limits laid down in the parent law but that it also conforms to the principles of natural justice.

(ii) Sometimes, in pursuance of a public policy, wide discretionary powers have to be vested in the Executive. It is in such cases that the Committee have to be particularly on the guard against, what Sir Cecil Carr termed as, the "germ of arbitrary administration." The Committee have insisted upon providing for, to the extent possible, built-in safeguards in rules.

(iii) Sometimes, for ensuring compliance with the provisions of the law, the power of search and seizure has to be vested in the Executive. The Committee have desired that in all such cases, not only the minimum rank of the Government Officer empowered to exercise the power should be specified but that such safeguards as presence of witnesses, preparation of inventories and giving a copy thereof to the persons concerned should be provided for in the Rules.

(iv) It is a well-known maxim that no fee can be levied under a rule unless the parent Act expressly authorises such a levy. However, the Committee have from time to time come across cases where fees had been levied under the rules without an express authorisation in the parent law.

(v) There is another well known maxim that a delegate cannot sub-delegate his legislative power unless there is an express authorisation to that effect in the parent law.

7. In discharging our duties, we would not be acting in hostility to the Executive. Our objective is implementation of the will of Parliament and our efforts would be complementary. Sometimes in their eagerness to discharge their duties more expeditiously and

effectively, the Executive may commit mistakes. We have to keep them on the right track.

8. This Committee has another notable feature. It is the tradition of the Committee that all its decisions are arrived at unanimously and party considerations never affect our deliberations. I hope this tradition would be continued by us too and we would be able to pull on in a combined and co-operative manner and with the same will and determination as is expected of us.

Thank you.

MINUTES OF THE EIGHTEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

(1972-73)

The Committee met on Monday, the 24th July, 1972 from 15.00 to 16.45 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri Dharnidhar Das
3. Shri T. H. Gavit
4. Shri Subodh Hansda
5. Shri Dinesh Joarder
6. Shri S. A. Kader
7. Shri Y. S. Mahajan
8. Shri S. N. Misra
9. Shri D. K. Panda
10. Shri K. Narayana Rao
11. Shri Tulmohan Ram

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered Memoranda Nos. 37 to 46 on the following subjects and 'Orders':—

S. No.	Memo. No.	Subject
1	37	The Iron and Steel (Control) Amendment Order, 1972 [S.O. 195(E) of 1972].

1	2	3
2	38	The Central Civil Services (Leave) Rules, 1972 (S.O. 940 of 1972).
3	39	The Delhi Milk Scheme (Personnel Officer) Recruitment Rules, 1972 (G.S.R. 486 of 1972).
4	40	The Ministry of Irrigation and Power Class I and Class II (Gazetted Technical Posts Recruitment Rules, 1972 (G.S.R. 485 of 1972).
5	41	Implementation of Recommendations of the Committee on Subordinate Legislation contained in paragraphs 40, 41 and 43 of their Sixth Report (Fourth Lok Sabha).
6	*	* * * *
7	43	The Post Office Savings Banks (Amendment) Rules, 1969 (G.S.R. 956 of 1969).
8	44	The Central Bureau of Investigation (Class III Posts) Recruitment Rules, 1969 (G.S.R. 1630 of 1969).
9	45	Implementation of recommendations contained in para 22 of Second Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1969 (G.S.R. 618 of 1968).
10	46	Publication of Rules etc. in draft form—Time given to public to send their comments/suggestions, etc.

(i) *The Iron and Steel (Control) Amendment Order, 1972 [S.O. 195 (E) of 1972] (Memorandum No. 37).*

3. Clause 11A of the Iron and Steel (Control) Order, 1956, as inserted by the Iron and Steel (Control) Amendment Order, 1972, empowered the Steel Controller to order suspension of supplies of iron and steel forthwith to any person against whom there existed a credible information, or a reasonable suspicion, of the contravention of any conditions laid down under the Iron and Steel (Control) Order, 1956 or the directions issued thereunder. A 'Note' below the

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

new clause provided that the provisions of the clause shall be invoked only as an interim action, and shall be followed up with further action, regard being had to the circumstances of the case.

4. In order that the follow-up action against the persons suspected of contravention of the prescribed conditions was not inordinately delayed, the Ministry of Steel and Heavy Engineering (Department of Steel) were asked whether they had any objection to laying down a time-limit within which the follow-up proceedings would be initiated. It was also suggested that the time-limit so prescribed could, for reasons to be recorded in writing, be further extended by a fresh order to be issued by the Steel Controller. In case, however, the Steel Controller was unable to initiate the follow-up proceedings within the prescribed time-limit or the extended time-limit, as the case may be, the supplies to the person concerned may be resumed.

5. The Ministry were also asked whether they had any objection to providing in the clause that reasons be recorded in writing by the Controller before he issued an order under the clause.

6. In their reply, the Ministry of Steel and Heavy Engineering (Department of Steel) had stated that the changes suggested in paras 4 and 5 above were acceptable and suitable action to amend the clause accordingly would be taken by them in consultation with the Ministry of Law and Justice.

7. The Committee noted with satisfaction the above reply of the Ministry of Steel and Heavy Engineering (Department of Steel).

(ii) *The Central Civil Services (Leave) Rules, 1972 (S.O. 940 of 1972) (Memorandum No. 38).*

8. Rule 50 (5) (ii) of the Central Civil Services (Leave) Rules, 1972 provided that study leave shall not ordinarily be granted to a Government servant who did not hold a Gazetted post under the Government.

9. The Ministry of Finance (Department of Expediture) were asked to state the considerations for drawing a distinction between Gazetted and non-Gazetted Government servants in the matter of grant of study leave. They were also asked whether they had any objection to omitting this provision from the Rules.

10. In their reply, the Ministry of Finance (Department of Expenditure, *inter alia,* stated as follows:—

> "The provisions now contained in rule 50(5) (ii) of the C.C.S. (Leave) Rules have been in existence for a number of years. In the absence of the file of 1925 in which the Government of India decision quoted above was taken, it is not possible to state categorically the considerations which underlay the decision.
>
> The provision in question does not entirely rule out the grant of study leave to non-gazetted Government servants and in practice, the provision in rule 3(5) (ii) of the Study Leave Rules, 1962 [corresponding to new rule 50(5) (ii)] has been relaxed in deserving cases and study leave has been granted to non-gazetted Government servants for higher studies, for specialised training in professional subjects or for specialised training in technical subjects having direct and close connection with the spheres of duty of the Government servants. These relaxations were agreed to by this Ministry on the basis of recommendations of the administrative Ministries on grounds such as equipping the Government servant for better performance of his duties or non-availability of persons possessing requisite qualifications to serve in remote areas like NEFA and LMA Islands.
>
> The Ministry have no objection to the provision referred to above being omitted from the rules."

11. The Committee desired that the provisions contained in Rule 50(5) (ii) should be omitted from the Rules.

(iii) *The Delhi Milk Scheme (Personnel Officer) Recruitment Rules,* 1972 (*G.S.R.* 486 *of* 1972) (*Memorandum No.* 39).

12. Under the relaxation provision normally occurring in recruitment rules relating to Gazetted posts, the Central Government were empowered to relax, for reasons to be recorded in writing, any provision of the rules with respect to any class or category of persons; but this power had to be exercised *in consultation with the Union Public Service Commission.*

13. It was noticed that even though the rules in question related to a Gazetted post, the relaxation rule contained therein *viz.*. Rule 6— did not provide for consultation with the U.P.S.C.

14. The Ministry of Agriculture (Department of Agriculture) who were asked to state the reasons for not following the normal practice in this case, had in their reply stated as follows:

> "....There is no deviation from the normal practice. The mistake pointed out is a printing mistake. A corrigendum is being issued to rectify the printing error."

15. In the opinion of the Committee, the Ministry of Agriculture were not to blame for the omission of the provision for consultation with the U.P.S.C. in this case. All the same, they felt that the case underscored the need for utmost care in printing of rules, regulations etc. which were nothing but law in force. They also felt that responsibility of a Ministry|Department should not cease with the sending of a notification to the Press. After the rules, regulations, etc. have been published in the Gazette, the Ministries|Departments concerned should take immediate steps to examine whether the same have been correctly printed, and, if necessary, to issue a corrigendum thereto.

(iv) *The Ministry of Irrigation and Power Class I and Class II (Gazetted) Technical Posts Recruitment Rules,* 1972 (*G.S.R. 485 of* 1972) (*Memorandum No.* 40).

16. Rule 7 of the Ministry of Irrigation and Power Class I and Class II (Gazetted) Technical Posts Recruitment Rules, 1972 provided for relaxation of standard for candidates belonging to Scheduled Castes and Scheduled Tribes to make up the deficiency in the reserved quota, *irrespective of their ranks in the order of merit at the examination.*

There was, however, no provision in the Rules or the Schedule thereto for holding an examination for recruitment to posts covered thereby.

17. The Ministry of Irrigation and Power to whom the matter was referred stated as follows:

> "Rule 7 of the Ministry of Irrigation and Power Class I and Class II (Gazetted) Technical Posts Recruitment Rules, 1972 (G.S.R. 485 of 1972) was added on the advice of the Ministry of Law and Justice, as referred to in the Ministry of Home Affairs O.M. No. 8|12|71-ESTS(SCT), dated 19-10-1971. It has now been checked that the various posts referred to in the above mentioned recruitment rules which are to be filled by direct recruitment, have not to

be filled on the basis of an examination but by interviews conducted by the UPSC. Rule 7 of the Recruitment Rules, referred to above, is, therefore, being amended in the light of the Department of Personnel's O.M. No. 8|12|71-ESTS (SCT), dated 21-9-1971, in consultation with the Ministry of Law and Justice. A copy of the amending Rules will be supplied to the Lok Sabha Secretariat soon after amendment to the Rules is issued."

18. The Committee noted that even though the various posts referred to in the Rules were intended to be filled by interview, Rule 7 indicated that these were to be filled on the basis of an examination. In the opinion of the Committee, this was a regrettable case of carelessness. They desired that the Rule in question should be amended to the necessary effect at an early date.

(v) *Implementation of Recommendations of the Committee on Subordinate Legislation contained in paragraphs 40, 41 and 43 of their Sixth Report (Fourth Lok Sabha) (Memorandum No. 41).*

19. During the course of examination of the Explosives Rules, 1940, as amended from time to time, the following two points were noticed:—

(i) There was no provision in Rules 92 and 93, *ibid.*, requireing the licensing authority to give an opportunity of being heard to the applicant, before his application for amendment or renewal of licence was rejected or to a licence holder before his licence was suspended or cancelled, and if the Central Government happened to be a licensing authority, even the requirement of recording the reasons in writing had been dispensed with; and

(ii) the fee to be charged for the grant of licence, etc. for purposes specified in column 3 of Schedule IV of the said Rules, was not mentioned against serial Nos. 8 and 9 in column 5 thereof and it was left to be prescribed by the Central Government, but it was not clear whether such fee would be prescribed by a general notification published in the Gazette or prescribed from time to time by *ad hoc* Orders of the Central Government.

The above points were referred to the erstwhile Ministry of Industrial Development and Company Affairs (Department of Industrial Development) on 3-5-1968. But it was only on 29-7-1970—one

day before the representative of the Ministry was summoned to appear before the Committee for evidence—that Government issued draft amendments to Rules inviting objections and suggestions from the affected parties. The reason given by the Ministry for the delay of more than two years in issuing the draft amendments to the Rules was that it took a longer time than it should have taken in getting the above rules vetted from two or three Ministries|Departments.

20. The Committee (1970-71) which considered the matter, made the following observations in paras 40, 41 and 43 of their Sixth Report (Fourth Lok Sabha):—

(i) "The Committee regrets to observe that it took Government more than two years to issue draft rules for amending rules 92 and 93 and Article Nos. 8 and 9 in Schedule IV appended to Explosives Rules, 1940. Even the communications received from Government did not give straight replies to the queries raised by the Committee. The Committee deplores this tendency on the part of a Ministry of the Government of India to treat queries from a Parliamentary Committee in such a light hearted manner."

(ii) "The Committee is not convinced with explanation given by the representative of the Ministry during the course of his evidence that 'it took a longer time than it should have taken in getting the rules vetted from two or three Ministries|Departments' particularly when the draft rules have been published in the Gazette only on the 29th July, 1970 i.e. one day before the Ministry was summoned to appear before the Committee for evidence. The Committee feels that Government should have taken prompt action when it was brought to its notice that the Rules framed by it denied the applicants|licence holders an opportunity of being heard when their applications for amendment or renewal of licences were rejected or their licences were suspended or cancelled."

(iii) "The Committee also recommends that a provision should be made in the Explosives Rules, 1940, making it incumbent on the Licensing Authority to give a speaking order to the licence-holder, whose licence is suspended or cancelled so that he may know the reasons for such an order and may seek legal remedies, if he so desires."

21. In their action taken note on the above observations/recommendations of the Committee, the Ministry stated as follows:—

> ".....the recommendations contained in the Sixth Report of Committee on Subordinate Legislation (Fourth Lok Sabha) relating to the amendments in rules 92 and 93 of the Explosives Rules, 1940 and in Schedule IV to the above Rules regarding prescribing of fees etc., have since been implemented. In this connection a copy each of the two notifications No. 11(17)|71-LI(II) dated the 24th June, 1971 issued by this Ministry is forwarded* herewith for ready reference."

22. From a perusal of the two notifications dt. 24-6-1971 referred to by the Ministry in their reply, the Committee observed that Rules 92 and 93 and Schedule IV had been amended to the following effect:

(a) The Central Government, which under the original Rules, was not required to record in writing the reasons for refusing to grant, amend or renew a licence or for suspending or cancelling a licence, will have to fulfil this requirement.

(b) Rates of fees in respect of Article 8 had been laid down in Schedule IV. Article 9, together with the relevant entries, had been omitted from Schedule IV.

(c) Before refusing to grant, amend or renew a licence, the licensing authority shall give to the applicant an opportunity of being heard.

(d) Likewise, before suspending or cancelling a licence, the licensing authority shall give to the licence-holder an opportunity of being heard. However, no such opportunity shall be given in cases:—

(i) Where the licence is being suspended for violation of any of the provisions of the Act or these rules, or of any condition contained in such licence and in the opinion of the licensing authority, such violation is likely to cause danger to the public, or

(ii) Where the licence is suspended or cancelled by the

---

*Not appended.

Central Government, if that Government considers that in the public interest or in the interests of the security of the State, such opportunity should not be given.

23. The Committee were satisfied with the action taken by Government as per (a) to (c) of the preceding paragraph.

As regards (d) *ibid.*, the Committee felt that while the authority concerned might not give an opporunity of being heard to a licence-holder in the circumstances mentioned in (i) and (ii) above in cases of suspension, a reasonable opportunity of being heard *must* be given to a licence-holder before his licence was cancelled. They also felt that the maximum period for which a licence could be suspended by the competent authority should also be laid down in the Rules.

(vi) * * * * *

(vii) *The Post Office Savings Banks (Amendment) Rules, 1969 (G.S.R. 956 of 1969) (Memorandum No. 43)*

29. Rule 18(2) of the Post Office Savings Banks Rules, 1965, which was inserted by the aforesaid G.S.R., read as follows:—

"The Post Office Savings Bank shall not be liable if any fraud takes place whether by a departmental employee or by an outsider due to the failure of the depositor to ensure that the amount sought to be withdrawn is entered in the application for withdrawal before the same is presented at or sent duly signed by him to the Post Office for withdrawal."

30. The Sub-Committee of the Committee on Subordinate Legislation (1970), which examined the aforesaid G.S.R. at their sitting held on the 19th September, 1970, desired to know the genesis of Rule 18(2).

31. In their reply, the Ministry of Finance, *inter alia*, stated as follows:

"....a case arose where the depositor went to the court alleging less payment than that was entered in the warrant of payment on the application form for withdrawal. Actually, the depositor had left the space for the amount to be withdrawn unfilled on the withdrawal form and the amount was filled in by the post office. The Court believed the evidence of the depositor for having sought to withdraw only the amount which had been actually paid to her and not the amount shown on the withdrawal form.

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

When this question was referred to the Ministry of Law, they advised that to safe-guard the Deptt's interests the rules should be amended to provide specifically that the depositor must ensure that the amount sought to be withdrawn is entered in the application form for withdrawal and that the Department will not be liable if any fraud takes place whether by a Departmental employee or by an outsider due to the failure of the depositor to comply with this requirement of filling in the amount to be withdrawn in the application form for withdrawal before the same is submitted duly signed by him to the Post Office for withdrawal.

It is in these circumstances that notification No. G.S.R. 956 of 1969 was issued."

32. The Committee were not convinced by the reasons given by the Ministry of Finance for the introduction of the sub-rule in question. In their opinion, Government owed a duty to safeguard the interests of illiterate depositors who deposited their hard-earned savings with Government in good faith. They felt that Government should be liable for the lapses on the part of its employees. They, therefore, desired that the sub-rule in question should be omitted, and the postal employees instructed not to accept a form which was not complete in all respects.

(viii) *The Central Bureau of Investigation (Class III Posts) Recruitment Rules,* 1969 *(G.S.R.* 1630 *of* 1969) *(Memorandum No.* 44)

33. Proviso to Rule 3 of the Central Bureau of Investigation (Class III Posts) Recruitment Rules, 1969 provided that the upper age limit specified in the Schedule to the Rules "may be relaxed in the case of persons belonging to the Scheduled Castes, Scheduled Tribes or other special categories of persons in accordance with the general orders issued by the Central Government from time to time."

34. The Sub-Committee of the Committee on Subordinate Legislation (1970), which examined the aforesaid rules at their sitting held on the 26th October, 1970, desired to know whether the general orders, issued by the Central Government from time to time, relaxing the upper age limit in respect of persons belonging to the Scheduled Castes and Scheduled Tribes or other special categories of persons were published in the Gazette of India for the information of the general public.

35. The Ministry of Home Affairs, to whom the matter was referred, stated as under:

> "....the orders providing for relaxation of age limit by 3 years in the case of candidates belonging to Scheduled Castes and Scheduled Tribes for recruitment to services under the Government of India were first issued in the Ministry of Home Affairs Resolution No. 42|21|49-NGS, dated the 13th September, 1950. The Limit of relaxation was later raised from 3 years to 5 years in the case of non-gazetted and also gazetted posts *vide* Resolutions Nos. 42|19|51-NGS, dated the 25th June, 1952 and No. 15|1|55-SCT, dated the 30th April, 1955. These Resolutions were published in the Gazette of India. For other special categories of persons, orders were issued by executive instructions."

36. The Committee noted that while age concessions relating to the Scheduled Castes and Scheduled Tribes were published in the Gazette in 1950 and 1955, those relating to 'other special categories of persons' were not published. They desired that age concessions in respect of these categories should also be published in the Gazette. They further desired that wide publicity in newspapers should be given to all such orders so that the persons belonging to these categories could take full benefit of the age concessions allowed by Government.

(ix) *Implementation of recommendations contained in para 22 of Second Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968 (G.S.R. 619 of 1968). (Memorandum No. 45).*

37. Rule 4(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, provided that a member or a creditor of a textile company proposed to be wound up may, within a period of 15 days from the date on which a notice is sent to him, make representation to the Central Government regarding the reserve price for the sale of the undertaking as a running concern, as determined by the authorised person. Likewise, under Rule 5(3), a member or a creditor may, within a period of 15 days from the date on which the notice is sent to him, make suggestions and objections to the authorised person regarding the draft scheme for the reconstruction of the textile company.

38. As under the above Rules, the period of 15 days was to be reckoned with reference to the date of issue of notices, it was felt

that a member or a creditor might not get a fair opportunity of making representations, etc., in case there was an undue delay in the delivery of notices to him.

39. The Ministry of Foreign Trade, with whom the matter was taken up, stated as follows in their reply:—

> "....it has been decided to extend the period of notice mentioned in Rules 4(3) and 5(3) of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968, from 15 days to 21 days and, at the same time to authorise the authorised person to grant extension of the period in cases where he is satisfied that there was undue delay in the delivery of notice to the members|creditors concerned."

40. Commenting upon the above reply of the Ministry of Foreign Trade, the Committee observed as follows in para 22 of their Second Report (Fifth Lok Sabha):

> "....The Committee feel that these steps, though in the right direction, are not adequate enough. They desire that the period allowed for making representations, etc. should be reckoned with reference to the date of receipt of notices by the members|creditors concerned, and, in case they refuse to receive the notices or sign the acknowledgement, with reference to the date of such refusal. In case, the postal authorities, in pursuance of the normal procedure, cannot find the members|creditors concerned or any of their agents duly empowered to receive the notices on their behalf, arrangements may be made for the affixation of notices on the outer door or some other conspicuous part of the premises shown in the last address of the memebrs/creditors concerned, and the relevant period reckoned with reference to the date of affixation."

41. In their action taken note on the above recommendation of the Committee, the Ministry of Industrial Development stated as follows:—

> "....the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Act, 1967 has been repealed by the Industries (Development and Regulation) Amendment Act, 1971. As the provisions of the Cotton Textile Companies Act have now been incorporated in the Industries Act, action is being taken to

frame a fresh set of rules so that they become applicable to all Scheduled industries including the cotton textile industry. The proposed rules will mainly have to be on the lines of the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Rules, 1968.

The recommendation made by the Committee on Subordinate Legislation (Fifth Lok Sabha) in their Second Report that the notice period of 21 days laid down in rule 4(3) and 5(3) of the Cotton Textile Companies Rules should be reckoned with reference to the date of receipt of the notice by the members|creditors concerned and in case they refuse to receive the notice or sign the acknowledgement, with reference to the date of such refusal, has been examined. Similarly, the recommendation that in case the postal authorities cannot find the members|creditors concerned or any of their agents duly empowered to receive the notice on their behalf, arrangements may be made for the affixation of the notice on the outer door or some other conspicuous part of the premises shown in the last address of the members|creditors and the relevant period of notice should be reckoned with reference to the date of affixation, has also been examined. It appears that acceptance of the afore-mentioned recommendations is likely to lead to certain practical difficulties for there will not be one date of receipt of such notice and different creditors and members may receive the notice on different dates; in some cases it would be reckoned from the date of refusal of the notice, in some cases it would be from the date of affixation of the notice on the outer door of the premises of the creditors and members. In the interest of speedy rehabilitation of sick units, Government would be anxious that the scheme of reconstruction or sale should be put into effect at the earliest. We are, therefore, finding it somewhat difficult to accept the recommendation of the Committee on Subordinate Legislation. In this connection, however, it may be mentioned that earlier the notice period was for 15 days and it was mainly with a view to meeting the objection made by the Committee on Subordinate Legislation that some members do not get fair opportunity of making representations etc., that the aforesaid period of 15 days was extended to 21 days. It was also provided in the rules that

where the authorised person is satisfied that there was undue delay in the delivery of the notice to the members| creditors concerned, he may grant extension of the notice period."

42. The Committee considered the above reply of the Ministry of Industrial Development at some length. They were not convinced by the arguments advanced by the Ministry for not accepting the recommendation of the Committee contained in para 22 of their Second Report (Fifth Lok Sabha). They desired that the relevant provision in the new rules to be framed by Government under the Industries (Development and Regulation) Amendment Act, 1971 should be in accord with the afore-mentioned recommendation of the Committee.

(::) *Publication of rules, etc. in draft form—Time given to public to send their comments|suggestions, etc. (Memorandum No. 46).*

43. In para 31 of their Sixth Report (First Lok Sabha), the Committee on Subordinate Legislation had observed as follows:—

"The Committee feel that when the Acts give a right to the public to send their comments on certain draft rules, it is only reasonable that sufficient time should be given to them to study the draft rules and send their comments before they are finalised. The Committee are of the opinion that a period of not less than 30 clear days, exclusive of the time taken in publishing the draft rules in the Gazette and despatching the gazette copies to various parts of the country, should be given to the public to send their comments on such draft rules."

44. It was noticed that in the following cases, the time allowed to the public to send their comments|suggestions on the draft rules was less than 30 clear days:

No.	Name & Number of Order	Date of publication of draft Rules	Date on which Gazette containing draft rules was made available to the public	Date by which comments were invited	Time given to the public for sending comments
'I	2	3	4	5	6
I.	Ajowan Seeds (Whole) Grading and Marking Rules, 1970 (S.O. 536 of 1970). . . .	19-10-68	2-11-68	20-11-68	17 days

1	2	3	4	5	6
2.	Chillies Grading and Marking(Amendment) Rules, 1970 (S.O. 2579 of 1970)	3-10-69	11-10-69	2-11-69	21 days
3.	Babina Cantonment (Division into Wards) Rules, 1970. (S.R.O. 242 of 1970)	18-2-70	28-2-70	18-3-70	17 days
4.	Ahmednagar Cantonment (Division into Wards) Rules, 1970. (S.R.O. 248 of 1970)	13-2-70	21-2-70	13-3-70	19 days
5.	Ahmedabad Cantonment (Division into Wards) Rules, 1970 (S.R.O. 249 of 1970)	10-3-70	21-3-70	10-4-70	19 days
6.	Saugor Cantonment (Division into Wards)Rules, 1970 (S.R.O. 278 of 1970)	3-3-70	14-3-70	3-4-70	19 days

45. The Ministry of Agriculture whose attention was invited to the aforesaid recommendation of the Committee stated as under in respect of the rules specified at S. Nos. 1 and 2:

> "....the time given for public in the notification was no doubt just a month, and the Government of India Press took sometime in actual publication of the Notification. However, the requirement of sufficient period to be given to the public for inviting objections|suggestions has been noted for careful action in future."

46. The Ministry of Defence who were concerned with the rules at S. Nos. 3—6 stated as under:—

> "....The practice followed hitherto by this Ministry has been to give 30 days' time from the date of publication of the draft rules in the Gazette for the submission of objections/ suggestions by the public. In actual fact, however, objections are considered even if received later than the time limit. However, in view of the observation made in the office Memorandum under reference, it has been decided hereafter to give 60 days' time instead of 30 days as at present so that the public have not less than 30 clear

days, excluding the time taken in the despatch of the Gazette notifications to the Cantonments concerned for the submission of objections|suggestions."

47. The Committee took note of the fact that in quite a number of cases the period allowed to the general public to send their comments/suggestions on the draft rules was well below the minimum period of 30 days recommended by the Committee in para 31 of their Sixth Report (First Lok Sabha). In view of this, the Committee decided to re-impress upon the Ministries/Departments of Government the need for strict compliance with their earlier recommendation.

The Committee then adjourned to meet again at 15.00 *hours on Tuesday, the* 25*th July,* 1972.

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

(1972-73)

The Committee met on Tuesday, the 25th July, 1972 from 15.00 to 17.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri M. C. Daga
3. Shri Dharnidhar Das
4. Shri T. H. Gavit
5. Shri Samar Guha
6. Shri Subodh Hansda
7. Shri Dinesh Joarder
8. Shri S. A. Kader
9. Shri Y. S. Mahajan
10. Shri S. N. Misra
11. Shri D. K. Panda
12. Shri K. Narayana Rao
13. Shri Tulmohan Ram

* * * *

REPRESENTATIVE OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE)

Shri B. D. Pande—*Secretary.*

REPRESENTATIVE OF THE MINISTRY OF LAW AND JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)

Shri R. S. Gae—*Secretary.*

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*
Shri H. G. Paranjpe—*Deputy Secretary.*

---

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

2. The Committee examined the representatives of the Ministries of Finance (Department of Revenue and Insurance) and Law and Justice (Department of Legal Affairs) in regard to retrospective effect given to Rule 19(5A) of the Income-tax Rules, 1962, as inserted by the Income-tax (Second Amendment) Rules, 1968.

3. Giving the background of the rule, the representative of the Ministry of Finance stated that in 1949, the old Income-tax Act, 1922 was amended to provide for exemption from tax of the profits of newly established industrial undertakings upto 6 per cent per annum of the 'capital' employed therein. In 1951, this concession was extended by a circular of the Central Board of Revenue to profits derived by Indian companies from the operation of ships. The object underlying the extension of the concession was to encourage the growth of Indian shipping. The concession was continued to be given under administrative instructions even after the Indian Income-tax Act, 1922 was repealed and replaced by the Income-tax Act, 1961, which contained no provision in that behalf. Subsequently, when it was brought to the notice of the Board that it was not strictly in accordance with the provision of section 84(1) of the Income-tax Act as it then stood, it was regularised by the Finance (No. 2) Act, 1967, which amended the section with retrospective effect (from 1-4-62), specifically extending the tax exemption to profits derived by Indian companies from the operation of ships. The representative of the Ministry of Finance further stated that Rule 19(5A) was given retrospective effect from 1-4-1962 so that it was in conformity with the relevant provision of the Act which also took effect from that date.

In reply to a question, he stated that in addition to the shipping industry, 'tax holiday' concession had been extended to the cold storage plants under executive instructions.

4. The Committee desired to know whether it was necessary to introduce Rule 19(5A) with retrospective effect. The representative of the Ministry of Law and Justice stated that section 84(1) as amended retrospectively with effect from 1-4-1962 provided for exemption from tax of profits derived by Indian companies from ships to the extent of 6 per annum of the 'capital' employed therein *computed in the prescribed manner*. In order to fully effectuate this provision, it was necessary to prescribe in the rules the method of computing the 'capital' employed in the ships retrospectively. It was for this reason that sub-rule (5A) relating to computation of 'capital' employed in a ship was made effective from 1-4-1962—the same date from which the main provision in the Act had been.

5. The representative of the Ministry of Law and Justice further stated that it was well settled that subordinate legislation could not be given retrospective effect unless the power to do so was either spcifically conferred by the statute on the rule-making authority or it could be inferred therefrom by necessary intendment. Asked whether Section 295 of the Income-tax Act relating to rule-making power empowered the Government to give retrospective effect to rules, the representative of the Ministry of Law and Justice stated that though that section did not authorise the Board to make rules with retrospective effect, the power to frame a rule for the computation of 'capital' employed in the ships with retrospective effect could be said to follow by necessary implication from the provision of section 84(1) as amended. He further said that even if rule 19(5A) had not been made to apply retrospectively from 1-4-1962, in view of the decision of the Supreme Court in the case of S.A.L. Narayana Row *vs.* Ishwarlal Bhagwan Dass (1965) 57 ITR 149, this rule, which effectuated the purpose for which the main provision was enacted with retrospective effect from 1-4-62, would have also become effective from 1-4-1962. Sub-rule (5A) had specifically been given retrospective effect only by way of abundant caution. In his view, retrospective amendment of rule 19 of the Income-tax Rules, 1962 by the Income-tax (Second Amendment) Rules, 1968 was, therefore, quite in accordance with the legal position as enunciated by the Supreme Court.

6. In reply to a question whether the Attorney General had been consulted before making the rules with retrospective effect, the representative of the Ministry of Law and Justice said that they consulted the Attorney General only in cases where they had any real doubt or where a question of a 'very great importance' was involved. In the present case they did not deem it proper to approach the Attorney General. Decisions of the Supreme Court in several cases did not leave any room for doubt in this regard.

7. In reply to a question, the representative of the Ministry of Finance conceded that it was a mistake on the part of the Central Board of Revenue to have extended the concession to the shipping industry under executive instructions. In reply to another question, he conceded that while the concessions given to the shipping industry from 1-4-1962 had been regularised, pre-April, 1962 concessions had not yet been.

8. In reply to a further question as to the total amount of revenue involved in the tax-concession given on this account, the representa-

tive of the Ministry of Finance stated that necessary information was being collected and would be made available to the Committee.

(The witnesses then withdrew)

* * * *

The Committee then adjourned to meet again at 15.00 hours on Thursday, the 17th August, 1972 to consider their draft Fourth Report.

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

MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION, FIFTH LOK SABHA (1972-73)

The Committee met on Wednesday, the 23rd August, 1972 from 15.00 to 15.30 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri M. C. Daga
3. Shri S. A. Kader
4. Shri G. Y. Krishnan
5. Shri Y. S. Mahajan

SECRETARIAT

Shri H. G. Paranje—*Deputy Secretary.*

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

3. The Committee authorised the Chairman and, in his absence Shri S. A. Kader to present the Report to the House on their behalf on the 30th August, 1972.

The Committee then adjourned to meet again on Friday, the 6th October and Saturday, the 7th October, 1972.

GMGIPND—L—1648 LS—28-8-72—800