

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(FIFTH LOK SABHA)

TWELFTH REPORT

(Presented on the 10th May, 1974)



**LOK SABHA SECRETARIAT
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LOK SABHA SECRETARIAT

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

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION

(1973-74)

1. Shri Vikram Mahajan—*Chairman*.
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3. Shri M. C. Daga
4. Shri T. H. Gavit
5. Shri Samar Guha
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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*.

(v)

REPORT

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Twelfth Report.

2. The Committee have held nine sittings—on the 30th June, 5th December, 1973, 24th, 25th, 28th, 29th January, 11th February, 28th March and 7th May, 1974.

3. The Committee considered and adopted this Report at their sitting held on the 7th May, 1974. The Minutes of the sittings which form part of the Report are appended to it.

4. A statement showing the summary of recommendations|observations of the Committee is also appended to the Report (Appendix I).

II

LAYING OF NOTIFICATIONS ISSUED UNDER THE CUSTOMS AND CENTRAL EXCISES ACTS

5. On 29th March, 1974, the Minister of State for Finance, laid on the Table a notification published in the Gazette of India on 23rd March, 1974, under Section 159 of the Customs Act, 1962. The notification had the effect of raising the export duty on carpet backing and other hessian cloth and re-imposing export duty on sacking (cloth and bags).

6. A point was raised in the House whether it was proper on the part of Government to issue the notification without taking the House into confidence and also whether it was proper for the Ministry to lay the notification on the Table after a lapse of 6 days.

7. In regard to the time-lag of 6 days in laying the notification on the Table, the Minister of State for Finance stated that according to the procedure or conventions, the notifications of the Finance Ministry were laid on the Table on their question day which happened to be 29th March, 1974, after the issue of the notification.

8. The Deputy Speaker who was in the Chair withheld the ruling and stated that the matter would be examined. Subsequently, the Minister of State for Finance wrote to the Speaker giving following procedure for laying notifications issued under the Customs and Central Excises Acts on the Table:—

When the Parliament is in Session

- "(a) A distinction will be made between sensitive notifications and others. In the former category will fall all notifications making changes in export duties, major changes in procedures, and changes in import and Central Excise duties involving revenue of more than Rs. 50 lakhs per annum, except cases where an existing concession is being continued.
- (b) All sensitive notifications should be published in Gazette Extraordinary. If such a notification is sent to the press for issue before 6 P.M., it should be laid on the Table of the Houses of Parliament on the same day just before they

adjourn for the day. For this purpose, as soon as it is decided to lay the notification on any particular day, a request should be sent to the Speaker, Lok Sabha and the Chairman, Rajya Sabha in writing, asking for time to lay the notification. If there is difficulty in getting the G.S.R. number the same day, the notification may be laid without the G.S.R. number and the G.S.R. number could be supplied later.

- (c) If a sensitive notification is sent to the Press for issue in a Gazette Extraordinary after 6 P.M., 550/250 copies should be sent the same night to the Lok Sabha Secretariat|Rajya Sabha Secretariat so that they could circulate it to the Members and such notification should be formally laid on the Table of the two Houses of Parliament within seven days of their publication after arranging, to obtain the G.S.R. number within that period. However, if in any particular case the issue of a notification was not anticipated and for that reason advance arrangements for posting staff connected with the stencilling and cyclostyling of the notification could not be made, the notification may be laid on the Table of both the Houses of Parliament the following morning. In such cases a letter should be sent to the Speaker and Chairman the same night sending a copy of the notification and informing them of the intention to lay the notification on the Table the following morning.
- (d) In regard to other than sensitive notifications, they should be laid on the Table of both Houses of Parliament within seven days of their publication after arranging to obtain the G.S.R. number within that period.

When the Parliament is not in Session

- (e) All notifications including sensitive notifications issued during the inter-session period should be laid in both the Houses of Parliament within seven days of the commencement of the next session."

9. As directed by the Speaker the Committee have examined the aforesaid procedure. The Committee approve the above procedure except that if a sensitive notification is sent to the Press for issue in the Gazette Extraordinary after 6 P.M., it should be formally laid on the Table of both Houses of Parliament at their next sitting instead of within seven days.

THE HOMOEOPATHY CENTRAL COUNCIL BILL, 1973 (AS PASSED BY RAJYA SABHA)—PROVISIONS REGARDING SUBORDINATE LEGISLATION

10. The Homoeopathy Central Council Bill*, 1973, as passed by Rajya Sabha on 23rd July, 1973, was laid on the Table of Lok Sabha on 26th July, 1973. The Bill was examined under direction 103(2) of the Directions by the Speaker and the following points arising therefrom were referred to the Ministry of Health and Family Planning (Department of Health) for such appropriate action as they might consider necessary:—

- (i) Clause 33 of the Bill empowered the Central Council to make Regulations with the previous sanction of the Central Government to carry out the purposes of this Act. Matters to be included in the Regulations were specifically laid down in sub-clauses (a) to (o) of Clause 33. But sub-clause (p) at the end provided to include any matter for which under this Act provision might be made by Regulations. This provision being omnibus in construction, appeared to be a case of excessive delegation, as it gave an impression that matters other than those enumerated in sub-clauses (a) to (o) could also be included in the Regulation; and
- (ii) no provision was made in the Bill for the publication of Regulations so framed under Clause 33, in the Official Gazette, as was done in the case of Rules to be made under Clause 32.

11. While explaining the position in regard to the above points, the Ministry of Health and Family Planning stated in their reply as follows:—

"Sub-clause (p) of Clause 33 is verbatim re-production of section 35(p) of the Indian Medicine Central Council Act, 1970 as well as section 33(n) of the Indian Medical Council Act, 1956. As per the recommendation of the Joint Committee which considered the Indian Medicine and Homoeopathy Central Council Bill, 1968, the Bill for

*The Bill was passed by Lok Sabha on 19-11-73.

Homoeopathy has been drafted on the same lines as the Indian Medicine Central Council Act, 1970. The Joint Committee which considered the Bill have not made any observation on this point.

Similarly the drafting of both the Clauses 32 and 33 are on the same lines as the two Acts referred to (above). Even though it is not specifically mentioned the Regulations made under clause 33 will be notified normally in the Gazette of India.

In view of the position explained above no further action on the part of this Ministry appears necessary."

12. The Committee are not convinced with the explanation given by the Ministry of Health and Family Planning for not providing for publication of Regulations in the Gazette. According to the Ministry, even though it is not specifically mentioned in the Act, the Regulations will normally be notified in the Gazette. The Committee desire the Ministry of Health and Family Planning to amend the Central Health Council Act so as to provide therein specifically for publication of Regulations.

13. The Committee are also not happy over the inclusion of an omnibus provision like sub-clause (p) of Clause 33. In their opinion such a provision is in the nature of excessive delegation as it gives an impression that matters other than those enumerated in sub-clauses (a) to (e) could also be included in the Regulations. The Committee desire the Ministry of Health and Family Planning to delete Section 33(p) from the Act. The Committee also desire the Ministry to delete similar provision from the Indian Medicine Central Council Act, 1970 and the Indian Medical Council Act, 1956.

IV

THE INDIAN TELEGRAPH (AMENDMENT) RULES, 1972 (G.S.R. 398 OF 1972)

14. Rule 519A of the Indian Telegraph Rules, 1951 as inserted by the Indian Telegraph (Amendment) Rules, 1972 read as follows:—

- “(i) No rebate or refund shall be admissible to a subscriber by reason of breakdown, disrepair, interruption, disturbance, stoppage of communication or of any other cause whatsoever.
- (ii) The telegraph authority shall endeavour to repair and restore the communication and the subscriber shall render all reasonable assistance in doing so.”

15. The Ministry of Communications were requested to state the considerations for inserting the afore-mentioned Rule 519A. They were also requested to state whether to ensure that due to disrepair for an indefinite period the subscriber did not suffer, the Ministry had any objection to lay down a maximum time-limit beyond which the subscriber may be allowed rebate or refund of charges.

16. In their reply, the P. & T. Department stated as under:—

“Rule 519-A of the Indian Telegraph Rules as inserted vide G.S.R. 398 in the Gazette of India, Part II, Section 3(i) dated 1st April, 1972 providing for non-eligibility of rebate or refund of charges for telex service by reason of breakdown, disrepair, interruptions etc. of the service is an amplification of Rule 519 of the Indian Telegraph Rules. The latter rule was incorporated in the Indian Telegraph Rules by its 12th Amendment on 30th May, 1969 to provide for coverage of the rules and regulations concerning Telex Services as provided by the Indian P. & T. Department. Earlier to this date, there was no provision in the Indian Telegraph Rules in regard to Telex Service and the practice in vogue was to enter into an agreement with the Telex subscribers in a contract form. It would be noted that clause 12 of the agreement form had the provision that in the event of the telex line not being in good working order at any time, the officer concerned should

restore the same with all reasonable despatch and the subscriber shall give all reasonable assistance for the purpose, but the Government shall not be responsible for any loss, damage or inconvenience caused to the subscriber by reason of break-down, disrepair, interruption, disturbance, stoppage of communication or from any other cause whatsoever. It was further stated in the clause that no rebate of rent or other dues would be admissible to the subscriber for the period of such interruption.

At the time when the 12th Amendment to the Indian Telegraph Rules was promulgated (in May, 1969), the intention of this Department was that the system of entering into agreements in the form prescribed earlier with the Telex subscribers was to be discontinued with the future Telex connections being provided under the provisions of the newly amended Indian Telegraph Rules. Thus it would be noted that incorporation of Rule 519-A in the Indian Telegraph Rules in April, 1972 does not introduce any new conditions in the service provided to the Telex subscribers, inasmuch as the provision of the rule is in accordance with clause 12 of the agreement which used to be entered into earlier.

It is also to be noted in this connection that there is a provision in Indian Telegraph Rule 474 to the effect that no rebate or refund of charges would be allowed to the rented telegraph and telephone circuits.

The recent amendment to the Indian Telegraph Rules, as introduced *vide* Rule 519-A, was similarly intended to serve in specific reference to the Telex Service as is served by Rule 474 for the rented circuits. This amendment was incorporated subsequently, as in the original amendment promulgated in May, 1969, this particular aspect was lost sight of due to an oversight.

As regards prescription of a maximum time limit beyond which subscribers may be allowed rebate or refund of charges, it is to be noted that failure in Telex Service (or in any of the other tele-communication services) may arise due to causes beyond the control of this Department and the period of interruption may also be beyond the control of this Department in spite of the fact that the P. & T. Department may make all possible endeavours to keep the circuits free from interruptions and to restore

the circuits into service as expeditiously as possible when interruptions occur. Dislocations in the service are sometimes caused by natural calamities like floods, cyclones, storms etc. So far as the Telex Service is concerned, it may cause failure on only certain routes and not on all the National Routes on which the service prevails. As would be noted the provisions in the newly introduced amendment are similar to those already provided in the Indian Telegraph Rule governing rented tele-communication services. Any suggestions to prescribe a maximum time limit for interruptions in the Telex Service would have repercussions on the other services also. This Department does not consider it desirable to make any such provisions in the Indian Telegraph Rules in view of the complications that may result due to a large number of claims being received from various subscribers—the genuineness of which may be difficult to prove and in view of the loss of revenue to the Government.”

17. The Committee were not satisfied with the reply of the Department of Communications (P. & T. Board) that Rule 519-A of the Indian Telegraph Rules, 1951 was in accordance with clause 12 of the agreement which used to be entered into earlier with Telex subscribers and that similar provision existed in the Indian Telegraphs Rule 474 in respect of rented telegraph and telephone circuits. The Committee noted that there was a marked difference in the provisions of Clause 12 of the agreement and the new Rule. Whereas under clause 12 of the agreement, there was an obligation on the Telegraph Authority to restore the service with all reasonable despatch, there was no obligation under Rule 519A(2) as worded. The Committee desired that (i) the Rule should be amended and brought in line with clause 12 of the agreement and (ii) in cases where the breakdown in the communication occurred or remained under disrepair due to negligence of the Department, subscriber should be entitled to refund of charges.

18. The Ministry of Communications which were asked to send their comments on the above suggestion as desired by the Committee replied as under:—

“.....action is being taken to amend Rule 519A(2) of the Indian Telegraph Rules to fall in line with clause 12 of the agreement which used to be entered into earlier with Telex subscribers as desired *vide* para 5 of the minutes of the sitting of the Committee on Subordinate Legislation in their meeting held on 11th January, 1973.

As regards para 6 of the minutes in respect of refund of charges for any breakdown in communication due to negligence of the department, it has again been examined and found that failure in Telex Service (or in any other telecommunications services) may arise due to causes beyond the control of the department in spite of the fact that this department may make all possible endeavours to keep the circuits free from interruptions and to restore the circuits into service as expeditiously as possible. Dislocations in the service are sometimes caused by natural calamities like floods, cyclones, storms etc. So far as the Telex Service is concerned, it may cause failure only on a limited number of trunk routes and not on all the routes which will still continue to be available to the customer. The refund in case of breakdown of service is not practical as the service is essential in a trunk Telegraph Service. A telex subscriber cannot be guaranteed uninterrupted services to all points and all the time.

Moreover a provision in the rules relating to refund of charges for any break-down in communications would cause complications as it would be difficult to determine negligence of the department and verify claims. Any rebate due to break-down caused by negligence of staff can very well be considered administratively rather than by a provision in the rules. This department, therefore, does not consider it desirable to make any such provisions in the Indian Telegraph Rules in view of the difficulties explained above."

19. The Committee are glad to note that the Ministry of Communications have agreed to amend Rule 519-A(2) of the Indian Telegraph Rules so as to bring it in line with Clause 12 of the agreement which used to be entered into earlier with Telex subscribers. The Committee desire the Department to amend this rule accordingly at an early date.

20. As regards the refund of charges for any break-down in communication due to negligence of the Telegraph Department, the Committee are in agreement with their reply that the provision for refund of charges for any breakdown would cause complication as it would be difficult to determine the negligence of the Department. The Committee note the assurance of the Department that a rebate in such cases would be considered administratively.

**TAXATION LAWS (EXTENSION TO UNION TERRITORIES)
(REMOVAL OF DIFFICULTIES) ORDER NO. 2 OF 1970
(S.O. 3770 OF 1970)**

21. Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970 was published in the Gazette of India Part II, Section 3(ii) dated the 19th November, 1970 but it was deemed to have come into force on the 1st April, 1963 *vide* clause 1(2) *ibid*.

22. Attention of the Ministry of Finance (Department of Revenue and Insurance) was invited to the following recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha): —

"The Ministries|Departments should take appropriate steps to ensure the publication of rules before they came into force. However, if in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given either by way of an explanation in the rules or in the form of a footnote to the relevant rule to the effect that no one will be adversely affected as a result of retrospective effect being given to the rules."

The Ministry were, therefore, requested to state:

- (i) the reasons for giving retrospective effect to the above Order; the reasons for a time lag of more than seven years between the date of effect of the Order and the date of its publication in the Gazette;
- (ii) whether anyone had been|would be adversely affected by the retrospective effect of the Order; and
- (iv) the reasons for not publishing an explanatory note to the Order as required by the above said recommendation of the Committee.

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

“Section 32 of the Income-tax Act, 1961 provides for deduction of depreciation allowance in respect of buildings, machinery, plant or furniture owned by an assessee and used for the purposes of his business or profession, in computing the taxable profits of the business or profession. Such depreciation allowance is to be calculated at rates laid down in the Income-tax Rules on the written down value of the asset. Written down value is defined in Section 43(6) of the Income-tax Act as being the actual cost of the asset to the assessee as reduced by all depreciation actually allowed to him under the Income-tax Act, 1961, or the Acts that preceded it.

Assessees in the Union Territories of Goa, Pondicherry, etc. who own and use plant and machinery for the purpose of their business or profession had been allowed depreciation in the computation of their taxable income under the local laws in force in those territories prior to their becoming part of India. Such depreciation allowance could not, however, be deducted from the actual cost of the asset for the purpose of computing the written down value under the Income-tax Act, 1961 as the said allowance was not granted to them under that Act or any of the Indian Income-tax Acts in force in earlier years. Consequently, for assessment years 1963-64 onwards, such assesseees would have been entitled to depreciation in respect of plant and machinery and other depreciable assets with reference to their actual cost, even though it cannot be denied that the assets had, in fact, depreciated due to their user prior to 1st April, 1963. Under the local laws, prevalent in Pondicherry prior to 1st April, 1963, depreciation was allowed on business assets according to the amount actually debited by the taxpayer in his accounts. In Goa, and other former Portuguese territories, the taxable income was determined on *ad hoc* basis without a specific allowance being made on account of depreciation. However, it cannot be denied that even in such cases the assets used in the business must have depreciated and the *ad hoc* basis adopted for determining the tax liability should be deemed to have taken this factor into account.

A difficulty had thus arisen in applying the provisions of the Income-tax Act to the Union Territories concerned. This difficulty was two-fold. In the first place, the deprecia-

tion allowed under the local laws could not be regarded as depreciation allowed under the Income-tax Act, 1961 or the enactments preceding it. Secondly, there were cases where the depreciation actually allowed under the local laws could not be ascertained due to the absence of records or due to the adoption of *ad hoc* methods of arriving at the taxable income under the local laws. It was, therefore, felt necessary to resolve these difficulties in order that the taxpayers in the Union Territories may not derive an undue advantage by way of allowance of depreciation in a higher amount than taxpayers in the rest of the India. Although these difficulties were brought to the notice of the Central Government by the field officers quite late, after the administrative machinery for levying income-tax and other direct taxes in the Union Territories concerned was brought into position and the difficulties actually came to the notice of the officers it was felt necessary to give retrospective effect to the above Order so that the provisions thereof could apply to all assessments made after the extension of the Income-tax Act to these territories. In this context, attention is invited to the following observations of the Supreme Court in the case of CIT v. Diwan Bahadur Ram Gopal Mills Ltd. [(1961) 41 ITR 280] upholding the retrospective effect given to the Explanation added to the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950:—

“The Explanation, though added in 1956 explains the meaning of paragraph 2 of the Removal of Difficulties Order, 1950 and says in express terms that the paragraph shall be deemed always to have had that meaning. Section 12 (of the Finance Act, 1950) by the very nature of its intent and purpose, confers on the Central Government power to make and to remove difficulty which has already arisen and the power to remove the difficulty from the time it arose. The Central Government has, therefore, the power to make an order to give a direction so as to remove the difficulty from the very beginning and that is what the Notification of 1956 does.”

The above quoted observations of the Supreme Court provide the rationale for giving retrospective effect to the Order under consideration.

- (ii) As stated in (i) above, the time lag of seven years occurred due to the fact that the difficulties in applying the

Income-tax Act to the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry were brought to the notice of the Central Government very late.

- (iii) According to the advice given to us by the Ministry of Law, the Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970 is an order under section 7 of the Taxation Laws (Extension to Union Territories) Regulation, 1963. This Regulation does not require any such order to be laid before Parliament. As such, it seems that the recommendation contained in para 10 of the Second Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) regarding procedure to be followed in a case where retrospective effect is given to any rules, is not applicable to the Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970."

24. The Committee are not convinced with the reply of the Ministry of Finance that explanatory note regarding retrospective effect given to the Order was not published as the Taxation Laws (Extension to Union Territories) Regulations, 1963 under which it was issued did not have any provision for its being laid on the Table. The Committee feel that the Ministry of Finance is under misapprehension in this regard. They would like to point out that the requirement of an explanatory note to an Order is not dependent upon whether it is required to be laid on the Table or not. According to the recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha), the explanatory note is required to be given in all cases where due to unavoidable circumstances retrospective effect has to be given to an Order.

25. The Committee would also like to draw attention to their observations made in para 102 of their Ninth Report (Fifth Lok Sabha) that the recommendation regarding giving of explanatory note in cases of retrospective effect had been made by them not because of any legal necessity but because of propriety and check on abuse of power. The Committee desire the Department of Parliamentary Affairs to issue general instructions in this behalf to all Ministries/Departments to remove their misapprehension regarding the necessity for explanatory note in cases where retrospective effect is given to Rules, Regulations, etc.

26. The Committee also regret to note from the reply of the Ministry that the difficulties in applying the Income-tax Act to the Union

Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry were brought to the notice of the Central Government very late by the field officers as a result of which retrospective effect was given to the Order from as far back as seven years. The Committee desire the Ministry of Finance to be careful about such matters in future and issue necessary instructions in this regard so that retrospective effect to Orders is avoided.

VI

THE COAL MINES LABOUR WELFARE FUND (AMENDMENT) RULES, 1971 (G.S.R. 1353 of 1971)

27. Rule 21(4) of the Coal Mines Labour Welfare Fund Rules, 1949 framed under Section 10(2)(ii) of the Coal Mines Labour Welfare Fund Act, 1947 provides that the Vice-Chairman of the Advisory Committee for Housing Board may, with the prior approval in writing of the Central Government, delegate his powers under sub-rule (3) to any officer subordinate to him.

28. Rule 21(3) reads as under:

"Subject to financial provision in the sanctioned budget, the vice-chairman of the Advisory Committee shall have power to incur any sanctioned expenditure and shall, with the concurrence of the appropriate sub-committee or Housing Board, also have power to sanction any welfare and housing scheme, if the cost of such a scheme does not exceed Rs. 50,000 non-recurring and Rs. 5,000 per annum recurring."

29. It was felt that the delegation of powers by the vice-Chairman to any Officer subordinate to him *albeit* with the prior approval of the Central Government amounts to sub-delegation for which there must be a provision in the Coal Mines Labour Welfare Fund Act, 1947, under which above Rules have been framed.

30. The Ministry of Labour (Department of Labour and Employment), to whom the matter was referred, have stated as under:—

"The vice-Chairman can delegate powers with prior approval of Central Government in writing. The Agency of vice-Chairman (i.e. the Coal Mines Welfare Commissioner, Dhanbad) is being utilised only as *modus vivendi*. In fact, the powers would be delegated by the Central Government, as the condition of getting prior approval in writing makes it clear. It is only that a formal order is issued by vice-Chairman, Hence rule 21(4) of Coal Mines Labour Welfare Fund Rules, 1949 does not appear to be inconsistent with any of the provisions under the Coal Mines Labour Welfare Fund Act, 1947 or the Rules framed thereunder."

31. The Committee do not agree with the reply of the Ministry of Labour that the agency of the Vice-Chairman of the Advisory Committee is utilised only as modus vivendi and the powers are in fact delegated by the Central Government. They are of the opinion that in case the Central Government wants to entrust the powers of the Vice-Chairman to incur expenditure to some other authority, the name of the authority with the extent of power should be mentioned in the Rules. The Committee desire the Ministry to amend the Rules accordingly at an early date.

VII

THE CARDAMOM RULES, 1966 (G.S.R. 25 of 1969)

32. Rule 15(2) of the Rules *ibid* provides as under:

"(2) If at any time the number of members present in a meeting of any of the Committees is less than the required quorum, the person presiding shall adjourn the meeting to a date not later than three days from the date of the meeting, informing the members of the Committee of the date, time and place of the adjourned meeting; and it shall thereupon be lawful for him to dispose of, at such adjourned meeting, the business intended to be transacted at the original meeting, irrespective of the number of members for the time being present."

33. The above provision was not in consonance with Section 33(2) (c) of the Cardamom Act, 1965 which envisaged certain quorum to be provided by rules for meetings of the Board and Committees thereof.

34. The Ministry of Commerce with whom the matter was taken up have stated as under in their reply:—

"In the light of what has been stated by the Committee on Subordinate Legislation, Government proposed to amend sub-rule (2) of Rule 15 of Cardamom Rules providing that the members present at an adjourned meeting (though the number of such members is less than the required quorum) shall form the quorum for such meetings, i.e. for the portion beginning with words 'and it shall thereupon', and ending with the words 'for the time being present' the following shall be substituted, namely:—

'and if the number of members present at such adjourned meeting is less than the required quorum, the members so present shall be the quorum'

It is hoped that this would meet the objection raised by the Committee."

35. The Committee considered the reply of the Ministry at their sitting held on the 22nd May, 1973 and desired to have the following further information:

- (a) The number of meetings adjourned during the last 4 years for want of quorum and the number of members present at each meeting.
- (b) The number of members present at the adjourned meetings.

36. In their reply, the Ministry of Commerce stated as under:

".....there has been no instance of any Committee meeting adjourned to a date not later than 3 days from the date of the originally fixed meeting. No business was transacted at any of the Committee meetings without the prescribed quorum as stipulated in Rule 15(1) of the Cardamom Rules, 1966, as it will be impracticable to adjourn any Committee meeting to a date not later than 3 days from the originally fixed date, if lack of quorum is evidenced, the procedure adopted so far is to postpone it to a later convenient date and again issue due notices as prescribed in Rule 14(3) of the Cardamom Rules, 1966. As such the information called for in item No. 2 is also 'NIL'."

The Ministry have also issued amendment to Rule 15(2) as proposed by them in their reply referred to in para 2 above.

37. Although the Committee have no objection to amendment issued to Rule 15(2) of the Cardamom Rules, they are not happy at the Ministry of Commerce having issued the same without waiting for the comments of the Committee thereon, particularly when it was proposed to meet the objection raised by them. The Committee desire the Department of Parliamentary Affairs to issue necessary instructions in this regard to all Ministries/Departments for compliance in future.

VIII

(i) INDIAN RAILWAY TRAFFIC SERVICE RECRUITMENT RULES, 1968 (G.S.R. 2204 of 1968)

(ii) INDIAN RAILWAY SERVICE OF ENGINEERS ETC. RULES, 1971 (G.S.R. 550, 551, 552, 553, 554 and 555 of 1971).

(A)

38. Rule 22(7) of the Indian Railway Traffic Service Recruitment Rules, 1968 provided that no officer shall have any claim to promotion to any class of the service as of right.

The Ministry of Railways who were requested to state the genesis of the above provision stated in their reply as under:

"It has been decided in consultation with the Union Public Service Commission that Rule 22(7) may be deleted."

39. The Committee note with satisfaction that the Ministry of Railways have decided to delete Rule 22(7) and desire them to issue necessary amendment at an early date.

40. The Committee feel that all Government servants are entitled to opportunities of promotion in accordance with set principles on the subject. The above Rule was so worded as to give an impression that promotion could be arbitrarily denied to a person. The Committee therefore, desire the Cabinet-Secretariat (Department of Personnel) to ask all Ministries/Departments of Government to examine their Recruitment Rules if they contain a similar provision and take necessary action for deleting the same.

(B)

41. Paragraph (d) of the Appendix to the Indian Railway Traffic Service Recruitment Rules, 1968 provides as under:

"Probationers should already have passed or should pass during the period of probation an examination in Hindi in the Devnagri script of an approved standard. This examination may be the "Praveen" Hindi Examination which is conducted by the Directorate of Education, Delhi Administration, Examination Branch, or one of the equivalent examinations recognised by the Government.

No probationer may be confirmed or his pay in the time scale raised to Rs. 450 per month unless he fulfils the above requirement, and failure to do so will involve liability to termination of service."

42. It was noticed that similar provision regarding passing of examination in Hindi had been made in the Recruitment Rules relating to Indian Railway Service of Engineers/Electrical Engineers/Medical Engineers/Signal Engineers/and Indian Railway Stores Services.

43. The above provision did not appear to be in consonance with the spirit of sub-section (4) of Section 3 of the Official Languages Act, 1963 which *inter alia* lays down that the rules to be framed by the Government under the Act shall ensure that the persons serving in connection with the affairs of the Union are not placed at a disadvantage on the ground that they do not have proficiency in both languages (Hindi and English).

44. The Ministry of Railways with whom the matter was taken up stated in their reply as under:—

"Paragraph (d) of the Appendix to the Rules *inter alia* provides that 'No Probationer' may be confirmed or his pay in the time-scale raised to Rs. 450/- P.M. unless he has passed during the period of probation an examination in Hindi in the Devnagari script of an approved standard, and failure to do so, will involve liability to termination of the service.

It has been pointed out in the Lok Sabha Secretariat O.M. that the above provision is not in concurrence with the spirit of sub-section (4) of Section 3 of the Official Languages Act, 1963 as amended in 1968. The matter has been considered in detail in consultation with the Ministry of Law. The Ministry of Law have given their advice which is reproduced below:—

"Section 8 of the Act contains the power to make rules by the Central Government for purposes of the Act. Section 3(4) says that such rules made by the Central Government under Section 8 shall ensure that persons serving in connection with the affairs of the Union and having proficiency either in Hindi or in English language may function effectively and that they are not placed at a

disadvantage on the ground that they do not have proficiency in both the languages. Therefore, according to the Committee on Subordinate Legislation, the provision contained in para (d) of the Appendix to the Indian Railway Traffic Service Recruitment Rules, 1968, wounds the spirit underlying the provisions of the Official Languages Act because failure to pass, according to the paragraph, could involve termination of the services of the employee.

In their comments the Department of Personnel and Administrative Reforms have stated that Hindi is one of the qualifying subjects prescribed in the IAS Probationers Final Examination, unless a Probationer passes the test in Hindi, he is not confirmed in the IAS; again under the ICS (probationary Service) Rules, 1940, a Probationer was required to offer for examination a vernacular language shown against his Province and the IAS (Probationers Final Examination) Regulations, 1955, are almost based on the lines of the ICS Rules, 1940.

In this connection, attention is invited to Rule 7 of the Indian Administrative Service (Probation) Rules, 1954, which says that every Probationer shall, during the course of training, appear at a final examination to be conducted by the Director in accordance with such regulations as the Central Government may make in consultation with the State Governments and the UPSC. The Indian Administrative Service (Probationers Final Examination) Regulations, 1955, have been accordingly framed and Part II of Regulations 4 has prescribed Hindi as one of the qualifying test except for candidates who are examined in Hindi as a regional language.

No doubt, in the rules prescribed by the Railways mentioned above, a drastic consequence will visit an employee who fails to pass the Hindi test, that is his services will be terminated. It is felt that considering the spirit of the Official Languages Act, such a drastic consequence appears to be out of context. In any event a stipulation that the candidate should pass the Hindi test as is done in the case of the Railway Service Rules for getting confirmed in the service, appears to be necessary to promote the objectives of the Official Languages Act itself.

It may also be mentioned that the Railway Service Rules mentioned above have been framed under the proviso of article 309 of the Constitution and not under Section of the Official Languages Act so as to ensure strict adherence to the provisions of that Act.

In the circumstances, the Railway Service Rules in question may be amended and the penalty of termination of services in case a candidate fails to pass a Hindi test, may be deleted'.

The Ministry of Railway have carefully considered the advice given by the Ministry of Law and are of the view that the provision as it appears in paragraph (d) of the Appendix to the Rules may be deleted. However, in keeping with the broad spirit of the Language Act to encourage use of Hindi, it is proposed to issue administrative instructions that Hindi should be one of the subjects for the departmental examination of the probationers. This will be on the lines of the IAS (Probation Final Examination) Regulations, 1955".

45. The Committee are glad to note that the Ministry of Railways have decided to delete paragraph (d) of the Appendix to the Indian Railway Traffic Service Recruitment Rules, 1968, which provides penalty of termination of service in case a candidate fails to pass Hindi test. The Committee desire the Ministry to take necessary action to amend these Rules as well as Recruitment Rules relating to Indian Railway Service of Engineers etc. at an early date.

IX

INDIAN SALT SERVICE RECRUITMENT RULES, 1970 (G.S.R. 673 OF 1970)

(A)

46. The preamble to the Indian Salt Service Recruitment Rules gave an impression that the earlier Rules on the subject published under S.R.O. 1666 of 1954 had merely been modified and not superseded, while according to Rule 17 the earlier Rules had been repealed. The matter was taken up with the Ministry of Industrial Development who agreed to remove the discrepancy.

(B)

47. Rule 8 *ibid* provided as under:

"If the power to make appointments in the Service/Department is delegated by Government to any officer, that officer may exercise any of the powers of Government under this Rule."

48. The Rule as worded was vague as Government did not enjoy any power 'under this Rule' which could be exercised by the officer to whom power to make appointments was delegated. The matter was taken up with the Ministry of Industrial Development who agreed to rectify the discrepancy by issue of a formal Notification.

(C)

49. Under Rule 10(e) *ibid*, a person having more than one wife living 'shall not be eligible for appointment to the service'. Proviso to the Rule empowered the Central Government to grant exemption from the application of this condition. Rule 11 laid down that the decision of the U.P.S.C. on the question whether a candidate did or did not satisfy any of the requirements of Rule 10 would be final.

50. The existence of the proviso to Rule 10(e) and Rule 11 was likely to create an anomalous situation. If the UPSC decided that a particular candidate was debarred from being appointed to the service in view of his having more than one wife living, it would be final but the Central Government could also exercise its power of granting exemption to such a candidate under the proviso to Rule 10(e). In that event there would not be any finality of the decision of the U.P.S.C. as envisaged under Rules 11.

51. The matter was taken up with the Ministry of Industrial Development who agreed to rectify the discrepancy by issue of a formal Notification.

52. The Committee note with satisfaction that the Ministry of Industrial Development have agreed to rectify the discrepancies in the Rules by issue of the formal Notification. They desire the Ministry to take necessary action in the matter at an early date.

AIR HEADQUARTERS (SENIOR DESIGN ENGINEER) RECRUITMENT RULES, 1972 (S.R.O. 229 OF 1972)

53. In column 6 of the Schedule to the above Rules, the age limit for direct recruitment to the post of Senior Design Engineer was given as 45 years which was "relaxable for Government Servants". There was, however, no indication as to the number of years by which the age could be relaxed for Government servants.

54. The Ministry of Defence with whom the matter was taken up stated in their reply as under:—

".... the matter has been examined in consultation with Union Public Service Commission. The recruitment rules for the post of Senior Design Engineer, as published in S.R.O. No. 229 of 1972, provide that it will be filled by transfer on deputation failing which by direct recruitment. The field of deputation is Defence Science Service Officers holding analogous posts, failing which officers with three years service in posts in the scale of Rs. 1100-1500 or equivalent from the Defence Science Service.

The recruitment rules *inter alia* provide that age limit for direct recruits should be '45 years (relaxable for Govt. servants)'. If the number of years by which the age would be relaxed in favour of Government servants, is specified, as desired by the Lok Sabha Sectt., it would obviously restrict the choice of selection and exclude highly qualified and experienced Government servants from being considered for the post. The Commission, however, at the time of selection take into consideration the qualifications and experience of the candidate concerned *vis-a-vis* his age so that he may be useful in the long run and should meet the requirement of the post. Wherever such a provision is incorporated in the recruitment rules, no limit is laid down by the Commission.

In view of the position explained above, it is not considered desirable to specify the number of years by which the age limit prescribed for direct recruits, should be relaxable for Government servants."

55. The Committee are not satisfied with the explanation of the Ministry of Defence for not specifying the period by which age could be relaxed for Government servants. They are of the opinion that except for Defence Services or in Emergencies, the period by which upper age limit for Government servants could be relaxed taking into account needs of the job should be specifically stated in the Rules and should not be left to the discretion of the Union Public Service Commission. The Committee desire the Cabinet Secretariat (Department of Personnel) to issue necessary instructions in this regard to all Ministries/Departments of Government.

XI

THE PATENTS RULES, 1972 (S.O. 301(E) OF 1972)

(A)

56. Under the provisions of Rules 21 (4), 23 (1), 26, 34 (3), 36 (2), 51 (2) and 87 (6) of the Patents Rules, the Controller of Patents is required to give notices and to send communications to the parties concerned. Having regard to the vital importance of the afore-said notices and communications to the parties, it was felt that a procedure for ensuring delivery thereof should be provided in the Rules. Attention of the Ministry of Industrial Development was invited to the Trade and Merchandise (Judicial Proceedings, Madras) Rules, 1968 (S.O. 1327 of 7th December, 1968) which specifically provide for sending communications to the addressees by Registered Post| A.D.

57. In their reply, the Ministry of Industrial Development stated as under:—

“Rules 23 (1) and other rules referred to in item (i) of the Lok Sabha Secretariat O.M. are based on the corresponding rules of the U.K. Patents Rules, 1968 and also compare with the corresponding rules of the old Patents and Designs Rules, 1933. All notices and communications to parties to various proceedings before the Controller are invariably sent by Registered post, except in the case of the patent agents at Calcutta, where the Patent Office is located to whom they are delivered by messengers. The time limits specified in the rules referred to are, in fact, the minimum time limits prescribed, the Patent Office invariably gives, on average, 30 days’ notice in respect of any hearing. Only when there is very little time left and the applications before the Controller are about to become ‘deemed to be abandoned’ the Patent Office curtails the notice of hearing. Even if a notice or other communication is not received or received by the applicant or other party very late, and the Controller passes his order or

decides on a case in the meanwhile, the aggrieved party can apply to the Controller for the review of his decision or setting aside his order passed *ex-parte* by following the procedure prescribed under sub-rule (1) or (2) of rule 115."

58. The Committee are not satisfied with the explanation of the Ministry that notices and communications to parties to various proceedings before the Controller are invariably sent by Registered post except in the case of patent agents at Calcutta to whom they are delivered by messenger. In this connection, they would like to invite the attention of the Ministry to para 25 of their First Report (Fifth Lok Sabha) wherein the Committee had stressed that departmental instructions could hardly be a proper substitute for a built-in legal safeguard. The Committee desire the Ministry to give statutory shape to the procedure being followed by them at present for sending communications to parties by making suitable amendments to the Rules.

(B)

59. Under Rule 9 of the Patents Rules, all documents except affidavits and drawings sent to or left at the Patent Office or otherwise furnished to the Controller, shall be written, type-written, lithographed or printed in the English Language (unless otherwise directed or allowed by the Controller).

60. It was felt that Rule 9, in so far as it placed a restriction on the use of Hindi was against the spirit of the Official Languages Act, 1963 which was enacted to ensure the progressive use of Hindi for official purposes of the Union.

61. The Ministry of Industrial Development with whom the matter was taken up stated in their reply as under:—

"Applications for patents, accompanied by detailed specifications and descriptions of inventions and drawings, are all highly technical and scientific in content. In fact, they represent original research and scientific investigations at high levels. Therefore, until such time as the translation of such highly technical and scientific publications, both Indian and foreign, are available in Hindi and our own level of technical education in Hindi sufficiently matches the high standard required to handle work of this kind,

the technical part of the work of the Patent Office may have to be continued to be transacted in English. If rule 9 is amended as suggested, it may create more problems and even confusion to the detriment of applicants for patents and the general public. Moreover, rule 9 gives power to the Controller to direct or allow documents in a language other than English in suitable cases. It is the intention of this Ministry to revise the Rules, including the use of Hindi in preference to English as soon as essential conditions are realised."

62. The Committee are not satisfied with the explanation of the Ministry for allowing only English in documents submitted before the Controller. They feel that the restriction on the use of Hindi in these documents goes against the spirit of the Official Languages Act, 1963 which was enacted to ensure progressive use of Hindi for official purposes of the Union. The Committee, therefore, desire the Ministry to allow the use of Hindi also in addition to English in documents furnished to the Controller under Rule 9 of the Patent Rules.

(C)

63. Under Rule 92(b), if the Controller is satisfied that the name of a person has been entered in the roll of scientific advisers by error or on account of misrepresentation or suppression of any material fact, he may remove the name of the person concerned from the roll. There is no indication in the Rule that the person concerned will be given a reasonable opportunity of being heard before his name is removed from the roll.

64. The Ministry of Industrial Development with whom the matter was taken up, replied as under:—

"It may be seen that Section 80 and rule 114 prescribe that the Controller shall give a hearing to a party before exercising any discretionary power under the Patents Act, 1970 and the Patents Rules, 1972 adverse to the party and that the Controller shall give at least 10 days' notice of such hearing. Before expunging the name of any person from the roll of scientific advisers, the Controller has to give that person an opportunity of being heard. If, however, the Committee on Subordinate Legislation so desires a specific provision in this behalf will be included."

65. The Committee note from the Ministry's reply that the Controller is required to give a hearing to a party before exercising any discretionary power under the Patents Act, 1970 and the Patents Rules, 1972 adverse to the party. They, however, feel that a specific provision should be made in the Rules for giving an opportunity of being heard to a person before expunging his name from the roll of scientific advisers. The Committee desire the Ministry to amend the Rules accordingly at an early date.

XII

- (i) THE INDIAN ADMINISTRATIVE SERVICE (PROBATION) AMENDMENT RULES, 1972 (G.S.R. 386 OF 1972).
- (ii) THE INDIAN POLICE SERVICE (PROBATION) AMENDMENT RULES, 1972 (G.S.R. 387 OF 1972).
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66. Rule 9 of the Indian Administrative Service (Probation) Rules, 1954 as amended by the above Amendment Rules, read as under:—

“Failure to pass the final examination.—Where a probationer fails to obtain the minimum number of marks prescribed for any subject, group of subjects or part of the final examination, under the regulations framed under rule 7, the Central Government may, permit him to sit for re-examination in subject or subjects in which he failed, or discharge him from the Service, or pass such *other order* as it may think fit.

Provided that the marks awarded to a probationer on such re-examination shall not be taken into account in determining his seniority;

Provided further that the provisions of this rule shall not apply to probationers appointed to the Service in accordance with the Indian Administrative Service (Special Recruitment) Regulations, 1956.

Provided that the Central Government may exempt a probationer, appointed to the service on the results of the competitive examination held in 1970 or earlier, from re-appearing in the subject or subjects in which he failed to obtain the prescribed minimum number of marks in the final examination”.

67. Rule 9 of the I.P.S. (Probation) Rules, 1954 is similarly framed.

68. The Cabinet Secretariat (Department of Personnel) were asked to elucidate the expression ‘*other orders*’ appearing in the above Rule. They were also requested to state whether any criteria

had been laid down as to which of the above-mentioned four methods would be applied in a particular category of cases and if so, whether they had any objection to their incorporation in the Rules.

69. In their reply, the Cabinet Secretariat (Department of Personnel) stated as under:—

“.....the expression ‘other order’ occurring in rule 9 of the Indian Administrative Service|Indian Police Service (Probation) Rules, 1954, does not arise out of the amendment issued in April, 1972. It has been figuring in the rules from the time they were made in 1954. The expression would relate to the following types of orders:—

- (a) order extending the period of probation of the probationer; and
- (b) order warning the probationer about the consequences that might follow if he does not pass the Probationers’ Final Examination in his subsequent appearance or appearances.

As regards the circumstances in which resort should be had to one of the alternatives referred to in rule 9, *no criteria have been laid down*. The alternative to be adopted is decided with reference to the merits of each case.

Certain guidelines have been issued recently in the matter of extension of probation etc. *vide* this Department’s letter No. 22|3|71-AIS (III), dated the 13th July, 1972. One of the guidelines is that, as a matter of convention, no member of the Indian Administrative Service should be kept on probation for more than four years. Accordingly, a probationer who does not complete the Probationers’ Final Examination within the period of four years should ordinarily be discharged from the Service. Thus ordinarily a probationer will be permitted to sit for re-examination or examinations held during the first four years of his Service. If at the end of that period, he has not completed the Probationers’ Final Examination by the prescribed standard, the matter will be considered for discharging him from the Service. The guideline is not strictly complied with and it may lead to rigidity.

The system of granting exemption has been done away with for the future by the amendment made in April, 1972.

and has been retained in the rule only in a limited context, namely, relating to the probationers appointed on the results of the competitive examinations held in 1970 or earlier. This power of grant of exemption from re-appearance in the Probationers' Final Examination to these probationers is exercised with reference to the merits of each case.

This Office Memorandum issues with the approval of the Minister of State in the Department of Personnel".

70. The Committee are not satisfied with the reply furnished by the Cabinet Secretariat (Department of Personnel) that each case is considered on its merits when deciding the alternative to be adopted on the failure of a probationer to pass the final examination. The Committee feel that in the absence of any criteria as to the alternative to be adopted in a particular case, there is a possibility of discrimination being made in cases similarly placed. The Committee desire the Cabinet Secretariat (Department of Personnel) to lay down guidelines in the light of past decisions as to the alternative to be adopted where a probationer fails to pass a subject or subjects at the final examination.

XIII

UNIVERSITY GRANTS COMMISSION (TERMS AND CONDITIONS OF SERVICE OF EMPLOYEES) AMENDMENT RULES, 1972 (G.S.R. 1070 OF 1972)

71. Sub-Rule (3) of rule 4 of the University Grants Commission (Terms and Conditions of Service of Employees) Rules, 1958, as substituted by the above Amendment Rules, provided as under:—

“Nothing in these rules shall affect reservations and other concessions required to be provided for Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.”

72. The above rule being in the nature of a saving clause in respect of Scheduled Castes, Scheduled Tribes and other special categories of persons should have been incorporated in the rules relating to recruitment and not the rules relating to terms and conditions of service.

73. The Ministry of Education and Social Welfare (Department of Education) who were asked to give their comments on the above point, stated as under in their reply:—

“the University Grants Commission (Terms and Conditions of Service of Employees) Rules, 1958, lay down broadly the procedure of recruitment as well as other terms and conditions of service of employees. The Commission has also prescribed the detailed recruitment procedure for posts of different categories through office orders issued from time to time.

It may be pointed out that the amendment to the above mentioned rules published under GSR 1070 in the Gazette of India. Part II, Section 3(i) dated 2nd September, 1972 pertain to rule 4 of the above-mentioned rules which contains the procedure for recruitment of staff. The amendment does not apply to other terms and conditions of service contained in the said Rules. It will, therefore, be

observed that there is no anomaly which requires to be removed and no further amendment of the rules is accordingly necessary. It is requested that the clarification given above may kindly be brought to the notice of the Committee on Subordinate Legislation”.

74. The Committee are not satisfied with the clarification given by the Ministry of Education and Social Welfare for incorporating the saving clause in respect of Scheduled Castes, Scheduled Tribes and other special categories of persons in the Rules relating to terms and conditions of Service of the employees of the University Grants Commission. The Committee are of the opinion that the Rules regulating recruitment to various posts in the University Grants Commission should not be mixed up with other terms and conditions of service of the Employees. Recruitment Rules should be laid down separately by publication in the Gazette of India and the statutory authority under which they are framed should be cited in the preamble. The Committee desire the Ministry of Education and Social Welfare to take necessary action in this regard without any delay.

XIV

- (i) **THE DELHI AND ANDAMANS AND NICOBAR ISLANDS CIVIL SERVICE RULES, 1971 (G.S.R. 122 OF 1971).**
(ii) **THE DELHI AND ANDAMANS AND NICOBAR ISLANDS. POLICE SERVICE RULES, 1971 (G.S.R. 123 OF 1971).**
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(A)

75. Rule 5(2) of the Delhi and Andamans and Nicobar Islands Civil Service/Police Service Rules, 1971, provides that if the exigencies of public service so require the Central Government may, in consultation with the Union Public Service Commission, vary the percentage of vacancies to be filled by each method specified in Rule 5 (1) of the above Rules.

76. It was felt that Government should record the reasons in writing before varying the percentage of vacancies to be filled by various methods.

77. The Ministry of Home Affairs to whom the matter was referred proposed to amend Rule 5(2) as under:—

"If the exigencies of public service so require, the Central Government may, for reasons to be recorded in writing and in consultation with the Commission, vary the percentage of vacancies to be filled by each method specified in Rule 5(1)".

78. The Committee are glad to note that the Ministry of Home Affairs have agreed to amend Rule 5(2) to provide for recording of reasons in writing by Government before varying the percentage of vacancies to be filled by each method specified in Rule 5(1). The Committee desire the Ministry to amend the Rules accordingly at an early date.

(B)

79. Rule 11 of the Delhi and Andamans and Nicobar Islands Civil Service/Police Service Rules, 1971 provides that the inclusion of a candidate's name in the list referred to in Rule 9 shall confer no right to appointment unless the Central Government is satisfied after such inquiry as it may consider necessary that the candidate is suitable in all respects for appointment to the service.

80. It was felt that in cases where the Government did not appoint a person coming in the list, the reasons therefor should be recorded in writing.

81. The Ministry of Home Affairs to whom the matter was referred proposed to amend the Rule by adding the following proviso:—

“Provided that in case a candidate whose name is included in the list referred to in rule 9 but is not appointed to the Service, the reasons for it shall be recorded by the Central Government.”

82. The Committee are glad to note that the Ministry of Home Affairs have agreed to amend Rule 11 to provide for recording the reasons in writing in cases where a person included in the list was not appointed. The Committee desire the Ministry to amend the Rule accordingly at an early date.

(C)

83. Rule 15(3) of the Delhi and Andamans and Nicobar Islands Civil Service/Police Service Rules, 1971, provides that the list shall finally be approved by the Central Government after taking into account the changes, if any, proposed by Union Public Service Commission.

84. It was felt that Government should record the reasons in writing in cases where they did not agree with the changes suggested by the Union Public Service Commission.

85. The Ministry of Home Affairs to whom the matter was referred have proposed to amend the Rules as under:

“The list shall finally be approved by the Central Government after taking into account the changes, if any, proposed by the Commission, and the Central Government shall record reasons in writing if the changes suggested by the Commission are not accepted.”

86. The Committee note with satisfaction that the Ministry of Home Affairs have agreed to amend Rule 15(3) to provide for recording of reasons in writing in cases where the Government did not agree with the change suggested in the List by the Union Public Service Commission. The Committee desire the Ministry to amend the Rule accordingly at an early date.

(D)

87. Proviso to Rule 22 of the Delhi and Andamans and Nicobar Islands Civil Service/Police Service Rules, 1971, provides that the Central Government may exempt, subject to such conditions as it may impose, either wholly or partly from training or departmental examinations, any person appointed under Clause (b) of sub-rule (1) of rule 5 or rule 17.

88. The power to exempt from training or departmental examinations appeared to be unguided power. It was felt that some suitable guidelines might be laid down in this regard by the Government.

89. The Ministry of Home Affairs to whom the matter was referred have proposed to amend Rules as under:—

“Provided that the Central Government may exempt subject to such conditions as it may impose and keeping in view the past service/experience/academic qualifications of the officer, either wholly or partly from such training or departmental examinations any person appointed under clause (b) of sub-rule (1) of rule 5 or rule 17.”

90. The Committee note with satisfaction that the Ministry of Home Affairs have decided to amend the proviso to Rule 22 of above Rules to provide that the Central Government may exempt, subject to such conditions as it might impose and keeping in view the past service/experience/academic qualifications of the officer, either wholly or partly from such training or departmental examinations any person appointed under clause (b) of sub-rule (1) of Rule 5 or Rule 17 of above Rules. The Committee desire the Ministry to amend the Rules at an early date.

(E)

91. Proviso to Rule 33 of the Delhi and Andamans and Nicobar Islands Civil Service/Police Service Rules, 1971, provides that the power exercisable by the Central Government may be delegated by it to the Administrator subject to such conditions as it may prescribe.

92. It was felt that the delegation of power to the Administrator was tantamount to sub-delegation of legislative power for which there was no express authorisation in the parent law.

93. The Ministry of Home Affairs to whom the matter was referred proposed to delete the above rule as it was felt that no delega-

tion of powers, as were available to the Central Government under above rules, to the Administrator of Delhi or Andamans and Nicobar Islands, was necessary. They further stated that no such delegation had been made so far under above rule.

94. The Committee note with satisfaction that the Ministry of Home Affairs have decided to delete proviso to Rule 33 under which power exercisable by the Central Government could be delegated to the Administrator. The Committee desire the Ministry to carry out the amendment at an early date.

**THE COLD STORAGE (AMENDMENT) ORDER, 1970
(S.O. 150 OF 1971)**

95. Sub-clause (d) of Clause 2 of the Cold Storage Order 1964, substituted by above amending Order, provides that the 'Licensing Officer' means the Agricultural Marketing Adviser to the Government of India, (Department of Agriculture), Ministry of Food, Agriculture, Community Development and Cooperation, Government of India, and includes 'any other officer' empowered by him in this behalf with the approval of the Central Government.

96. The Ministry of Agriculture (Department of Agriculture) were asked to state whether the names of other officers empowered by Agricultural Marketing Adviser to act as licensing officers were notified in the Gazette of India for the information of all concerned and if not, whether they had any objection to amending the Rules suitably to provide for the notification of the names of other officers empowered to act as licensing officers in the Gazette.

97. The Ministry of Agriculture (Department of Agriculture) in their reply, stated as under:—

"This Ministry has not published in the Gazette of India, the names of officers empowered by the Agricultural Marketing Adviser with the approval of this Ministry to act as Licensing Officer on his behalf. However, since the Cold Storage Order is going to be replaced by a new Order shortly, the advice of the Lok Sabha Secretariat with regard to the clause dealing with the 'Licensing Officer' will be observed and while publishing the revised Order in the Gazette, this particular clause will be so worded as to cover the view-point of the Lok Sabha Secretariat."

98. The Committee note with satisfaction that the Ministry of Agriculture have agreed to provide for notification of the names of persons empowered by the Agricultural Marketing Adviser to act as Licensing Officers in the Cold Storage Order when it is replaced next. The Committee desire the Ministry to do the needful at an early date.

XVI

THE INVESTIGATOR (PLANNING CELL), (MINISTRY OF HOME AFFAIRS) RECRUITMENT RULES, 1969 (G.S.R. 2564 OF 1969)

(A)

99. Rule 4 of the Investigator (Planning Cell) (Ministry of Home Affairs) Recruitment Rules, 1969, provided as follows:—

“Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these Rules.”

100. Normally, the relaxation clause in the recruitment Rules reads as under:—

“Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing in consultation with the U.P.S.C., relax any of the provisions of these rules *with respect to any class or category of persons.*”

101 On a comparison of above two Rules, it was observed that whereas in terms of the normal relaxation Rule, the relaxation has to be with respect to a class or category of persons (as contradistinguished from an individual) there was no such limitation in the Rules under reference.

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

“The ‘power to relax’ clause was in the Recruitment Rules, when they were notified *vide* G.S.R. No 2564 dated 8th November, 1969. Later, when a proposal was made for amending the clause, the UPSC opined that as there was only one post of Senior Investigator and the post was filled in only by deputation, it was not necessary at all to have the ‘power to relax’ clause in the Recruitment

Rules. The views of the UPSC were considered in consultation with the Department of Personnel and the clause was deleted *vide* this Ministry's Notification No. 23/29/69-Ad. I (C) dated the 20th October, 1970. Thus the position is that in the present Recruitment Rules 'power to relax' does not exist at all.

The question of re-inserting this clause was again considered in consultation with the U.P.S.C. The Commission again advised that it was not necessary to insert this clause in the Recruitment Rules. In view of the UPSC's advice, it is not considered necessary to insert the 'power to relax' clause in the Recruitment Rules."

103. The Committee note with satisfaction that the Ministry of Home Affairs have deleted from the Rules the relaxation clause which was not on the usual pattern.

(B)

104. The Investigator (Planning Cell) (Ministry of Home Affairs) Recruitment Rules, 1969, did not contain the provision for disqualification on account of bigamous|plural marriage, which is normally provided in all Recruitment Rules on the following lines:

"Disqualifications.—No person—

- (a) who has entered into or contracted a marriage with a person having a spouse living, or
- (b) who, having a spouse living, has entered into or contracted marriage with any person, shall be eligible for appointment to the said post:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this rule."

105. The Ministry of Home Affairs, to whom the matter was referred, stated that the 'disqualification' clause was being inserted in the Rules.

106. The Committee also noticed that in certain Rules (*vide* Appendix II), the disqualification clause on account of plural

marriage was given in the old form which has long been revised by the Cabinet Secretariat (Department of Personnel) in the form given in para 104 above.

107. The Committee note with satisfaction that the Ministry of Home Affairs have agreed to include in the Rules the disqualification clause on account of plural marriage. They desire the Ministry to amend the Rules accordingly, at an early date.

108. The Committee further desire the Ministries/Departments concerned with the Rules shown in the Appendix II to amend the existing disqualification clause therein to bring it in conformity with the revised form.

(C)

109. Rule 2 of the Investigator (Planning Cell), (Ministry of Home Affairs) Recruitment Rules, 1969, provide that the number of posts, its classification and the scale of pay attached thereto, shall be as specified in columns 2 to 4 of the Schedule. Likewise in Rule 3 also, a reference to the Schedule has been made.

110. It was observed that no schedule had been appended to the above Rules.

111. The Ministry of Home Affairs, whom the matter was referred stated that the schedule to the said Rules had been published in the Gazette, *vide* G.S.R. 824, dated 4th August, 1973.

112. The Committee note with satisfaction that the Ministry of Home Affairs have republished the Rules alongwith the Schedule, which was not appended earlier. The Committee desire the Ministry to be careful in future in such matters.

XVII

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT RULES, 1971 (S.O. 109 OF 1971)

113. Rule 13 of the Unlawful Activities (Prevention) Amendment Rules, 1971 provided that a summons may be served by sending it by post to the person for whom it is intended or any other manner as may be directed by the Tribunal or the District Judge, as the case may be.

114. It was felt that summons, being a document of important nature, might be sent by registered post acknowledgement due so that it might not be misplaced in the transit.

115. The Ministry of Home Affairs, whom the matter was referred, have amended Rule 13 accordingly.

116. The Committee note with satisfaction that the Ministry of Home Affairs have amended Rule 13 to provide for service of summon by registered post acknowledgement due (vide S.O. 346-E dated 21-6-1973).

XVIII

THE NATIONAL ATLAS ORGANISATION (RECRUITMENT TO CLASS III AND CLASS IV POSTS) AMENDMENT RULES, 1972 (G.S.R. NOS. 924 AND 925 OF 1972)

117. Short titles of the Rules published under G.S.R. No. 924 and 925 amending the National Atlas Organisation (Recruitment to Class III and Class IV posts) Rules, 1960 did not indicate the distinctive serial number of the amendment.

118. Attention of the Department of Science and Technology was invited to the recommendation of the Committee on Subordinate Legislation made in para 44 of their Third Report (First Lok Sabha) that for facility of reference and easy recognisability, amendments to any 'Order' issued from time to time should be serially numbered and the short title of each amendment Order should clearly show the relevant serial number.

119. In their reply, dated the 21st February, 1974, the Department of Science and Technology has stated as under:

"The National Atlas Organisation (Recruitment to Class III and Class IV posts) Amendment Rules, 1972 were published after consultation with the Ministry of Law and Justice. It is regretted that inadvertently these amending rules were not serially numbered in accordance with the recommendations of the Committee on Subordinate Legislation made in para 44 of their Third Report (First Lok Sabha). The short titles of the Amending Rules, 1972 relating to the National Atlas Organisation are, however, now being amended on the lines recommended by the Committee on Subordinate Legislation and the draft is being sent to the Ministry of Law and Justice for vetting. A copy of the amendment will be sent to the Lok Sabha as soon as this amendment is notified."

120. The Committee note with satisfaction that the Department of Science and Technology have agreed to amend the Rules to indicate distinctive serial number of the amendment. They desire the Department to issue the amendment at an early date and be careful about such matters in future.

121. The Committee had first made their recommendation regarding giving of titles to rules and amendments in para 44 of their Third Report (First Lok Sabha). They restress that recommendation and desire to the Department of Parliamentary Affairs to issue necessary instructions to all Ministries/Departments of Government so that such omissions are not made in future.

XIX

CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) AMENDMENT RULES, 1972 (S.O. 2335 OF 1972)

122. Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 *before* amendment by the above Rules, provided as under:

“Termination of temporary service—(1) (a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant;

(b) the period of notice shall be one month:

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.”

123. The above amendment Rules substituted the words “and on such termination the Government servant shall be entitled to claim” for the words “by payment to him of” occurring in the proviso to the above Rules. The amendment was given retrospective effect from 1st May, 1965 *vide* sub-rule (2) of Rule 1 *ibid.* Explanatory note regarding retrospective effect was, however, not published alongwith the Notification as required by the recommendation of the Committee on Subordinate Legislation.

124. Explaining the reasons for giving retrospective effect, the Department of Personnel in their O.M. dated 17th August, 1972 stated as under:

“Under Rule 5 of the CCS(TS) Rules, 1965, the service of a temporary Government servant who is not in quasi-permanent service is liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing

authority to the Government servant, the period of such notice being one month. Under the proviso to this Rules, the service of any such Government servant could be terminated by the appointing authority forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before termination of his service, or as the case may be, for the period by which such notice falls short of one month. The intention of this Rule ever since the commencement of the CSS (TS) Rules, 1965 (1-5-1956) has been that if the services of a temporary employee are terminated with immediate effect, he has to be given his pay and allowances in lieu of notice. It has not been the intention that the payment should be simultaneous with the serving of the order of termination of the service. This view was further strengthened by the judgment of the Supreme Court in the case of State of Uttar Pradesh versus Dina Nath Rai (1969 Serv. L.R. 647) (Civil Appeal No. 174 of 1968). The Supreme Court in that case while interpreting a similar Rule of the Uttar Pradesh Government, which provided that notice could be substituted for the whole or part of the period thereof by pay in lieu thereof, stated that the Rule "gives option to the Government to either give a month's notice or to substitute for the whole or part of this period of notice pay in lieu thereof. The Rule does not say that the pay should be given in cash or by cheque at the same time the notice is issued. Knowing the way the Governments are run, it would be difficult to ascribe this intention to the Rule making authorities. There is no doubt that the Government servant would be entitled to the pay in lieu of notice but this he would get in the ordinary course". The Supreme Court, however, in its judgement in Senior Superintendent R.M.S., Cochin and another versus K. G. Gopinath Sorter (AIR 1972) (C.S. 1487) decided on 18th February, 1972 (Civil Appeal No. 1706) (N) of 1971) while interpreting the proviso to the Rules 5(1) of the CCS(TS) Rules, 1965 came to the conclusion that the said proviso did not "lend itself to the interpretation that the termination of service becomes effective as soon as the order is served irrespective of the question as to when payment due to him is to be made", relying upon the meaning of the plain words of the Rule namely "termination forthwith by payment to the Government servant."

The Supreme Court have referred to their earlier judgement in "Dina Nath Rai's case" mentioned above in their latest judgement and distinguished it. Since this interpretation of the Rule was different from the intention of the Rule itself, it became necessary to amend it retrospectively by providing that on such termination of services of a temporary Government servant the temporary Government servant would be entitled to claim his pay and allowances in lieu of notice. The substantive provision of this Rule which affords a right to the temporary Government servant to determinate his service with the Government at any time by the appointing authority to terminate his services by one month's notice has been kept intact. What has been done is to clarify the position that where the services of a temporary Government servant are terminated with notice, he would be entitled to be paid pay and allowances for the period of notice. Moreover, it would neither be advisable nor feasible to reinstate in service all the temporary Government servants whose services were terminated forthwith ever since the commencement of the CCS(TS) Rules, 1965 and in whose cases the payment of pay and allowances was made or tendered after the termination of services because the services of those Government servants were terminated in exercise of the powers conferred by the Rules on mature consideration of all relevant factors and it would not be in the public interest to take them back in service merely on the ground that the payment was not made simultaneously with the order of termination of services.

The position indicated above may please be brought to the notice of the Committee on Subordinate Legislation, if and when this particular amendment is taken by them for consideration."

125. Giving the reasons for not publishing the explanatory note along with the Notification, the Department of Personnel in a further communication dated the 22nd May, 1973 stated as under:

".....the attention of the Lok Sabha Secretariat is invited to para 4 of letter No. 32-1/69-R&C dated 28th January 1971 from the Department of Parliamentary Affairs where it is recommended that instead of publishing the explanatory memorandum with rules which have retrospective effect, an explanatory memorandum may be furnished to

the Committee on Subordinate Legislation. It may be noted that in view of the above recommendation, Office Memorandum dated 17-8-1972 was sent to the Lok Sabha Secretariat explaining in detail the reasons for giving retrospective effect to the amendment of CCS(TS) Rules, 1965 through notification No. F.4|2|72-Esst(C), dated the 23rd June, 1972".

126. The suggestion of the Department of Personnel made in para 4 of their O.M. No. 32-1|69-R&C referred to in their above reply was considered by the Committee which reiterated in para 101—103 of Ninth Report (Fifth Lok Sabha) their earlier recommendation made in para 10 of Second Report (Fourth Lok Sabha) in regard to giving retrospective effect to Rules.

127. In a further communication dated 23rd February, 1974, the Department of Personnel and Administrative Reforms have stated as under:

"the retrospective amendment of the proviso to Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1956 promulgated in the Central Civil Services (Temporary Service) Amendment Rules, 1972 was the subject matter of Unstarred Question No. 3299 by Shri S. M. Banerjee, M.P., in the Lok Sabha on 23rd August, 1973 and the position was explained in reply to that question. Moreover, the position regarding the retrospective amendment was also explained in great detail in the National Council set up under the Joint Consultative Machinery. However, having regard to the recommendations of the Committee on Subordinate Legislation in paragraph 103 of their Ninth Report, the Department of Personnel and Administrative Reforms have no objection to republishing in the Gazette of India the Central Civil Services (Temporary Service) Third Amendment Rules 1972 (which was consequential to the Central Civil Services (Temporary Service) Amendment Rules, 1972), with an explanatory memorandum stating the reasons for giving retrospective effect. A copy of the notification issued in this regard will be sent to the Lok Sabha Secretariat as early as possible".

128. The Committee are glad to note that the Cabinet Secretariat (Department of Personnel) have agreed to republish the Rules with the explanatory memorandum stating the reasons for giving retrospective effect. They desire them to republish the Rules at an early date.

- (I) THE BORDER SECURITY FORCE (ASSISTANT COMMANDANTS) RECRUITMENT RULES, 1969 (G.S.R. 2787 OF 1969); AND
- (II) DIRECTORATE OF COORDINATION (POLICE WIRELESS) RECRUITMENT TO CLASS I AND CLASS II POSTS (AMENDMENT) RULES, 1971 (G.S.R. 938 OF 1972).

129. The Border Security Force (Assistant Commandants) Recruitment Rules, 1969, provided five alternative methods for the recruitment of Assistant Commandants in the Border Security Force. There was no indication in the rules as to which of the five methods would have priority over others and failing it, which other method would be next applied, and so on.

130. Generally in the schedule to recruitment rules, a precise *inter se* order of priority of methods is given. In cases where different alternative methods are given, without a precise *inter-se* order of priority, generally a rider on the following lines is added after the methods:

“The particular method to be adopted on each occasion to be decided in consultation with the Union Public Service Commission”.

131. The Ministry of Home Affairs were requested to state whether they had any objection to the amendment of the rules to lay down a precise *inter-se* order of priority or in the alternative, to add a rider on the lines indicated above.

132. The Ministry of Home Affairs to whom the matter was referred stated as follows:

“.... this Ministry agree to add the following rider at the end of sub-rule (1) of rule 2 of the Border Security Force (Assistant Commandants) Recruitment Rules, 1969:

“The method or methods to be adopted on each occasion will be decided by the Central Government.”

The above mentioned rider is on the lines of para 3 of the Lok Sabha Secretariat O.M. under reference excepting that the words 'in consultation with the Union Public Service Commission' have been substituted by the words 'by the Central Government' in view of the fact that the posts of Assistant Commandants in the BSF have permanently been excluded from the purview of the Commission under Regulation 2 of the UPSC (Exemption from Consultation) Regulations, 1958.

Necessary action is being taken to amend rules accordingly."

133. The Committee considered the above reply at their sitting held on the 22nd May, 1973 and postponed its further consideration till the receipt of reply on a similar reference made to the Ministry of Home Affairs in connection with the Directorate of Coordination (Police Wireless) Recruitment to Class I and Class II posts (Amendment) Rules, 1971 (G.S.R. 938 of 1972).

134. The above Rules provide that recruitment to the post of Additional Director would be 'by promotion or transfer or deputation or direct recruitment (the method to be decided on each occasion' in consultation with the UPSC). The Ministry of Home Affairs were requested to state the reasons for not prescribing a precise method of recruitment.

135. In their reply, the Ministry of Home Affairs have stated as under:

.....the Director (Police Telecommunications) is holding concurrently the post of Inspector General (Communications), Border Security Force, and as such he is not in a position to attend to all the various day to day problems both in the administrative and technical fields arising in the Directorate of Coordination (Police Wireless). The Additional Director is meant to relieve the Director of these duties, and, therefore, should have adequate knowledge and experience of administration as well as technical matters. Normally an officer who has had considerable experience of working in the Organisation and has held the post of Deputy Director for three years (reduced from five years originally prescribed *vide* this Ministry's notification dated 22nd August, 1973) should have the necessary background, knowledge and experi-

ence to shoulder the responsibilities of Additional Director. But this need not necessarily be so. There are only three posts of Deputy Director, and, therefore, the field of selection is necessarily limited. At present, actually only one officer holding the post of Deputy Director fulfills the conditions for promotion also. Therefore, if promotion is prescribed as the first method of recruitment, the other method being tried only if it fails, it would mean that the only officer eligible will have to be appointed to the post unless he is found unfit. This would not be a satisfactory arrangement and it was felt that some degree of flexibility should be available so that the Government may be in a position to explore other avenues and get the best possible candidate for appointment to the post. The provision referred to in the Lok Sabha Secretariat's office Memorandum was therefore, proposed and was accepted by the Union Public Service Commission".

136. The Committee are of the opinion that precise method of recruitment to a post should be prescribed in the Recruitment Rules as a matter of principle. The Committee, are, however, satisfied with the reply of the Ministry of Home Affairs in regard to the Directorate of Coordination (Police Wireless) Recruitment to Class I and Class II posts (Amendment) Rules, 1971 and feel that in view of the position explained therein it is not necessary to prescribe precise method of recruitment to the post of Additional Director. In the case of the Border Security Force (Assistant Commandants) Recruitment Rules, 1969, the Committee note with satisfaction that the Ministry of Home Affairs have accepted the suggestion of adding a rider about the precise method of recruitment. The Committee desire the Ministry to make necessary amendments to the Rules at any early date.

XXI

- (i) THE PLANNING COMMISSION (VERITYPE OPERATOR)
RECRUITMENT RULES, 1971 (G.S.R. 1651 OF 1971).
 - (ii) THE CIVIL AVIATION DEPTT. (ACCOUNTS OFFICER)
RECRUITMENT RULES, 1971 (G.S.R. 1586 OF 1971).
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(A)

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

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

Provided that such person:

- (a) shall not be required to serve as aforesaid after the expiry of ten years from the date of appointment: and
- (b) shall not ordinarily be required to serve as aforesaid after attaining the age of forty years.”

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

(B)

139. Rule 6 of the Civil Aviation Department (Accounts Officer) Recruitment Rules, 1971 also provided for liability to serve in the defence service.

140. The Ministry of Tourism and Civil Aviation (Department of Civil Aviation) who were requested to state whether all persons employed in Civil Aviation Department had to incur such liability or

persons serving only in some selected categories of posts were required to do so, have stated as follows:—

“.....in accordance with the provisions made in the Ministry of Home Affairs (Department of Manpower) O.M. No. F.24(44)/63-M.P. (Vol. III) dated the 7th May, 1964, a provision to serve in the Defence Services is required to be made only in the rules for recruitment of graduate engineers and doctors. Inadvertently, a similar provision was made in the recruitment rules for the post of Accounts Officer also. The question of deleting this provision is being considered in consultation with the Department of Personnel and the Union Public Service Commission.”

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

- (i) THE KANDLA DOCK WORKERS (REGULATION OF EMPLOYMENT) SCHEME, 1969 (S.O. 564 OF 1969).
- (ii) THE CALCUTTA DOCK WORKERS (REGULATION OF EMPLOYMENT) SCHEME, 1970 (S.O. 1985 OF 1970).
- (iii) THE CALCUTTA DOCK CLERICAL AND SUPERVISORY WORKERS (REGULATION OF EMPLOYMENT) SCHEME, 1970.

(A)

142. Under Clause 21 of the Kandla Dock Workers (Regulation of Employment) Scheme, 1969, a worker found medically unfit by a Medical Officer is required to deposit the prescribed fee for re-examination by a Medical Board. Similar provision exists in Clause 23 of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970.

143. The Dock Workers (Regulation of Employment) Act, 1948 under which the above schemes have been framed does not provide for charging of fees for medical examination.

144. Attention of the Ministry of Labour and Rehabilitation was invited to the opinion given by the Attorney General regarding the imposition of charges under rules 5(2)(i) and 5(3)(i) of Delhi (Control of Building Operations) Regulations, 1955 framed under the Delhi (Control of Building Operations) Act, 1955 wherein he expressed the view that a rule providing for the levying of fee or financial burden could not be made without an express power vested in that behalf, in the Rule making authority [vide Appendix I of the First Report of the Committee on Subordinate Legislation (Second Lok Sabha)].

145. The Ministry of Labour and Rehabilitation in their reply dated 17th April, 1973 stated as under:—

"It is, no doubt, true that the Dock Workers (Regulation of Employment) Act, 1948 does not expressly authorise Government to charge such a medical fee for re-medical examination. However, it may be pointed out that section

3(2)(k) of the Act lays down that a Scheme framed under the Act may provide for such incidental and supplementary matters as may be necessary or expedient for the purpose of the Scheme. It is felt that the charging of medical fee for re-medical examination of workers is an incidental and supplementary matter for purpose of administering the Scheme and is, therefore, covered by the above-mentioned clause. In case, the above mentioned clause is not acceptable to the Committee on Subordinate Legislation, it is then proposed by this Department to delete the provision regarding charging of fee for re-medical examination of workers."

146. The Committee are not convinced with the reply of the Ministry of Labour that Section 3(2)(k) of the Dock Workers (Regulation of Employment) Act, 1948 covers clause 21 of the Kandla Dock Workers (Regulation of Employment) Scheme providing for charging of medical fees for re-medical examination. The Committee feel that there should be an express provision in the Act authorising the Government to charge fees for re-medical examination. The Committee desire the Ministry either to delete the relevant clause from the Scheme or make a specific provision in the Act authorising the levy of the fee.

(B)

147. Clauses 49(5), 50(1)(a), 50(1)(c) and 50(2) of the Kandla Dock Workers (Regulation of Employment) Scheme provide that the order passed on appeal shall be final/final and conclusive. Similar provision exists in clauses 51(5), 52(1)(a) and (b) and 52(2) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970, clauses 44(5), 45(1)(a) and clause 45(2) of the Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme.

148. The clauses as worded, give an impression that they seek to bar the jurisdiction of courts. Attention of the Ministry was invited to para 18 of the Fourth Report (Third Lok Sabha) wherein the Committee on Subordinate Legislation stressed that rules should not be worded in a manner which may give an impression that the jurisdiction of courts was being ousted.

149. The Ministry of Labour and Rehabilitation to whom the matter was referred, have amended clause 49(5) of the Kandla Scheme by deleting the words "and the order passed on such appeal shall

be final and conclusive". Regarding the other clauses of the two schemes, they have stated as under:—

"It is difficult to say that the use of words 'the order passed on appeal shall be final and conclusive' have ousted the jurisdiction of Courts under Articles 226/227 of the Constitution of India and, as such, there does not seem to be total ouster of jurisdiction of the Courts. However, the question as to how the relevant clauses of the Scheme are to be worded so as not to give an impression that the jurisdiction of the Courts is ousted will be examined by this Department in consultation with the Ministry of Law and Justice."

150. The Committee note with satisfaction that the Ministry of Labour have amended Clause 49(5) of the Kandla Dock Workers (Regulation of Employment) Scheme, 1969 by deleting the words 'and the order passed on such appeal shall be final and conclusive'. The Committee desire the Ministry to amend likewise similar clauses in the Calcutta Dock Workers Scheme and the Calcutta Dock Clerical and Supervisory Workers Scheme.

(C)

151. After the declaration of Emergency by the Chairman of the Board under clause 53(1) of the Kandla Scheme, he is empowered under clause 53(2) to take action against a registered dock worker after a 'summary inquiry'. Under clause 53(3), the provision of the Scheme relating to disciplinary action shall not apply to any order passed by the Chairman under clause 53(3). Similar provisions relating to declaration of emergency by the Chairman are contained in clause 55 of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970, Clause 48 of the Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme and the Unregistered Dock Workers Schemes of Bombay, Madras, Kandla and Vishakhapatnam ports.

152. It was felt that penal action against a person should not be taken unless an opportunity of being heard had been provided to him. In case, however, it was considered necessary to dispense with these requirements in an emergency, there should be a specific authorisation for it in the parent Act.

153. The Ministry of Labour and Rehabilitation with whom the matter was taken up stated as under:—

"It is understood that no occasion has so far arisen for the Chairman of the Kandla Dock Labour Board to take re-

course to Declaration of Emergency under Clause 53 of the Scheme. The matter was also examined in consultation with the Ministry of Law and Justice in respect of similar clause in the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970, who advised that the summary proceedings contemplated in Emergency Clause of the Scheme would appear to include an opportunity of being heard before action is taken under the Clause."

154. In regard to the Emergency clause in the Calcutta Scheme, the Ministry replied as under:—

"..... It is understood that the Chairman had earlier taken recourse to Declaration of Emergency under the above clause once from 19th November, 1970 to 18th January, 1971. However, no summary proceedings were drawn either against any employer or worker on that occasion. The summary proceedings contemplated by clause 55(2) of the Scheme would appear to include an opportunity of being heard before action is taken under the Clause and hence the same may not offend against the principles of natural justice.

....It may be added that the present emergency clause of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 is based on the lines of the provisions contained in the Calcutta 1956 Scheme. The latter Scheme has been replaced by the existing 1970 Scheme. Similar emergency clause exists in the Registered Schemes of all other Dock Labour Boards."

155. The Committee have noted the reply of the Ministry of Labour that summary proceedings contemplated in the Emergency Clause would appear to include an opportunity of being heard before action was taken thereunder. The Committee feel satisfied with the reply except that they desire incorporation of a statutory provision in the Scheme for providing an opportunity of being heard in cases where services were terminated as a result of action taken under the Emergency Clause.

(D)

156. Clause 57 of the Kandla Dock Workers (Regulation of Employment) Scheme, 1969 empowers the Board to frame rules for contributions to maintenance and operation of the Dock Workers Welfare Fund. Similar provision is contained in Clause 59 of the Calcutta Dock Workers (Regulation of Employment) Scheme and clause

52 of the Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme.

157. It was felt that empowering the Board to frame rules for contributions to maintenance and operation of the Fund was tantamount to sub-delegation of legislative power for which there was no specific authorisation in the parent Act.

158. The Ministry of Labour and Rehabilitation who were asked to state whether they had any objection to incorporating the provisions relating to maintenance and operation of the Fund in the Scheme itself, stated as under:—

“Although there is no specific authorisation in regard to framing rules for contributions to maintenance and operation of the Dock Workers Welfare Fund, it may be mentioned that Section 5B(1) of the Dock Workers (Regulation of Employment) Act, 1948 stipulates that the Board shall be responsible for administering the Scheme for the port or group of ports for which it has been established and shall exercise such powers and perform such functions as may be conferred on it by the Scheme. It is felt that the above clause empowers the Board to frame the rules for maintenance of the Welfare Fund. As regards the suggestion for incorporating the provisions relating to maintenance and operation of the Welfare Fund in the Scheme itself, it may be mentioned that the following practical difficulties will be experienced in this regard:—

‘It is considered that depending upon several factors, the Dock Labour Board decides from year to year what kind of welfare amenities it can provide to the workers. The cost of such provision has to be estimated and depending upon the budgetary position of the fund, the rate of contribution has to be estimated by the Board which in turn is dependent upon the estimated extent of employment which is likely to be generated by the traffic forecast for the year. The actual amount of contribution has to be watched very carefully in the course of the year and the rate of contribution varies if necessary, depending upon whether or not the projected level of employment was materialising. In these circumstances the rate of contribution and the provisions regarding maintenance and operation of the welfare fund cannot be indicated in the Scheme itself. Further it may also be mentioned that similar provisions exist in

all the Schemes framed under the Dock Workers (Regulation of Employment) Act. However, in case it is still felt by the Committee that the Scheme should provide for maintenance of Welfare Fund, the matter will be further examined by this Department."

159. The Committee are not satisfied with the reply of the Ministry of Labour that though there is no specific authorisation in the Dock Workers (Regulation of Employment) Act, 1948, in regard to framing rules for contribution to Welfare Fund, Section 5B(1) empowers the Board to exercise such powers and perform such functions as may be conferred on it by the Scheme. The Committee are of the opinion that there must be express provision in the Act authorising the Board for creation of the Fund and its administration and desire them to bring suitable amendment to the Act at an early date.

(E)

160. Clause 43(3) of the Kandla Scheme provides that the Board shall by regulations, relate the wages earned to the actual output of workers. Similar provision was contained in Clause 45(4) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 which has now been amended so as to include the wage-output relationship in Schedule VI.

161. It was felt that empowering the Board to make the above regulations is tantamount to sub-delegation of legislative power for which there was no express authorisation in the parent Act.

162. The Ministry of Labour who were asked to state whether they had any objection to providing for the matters pertaining to wage-output relationship in the scheme itself, stated as under:—

"Similar provisions exist in almost all the Registered Schemes of the various Dock Labour Boards except Calcutta wherein the wage/output relationship has been laid in Schedule VI appended to the Scheme. In the Scheme, where there is no mention of Schedule, the Scheme provides that the regulations framed by the Board shall be submitted to the Central Government for approval before implementation."

163. The Committee note with satisfaction the reply of the Ministry of Labour that provision similar to Clause 43(3) of the Kandla Scheme regarding Wage-output relationship exists in all the Registered Schemes of the various Dock Labour Boards.

164. Under Clause 49 of the Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme, 1970, the Board has been empowered to fix the rates of levy payable by registered employees for administering the Scheme. Further, under clause 51 the Board has been empowered to frame Rules for contribution to various funds. Similar provisions are made in clauses 56 and 58 of the Calcutta Dock Workers (Regulation of Employment) Scheme and Clauses 54 and 56 of Kandla Scheme.

165. It was felt that the rates of contribution for administering the Scheme or to Funds should be specified in the Scheme itself.

166. The Ministry of Labour with whom the matter was taken up replied as under:—

".....The rates of levy payable by registered employers cannot be specified as the cost of operating the Scheme is a variable factor depending upon the quantum of available work and the level of employment of the workers. As the traffic of the Port fluctuated from time to time, the levy under clause 49 cannot be constant. Clause 49(c), however, limits the Board's powers and levy beyond the 100 per cent of the gross wages requires concurrence of the Government.

For the various funds.....under clause 51...the rates of contribution being variable factors cannot be laid down in the scheme. It would mean an amendment to the scheme every time a variation of the rate of contribution is to be made. Provident Fund Schemes framed under the P.F. Act are operated by the appointed Trustees who are to determine from year to year the rate of contribution by the workers, the rate of interest that is to be paid, etc, and the Board adopts the decisions of the Trustees".

167. The Committee feel satisfied with the reply of the Ministry of Labour that the rates of levy payable by registered employees for administering the Scheme cannot be laid down in the Scheme as the cost of operating the Scheme is variable, depending upon the quantum of available work and the level of employment of the workers. The Committee are also satisfied that the rates of contribution to various funds being variable factors cannot be specified in the Scheme.

(G)

168. Under the provisions of clause 15(3)(c) of the Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme, 1970 the procedure for de-registration of workers will be separately laid down by the Board. Similar provision is contained in Clause 19 of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970.

169. It was felt that empowering the Board to lay down the procedure for de-registration of workers was tantamount to sub-delegation of legislative power for which there was no specific authorisation in the parent Act.

170. In their reply, the Ministry of Labour stated as under:—

“The provision for de-registration of workers has already been removed from the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970.

The question of wresting this provision of de-registration from the Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme is under consideration.”

171. The Committee are glad to note that the Ministry have deleted the provision for de-registration of workers from the Calcutta Scheme. The Committee desire the Ministry to take similar action in regard to the other Dock Workers Schemes.

(H)

172. Under Clause 48(9) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970, a registered employer has been empowered to take disciplinary action including dismissal against workers employed under him, without prejudice to the special disciplinary powers of the Chairman under Clause 49.

173. The Ministry of Labour and Rehabilitation who were asked to state the consideration for making the above provision replied as under:—

“Monthly workers are in the direct employment of the employers and as such it was considered appropriate to give disciplinary powers to the employers so far as the monthly workers are concerned. In respect of them the Chairman has, however, been made the Appellate Authority against orders passed by the employers. [Clause 51(3) of the Scheme refers].”

174. The Committee note with satisfaction the reply of the Ministry of Labour that it was considered appropriate to give disciplinary powers to the employers in respect of monthly workers as they were in their direct employment.

(I)

175. Under Clause 37(2) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970, the Board has been empowered to prescribe a rate of disappointment money different from that prescribed in Clause 37(1) and the conditions under which it is to be laid.

176. The Ministry of Labour and Rehabilitation who were asked to state the consideration for inclusion of Clause 37(2) have replied that Clause 37 relating to disappointment money has been deleted.

177. The Committee note with satisfaction that the Ministry, while deleting Clause 37 of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 relating to disappointment money have provided in Clause 36(2) that a worker in the reserve pool when booked for work shall be entitled to full wages inclusive of allowances even though the work for which he attends cannot commence or proceed and no alternative work can be found for him.

XXIII

- (i) THE PLANNING COMMISSION (SENIOR RESEARCH OFFICERS AND RESEARCH OFFICERS) RECRUITMENT RULES, 1970 (G.S.R. 1105 OF 1970)
- (ii) THE HINDI TRANSLATOR, DEPARTMENT OF WORKS AND HOUSING AND URBAN DEVELOPMENT RECRUITMENT RULES, 1970 (G.S.R. 480 OF 1971)
- (iii) THE DEPUTY FIRE ADVISER RECRUITMENT RULES, 1971 (G.S.R. 902 OF 1971).

(A)

178. Normally the Rule regarding method of recruitment, age limit and qualification etc. occurring in the recruitment Rules contains the following proviso:

“Provided that the upper age-limit prescribed...may be relaxed in the case of candidates belonging to the Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued from time to time by the Central Government.”

179. It was, however, seen that the relevant Rules in above cases did not have the proviso on aforesaid lines.

180. The Planning Commission and the Ministries of Works and Housing and Home Affairs to whom the matter was referred, have amended the Rules suitably.

181. The Committee note with satisfaction that the Planning Commission and the Ministries of Works and Housing and Home Affairs have amended the above Rules to include therein the proviso about relaxation of upper age-limit for candidates belonging to the Scheduled Castes, Scheduled Tribes and other special categories of persons.

182. They also desire the Department of Personnel to issue necessary instructions to all Ministries/Departments for amending their recruitment rules where such a proviso was required to be incorporated.

(B)

183. Rule 5 regarding relaxation provision in the Deputy Fire Adviser Recruitment Rules, 1971 did not conform to the normal relaxation provision contained in the recruitment Rules relating to gazetted posts which provides that where the Central Government is of opinion that it is necessary or expedient so to do, it may by order for reasons to be recorded in writing *and in consultation with the Union Public Service Commission* relax any of the provision of these rules with respect to any class or category of persons.

184. The Ministry of Home Affairs to whom the matter was referred have amended the Rules to rectify the mistake.

185. Similar lacuna was found in Commissioner for Linguistic Minorities Allahabad (Administrative Officer) Recruitment Rules, 1972 (G.S.R. 939 of 1972).

186. The Committee note with satisfaction that the Ministry of Home Affairs have amended Rule 5 by adding the words "and in consultation with the U.P.S.C." They desire them to make similar amendment to the Commissioner for Linguistic Minorities, Allahabad (Administrative Officer) Recruitment Rules, 1972.

XXIV

THE CENTRAL CIVIL SERVICES (PENSION) RULES, 1972 (S.O. 934 OF 1972).

(A)

187. Rule 6(2) of the Central Civil Services (Pension) Rules, 1972 provided that if the Service rendered by a Government servant had not been satisfactory, the pension sanctioning authority might make reduction in the amount of pension or gratuity or both.

188. There was no indication in the Rules that the person concerned would be given a reasonable opportunity of being heard before the amount of pension or gratuity or both was reduced under the Rule.

189. The Ministry of Finance with whom the matter was taken up stated as under in their final reply dated 12-12-1973:—

“...rule 6(2) of the C.C.S. (Pension) Rules, 1972 has been amended to provide that the Government servant concerned shall be given a reasonable opportunity for making a representation in this matter. In this connection, attention is invited to this Ministry's Notification No. 5(3)-E.V (A)/72 dated the 29th September, 1973.”

190. The Committee note with satisfaction that the Ministry of Finance have amended Rule 6(2) of the C.C.S. (Pension) Rules to provide that the Government servant concerned shall be given a reasonable opportunity for making representation before any reduction is made in the amount of pension or gratuity, (vide Notification No. 5(3)—E.V. (A)/72, dated 29-9-73).

(B)

191. In certain Rules e.g. Rules 45, 47(a), 55(1), etc. of the Central Services (Pension) Rules, 1972, there is reference to certain Office Memoranda issued by the Ministry of Finance.

192. Attention of the Ministry of Finance was invited to para 13 of the First Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) wherein they had emphasised that the Rules

should as far as possible be self-contained and 'legislation by reference' be avoided.

193. In their reply, the Ministry of Finance stated as under:—

"Before April, 1950, Central Government Civil Servants were governed in the matter of pension by the provisions contained in Civil Service Regulations and the Superior Civil Service Rules. In the light of the 1st Pay Commission's recommendations the provisions contained in the above rules, which were referred to as the old rules, were liberalised by the orders contained in this Ministry's O.M. No. 3(1) E. (Spl)/47 dated 17-4-50 which have generally been referred to as "Liberalised Pension Rules". The intention was that the provisions of the Liberalised Pension Rules would also be formally incorporated in the old rules but due to a variety of reasons this could not be done. The Liberalised Pension Rules applied automatically to all post-1938 entrants but the pre-1938 entrants were given an option to be governed by the old rules or to come on to the new rules. Later on, by an O.M. No. 3(16)—Est. (Spl)/50 dated 21-2-51 the pre-1938 entrants were given a further option of (a) coming on to the new pension rules; or (b) continuing under the old rules or (c) drawing benefits partly of the old rules and partly of the new rules. Thus, those who came to be governed by the Liberalised Pension Rules comprised all post-1938 entrants and those pre-1938 entrants who had opted for or were deemed to have opted for new rules. While codifying the existing rules and O.M.s in the Central Civil Service (Pension) Rules, 1972, care had to be taken to include provisions applicable not only to those governed by the new rules but also those governed by the old rules. In these rules, the latter are referred to as pre-1938 entrants. Chapter VI of these rules contains provisions which are peculiar to pre-1938 entrants and Chapter VII contains provisions which are applicable to post-1938 entrants. Reference to certain O.M.s. in rules 42, 45 and 47 is incidental to the fact that the Government servants came to be governed by the new rules or the old rules as the case may be by virtue of the provisions and the option exercised under the authority of the O.M.s. quoted above the contents of which were not put in the form of statutory rules till the issue of the C.C.S. (Pension) Rules, 1972. If reference to these O.M.s. had not been included it would not have been possible to

distinguish the categories of Government servants referred to in the rules. In rules 54 and 55 also reference has been made to the O.M. of 17-4-1950 and another O.M. of 31st December, 1963 which had not been included in any statutory rules prior to the commencement of the C. C. S. (Pension) Rules, 1972. The reference to those O.Ms. is also necessary as in the case of rules mentioned above to distinguish between the categories of Government servants who are governed by the provisions relating to the contributory family pension and those governed by the provisions relating to non-contributory family pension. The object of quoting the O.Ms. in these rules is not to legislate by reference. The question whether the O.Ms. quoted in the rules may be appended to the rules will, however, be considered in consultation with the Comptroller and Auditor General and the Ministry of Law."

194. In their reply dated 28-4-73, the Ministry further stated as under:—

"It has been decided in consultation with the Ministry of Law (Legislative Department) that the provisions of this Ministry's O.M. No. F. 3 (16)-Est. (Spl)/50 dated the 2nd January, 1951 and O.M. of even number dated the 21st February, 1951 should be incorporated as Appendix to the CCS (Pension) Rules. Action to amend the rules accordingly is being taken separately."

195. The Committee note with satisfaction that the Ministry of Finance have decided to incorporate the provision of their O.M. No. F.3(16)—Est.(Spl)|50, dated the 2nd January, 1951 and 21st February 1951 as Appendix to the Central Civil Services (Pension) Rules. The Committee desire the Ministry to amend the Rules at an early date.

C

196. In terms of Note below Rule 54(14)(b)(i), if the appointing authority decides for reasons to be recorded in writing that a child or children of a deceased female Government servant should receive the family pension in preference to the Judicially separated husband of the deceased Government servant, such husband will not be regarded as covered by the expression 'family'.

197. There was no indication in the Rule whether the husband would be given an opportunity of being heard before he was excluded from the expression 'family'.

198. The Ministry of Finance in their reply stated as under:—

“There is no objection to the suggestion. The question of amending the rule accordingly is being taken up separately.”

199. The Committee note with satisfaction that the Ministry of Finance have agreed to the suggestion of giving an opportunity of representation to a person before excluding him from the expression ‘family’ in terms of Note below Rule 54(14)(b)(i). The Committee desire the Ministry to amend the Rule accordingly at an early date.

THE ALLOTMENT OF GOVERNMENT RESIDENCES (GENERAL POOL IN DELHI) FIFTH AMENDMENT RULES, 1972 (S.O. 3117 OF 1972).

200. The above Rules were published in the Gazette of India, Part II, Section 3(ii), dated the 21st October, 1972 but were given retrospective effect from 1st September, 1972 *vide* Rule 1(2) *ibid*.

201. The Ministry of Works and Housing who were requested to state the reasons for giving retrospective effect to the Rules and not publishing an explanatory note in regard thereto stated as under in their reply:

".....the relevant notification was sent for publication in the Gazette of India to the Manager, Government of India Press, New Delhi, on the 14th August, 1972 in the expectation that it would be published before the 1st September, 1972. It was not the intention that the modification suggested in the notification should have 'retrospective effect' from the 1st September, 1972.

It may also be explained that this modification did not adversely affect any Government servant. On the contrary, it has benefitted such Government servants in the matter of retention of general pool accommodation as were compulsorily retired and granted leave under F.R. 56(j) during the period from 1-9-1972 to 21-10-1972. In the circumstances, it is requested that the matter may be treated as closed.

The above position may please be brought to the notice of the Committee on Subordinate Legislation."

202. The Committee are not satisfied with the explanation given by the Ministry of Works & Housing for giving retrospective effect to the Rules. The Committee feel that the Ministry should have sent the Notification to the Government Press alongwith a covering letter asking them to publish it by the particular date.

203. When the Notification was not published by the specified date and consequently the Ministry inserted Rule 1(2) regarding retrospective effect, they should have simultaneously attached an explanatory note as to the circumstances in which retrospective effect was being given. The Committee desire the Ministry of Works and Housing to be careful in this regard in future.

INDIAN COINAGE RULES 1971 (S.O. NOS. 169 AND 172 OF 1972).

204. It was seen that every time Government were required to specify the standard weight and remedy in respect of a coin, new rules were issued with the same short title e.g. both S.O. Nos. 169 and 172 carry the same short title viz. Indian Coinage Rules. As this practice leads to inconvenience in referencing, the Ministry of Finance were requested to state the reasons for adopting this practice and whether they had any objection to issuing one set of Rules showing the standard weight and remedy allowed in respect of coins of various denominations.

205. In their reply, the Ministry of Finance replied as under:—

“the reasons for issuing separate Notifications publishing Indian Coinage Rules relating to standard weight and remedy allowed in respect of the Coins referred to lies in the fact that the metal composition of these coins were changed from pure nickle to cupro-nickle, making them entirely new coins of the same denomination in that process. Any change in the alloy composition of a coin or for that matter in the size, weight, thickness, design, or descriptive particulars on a coin, makes it a new one, even though denomination remains constant and new notification in regard to weight and remedy allowed for the coin will have to be issued. As any such change or changes cannot be foreseen and do not follow any rule of constancy, it is not feasible to issue only one set of rules showing standard weight and remedy allowed to the coin or coins of various denominations during the course of a year.

However, the matter has been examined in consultation with the Ministry of Law. In any Rule framed under an Act, it is necessary to give a short title to facilitate reference. Since it is not possible to anticipate the number of Notifications which will have to be issued during the year to fix the standard weights of coins and remedy allowed, it has been suggested by the Ministry of Law and Justice

that the Rules issued under Section 7 of the Indian Coinage Act might conveniently be distinguished by making a reference in the short titles thereof to the denomination and metallic composition of the coins involved apart from the year of the issue. This Ministry agree with the suggestions made by the Ministry of Law and Justice."

206. The Committee are glad to note that the Ministry of Finance have agreed to distinguish various Notifications fixing standard weights of coins and remedy allowed by making a reference in their short titles to the denomination and metallic composition of the coins involved apart from the year of issue.

XXVII

INDIAN ADMINISTRATIVE SERVICE (FIXATION OF CADRE STRENGTH) SIXTH AMENDMENT REGULATIONS, 1972 (G.S.R. 433-E OF 1972)

207. According to the Short Title of above Regulations, they sought to amend the Regulations relating to the fixation of Cadre strength of the Indian Administrative Service. There was, however, no indication in the preamble as to which Regulations were being amended.

208. The Cabinet Secretariat (Department of Personnel) with whom the matter was taken up have rectified the lacuna by issue of necessary corrigenda No. 33/17/71-AIS (II), dated 19-11-1973.

209. The Committee note with satisfaction that the Cabinet Secretariat (Department of Personnel) have issued amendment to the Notification to specify the original Regulations in its preamble.

XXVIII

DELAY IN SENDING FINAL REPLIES BY THE MINISTRIES/ DEPARTMENTS TO REFERENCES MADE BY THE COMMITTEE ON SUBORDINATE LEGISLATION

210. At their sitting held on the 11th February, 1974, the Committee noted that in case of 13 Orders issued in 1972, clarifications from the concerned Ministries|Departments were still awaited despite O.M. and D.O. reminders from time to time (vide Appendix III). The Committee took serious note of the delay on the part of the Ministries|Departments for not sending final replies to communications sent by the Committee and desired that their displeasure be communicated to the Ministries/Departments concerned.

211. After the displeasure was communicated, final replies in respect of 12 Orders (S. No. 1 to 10 and 12-13) have been received. But in one case, final reply is still awaited.

222. The Committee take a serious view of the lapse on the part of the concerned Ministries|Departments. They need hardly mention that unless information is furnished to them in time, they cannot express their views on the various Rules|Regulations etc. scrutinized by them and submit their report to the House. They would like the defaulting Ministry of Defence to send their reply within 3 months of the presentation of this Report.

IMPLEMENTATION OF OUTSTANDING RECOMMENDATION
MADE IN PARA 32 OF FIRST REPORT OF COMMITTEE ON
SUBORDINATE LEGISLATION (FIFTH LOK SABHA) RE-
GARDING PUBLICATION AND LAYING OF RULES AND
REGULATIONS FRAMED UNDER THE INDIAN RAIL-
WAYS ACT, 1890.

213. Apart from the rules and regulations framed under Sections 27, 29 and 42 of the Indian Railways Act, rule making power has also been vested in Government under Sections 22, 47, 71E, 82J and 84, *ibid.* Only one of these Sections, viz., Section 82J provides for both publication of the rules framed thereunder and their laying before Parliament. Section 47 provides for publication of the Rules in the Gazette but not for their laying before Parliament. The other Sections provide neither for publication nor for their laying.

214. The Committee on Subordinate Legislation (Fifth Lok Sabha), after considering the matter in all its aspects, observed in para 32 of their First Report that both in the interest of wider publicity and Parliamentary control over subordinate legislation, it was imperative that the Rules and Regulations framed by Government under the provisions of the Indian Railways Act should not only be published in the Gazette but also laid before Parliament. The Committee, therefore, recommended that Government should suitably amend the Act to this end.

215. While accepting the above recommendation, the Ministry of Railways (Railway Board), in their reply dated the 9th October, 1973, stated as follows:—

“The Ministry.....have embarked upon a detailed and comprehensive review of the Indian Railways Act, with a view to bringing it in consonance with present day conditions and making it a more flexible instrument of regulation. The question of rules and regulations made by the Central Government in exercise of the powers conferred on it by the Act will naturally be gone into as a part of this review. It may be some time before the review is completed and suitable legislation brought before the Parliament. Meanwhile, the Ministry of Railways would,

without waiting for a Statutory requirement to that effect being inscribed in the Act, undertake to 'lay' rules and regulations framed by them in exercise of their rule making powers under Sections 22, 47, 71E and 84. Section 82J already provides for the rules framed thereunder being laid before each House of Parliament.

So far as Sections 27, 29 and 42 are concerned, it may be explained that the examination so far made has suggested the need for their being drastically abridged or completely repealed. In Section 27, the lengthy proviso in sub-section (4) and the whole of sub-section (5) deal with the routing and rating of through traffic and the apportionment of freight charges earned thereon, the differences that may arise in regard to these matters between one railway administration and another and the resolving of such differences by the Central Government. Virtually the entire railway system having been nationalized and a standardized rates structure, a uniform routing procedure and accepted norms for apportionment of freight charges having been established, these provisions of section 27 do not now serve any purpose. It has, therefore,, been decided to delete them.

Section 42 provides that the Central Government alone shall have power to classify or reclassify any commodity or to raise or lower the level of class rates and other charges. As the Committee would notice this section only operates as a bar to the jurisdiction of the Railway Rates Tribunal. Until July, 1958, the Tribunal alone had the power to raise the classification of a commodity, though it could exercise this power only on an application from the Central Government. On a recommendation of the Railway Freight Structure Enquiry Committee, it was decided that the power to classify any commodity, or make any changes therein, should vest exclusively in the Central Government. It was in pursuance of that decision that section 42 was given the form it now has. Section 45 expressly excludes from the jurisdiction of the Tribunal 'Classification or reclassification of any commodity'. So, clause (a) in section 42 is avoidable repetition and it has been decided to drop it.

Sub-section (1) of section 29 empowers the Central Government to fix maximum and minimum rates for the whole

or any part of a railway and prescribe the conditions in which such rates will apply. Sub-section (3) goes on to provide that any complaint that a railway administration is contravening any order issued by the Central Government under sub-section (1) shall be determined by the Central Government. These provisions were enacted in the context of the Government of India exercising control over the rates on company railways, and the policy underlying them was to prescribe the maximum and the minimum and, for the rest, leave it to the railways to fix their own rates. With the nationalization of railways and the standardization of the rates structure, this part of section 29 has become anachronistic. The Ministry of Railways have, therefore, decided to repeal it.

Whether the provisions of sub-section (2) of section 29 and clause (b) in section 42, or some part of them, should be retained, and, if so, in what form would need to be further examined.

It may be repeated that even before provision is made in the Act for the 'laying' of rules and regulations made by the Central Government under various sections of the Act, the Ministry of Railways would 'lay' rules framed in exercise of powers conferred on the Central Government by sections 22, 47, 71E and 84."

216. In a further communication, dated 3-11-73, the Ministry, however, stated as follows—

"In regard to the 'General Rules for all Open Lines of Railways in India administered by the Government, 1929,' framed under section 47 of the Indian Railways Act, it may be stated that these rules were last reprinted in 1962 and only a very few copies thereof are now available in this Ministry for official use. It may also be added that it is not proposed to bring out a further reprint of these rules as this Ministry have undertaken a complete revision of these rules. As a good deal of emphasis is being laid on economy in Government expenditure, it will be appreciated that the present is not the appropriate time to reprint these rules.

The above being the position, this Ministry would earnestly suggest that they be allowed to furnish two completely up-to-date copies of the said rules to the Parliament

Library for reference. However, copies of any future amendments to these rules would be placed before the Parliament.

It may also be added that the requisite number of revised version of these rules when brought out and published in the Gazette will be laid before the Parliament.

It is requested that the Committee on Subordinate Legislation may be moved to accord permission to the adoption of the above procedure."

217. The Committee note with satisfaction the reply of the Ministry of Railways that a detailed and comprehensive review of the Indian Railways Act with a view to bringing it in consonance with the present conditions has been undertaken and the question of making suitable provision for the laying of Rules and Regulations framed under the Act would also be gone into as a part of the review. The Committee are also glad to note that the Ministry would be laying Rules and Regulations framed by them in exercise of the rule-making powers under Sections 22, 47, 71-E and 84 of the Railways Act without waiting for statutory requirement to that effect. The Committee desire the Ministry to expedite action for amending the Act at an early date.

XXX

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS MADE BY, AND ASSURANCES GIVEN TO, THE COMMITTEE ON SUBORDINATE LEGISLATION

218. The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix IV.

NEW DELHI;

The 7th May, 1974.

VIKRAM MAHAJAN,

Chairman,

*Committee on Subordinate
Legislation.*

APPENDIX I

(Vide para 4 of the Report)

Summary of main recommendations/observations made by the Committee

S. No.	Para No.	Summary
(1)	(2)	(3)
1	9	As directed by the Speaker the Committee have examined the procedure for laying of notifications issued under the Customs and Central Excises Acts, as proposed by the Ministry of Finance. The Committee approve the procedure except that if a sensitive notification is sent to the Press for issue in the Gazette Extraordinary after 6 P.M. it should be formally laid on the Table of both Houses of Parliament on their next sitting instead of within seven days.
2	12-13	The Committee are not convinced with the explanation given by the Ministry of Health and Family Planning for not providing in the Homoeopathy Central Council Act, 1973 for publication of Regulations framed thereunder in the Gazette. According to the Ministry, even though it is not specifically mentioned in the Act, the Regulations will normally be notified in the Gazette. The Committee desire the Ministry of Health and Family Planning to amend the Central Health Council Act so as to provide therein specifically for publication of Regulations.

The Committee are also not happy over the inclusion of an omnibus provision like sub-

(1)	(2)	(3)
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clause (p) of Clause 33. In their opinion, such a provision is in the nature of excessive delegation as it gives an impression that matters other than those enumerated in sub-clauses (a) to (o) could also be included in the Regulations. The Committee desire the Ministry of Health and Family Planning to delete Section 33 (p) from the Act. The Committee also desire the Ministry to delete similar provision from the Indian Medicine Central Act, 1970 and the Indian Medical Council Act, 1956.

- 3 19-20 The Committee are glad to note that the Ministry of Communications have agreed to amend Rule 519-A(2) of the Indian Telegraph Rules so as to bring it in line with Clause 12 of the agreement which used to be entered into earlier with Telex subscribers. The Committee desire the Ministry to amend this rule accordingly at an early date.

As regards the refund of charges for any breakdown in communication due to negligence of the Telegraph Department of Committee are in agreement with their reply that the provision for refund of charges for any breakdown would cause complication as it would be difficult to determine the negligence of the Department. The Committee note the assurance of the Department that rebate in such cases would be considered administratively.

- 4 24-26 The Committee are not convinced with the reply of the Ministry of Finance that explanatory note regarding retrospective effect given to the Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970 was not published as the Taxation Laws (Extension to Union Territories) Regulations, 1963 under
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(1)

(2)

(3)

which it was issued did not have any provision for its being laid on the Table. The Committee feel that the Ministry of Finance is under misapprehension in this regard. They would like to point out that the requirement of an explanatory note to an Order is not dependent upon whether it is required to be laid on the Table or not. According to the recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha), the explanatory note is required to be given in all cases where due to unavoidable circumstances retrospective effect has to be given to an Order.

The Committee would also like to draw attention to their observations made in para 102 of their Ninth Report (Fifth Lok Sabha) that the recommendation regarding giving of explanatory note in cases of retrospective effect had been made by them not because of any legal necessity but because of propriety and check on abuse of power. The Committee desire the Department of parliamentary Affairs to issue general instructions in this behalf to all Ministries/ Departments to remove their misapprehension regarding the necessity for explanatory note in cases where retrospective effect is given to Rules, Regulations, etc.

The Committee also regret to note from the reply of the Ministry that the difficulties in applying the Income-tax Act to the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry were brought to the notice of the Central Government very late by the field officers as a result of which retrospective effect was given to the Order from as far back as seven years. The Committee desire the Ministry of Finance to be careful about such matters in future and issue necessary instructions in this regard so that retrospective effect to Orders is avoided.

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5	31	<p>The Committee do not agree with the reply of the Ministry of Labour that the agency of the Vice-Chairman of the Advisory Committee for Housing Board is utilised only as <i>modus vivendi</i> and the powers are in fact delegated by the Central Government. They are of the opinion that in case the Central Government wants to entrust the powers of the Vice-Chairman to incur expenditure to some other authority, the name of the authority with the extent of power should be mentioned in the Coal Mines Labour Welfare Fund Rules, 1949. The Committee desire the Ministry to amend the Rules accordingly at an early date.</p>
6	37	<p>Although the Committee have no objections to amendment issued to Rule 15(2) of the Cardamom Rules, they are not happy at the Ministry of Commerce having issued the same without waiting for the comments of the Committee thereon, particularly when it was proposed to meet the objection raised by them. The Committee desire the Department of Parliamentary Affairs to issue necessary instructions in this regard to all Ministries/Departments for compliance in future.</p>
7	39-40	<p>The Committee note with satisfaction that Ministry of Railways have decided to delete Rule 22(7) of the Indian Railway Traffic Service Recruitment Rules, 1968 and desire them to issue necessary amendment at an early date.</p> <p>The Committee feel that all Government servants are entitled to opportunities of promotion in accordance with set principles on the subject. The above Rule was so worded as to give an impression that promotion could be arbitrarily denied to a person. The Committee, therefore desire the Cabinet Secretariat (Department of Personnel) to ask all Ministries/Departments of Government to examine their Recruitment Rules if they contain a similar provision and take necessary action for deleting the same.</p>

(1)	(2)	(3)
8	45	<p>The Committee are glad to note that the Ministry of Railways have decided to delete paragraph (d) of the Appendix to the Indian Railways Traffic Service Recruitment Rules, 1968, which provides penalty of termination of service in case a candidate fails to pass Hindi test. The Committee desire the Ministry to take necessary action to amend these Rules as well as Recruitment Rules relating to Indian Railway Service of Engineers etc. at an early date.</p>
9	52	<p>The Committee note with satisfaction that the Ministry of Industrial Development have agreed to rectify the discrepancies in the Indian Salt Service Recruitment Rules, 1970 by issue of a formal Notification. They desire the Ministry to take necessary action in the matter at an early date.</p>
10	55	<p>The Committee are not satisfied with the explanation of the Ministry of Defence for not specifying in the Air Headquarters (Senior Design Engineer) Recruitment Rules, 1972 the period by which age could be relaxed for Government servants. They are of the opinion that except for Defence Services or in Emergencies, the period by which upper age limit for Government servants could be relaxed taking into account needs of the job should be specifically stated in the Rules and should not be left to the discretion of the Union Public Service Commission. The Committee desire the Cabinet Secretariat (Department of Personnel) to issue necessary instructions in this regard to all Ministries/Departments of Government.</p>
11	58	<p>The Committee are not satisfied with the explanation of the Ministry of Industrial Development that notices and communications to parties to various proceedings before the Controller are invariably sent by Registered post except in the case of patent agents at Calcutta to</p>

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whom they are delivered by messenger. In this connection, they would like to invite the attention of the Ministry to para 25 of their First Report (Fifth Lok Sabha) wherein the Committee had stressed that departmental instructions could hardly be a proper substitute for a built-in legal safeguard. The Committee desire the Ministry to give statutory shape to the procedure being followed by them at present for sending communications to parties by making suitable amendments to the Patents Rules, 1972

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| 12 | 62 | The Committee are not satisfied with the explanation of the Ministry of Industrial Development for allowing only English in documents submitted before the Controller of Patents. They feel that the restriction on the use of Hindi in these documents goes against the spirit of the Official Languages Act, 1963 which was enacted to ensure progressive use of Hindi for official purposes of the Union. The Committee, therefore, desire the Ministry to allow the use of Hindi also in addition to English in documents furnished to the Controller under Rule 9 of the Patent Rules. |
| 13 | 63 | The Committee note from the reply of Ministry of Industrial Development that the Controller is required to give a hearing to a party before exercising any discretionary power under the Patents Act, 1970 and the Patents Rules, 1972 adverse to the Party. They, however, feel that a specific provision should be made in the Rules for giving an opportunity of being heard to a person before expunging his name from the roll of scientific advisers. The Committee desire the Ministry to amend the Rules accordingly at an early date. |
| 14 | 70 | The Committee are not satisfied with the reply furnished by the Cabinet Secretariat (Department of Personnel) that each case is consi- |
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		<p>dered on its merits when deciding the alternative to be adopted on the failure of a probationer to pass the final examination. The Committee feel that in the absence of any criteria as to the alternative to be adopted in a particular case, there is a possibility of discrimination being made in cases similarly placed. The Committee desire the Cabinet Secretariat (Department of Personnel) to lay down guidelines in the light of past decisions as to the alternative to be adopted where a probationer fails to pass a subject or subjects at the final examination.</p>
15	74	<p>The Committee are not satisfied with the clarification given by the Ministry of Education and Social Welfare for incorporating the saving clause in respect of Scheduled Castes, Scheduled Tribes and other special categories of persons in the Rules relating to terms and conditions of Service of the employees of the University Grants Commission. The Committee are of the opinion that the Rules regulating recruitment to various posts in the University Grants Commission should not be mixed up with other terms and conditions of service of the Employees. Recruitment Rules should be laid down separately by publication in the Gazette of India and the statutory authority under which they are framed should be cited in the preamble. The Committee desire the Ministry of Education and Social Welfare to take necessary action in this regard without any delay.</p>
16	78	<p>The Committee are glad to note that the Ministry of Home Affairs have agreed to amend Rule 15(2) of the Delhi and Andamans & Nicobar Islands Civil Service Rules, 1971 to provide for recording of reasons in writing by Government before varying the percentage of vacancies to be filled by each method specified in Rule 5(1). The Committee desire the Ministry to amend the Rules accordingly at an early date.</p>

(1)	(2)	(3)
17	82	The Committee are glad to note that the Ministry of Home Affairs have agreed to amend Rule 11 of the Delhi and Andamans & Nicobar Islands Civil Service Rules, 1971 to provide for recording the reasons in writing in cases where a person included in the list referred to in Rule 9 was not appointed. The Committee desire the Ministry to amend the Rule accordingly at an early date.
18	86	The Committee note with satisfaction that the Ministry of Home Affairs have agreed to amend Rule 15(3) of the Delhi and Andamans and Nicobar Island Civil Service Rule, 1971 to provide for recording of reasons in writing in cases where the Government did not agree with the change suggested in the List by the Union Public Service Commission. The Committee desire the Ministry to amend the Rule accordingly at an early date.
19	90	The Committee note with satisfaction that the Ministry of Home Affairs have decided to amend the proviso to Rule 22 of the Delhi and Andamans and Nicobar Islands Civil Service Rules, 1971 to provide that the Central Government may exempt, subject to such conditions as it might impose and keeping in view the past service experience/academic qualifications of the officer, either wholly or partly from such training or departmental examinations any person appointed under clause (b) of sub-rule (1) of Rule 5 or Rule 17 of above Rules. The Committee desire the Ministry to amend the Rules at an early date.
20	94	The Committee note with satisfaction that the Ministry of Home Affairs have decided to delete proviso to Rule 33 of the Delhi and Andamans and Nicobar Islands Civil Service Rules, 1971 under which power exercisable by the Central Government could be delegated to the Administrator. The Committee desire the Ministry to carry out the amendment at an early date.

(1)	(2)	(3)
21	98	The Committee note with satisfaction that the Ministry of Agriculture have agreed to provide for notification of the names of persons empowered by the Agricultural Marketing Adviser to act as Licensing Officers in the Cold Storage Order when it is replaced next. The Committee desire the Ministry to do the needful at an early date.
22	107	The Committee note with satisfaction that the Ministry of Home Affairs have agreed to include in the Investigator (Planning Cell) Ministry of Home Affairs Rectt. Rules, 1969, the disqualification clause on account of plural marriage. They desire the Ministry to amend the Rules accordingly at an early date.
	108	The Committee further desire the Ministries Departments concerned with the Rules shown in the Appendix II to amend the existing disqualification clause therein to bring it in conformity with the revised form.
23	112	The Committee note with satisfaction that the Ministry of Home Affairs have republished the Investigator (Planning Cell) Ministry of Home Affairs Rectt. Rules, 1969, alongwith the Schedule, which was not appended earlier. The Committee desire the Ministry to be careful in future in such matters.
24	116	The Committee note with satisfaction that the Ministry of Home Affairs have amended Rule 13 of the Unlawful Activities (Prevention) Rules to provide for service of summons by registered post acknowledgement due (<i>vide</i> S.O. 346-E dated 21-6-1973).
25	120	The Committee note with satisfaction that the Department of Science and Technology have agreed to amend the National Atlas Organisation (Recruitment to Class III and Class IV)

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		<p>Posts Amendment Rules, 1972 to indicate distinctive serial number of the amendment. They desire the Department to issue the amendment at an early date and be careful about such matters in future.</p>
121		<p>The Committee had first made their recommendation regarding giving of titles to rules and amendments in para 44 of their Third Report (First Lok Sabha). They restate that recommendation and desire the Department of Parliamentary Affairs to issue necessary instructions to all Ministries/Departments of Government so that such commissions are not made in future.</p>
26	128	<p>The Committee are glad to note that the Cabinet Secretariat (Department of Personnel) have agreed to republish the Central Civil Services (Temporary Service) Amendment Rules, 1972, with the explanatory memorandum stating the reasons for giving retrospective effect. They desire them to republish the Rules at an early date.</p>
27	136	<p>The Committee are of the opinion that precise method of recruitment to a post should be prescribed in the Recruitment Rules as a matter of principle. The Committee, are, however, satisfied with the reply of the Ministry of Home Affairs in regard to the Directorate of Coordination (Police Wireless) Recruitment to Class I and Class II posts (Amendment) Rules, 1971 and feel that in view of the position explained therein it is not necessary to prescribe precise method of recruitment to the post of Additional Director. In the case of Border Security Force (Assistant Commandants) Recruitment Rules, 1969, the Committee note with satisfaction that the Ministry of Home Affairs have accepted the suggestion of adding a rider about the precise method of recruitment. The Committee desire the Ministry to make necessary amendments to the Rules at an early date.</p>

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28	141	<p>The Committee note with satisfaction that both the Ministry of Planning and the Ministry of Tourism and Civil Aviation have agreed to delete from (i) The Planning Commission (Verity-type Operator) Recruitment Rules, 1971 (G.S.R. 1651 of 1971), (ii) The Civil Aviation Department (Accounts Officer) Recruitment Rules, 1971 (G.S.R. 1586 of 1971), the rule regarding liability to serve in the Defence Services as such a provision is required to be made only in Rules for recruitment of graduate engineers and Doctors. The Committee desire the Department of Personnel and Administrative Reforms to issue necessary instructions to all the Ministries/Departments to examine the recruitment Rules with which they are concerned, and delete therefrom the provision regarding liability to serve in Defence Service where it is not necessary to keep it in order to maintain uniformity in the Rules.</p>
29	146	<p>The Committee are not convinced with the reply of the Ministry of Labour that Section 3(2) (k) of the Dock Workers (Regulation of Employment) Act, 1948 covers clause 21 of the Kandla Dock Workers Regulation of Employment) Scheme providing for charging of medical fees for re-medical examination. The Committee feel that there should be an express provision in the Act authorising the Government to charge fees for re-medical examination. The Committee desire the Ministry either to delete the relevant clause from the Scheme or make a specific provision in the Act authorising the levy of the fee.</p>
30	150	<p>The Committee note with satisfaction that the Ministry of Labour have amended Clause 49(5) of the Kandla Dock Workers (Regulation of Employment) Scheme, 1969 by deleting the words 'and the order passed on such appeal shall be final and conclusive'. The Committee desire the Ministry to amend likewise similar clauses in the Calcutta Dock Workers Scheme and the Calcutta Dock Clerical and Supervisory Workers Scheme.</p>

(1)	(2)	(3)
31	155	<p>The Committee have noted the reply of the Ministry of Labour that summary proceedings contemplated in the Emergency Clause in Dock Workers Schemes would appear to include an opportunity of being heard before action was taken thereunder. The Committee feel satisfied with the reply except that they desire incorporation of a statutory provision in the Schemes for providing an opportunity of being heard in cases where services were terminated as a result of action taken under the Emergency Clause.</p>
32	159	<p>The Committee are not satisfied with the reply of the Ministry of Labour that though there is no specific authorisation in the Dock Workers (Regulation of Employment) Act, 1948, in regard to framing rules for contribution to Welfare Fund, Section 5B(1) empowers the Board to exercise such powers and perform such functions as may be conferred on it by the Scheme. The Committee are of the opinion that there must be express provision in the Act authorising the Board for creation of the Fund and its administration and desire them to bring suitable amendment to the Act at an early date.</p>
33	163	<p>The Committee note with satisfaction the reply of the Ministry of Labour that provision similar to Clause 43(3) of the Kandla Scheme regarding Wage-output relationship exists in all the Registered Schemes of the various Dock Labour Boards.</p>
34	167	<p>The Committee feel satisfied with the reply of the Ministry of Labour that the rates of levy payable by registered employees for administering the Dock Workers Schemes cannot be laid down in the Schemes as the cost of operating the Schemes is variable, depending upon the quantum of available work and the level of employment of the workers. The Committee are also satisfied that the rates of contribution to various funds being variable factors cannot be specified in the Schemes.</p>

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35	171	The Committee are glad to note that the Ministry have deleted the provision for de-registration of workers from the Calcutta Scheme. The Committee desire the Ministry to take similar action in regard to the other Dock Workers Schemes.
36	174	The Committee note with satisfaction the reply of the Ministry of Labour that it was considered appropriate to give disciplinary powers to the employers in respect of monthly workers as they were in their direct employment.
37	177	The Committee note with satisfaction that the Ministry, while deleting Clause 37 of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 relating to disappointment money have provided in Clause 36(2) that a worker in the reserve pool when booked for work shall be entitled to full wages inclusive of allowances even though the work for which he attends cannot commence or proceed and no alternative work can be found for him.
38	181	The Committee note with satisfaction that the Planning Commission and the Ministries of Works and Housing and Home Affairs have amended the Rules to include therein the proviso about relaxation of upper age-limit for candidates belonging to the Scheduled Castes, Scheduled Tribes and other special categories of persons.
	182	They also desire the Department of Personnel to issue necessary instructions to all Ministries/ Departments for amending their recruitment rules where such a proviso was required to be incorporated.
39	186	The Committee note with satisfaction that the Ministry of Home Affairs have amended Rule 5 of the Deputy Fire Adviser Recruitment Rules, 1971 by adding the words "and in consultation with the U.P.S.C." They desire them to make similar

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amendment to the Commissioner for Linguistic Minorities, Allahabad (Administrative Officer) Recruitment Rules, 1972.

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The Committee note with satisfaction that the Ministry of Finance have amended Rule 6(2) of the C.C.S. (Pension) Rules to provide that the Government servant concerned shall be given a reasonable opportunity for making representation before any reduction is made in the amount of pension or gratuity. (*vide* Notification No. 5(3)-E.V (A) |72, dated 29-9-73).

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The Committee note with satisfaction that the Ministry of Finance have decided to incorporate the provisions of their O.M. Nos. F.(16)-Est. (Spl)/50, dated the 2nd January, 1951 and 21st Feburaury, 1951 as Appendix to the Central Civil Services (Pension) Rules. The Committee desire the Ministry to amend the Rules at an early date.

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The Committee note with satisfaction that the Ministry of Finance have agreed to the suggestion of giving an opportunity of representation to a person before excluding him from the expression 'family' in terms of Note below Rule 54(14) (b) (i) of the C.C.S. (Pension) Rules. The Committee desire the Ministry to amend the Rule accordingly at an early date.

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The Committee are not satisfied with the explanation given by the Ministry of Works & Housing for giving retrospective effect to the Allotment of Government Residences (General Pool in Delhi) Fifth Amendment Rules, 1972 (S.O. 3117 of 1972). The Committee feel that the Ministry should have sent the Notification to the Government Press along with a covering letter asking them to publish it by the particular date.

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203		When the Notification was not published by the specified date and consequently the Ministry inserted Rule 1(2) regarding retrospective effect, they should have simultaneously attached an explanatory note as to the circumstances in which the retrospective effect was being given. The Committee desire the Ministry of Works and Housing to be careful in this regard in future.
44	206	The Committee are glad to note that the Ministry of Finance have agreed to distinguish various Notifications issued under the Indian Coinage Act fixing standard weights of coins and remedy allowed by making reference in their short titles to the denomination and metallic composition of the coins involved apart from the year of issue.
45	209	The Committee note with satisfaction that the Cabinet Secretariat (Department of Personnel) have issued amendment to the Notification containing the Indian Administrative Service (Fixation of Cadre Strength) Sixth Amendment Regulations, 1972 (G.S.R. 433-E of 1972), to specify the original Regulations in its preamble.
46	212	The Committee take a serious view of the lapse on the part of the concerned Ministries/Departments. They need hardly mention that unless information is furnished to them in time, they cannot express their views on the various Rules/Regulations, etc. scrutinized by them and submit their report to the House. They would like the defaulting Ministry of Defence to send their reply regarding the Order at S. No. 11 of Appendix III within 3 months of the presentation of this Report.
47	217	The Committee note with satisfaction the reply of the Ministry of Railways that a detailed and comprehensive review of the Indian Railways Act with a view to bringing it in consonance with the present conditions has been undertaken and

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the question of making suitable provision for the laying of Rules and Regulations framed under the Act would also be gone into as a part of the review. The Committee are also glad to note that the Ministry would be laying Rules and Regulations framed by them in exercise of the rule-making powers under Sections 22, 47, 71-E and 84 of the Railways Act without waiting for statutory requirement to that effect. The Committee desire the Ministry to expedite action for amending the Act at an early date.

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The Committee note with satisfaction the action taken by Government on their earlier recommendations as indicated in Appendix IV.

APPENDIX II

(Vide para 106 of the Report)

List of Rules containing Disqualification clause in the old form

Sl. No.	Short title of Rules	Number and date of 'Order'	Ministry/Department concerned
1	The Civil Aviation Deptt. Receptionists and Left Luggage Attendants (Recruitment) Rules, 1970.	G.S.R. 1300 11-9-1971	Tourism and Civil Aviation
2	Senior Fire Officer, Civil Aviation Department (Recruitment) Rules, 1969.	G.S.R. 1299 11-9-1971	Do.
3	The Department of Company Affairs (Recruitment of Staff car drivers in the offices of the Regional Directors) Recruitment Rules, 1971.	G.S.R. 1491 9-10-1971	Law, Justice and Company Affairs.

(vide para 210 of the Report)

S. No.	Description of 'Order'	Date of making reference to Ministry/Department	Date of issuing reminder	Date of issuing D.O. reminders	Remarks
1	D.G.H.S. Chief Draftsman (Second Amendment) Rules, 1972 (G.S.R. 1255 of 1972)	1-8-1973	19-10-1973	24-1-1974	No reply received
2	Central Civil Service (Temporary Service) Amendment Rules, 1972	28-4-1973	20-7-1973 22-10-1973	24-1-1974	Only interim reply received
3	The Fertilizer (Control) Third Amendment Order, 1972 (G.S.R. 417-E of 1972)	28-5-1973	20-10-1973	24-1-1974	No reply received
4	National Atlas Organisation (Recruitment to Class III and Class IV Posts) Amendment Rules, 1972 (G.S.R. 924 & 925 of 1972)	11-5-1973	29-8-1973	24-1-1974	Only interim reply received
5	Senior Hindi Officer (Class I Gazetted) Ministry of Home Affairs Recruitment Rules, 1972 (G.S.R. 1164 of 1972)	11-5-1973	11-7-1973 24-10-1973	23-1-1974	—do—
6	The Staple Fibre Distribution Order, 1972 (S.O. 5356 of 1972)	23-7-1973	22-10-1973	24-1-1974	—do—
7	The Registrar of Newspapers for India (Junior Stenographer) Recruitment Rules, 1972 (G.S.R. 1196 of 1972)	27-7-1973	20-10-1973	24-1-1974	No reply received
8	The Central Government Health Scheme (Kanpur) Rules, 1972 (S.O. 2624 of 1972)	19-7-1973	19-10-1973	22-1-1974	Interim reply received
9	Border Security Force Accounts Cadre (Class IV posts) Recruitment Rules, 1972 (S.O. 2147 of 1972)	25-5-1973	29-8-1973	20-10-1973 24-1-1974	No reply received

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10	Compensation (Class III Non-Gazetted) Recruitment Rules, 1972 (S.R.O. 306 of 1972)	25-5-1973	29-8-1973	20-10-1973 24-1-1974	No reply received
11	Directorate of Technical Development and Production (Air) Organisation Class III Technical Staff: and other non-Ministerial Posts Recruitment Rules, 1972 (S.R.O. 217 of 1972)	28-7-1973	23-10-1973	24-1-1974	Interim reply received
12	Central Civil Services (Temporary Service) Second Amendment Rules, 1972 (S.O. 2601 of 1972)	19-7-1973	19-10-1973 30-1-1974	—	—do—
13	Delhi Development Authority (Issue and Management of Bonds) Regulations, 1970 (S.O. 1135 of 1972)	25-5-1973	24-1-1974	—	—do—

APPENDIX IV

(Vide para 218 of the Report)

Statement showing the progress of action taken or proposed to be taken on the recommendations made by, and assurances given by Ministries/Departments, to the Committee on Subordinate Legislation

S.No.	Reference to para No. of Report.	Summary of recommendations/ assurances	List of Government's reply
(1)	(2)	(3)	(4)
1.	Seventh Report (5LS) 55	The Committee note with satisfaction that the Ministry of Finance have agreed to correct the G.S.R. No. and short title of the Income-tax Department Appraisers' Recruitment Rules, 1969 and desire them to take necessary action in the matter at an early date.	This has since been done (see G.S.R. 1096 of 1972, dt. 9-9-72).
2.	Seventh Report (5LS) 67	The Committee note with satisfaction that the Ministry of Finance are taking action to indicate the manner of recruitment, etc. in the Schedule to the Income-tax Department (Inspector) Recruitment Rules, 1969. They desire the Ministry to amend the Rules at an early date.	The Rules have since been amended (see G.S.R. 1058 of 1973 dt. 29-9-73).
3.	Seventh Report (5LS) 119	The Committee note with Satisfaction that the Ministry of Railways (Railway Board) have agreed to give preference to officers having experience on Zonal Railways in appointment to the post of Member-Secretary, Railway Service Commission. The Committee desire the Ministry to amend the Recruitment Rules in question at an early date.	The Rules have since been amended (see G.S.R. 1315 of 1973, dt. 1-12-73).

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4. Eighth Report
(5LS)
25—28

Bye-laws relating to the Secunderabad and Jullundur Cantonments did not bear the short titles. The Ministry of Defence, in their reply, stated that the recommendations of the Committee on Subordinate Legislation about giving of short titles had not been brought to their notice at the time the bye-laws were published.

The Committee first made recommendation about giving short titles to all rules and amendments to all rules in para 44 of their Third Report (Fifth Lok Sabha) presented to the House on 3rd May, 1955. This recommendation was reiterated in their subsequent Reports. The Department of Parliamentary Affairs had also (*vide* their O.M. No. S.R. I/CB-57 dt. 14-2-58, No. S.R. III (58-59) C3/58 dt. 27-5-58 and No. S.R. II (20-21) LS-68 dt. 7-3-69) brought the above recommendation to the notice of all Ministries/Departments of the Government of India. This was well before the above bye-laws were published in the Gazette. It is obvious that the Ministry of Defence had failed to follow the above recommendation/instruction. The Committee desire the Ministry to be careful in future about such matters. They also desire the Ministry to give short titles to the above bye-laws as these are principal bye-laws and absence of short titles would cause inconvenience to all concerned in tracing out the bye-laws.

The Ministry has no objection to giving the short titles to such bye-laws which seek to amend the principal bye-laws which were not given the short titles. The recommendation of the Committee has been communicated to the ML & C Directorate for strict compliance in future (*vide* Ministry of Defence O.M. No. 10 (47)/73/3300-C/D(Q&C) dt. 21-12-73).

5. Eighth Report
(5LS)
33

The Committee are not satisfied with the reasons given by the Ministry of Defence for not publishing bye-laws for inviting objections and suggestions from the members of the public. They are of the view that although the public at large is not concerned with the bye-laws of a particular Cantonment

Instructions have already been issued to the local authorities for strict compliance of the recommendations of the Committee (*vide* Ministry of Defence O.M. No. 10(47)/73/2589-C/D (Q & C) dt. 23-10-73]

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Board but if the particulars of previous publication of the draft bye-laws are indicated in the preamble to the final bye-laws it would make the position more clear and all concerned will know from the first glance the details of previous publication. The Committee desire the Ministry of Defence to give particulars of pre-publication of draft bye-laws in the preamble to all the final bye-laws in future as is being done in the case of Rules, which are required to be pre-published.

6. Eighth Report
(5 LS)
36

The Committee regret to note that Schedule to the Directorate of Extension (Horticulture Officer) Recruitment Rules, 1969, reference of which had been made in the Rules was not appended at the time of their publication. The Committee desire the Ministry of Agriculture to take necessary steps for avoiding such a lapse in future. The Committee also desire the Ministry to republish the above Rules along with the Schedule thereto at an early date.

Rules (along with Schedule) have since been republished in the Gazette in super session of earlier notification No. G.S.R. 2781 of 1969, dt. 22-12-69 (see G.S.R. 1071 of 1973, dt. 29-9-73). Steps have been taken to ensure that such a lapse does not take place in future [vide Ministry of Agriculture (Department of Agriculture) O.M. No. F. 5-6/73-EE I, dt. 4-10-73].

7. Eighth Report
(5 LS)
10

The Committee are glad to note that the Ministry of Finance have issued Notification Nos. 22(2)-E.V. (A)/71-I and 22(2)-EV (A)/71-II dated the 4th January, 1972 containing corrigenda. They, however, desire the Ministries to be more vigilant in future in such matters as the wrong amendment number causes inconvenience to all concerned in tracing and referencing of the Regulations. The Committee also desire that necessary instructions in this regard should be issued to all Ministries/Departments of the Government.

The Department of Parliamentary Affairs have circulated the recommendation of the Committee to all Ministries/Departments for information and appropriate action, vide their O.M. No. F. 32(57)/73-R & C, dt. 22-9-73.

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8. (i) Eighth Report (5 LS) 44	The Committee note with satisfaction that the Ministry of Defence have agreed to provide seven days' time-limit which the person concerned would be bound to comply with the notice issued to him under bye-law (d) of the bye-laws regulating supply and use of water in Nasirabad Cantonment. The Committee desire the Ministry to amend the bye-laws at an early date.	The Bye-laws have since been amended suitably (see S.R.O. 102 of 1974 dt. 23-3-74).	
(ii) Eighth Report (5 LS) 48	The Committee note with satisfaction that Ministry of Defence have agreed to provide seven days' time-limit within which the party concerned would be required to pay the cost of repairs/alterations to the water connection to be carried out under bye-law 24 of the bye-laws regulating supply and use of water in Nasirabad Cantonment. The Committee desire the Ministry to amend bye-laws at an early date.	do	
(iii) Eighth Report (5 LS) 52	The Committee note with satisfaction that the Ministry of Defence have accepted the suggestion of giving a reasonable opportunity of being heard to the person concerned before the water supply is disconnected due to infringement of bye-law 30 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment. The Committee desire the Ministry to amend the bye-law at an early date.	do	
(iv) Eighth Report (5 LS) 58-59	The Committee are not fully satisfied with the proposed amendment to bye-law 37 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment as it is not in conformity with the provision contained in Section 222(2) and 223 of the Cantonments Act, 1924, which empowers	The Bye-laws have since been amended suitably (see S.R.O. 102 of 1974 dt. 23-3-74).	

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the Board to withdraw and curtail the water supply and not withdraw or curtail as proposed in the amendment. In this connection, it is pointed out that the amendment suggested in respect of bye-laws of Belgium Cantonment referred to in para 56 has been accepted by the Ministry of Defence.

The Committee, therefore, desire the Ministry of Defence to further amend Bye-law 37 of the Nasirabad Cantonment to bring it in conformity with the provisions of the Cantonments Act.

(v) Eighth Report
(SLS)
62

The Committee note with satisfaction that Ministry of Defence have decided to amend bye-law 43 of the bye-laws regulating the supply and use of water in Nasirabad Cantonment by deleting the words "..... decision of the Cantonment Board shall be final." They desire the Ministry to take early action in the matter.

The Bye-laws have since been amended suitably (See. S. R.O. 102 of 1971 dt. 23-3-74).

9. Eighth Report
(SLS)
106

The Committee desire the Department of Culture to be more vigilant in future in the matter of publication of Orders. They also desire the Ministry of Works and Housing and the Chief Controller, Printing and Stationery to issue suitable instructions in the matter to press to avoid duplication in printing of Orders as had occurred in the case of Khuda Bukh Oriental Public Library Rules, 1970.

(i) Noted and brought to the notice of all administrative sections [vide Department of Culture Endorsement No. F. 9-14/69-CAI(2), dt. 18-10-73].

(ii) Necessary instructions to the Managers of Govt. Presses at Faridabad, Ring Road, Minto Road, New Delhi, have since been issued by the Director of Printing vide his D.O. No. L-15030/10/72-P, dt. 24-9-73 (vide Ministry of Works and Housing O.M. No. G-25020/2/73-PSP/Ptg., dt. 23-10-73).

(1)

(2)

(3)

(4)

10. Ninth Report (5 LS)
64-56

The Committee feel that provision for consultation with the Union Public Service Commission is an important check against the possible abuse of power vested in the Central Government by relaxation rules. Similarly, the use of words "with respect to any class or category of persons" in the relaxation clause is also necessary to obviate the possibility of discrimination among persons similarly placed by making the benefit of relaxation available to all persons coming in the same category or class.

Circulated by the Department of Personnel & Administrative Reforms to all the Ministries/Departments for taking necessary action *vide* their O.M. No. 2/100/73-Estt. (D), dt. 18-2-74.

The Committee note that in pursuance of their earlier recommendation made in para 83 of Fifth Report (Fifth Lok Sabha), the Department of Personnel have already issued instructions on 14-5-1973 to all Ministries/Departments to review the recruitment rules for Class I and II posts to ensure that the relaxation clause carries a provision for consultation with the Union Public Service Commission, wherever necessary.

The Committee desire the Department of Personnel to issue general instructions on the same lines to all Ministries/Departments in so far as the use of words "with respect to any class or category of persons" in the relaxation clause is concerned, so that the possibility of discrimination among persons similarly placed is obviated.

11. Ninth Report (5 LS)
89-90

The Committee reiterate their earlier recommendation that "whenever Ministries/Departments want their notifications containing rules, regulations etc., to be published by a particular date, they should send them to the Press along with a covering letter indicating therein the date by which they want them to be published. In case the Government Press do not find it possible to publish them

Department of Parliamentary Affairs have circulated the observations/recommendations of the Committee to all Ministries/Departments for information and appropriate action, *vide* their O.M. No. F. 32(50)/73-R & C, dt. 18-12-73.

(1)

(2)

(3)

(4)

by that date, they should inform the concerned Ministries/Department accordingly.' The Committee desire the Ministries/Departments to strictly follow it in future so that the period of 30 days allowed to the persons concerned for making suggestions/raising objections is in no case reduced due to delay in the publication of the draft rules by the Press.

The Committee further desire that while inviting suggestions/objections from the persons concerned on draft rules, the Ministries/Departments should instead of specifying a particular date, indicate in the preamble to the draft rules that they would be taken into consideration 30 days after their publication in the Gazette. The Committee feel that this would avoid reduction of the period available to the public due to delay in publication of the draft rules in the Gazette.

12. Ninth Report
(5LS)
93

The Committee are glad to note that the Ministry of Shipping and Transport (Transport Wing) have decided to omit the provision for an examination fee of Rs. 5/- from rule 6 of the Life boatmen's (Qualifications and Certificates) Rules, 1963. They desire the Ministry to amend the rules at an early date.

The provision for an examination fee of Rs 5.00 has since been omitted from rule 6, *ibid.* (See G.S.R. 339 of 1974, dt. 30-3-74).

13. Ninth Report
(5LS)
101—103

The Committee note that so far Government had accepted and also acted according to the recommendations regarding avoidance of retrospective effect to Rules, Regulations, etc., and to give explanatory notes in cases where retrospective effect to Rules was unavoidable (*vide* para 10 of Second Report—Fourth Lok Sabha, para 32 of Fourth Report—Fourth Lok Sabha and para 22 of Fifth Report—Fourth Lok Sabha).

Noted for compliance in consultation with the Department of Personnel. Circulated to all Ministries/Departments with the request to bear this decision in mind while formulating statutory rules (*vide* D.P.A.O.M.No.F.32 (1)/69-R&C, dt. 22-3-74).

(1)

(2)

(3)

(4)

The Committee had recommended avoidance of giving retrospective effect to the rules and giving explanatory note that no one would be affected adversely, not because of legal necessity but because of propriety and check on abuse of power. The Committee feel that once the propriety of not issuing the Rules retrospectively is accepted, it does seem necessary to indicate the explanatory note that the interests of no one are prejudicially affected by retrospective effect. There should also be no objection to publication of explanatory note in the Gazette as it would go to prove that there is no *male fide*.

The Committee, therefore, reiterate their earlier recommendations made in para 10 of their Second Report (Fourth Lok Sabha).

14. Ninth Report
(5LS)
110-111

As regards power of the Central Government to relax rules, the Committee would like to emphasise that, if considered necessary, the rules should be relaxed prospectively and not with retrospective effect and the relaxation should invariably be in respect of a class or category of persons and not an individual.

The Department of Personnel and Administrative Reforms have circulated the recommendations of the Committee to all Ministries/Departments for taking necessary action (*vide* their O.M. No. 2/100/73-Estt.(D), dt. 18-2-74).

The Committee desire that the Department of Personnel should issue general instructions in this regard to all Ministries/Departments to avoid recurrence of such cases in future.

MINUTES

XXXIV

MINUTES OF THE THIRTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74).

The Committee met on Saturday, the 30th June, 1973 from 15.00 to 16.45 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavitt
4. Shri Samar Guha
5. Shri K. Lakkappa
6. Shri S. N. Misra
7. Shri D. K. Panda
8. Shri Tulmohan Ram

SECRETARIAT

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.

3. The Committee then considered Memoranda Nos. 129 to 135 on the following subjects and 'Orders':—

S.No.	Memo. No.	Subject		
(i) to (iv)	129 to 132	*	*	*
(v)	133	Indian Salt Service Recruitment Rules, 1970 (G.S.R. 673 of 1970)		
(vi) & (vii)	134—135	*	*	*

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

4 to 9

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(v) *The Indian Salt Service Recruitment Rules, 1970 (G.S.R. 673 of 1970)—(Memorandum No. 133).*

10. The Committee considered the above Memorandum and noted with satisfaction the reply of the Ministry of Industrial Development that the discrepancies in the said Rules pointed out to them were being rectified by issue of formal notification in consultation with the Ministry of Law. The Committee desired the Ministry to take early steps to do the needful.

11-12

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The Committee then adjourned to meet again on Monday, the 2nd July, 1973.

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

XLIII

MINUTES OF THE FORTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74).

The Committee met on Wednesday, the 5th December, 1973 from 16.30 to 17.15 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavitt
4. Shri S. A. Kader
5. Shri Y. S. Mahajan

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 155, 160 to 163, 165 to 167 on the following subjects:—

S. No.	Memo No.	Subject
(1)	(2)	(3)
(i)	155	The Investigator (Planning Cell) (Ministry of Home Affairs) Recruitment Rules, 1969 (G.S.R. 2564 of 1969).
(ii)	160	The Cold Storage (Amendment) Order, 1970 (S.O. 150 of 1971).
(iii)	161	The Unlawful Activities (Prevention) Amendment Rules, 1971 (S.O. 109 of 1971).
(iv)	162	* * * *

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

(1)	(2)	(3)
(v)	163	(i) The Delhi and Andamans and Nicobar Islands Civil Service Rules, 1971 (G.S.R. 122 of 1971). (ii) The Delhi and Andamans and Nicobar Islands Police Service Rules 1971 (G.S.R. 123 of 1971).
(vi)	165	Bills or Acts delegating legislative powers to subordinate authorities—the Homoeopathy Central Council Bill, 1973 (as passed by Rajya Sabha).
(vii) and (viii)	166-167	* * *

- (i) *The Investigator (Planning Cell) (Ministry of Home Affairs) Recruitment Rules, 1969 (G.S.R. 2564 of 1969) (Memo. No. 155).*

I

3. The Committee on Subordinate Legislation considered the above Memorandum and noted that the Ministry of Home Affairs have deleted 'relaxation clause' which was not on the usual pattern, from above Rules.

II

4. The Committee noted that the Ministry of Home Affairs, on being pointed out to them, have decided to insert 'disqualification clause' in the above Rules. The Committee desired the Ministry to amend the Rules at an early date.

III

5. The Committee noted that the Ministry of Home Affairs, on their attention being drawn, have republished the Rules along with the Schedule, which was not appended to the above Rules. The Committee desired the Ministry to be careful in future in such matters.

- (ii) *The Cold Storage (Amendment) Order, 1970 (S.O. 150 of 1971) (Memorandum No. 160).*

6. The Committee considered the above Memorandum and noted that the Ministry of Agriculture (Department of Agriculture) had decided to publish the names of Officers empowered by the Agricultural Marketing Adviser to act as Licensing Officers on his behalf in the Cold Storage Order when it was replaced next. The Committee desired the Ministry to do the needful at an early date.

- (iii) *The Unlawful Activities (Prevention) Amendment Rules, 1971 (S.O. 109 of 1971) (Memorandum No. 161).*

7. The Committee considered above Memorandum and noted that the Ministry of Home Affairs had amended Rule 13 of the Unlawful Activities (Prevention) Amendment Rules, 1971 that the summons would be sent to the person for whom it was intended by the registered post acknowledgement due.

8. * * * *

- (v) *The Delhi & Andamans and Nicobar Islands Civil Service/Police Service Rules, 1971 (G.S.R. 122/123 of 1971) (Memorandum No. 163).*

9. The Committee considered above Memorandum and noted that the Ministry of Home Affairs had decided to amend Rule 5(2) of aforesaid Rules to record the reasons in writing when varying the percentage of vacancies to be filled by each method specified in Rule 5(1) of above Rules. The Committee desired the Ministry of Home Affairs to amend Rules at an early date

II

10. The Committee noted that the Ministry of Home Affairs had decided to amend Rule 11 of above Rules that in case a candidate whose name was included in the List but was not appointed to the service, the reasons therefor shall be recorded by the Central Government. The Committee desired the Ministry to amend the Rule at an early date.

III

11. The Committee noted that the Ministry of Home Affairs had decided to amend Rule 15 (3) of above Rules that the list shall finally be approved by the Central Government after taking into account the changes, if any, proposed by the Union Public Service Commission, and the Central Government shall record the reasons in writing if the changes suggested by the Commission were not accepted. The Committee desired the Ministry to amend the Rule at an early date.

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

IV.

12. The Committee noted that the Ministry of Home Affairs had decided to amend proviso to Rule 22 of above Rules to provide that the Central Government might exempt, subject to such conditions as it might impose and keeping in view the past service/experience/academic qualifications of the officer, either wholly or partly from such training or departmental examinations any person appointed under clause (b) of sub-rule (1) of Rule 5 to amend the Rules at an early date.

V

13. The Committee noted that the Ministry of Home Affairs had decided to delete proviso to Rule 33 of above Rules under which power exercisable by the Central Government was delegated to the Administrator.

(vi) *Bills or Acts delegating Legislative powers to subordinate authorities—the Homoeopathy Central Council Bill, 1973 (as passed by Rajya Sabha) (Memo. No. 165).*

14. The Committee considered above Memorandum and reiterated their earlier recommendation made in para 10 of their Seventh Report (Fourth Lok Sabha) that all Rules framed by the Government, pursuant to Constitutional or Statutory provisions, should invariably be published in the Gazette for public information. The Committee were of the opinion that a provision should be made in the Homoeopathy Central Council Bill, 1973, for publication and laying of Regulations to be made under the Bill.

15 to 17. * * *

The Committee then adjourned to meet again on Thursday, the 24th January, 1974.

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

XLIV

MINUTES OF THE FORTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74)

The Committee met on Thursday, the 24th January, 1974 from 15.00 to 17.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavitt
4. Shri Samar Guha
5. Shri S. A. Kader
6. Shri K. Lakkappa
7. Shri S. N. Misra
8. Shri Mohan Swarup
9. Shri Tulmohan Ram

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered Memoranda Nos. 156 to 158, 171 and 173 to 175 on the following subjects:

S. No.	Memo No.	Subject
1	2	3
I to 3	156 to 158	• • •
4	171	The Cardamom Rules, 1966 (G.S.R. 25 of 1969).
5	173	(i) The Kandla Dock Workers (Regulation of Employment) Scheme, 1969 (S.O. 564 of 1969). (ii) The Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 (S.O. 1985 of 1970). (iii) The Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme, 1970.

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

1	2	3
6 & 7	174-175	* * *
3 to 6		* * *

(iv) *The Cardamom Rules, 1966* (G.S.R. 25 of 1969)—(Memo No. 171).

7. The Committee considered the above Memorandum and were not happy at the Ministry of Commerce having issued amendment to Rule 15(2) of the Cardamom Rules as proposed by them without waiting for comments of the Committee thereon, particularly when the amendment was proposed to meet the objection raised by the Committee. The Committee desired that necessary instructions in this regard should be issued to all Ministries/Departments for compliance in future.

(v) (i) *The Kandla Dock Workers (Regulation of Employment) Scheme, 1969* (S.O. 564 of 1969).

(ii) *The Calcutta Dock Workers (Regulation of Employment) Scheme, 1970* (S.O. 1985 of 1970).

(iii) *The Calcutta Dock Clerical and Supervisory Workers (Regulation of Employment) Scheme, 1970*—(Memo. No. 173).

I

8. The Committee considered the above Memorandum and were of the opinion that clause 21 of the Kandla Dock Workers (Regulation of Employment) Scheme providing for charging of medical fees for pre-medical examination was not covered by Section 3(2) (k) of the Dock Workers (Regulation of Employment) Act, 1948. As such, the Committee desired the Ministry either to delete the clause from the Scheme or make a specific provision in the Act authorising the levy of the fee.

II

9. The Committee considered the above Memorandum and noted that, on being pointed out, the Ministry of Labour and Rehabilitation (Department of Labour and Employment) had amended Clause 49(5) of the Kandla Scheme by deleting the words "and the order passed on such appeal shall be final and conclusive". The Committee desired the Ministry to amend likewise similar clauses in the Calcutta Dock Workers Scheme and the Calcutta Dock Clerical and Supervisory Workers Scheme.

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

III

10. The Committee considered the Memorandum and noted the reply of the Ministry that summary proceedings contemplated in the Emergency clause would appear to include an opportunity of being heard before action was taken thereunder. The Committee felt satisfied with the reply except that statutory provision must be made for providing an opportunity of being heard in cases where services were terminated as a result of action under the Emergency clause.

IV

11. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry that though there was no specific authorisation in regard to framing rules for contribution to Welfare Fund, Section 5B(1) of the Dock Workers (Regulation of Employment) Act, 1948 empowered the Board to exercise such powers and perform such functions as might be conferred on it by the Scheme. The Committee desired the Ministry to bring suitable amendment to the Statute giving express authority to the Board for creation of the Fund and its administration.

V

12. The Committee considered the Memorandum and were satisfied with the reply of the Ministry that provisions similar to Clause 43(3) of the Kandla Scheme regarding the wage-output relationship existed in almost all the Registered Schemes of the various Dock Labour Boards except that in the Calcutta Scheme the wage-output relationship had been laid down in Schedule VI appended to the Scheme.

VI

13. The Committee considered the Memorandum and were satisfied with the reply of the Ministry that the rates of levy payable by registered employers for administering the Scheme could not be laid down in the Scheme as the cost of operating the Scheme was variable depending upon the quantum of available work and the level of employment of the workers. Similarly, the rates of contribution to various funds being variable factors could not be laid down in the Scheme.

VII

14. The Committee considered the Memorandum and noted that, on being pointed out, the Ministry of Labour and Rehabilitation had deleted the provision for de-registration of workers from the Calcutta Scheme. The Committee desired the Ministry to take similar action in regard to the other Schemes.

VIII

15. The Committee considered the above Memorandum and felt satisfied with the reply of the Ministry of Labour and Employment that monthly workers being in the direct employment of the employers, it was considered appropriate to give disciplinary powers to the employers.

IX

16. The Committee considered the above Memorandum and were satisfied to note that Clause 37 of the Calcutta Dock Workers Scheme relating to disappointment money had been deleted from the Scheme.

17 to 19

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The Committee then adjourned to meet again on the 25th January, 1974.

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

XLV

MINUTES OF THE FORTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74)

The Committee met on Friday, the 25th January, 1974 from 15.00 to 17.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*.

MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavit
4. Shri Samar Guha
5. Shri S. A. Kader
6. Shri K. Lakkappa
7. Shri S. N. Misra
8. Shri Mohan Swarup

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered Memoranda Nos. 159, 164, 166, 168-169, 172, 176 to 181, 193 and 194 on the following subjects:—

1	2	3
1	159	*
2	164	*
3	166	*
4	168	Implementation of outstanding recommendation made in para 32 of First Report of Committee on Subordinate Legislation (Fifth Lok Sabha) re: publication and laying of Rules and Regulations framed under the Indian Railways Act, 1890.
5	169	*

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

1	2	3
6	172	(i) The Border Security Force (Assistant Commandants) Recruitment Rules, 1969 (G.S.R. 2787 of 1969); and (ii) Directorate of Coordination (Police Wireless) Recruitment to Class I and Class II posts (Amendment) Rules, 1971 (G.S.R. 938 of 1972).
7 to 12	176 to 181	* * *
13 to 14	193 & 194	* * *
3 to 5		* * *

(iv) *Implementation of outstanding recommendation made in para 32 of First Report of Committee on Subordinate Legislation (Fifth Lok Sabha) re: publication and laying of Rules and Regulations framed under the Indian Railways Act, 1890 (Memo. No. 168).*

6. The Committee considered the above Memorandum and noted with satisfaction the reply of the Ministry of Railways that a detailed and comprehensive review of the Indian Railways Act with a view to bringing it in consonance with the present conditions had been undertaken and the question of making suitable provision for the laying of rules and regulations framed under the Act would also be gone into as a part of the review. The Committee also noted that in the meantime the Ministry would without waiting for statutory requirement to that effect be laying rules and regulations framed by them in exercise of these rule-making powers under Sections 22, 47, 71E and 84 of the Railways Act. The Committee desired the Ministry of Railways to expedite action for amending the Act at an early date.

7.

(vi) (1) *The Border Security Force (Assistant Commandants) Recruitment Rules, 1969 (G.S.R. 2787 of 1969).*

(2) *Directorate of Coordination (Police Wireless) Recruitment to Class I and Class II posts (Amendment) Rules, 1971 (G.S.R. 938 of 1972) (Memo. No. 172).*

8. The Committee considered the above Memorandum and were satisfied with the reply of the Ministry and did not feel it

necessary that a precise method of recruitment should be prescribed in the Directorate of Coordination (Police Wireless) Recruitment to Class I and Class II posts (Amendment) Rules, 1971. In the case of the Border Security Force (Assistant Commandants) Recruitment Rules, 1969 the Committee noted with satisfaction that the Ministry of Home Affairs had accepted the suggestion for adding a rider about precise method of recruitment. The Committee desired the Ministry to make necessary amendment to the Rules at an early date.

9 to 61

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*The Committee then adjourned to meet again on the 28th
January, 1974 at 14.30 hours*

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

XLVI
MINUTES OF THE FORTY-SIXTH SITTING OF THE COM-
MITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK
SABHA) (1973-74)

The Committee met on Monday, the 28th January, 1974, from 14.30 to 17.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri T. Balakrishnaiah
3. Shri M. C. Daga
4. Shri T. H. Gavli
5. Shri S. A. Kader
6. Shri S. N. Misra
7. Shri Mohan Swarup

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered Memoranda Nos. 170, 182 to 182, 183A and 195 on the following subjects:—

S. No.	Memo. No.	Subject
1	2	3
1	170	(i) Indian Railways Traffic Service Recruitment Rules, 1968 (G.S.R. 2204 of 1968). (ii) Central Secretariat Clerical Service (Lower Division Grade Competitive Examination for Class IV Staff) Regulations, 1969 (G.S.R. 1130 of 1969). (iii) Indian Railway Service of Engineers etc. Rules, 1971 (G. S.R. 550, 551, 552, 553, 554 and 555 of 1971).
2 and 3	182 and 183	* * *

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

1	2	3
4	184	The Patents Rules, 1972 (S.O. 301-E of 1972).
5	185	The Central Civil Services (Pension) Rules, 1972 (S.O. 934 of 1972).
6	186	The Allotment of Government Residences (General Pool in Delhi) Fifth Amendment Rules, 1972 (S.O. 3117 of 1972).
7	187	(i) Indian Administrative Service (Probation) Amendment Rules, 1972 (G.S.R. 386 of 1972). (ii) Indian Police Service (Probation) Amendment Rules, 1972. (G. S. R. 387 of 1972)
8	188	Indian Coinage Rules, 1971 (S.O. No. 169 and 172 of 1972).
9 to 12	189 to 192	* * *
13	193A	* * *
14	195	* * *

(i) (1) *Indian Railway Traffic Service Recruitment Rules, 1968 (G.S.R. 2204 of 1968).*

(2) *Central Secretariat Clerical Service (Lower Division Grade Competitive Examination for Class IV Staff) Regulations, 1969 (G.S.R. 1130 of 1969).*

(3) *Indian Railways Service of Engineers etc. Rules, 1971 (G.S.R. 550, 551, 552, 553, 554 and 555 of 1971) (Memorandum No. 170).*

3.

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(B)

4. The Committee noted with satisfaction that the Ministry of Railways, on being pointed out to them, had agreed to delete Rule 22(7) of the Indian Railway Traffic Service Recruitment Rules, 1968 which provided that no officer shall have any claim to promotion to any class of the service as of right. The Committee desired the Ministry to amend the Rules at an early date.

(C)

5. The Committee considered the Memorandum and noted with satisfaction that, on being pointed out to them, the Ministry of Railways had decided to delete paragraph (d) of Appendix to the Indian

Railway Traffic Service Recruitment Rules, 1968, which provided that failure to pass the prescribed examination in Hindi in Devnagri script would involve liability to termination of service. The Committee desired the Ministry of Railways to amend the Indian Railway Traffic Service Recruitment Rules, 1968 and the Indian Railway Service of Engineers etc. Rules, 1971 at an early date so as to delete the above provision from them.

6 and 7 * * *

(iv) *The Patents Rules, 1972 (S.O. 301-E of 1972)*
(Memorandum No. 184).

I

8. The Committee considered the above Memorandum and noted the reply of the Ministry of Industrial Development that notices and communications to parties to various proceedings before the Controller were invariably sent by Registered Post except in the case of patent agents at Calcutta to whom they were delivered by messengers. The Committee desired the Ministry to make statutory provision for the same by making suitable amendments to the Rules.

II

9. The Committee considered the above Memorandum and desired the Ministry of Industrial Development to allow the use of Hindi also in addition to English in documents furnished to the Controller under Rule 9 of the Patents Rules.

III

10. The Committee considered the above Memorandum and noted that before expunging the name of any person from the roll of scientific advisers, the Controller had to give that person an opportunity of being heard. The Committee, therefore, desired the Ministry to make a specific provision for the same in the Rules.

(v) *The Central Civil Services (Pension) Rules, 1972 (S.O. 934 of 1972)*—(Memorandum No. 185)

I

11. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Finance

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

had amended Rule 6(2) of the Central Civil Services (Pension) Rules, 1972 so as to provide an opportunity of making representation to a person before his pension or gratuity or both was reduced under the Rule.

II

12. The Committee considered the Memorandum and noted with satisfaction that on being pointed out, the Ministry of Finance had decided that the provisions of that Ministry O.M. Nos. F. 3(16)-Est (Spl)/50 dated the 2nd January, 1951 and 21st February, 1951, should be incorporated as Appendix to the Central Civil Services (Pension) Rules. The Committee desired the Ministry to amend the Rules at an early date.

III

13. The Committee noted with satisfaction that the Ministry of Finance had agreed to the suggestion of giving an opportunity of being heard before a person was excluded from the expression "family" in terms of Note below Rule 54(14) (b) (i) of the Central Civil Services (Pension) Rules, 1972. The Committee desired the Ministry to amend the Rules at an early date.

14.

(vi) The Allotment of Government Residences (General Pool in Delhi) Fifth Amendment Rules, 1972 (S.O. 3117 of 1972)—

(Memorandum No. 186).

15. The Committee considered the above Memorandum and were not satisfied with the explanation given by the Ministry of Works and Housing for giving retrospective effect to the above Rules. The Committee felt that the Ministry should have sent the Notification to the Government Press alongwith a covering letter asking them to publish it by the particular date. When the Ministry found that the Notification had not been published by that date and consequently inserted Rule 1(2), they should have also attached an explanatory note stating the circumstances under which retrospective effect was being given to the Notification. The Committee desired the Ministry of Works and Housing to be careful in this regard in future.

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

- (vii) (i) **The Indian Administrative Service (Probation) Amendment Rules, 1972 (G.S.R. 386 of 1972).**
(ii) **The Indian Police Service (Probation) Amendment Rules, 1972 (G.S.R. 387 of 1972)—**

(Memorandum No. 187)

16. The Committee considered the above Memorandum and were not satisfied with the reply furnished by the Cabinet Secretariat (Department of Personnel) that each case was considered on its merits when deciding the alternative to be adopted on the failure of a probationer to pass the final examination. The Committee felt that in the absence of any criteria there was possibility of discrimination being made in cases similarly placed. The Committee desired the Cabinet Secretariat to lay down guidelines in the light of past decisions as to the alternative to be adopted where a probationer failed to pass a subject or subjects at the final examination.

(viii) **The Indian Coinage Rules, 1971 (S.O. Nos. 169 and 172 of 1972)**

(Memorandum No. 188)

17. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Finance had agreed to distinguish the various Indian Coinage Rules by making a reference in the Short Titles thereof to the denomination, and metallic composition of the coins involved apart from the year of the issue.

18 to 24.

The Committee then adjourned to meet again on Tuesday, the 29th January, 1974 at 14.30 hours.

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

XLVII

MINUTES OF THE FORTY-SEVENTH SITTING OF COMMITTEE
ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)
(1973-74)

The Committee met on Tuesday, the 29th January, 1974 from 14.30 to 16.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*

MEMBERS

2. Shri T. Balakrishnaiah
3. Shri M. C. Daga
4. Shri T. H. Gavit
5. Shri S. A. Kader
6. Shri K. Lakkappa
7. Shri S. N. Misra
8. Shri Mohan Swarup
9. Shri Tulmohan Ram

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered Memorandum Nos. 196 to 209 and 216 on the following subjects:—

S. No.	Memo. No.	Subject
(1)	(2)	(3)
1 to 7 8	196 to 202 203	* * * Air Headquarters (Senior Design Engineer) Recruitment Rules 1972 (S. R. O. 229 of 1972).
9 to 15	204 to 209 and 216	* *

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

10. The Committee considered the above Memorandum and felt that except for Defence Services or in Emergencies, the period by which upper age limit for Government Servants could be relaxed should be specifically stated in the Rules and should not be left to the discretion of U.P.S.C. The Committee desired the Cabinet Secretariat (Department of Personnel) to issue necessary instructions in this regard to all Ministries/Departments of Government.

11 to 21

The Committee then adjourned to meet again on the 11th and 12th February, 1974.

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

XLVIII

MINUTES OF THE FORTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74)

The Committee met on Monday, the 11th February, 1974 from 15.00 to 16.30 hours.

PRESENT

Shri S. N. Misra—*In the Chair.*

MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavitt
4. Shri S. A. Kader
5. Shri K. Lakkappa
6. Shri Y. S. Mahajan
7. Shri Tulmohan Ram.

SECRETARIAT

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

2. In the absence of the Chairman, Shri S. N. Misra was chosen to act as Chairman for the sitting in terms of Rule 258 (3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered Memoranda Nos. 211, 215, 217 to 222 and 226 on the following subjects:—

S . No.	Memo. No.	Subject
(1)	(2)	(3)
1.	211	(i) The Planning Commission (Senior Research Officers and Research Officers) Recruitment Rules, 1970 (G. S. R. 1105 of 1970).
		(ii) The Hindi Translator, Department of Works and Housing and Urban Development Recruitment Rules, 1970 (G. S. R. 480 of 1971).

(1)	(2)	(3)
2.	215	* * *
3 to 7.	217 to 221	* * *
8.	222	Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970 (S.O. 3770 of 1970).
9.	226	Delay in sending final replies by the Ministries/Departments to references made by the Committee on Subordinate Legislation.

(i) (1) *The Planning Commission (Senior Research Officers and Research Officers) Recruitment Rules, 1970 (G.S.R. 1105 of 1970).*

(2) *The Hindi Translator, Department of Works and Housing and Urban Development Recruitment Rules, 1970 (G.S.R. 480 of 1971). (Memorandum No. 211).*

4. The Committee considered the above Memorandum and noted that, on being pointed out, the Planning Commission and the Ministry of Works and Housing had amended the above Rules to include therein the proviso about relaxation of upper age-limit for candidates belonging to the Scheduled Castes, Scheduled Tribes and other Special categories of persons.

5 to 11

(viii) *Taxation Laws (Extension to Union Territories) (Removal of Difficulties) Order No. 2 of 1970 (S.O. 3770 of 1970)—(Memorandum No. 222).*

12. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Finance that explanatory note regarding retrospective effect had not been given in the above Order as the Taxation Laws (Extension to Union Territories) Regulations, 1963 under which the above Order was issued did not require it to be laid on the Table of the House. The Committee felt that the Ministry was under some misapprehension in this regard and emphasised that the requirement of an explanatory note to the 'Order' was not dependent upon whether it was required to be laid on the Table or not. The recommendation of the

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

Committee required the explanatory note to be given in all cases where due to unavoidable circumstances retrospective effect had to be given to an 'Order'. In this connection, the Committee also drew the attention of the Ministry to their observation made in para 102 of their Ninth Report (Fifth Lok Sabha) that the recommendation regarding giving explanatory note in cases of retrospective effect had been made by them not because of any legal necessity but because of propriety and check on abuse of power.

- (ix) Delay in sending final replies by the Ministries|Departments to references made by the Committee on Subordinate Legislation.—

(Memorandum No. 226)

13. The Committee considered the above Memorandum and recorded their grave displeasure on the delay on the part of certain Ministries|Departments in sending final replies to the references made on 'Orders' contained in Appendix III of this Report. The Committee desired that their displeasure be communicated to the Ministries|Departments concerned.

The Committee then adjourned to meet again on Tuesday, the 12th February, 1974 at 11.30 hours.

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MINUTES OF THE FIFTIETH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74)

The Committee met on Thursday, the 28th March, 1974 from 16.00 to 17.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*.

MEMBERS

2. Shri T. H. Gavit
3. Shri Samar Guha
4. Shri Y. S. Mahajan
5. Shri S. N. Misra.

SECRETARIAT

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

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

3. The Committee authorised the Chairman and in his absence, Shri Y. S. Mahajan, M.P., to present the Report to the House on their behalf on the 3rd April, 1974.

4. The Committee considered Memoranda Nos. 210, 212, 213, 214 224, 225, 228 to 232 and 235 to 237 on the following subjects and 'Orders':—

Sl. No.	Memo. No.	Subject
(1)	2	(3)
1.	210	(i) The Planning Commission (Veritype Operator) Recruitment Rules, 1971 (G. S. R. 1651 of 1971). (ii) The Civil Aviation Department (Accounts Officer) Recruitment Rules, 1971 (G. S. R. 1586 of 1971).
2.	212	University Grants Commission (Terms and Conditions of Service of Employees) Amendment Rules, 1972 (G. S. R. 1070 of 1972)

I	2	3
3.	213	The Indian Telegraph (Amendment) Rules, 1972 (G. S. R. 398 of 1972).
4.	214	The Coal Mines Labour Welfare Fund (Amendment) Rules, 1971 (G. S. R. 1353 of 1971).
5.	224	I. A. S. (Fixation of Cadre Strength) Sixth Amendment Regulations, 1972 (G. S. R. 433-E of 1972).
6.	2.25	* * *
7 to	228 to	* * *
11	232	* * *
12.	235	The National Atlas Organisations (Recruitment to Class III and Class IV Posts) Amendment Rules, 1972 (G. S. R. 924 and 925 of 1972).
13.	236	Central Civil Services (Temporary Service) Amendment Rules, (S. O. 2335 of 1972).
14.	237	The Deputy Fire Adviser Recruitment Rules 1974 (G. S. R. 902 of 1971).

(i) (a) *The Planning Commission (Veri type Operator) Recruitment Rules, 1971 (G.S.R. 1651 of 1971).*

(b) *The Civil Aviation Department (Accounts Officer) Recruitment Rules, 1971 (G.S.R. 1586 of 1971)—Memorandum No. 210).*

5. The Committee considered the above Memorandum and noted that both the Ministry of Planning and the Ministry of Tourism and Civil Aviation had agreed to delete the rule regarding liability to serve the Defence Services as such a provision was required to be made only in the rules for recruitment of graduate engineers and doctors. The Committee desired the Department of Personnel and Administrative Reforms to issue necessary instructions to all the **Ministries/Departments for deleting a provision regarding liability** to serve in the Defence Services from the recruitment rules under their respective Departments where it was not necessary to keep such a provision, in order to maintain uniformity in the recruitment rules.

(ii) *University Grants Commission (Terms and Conditions of Service of Employees) Amendment Rules, 1972 (G.S.R. 1070 of 1972)—(Memorandum No. 212).*

6. The Committee considered above memorandum and were of the opinion that the Rules regulating recruitment to various posts.

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

in the University Grants Commission should not be mixed up with other terms and conditions of service of the employees. These Rules should be laid down separately and statutory authority under which they are issued should also be cited in the preamble to the Rules and be published in the Gazette of India.

(iii) *The Indian Telegraph (Amendment Rules, 1972 (G.S.R. 398 of 1972).—(Memorandum No. 213).*

7. The Committee noted that the Ministry of Communications had agreed to amend Rule 519-A(2) of the Indian Telegraph Rules so as to bring it in line with Clause 12 of the agreement which used to entered into earlier with Telex Subscribers. Regarding refund of charges for any break-down in communication due to negligence of the Telegraph Department, the Committee was in agreement with the reply of the Ministry that the provision for refund of charges for any break-down would cause complications as it would be difficult to determine the negligence of the Department. The Committee further noted that a rebate in such cases would be considered by the Department administratively.

(iv) *The Coal Mines Labour Welfare Fund (Amendment) Rules, 1971 (G.S.R. 1353 of 1971).—(Memorandum No. 214).*

8. The Committee considered above memorandum and observed that if the Central Government wanted to entrust the powers of Vice-Chairman of the Advisory Committee to incur expenditure to some other authorities, the name of that authority with the extent of power should be mentioned in the Rules.

(v) *I.A.S. (Fixation of Cadre Strength) Sixth Amendment Regulations, 1972 (G.S.R. 433-E of 1972).—(Memorandum No. 224).*

9. The Committee considered above memorandum and noted that on being pointed out, the Cabinet Secretariat (Department of Personnel) had amended the Regulations to indicate in the preamble the Regulations which were being amended.

(xii) *The National Atlas Organisation (Recruitment to Class III and Class IV posts) Amendment Rules, 1972 (G.S.R. 924 and 925 of 1972).*—(Memorandum No. 235).

16. The Committee considered above memorandum and noted that the Department of Science and Technology on being pointed out had agreed to amend the Rules in order to indicate distinctive serial number of amendment. The Committee desired the Ministry to issue amendment at an early date.

(xiii) *Central Civil Services (Temporary Service) Amendment Rules, 1972 (S.O. 2335 of 1972).*—(Memorandum No. 236).

17. The Committee considered above memorandum and noted with satisfaction that the Department of Personnel and Administrative Reforms on being pointed out, have agreed to re-publish the Rules with an explanatory memorandum stating the reasons for giving retrospective effect. The Committee desired the Department of Personnel and Administrative Reforms to re-publish the Rules at an early date.

(xiv) *The Deputy Fire Adviser Recruitment Rules, 1971 (G.S.R. 902 of 1971).* (Memo. No. 237).

18. The Committee considered above memorandum and noted that the Ministry of Home Affairs had amended the Rules by inserting a 'Saving Clause' The Committee also observed that 7 other Rules had similar lacunae. They desired the respective Ministries to amend the Rules accordingly. They further desired the Department of Personnel to issue necessary instructions to all the Ministries/Departments that all Rules/Regulations framed by them should invariably contain a provision for relaxation of rules in respect of candidates belonging to Scheduled Castes/Tribes.

19. The Committee further noted that the Ministry of Home Affairs on being pointed out have amended Rule 5 by adding the words "and in consultation with the U.P.S.C." They also desired, the Ministry of Home Affairs to amend the Commissioner for Linguistic Minorities, Allahabad (Administrative Officer) Recruitment Rules, 1972 which contains a similar lacunae.

20 TO 22

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23. The Committee then adjourned to meet again at 15.00 hours on Tuesday, the 30th April, 1974.

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

MINUTES OF THE FIFTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1973-74).

The Committee met on Tuesday, the 7th May, 1974 from 14.30 to 15.00 hours.

PRESENT

Shri Vikram Mahajan—*Chairman*.

MEMBERS

2. Shri M. C. Daga
3. Shri T. H. Gavit
4. Shri Samar Guha
5. Shri K. Lakkappa
6. Shri Tulmohan Ram

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered Memorandum No. 246 regarding laying of Notifications issued under the Customs and Central Excises Acts and approved the procedure thereof as proposed by the Ministry of Finance except that if a sensitive notification was sent to the Press for issue in the Gazette Extraordinary after 6 P.M., it should be formally laid on the Table of both Houses of Parliament at the next sitting instead of within seven days of its publication.

3. The Committee considered their draft.....Twelfth Report and adopted it.

4. The Committee authorised.....the Chairman and, in his absence, Shri K. Lakkappa to present the Twelfth Report to the House on their behalf on the 10th May, 1974.

The Committee then adjourned to meet again on the 25th, 27th and 28th May, 1974.