

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(FIFTH LOK SABHA)

SIXTEENTH REPORT

(Presented on the 9th May, 1975)



**LOK SABHA SECRETARIAT
NEW DELHI**

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LOK SABHA SECRETARIAT

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

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LEGISLATION

(1974-75)

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SECRETARIAT

Shri P.K. Patnaik—*Additional Secretary*

Shri H.G. Paranjpe—*Chief Financial Committee Officer.*

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 Sixteenth Report.

2. The Committee have held four sittings—on the 27th January, 22nd April, 28th April and 6th May, 1975. At their sittings held on the 27th January and 22nd April, 1975, the Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue and Insurance) in regard to the Income-tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973.

3. The Committee considered and adopted this Report at their sitting held on the 6th May, 1975. 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

THE INSECTICIDES RULES, 1971 (G.S.R. 1650 of 1971).

5. Rule 12(a) of the above-mentioned rules reads as follows:

"Subject to such conditions as are contained in the licence, a licence shall not be granted to any person under this Chapter unless the licensing officer is satisfied that the premises in respect of which licence is to be granted are adequate and equipped with proper storage accommodation for avoiding any hazards and for preserving the properties of insecticides in respect of which the licence is granted."

6. It was felt that the conditions subject to which licence could be granted should be mentioned in the rules in order to make them self-contained and for the information of all concerned.

7. The Ministry of Agriculture and Irrigation (Department of Agriculture), to whom the matter was referred, have proposed to amend sub-rule (3) of rule 9 and sub-rule (4) of rule 10 and sub-rule (a) of rule 12 of above-mentioned rules as under:

"For the existing sub-rule (3) of Rule 9 substitute the following:

A licence to manufacture insecticides shall be in Form V and shall be subject to the following conditions:

- (i) The licence and any certificate of renewal shall be kept on the approved premises and shall be produced for inspection at the request of an Insecticides Inspector appointed under the Insecticides Act, 1968, or any other officer or authority authorised by the Licensing Officer.
- (ii) Any change in the expert staff named in the licence shall forthwith be reported to the Licensing Officer.
- (iii) If the licensee wants to undertake during the currency of the licence to manufacture for sale additional insecticides, he should apply to the Licensing Officer for the necessary endorsement in the licence on payment of the prescribed fee.

- (iv) An application for the renewal of a licence shall be made before its expiry as laid down in Rule 11.

For the existing sub-rule (4) of Rule 10 substitute the following:

A licence to sell, stock or exhibit for sale or distribute insecticides shall be in Form VIII and shall be subject to the following conditions:

- (i) The licence shall be displayed in a prominent place in the part of the premises open to the public.
- (ii) The licensee shall comply with the provisions of the Insecticides Act, 1968, and the rules made thereunder for the time being in force.
- (iii) No sale of any insecticides shall be made to a person not holding a licence to sell, stock or exhibit for sale or distribute the insecticides.
- (iv) An application for renewal of a licence shall be made before its expiry as laid down in Rule 11.

For the existing sub-rule (a) of Rule 12 substitute the following:

Subject to conditions laid down in sub-rule (3) of Rule 6 and sub-rule (4) of Rule 10, a licence shall not be granted to any person under this Chapter unless the Licensing Officer is satisfied that the premises in respect of which licence is to be granted are adequate and equipped with proper storage accommodation for avoiding any hazards for preserving the properties of insecticides in respect of which the licence is granted."

8. The Committee note with satisfaction that on being pointed out, the Ministry of Agriculture and Irrigation (Department of Agriculture) propose to amend sub-rule (3) of rule 9, sub-rule (4) of rule 10 and sub-rule (a) of rule 12 of the Insecticides Rules, 1971, so as to incorporate therein the conditions subject to which the licences are issued. The Committee desire the Ministry to issue the amendment at an early date.

III

THE DELHI SCHOOL EDUCATION RULES, 1973.

(A)

9. Under Rule 22(3) of the Delhi School Education Rules, 1973, the Curriculum Committee consists of 26 members. Under Rule

24(2), seven members of the Committee personally present at a meeting shall be the quorum for the meeting of the Committee. This comes to about one-fourth of the total membership of the Committee. The provision relating to quorum being of an unusual character, the Ministry of Education and Social Welfare were asked to state whether they had any objection to amending sub-rule (2) of rule 24 so as to raise the quorum for a meeting to one-third of the total membership of the Curriculum Committee.

10. In their reply, the Ministry stated as under:

"There is no objection to provide one-third of the total membership of the Curriculum Committee to form a quorum for its meeting. While amending the Rules, sub-rule (2) of rule 24 will be amended accordingly."

11. The Committee note with satisfaction that, on being pointed out, the Ministry of Education and Social Welfare (Department of Education) have agreed to amend sub-rule (2) of rule 24 of the Delhi School Education Rules, 1973 so as to provide one-third of the total membership of the Curriculum Committee as quorum for its sittings. The Committee desire the Ministry to issue the amendment at an early date.

(B)

12. Rules 64, 69(a), 77(3), 86, 100(c), 144, 149(4) and 150(2) empower the Director to issue instructions on various matters, e.g., grant-in-aid, procedure and conditions for purchase of furniture, minimum qualifications for filling a post (other than that of a teacher), admission to aided schools and spending of the Pupils Fund and the Home Science Fund, etc.

13. The Ministry of Education and Social Welfare were, therefore, asked to state whether these instructions would form part of the rules and published in the Delhi Gazette and also laid before Parliament as is done in respect of rules.

14. In their reply, the Ministry of Education and Social Welfare stated as under:

"The instructions which may be issued by the Director of Education are of executive nature and do not concern public in general and as such they need not be published or laid on the Table of the Parliament, in the absence of any legal requirement in that behalf. Even in practice no instructions issued by the Director of Education are being

published in the Delhi Gazette and they were never placed on the Table of the Parliament."

15. The Committee are not satisfied with the reply of the Ministry of Education and Social Welfare (Department of Education) that the instructions to be issued under the Rules by the Director of Education are of executive nature and need not be published or laid on the Table of Parliament. The Committee note that the Delhi School Education Act under which the Rules have been framed does not empower the Director of Education to issue instructions on any matter. The Act envisages rules to be framed on certain matters which, under the rules, are sought to be covered by instructions.

16. The Committee desire the Ministry of Education and Social Welfare to delete all rules empowering the Director of Education to issue instructions. In case the Ministry consider it necessary to empower the Director to issue instructions on any matter, necessary amendment should be made in the Act. The Committee further desire that till such time as the Act is amended, the matters sought to be covered by instructions should be provided for in the Rules which are published and are also required to be laid before Parliament.

(C)

17. Sub-rule (4) of rule 115 of the Delhi School Education Rules, 1973 states, as under:—

"(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or rendered void, in consequence of, or by, a decision of a court of law or of the Tribunal, and the disciplinary authority on a consideration of the circumstances of the case decides to hold further inquiry against such employee on the same allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such employee shall be deemed to have been placed under suspension by the managing committee from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

18. The Ministry of Education and Social Welfare were requested to state the genesis of the above sub-rule and whether they had any objection to incorporating therein the circumstances under which or the specific considerations on which its provisions would be invoked.

19. In their reply, the Ministry stated as under:

"Rule 115(4) is quite explicit. Under that sub-rule, the employee will not be under suspension in all cases. If only a further inquiry is decided to be made in consideration of the circumstances of the case then only the employee will be deemed to have been placed under suspension. It is not possible to specify all the possible circumstances which may arise. For example, when an order for dismissal or removal from service is set aside on a technical ground, but the circumstances for which such punishment was imposed was a grave one, and continuation of the employee in the post is likely to prejudicially affect the interests of the students of the school, the managing committee may decide to hold a further enquiry and when such a decision is taken, the employee will be deemed to have been placed under suspension."

20. The Committee note that while it is not possible for the Ministry of Education and Social Welfare (Department of Social Welfare) to specify all the circumstances under which the provisions of rule 115(4) could be invoked, they have given an example when an order of dismissal or removal from service is set aside on a technical ground and looking into the circumstances of the case, the disciplinary authority decides to hold a further inquiry.

21. In para 59 of their Fifteenth Report (Fifth Lok Sabha), Committee, while commenting upon a similar provision contained in the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1962, had desired that the provision be amended so as to make it clear that it was designed to meet a situation where the court passes an order on purely technical grounds without going into the merits at all.

22. The Committee desire the Ministry of Education and Social Welfare (Department of Education) to amend rule 115(4) of the Delhi School Education Rules, 1973, on similar lines.

IV

- (i) THE INDIAN SUPPLY SERVICE (CLASS I—RECRUITMENT BY COMPETITIVE EXAMINATION) AMENDMENT RULES, 1973 (GSR 255 OF 1973); AND (ii) INDIAN INSPECTION SERVICE (CLASS I—RECRUITMENT BY COMPETITIVE EXAMINATION) AMENDMENT RULES, 1973 (GSR 256 OF 1973).

23. Rule 3(i) of the Indian Supply Service|Indian Inspection Service (Class I Recruitment by Competitive Examination) Rules, 1973, provided as under:

“3. Holding of Examination.—(1) The examination shall be held in India at such times and places as may be prescribed in the notice issued by the Commission. Every such notice may specify the number of vacancies to be filled on the result of the examination.”

The italicised portion of the above Rule has been deleted by the above noted amendment Rules.

24. The Department of Supply, who were requested to state the genesis for the deletion of the above provision, have replied as under:

“.....the amendment to the Rules was carried out as desired by the Union Public Service Commission in their letter No. F.2.7.72-E.I. (B), dated the 7th December, 1972.

....The Union Public Service Commission pointed out that it had been their experience that some of the Ministries/ Departments concerned did not intimate to the Commission the approximate number of vacancies to be filled on the results of the Examination in time to be specified in the Notice of Examination for information of prospective candidates. As such, it hardly seemed appropriate to the Commission to have in the Rules for the Examination the above provision. The Commission who had addressed the Department of Personnel and Administrative Reforms in the matter had also agreed to the above provision being deleted, so far as the Rules for the IAS etc., examinations were concerned. The Commission were, therefore, of the view that the above provision may be deleted from the draft rules for the Engineering Services Examination also. In view of this, Rule 3(1) of the Indian Supply Service| Indian Inspection Service (Class I—Recruitment by Competitive Examination) Rules, 1963, was amended to delete sub-rule (1) of Rule 3 as per GSRs. 255 and 256.”

25. The Committee are not convinced of the reply given by the Department of Supply for deleting the provision requiring specification in the Notice of the number of vacancies to be filled on the result of the examination. The Committee feel that this is a salutary provision which enables the prospective candidates to assess their chances of success in the examination and should be retained in the Rules. To meet the requirement of this provision, the Committee desire the Ministry/Department concerned with the examination to intimate to the Union Public Service Commission at least an approximate number of vacancies to be filled before the Notice of examination is issued by the Commission.

26. The Committee desire the Department of Supply to re-incorporate the deleted provision in the Indian Supply Service/Indian Inspection Service (Class I—Recruitment by Competitive Examination) Rules. The Committee further desire the Department of Personnel and Administrative Reforms to emphasise upon all Ministries Departments the need for including the above provision in all Rules/Regulations relating to competitive examinations with which they might be concerned.

V

THE ADDITIONAL EMOLUMENTS (COMPULSORY DEPOSIT) BILL, 1974 (AS INTRODUCED IN LOK SABHA)—MATTERS TO BE INCLUDED IN THE RULE-MAKING CLAUSE.

27. The Additional Emoluments (Compulsory Deposit) Bill, 1974 (as introduced in Lok Sabha on the 19th August, 1974), was examined under Direction 103(2) of the Directions by the Speaker. It was noticed that Clause 24 of the Bill, which empowered the Central Government to make rules to carry out the provisions of this Act, did not specify the matters to be included in the rules to be framed thereunder, as was usually done in such cases. Clause 20 of the Bill, however, empowers the nominated authority or any officer authorised by the nominated authority to call for such returns, as may be prescribed (by rules), from any employer to whom this Act applies.

28. The Ministries of Law, Justice and Company Affairs (Legislative Department) and Finance (Department of Economic Affairs) were asked to furnish their comments on the following points:

- (i) if the rules to be framed under Clause 24 contemplate to cover the matters mentioned in Clause 20 only, then it should have been specifically mentioned in Clause 24; and
- (ii) if there are matters other than those mentioned in Clause 20 which are to be included in the rules, those should have been specifically enumerated under Clause 24.

29. In their reply, the Ministry of Law, Justice and Company Affairs stated as under:

"Normally, the rule-making section is divided into two sub-sections, namely, sub-section (1) which gives the general power to make rules, and sub-section (2), which illustrates the matters with regard to which rules may be made.... According to the case laws, as they stand, it is sub-section (1) which confers power to make rules and sub-section (2) only serves the purpose of illustrating the matters with regard to which rules may be made. In the circumstances, the inclusion of sub-section (2) in all Bills is not necessary. Only when matters in relation to which rules may be made are many, sub-section (2) is included with a view to illustrating the matters in relation to which rules may be made. Since the matters in relation to which rules may be made under the law in question are very few, the matters have not been illustrated. The question whether the matters with regard to which rules may be made should or should not be illustrated is a matter for the decision of Parliament and Parliament has decided that no such illustration is necessary in the present case."

30. The Ministry of Finance (Department of Economic Affairs) replied as under:

"The Ministry of Law, Justice and Company Affairs (Legislative Department) have explained the position to the Lok Sabha Secretariat in this regard.... For reasons indicated therein, no action on the part of this Ministry seems called for."

31. The Committee are not convinced by the arguments given by the Ministry of Law, Justice and Company Affairs (Legislative Department) for not specifying matters in clause 24 of the Bill in respect of which rules are to be framed thereunder. In para 29 of their Fourteenth Report (Fifth Lok Sabha), the Committee while commenting upon the Monopolies and Restrictive Trade Practices (Classification of Goods) Rules had recommended that either the rule-making power section should enumerate all matters on which rules have to be framed under various sections of a statute and quote the section to which that matter relates or in the alternative the preamble to the rules should refer not only to the general rule-making power section of the Act but also other sections of the Act under which the Rules have been framed. The Committee desire the Minis-

try of Finance to adopt either of these two alternatives in the case of the Additional Emoluments (Compulsory Deposit) Bill, 1974 also which has already been brought on the statute book.

VI

DELAY IN LAYING 'ORDERS' ON THE TABLE OF LOK SABHA DURING THE ELEVENTH SESSION, 1974.

32. In their successive Reports, the Committee on Subordinate Legislation have emphasised that all 'Orders' required to be laid on the Table of Lok Sabha should be laid within a period of 15 days after their publication in the Gazette, if the House is in Session, and within 15 days of the commencement of the next Session if the House is not then in Session. In cases where 'Orders' are laid on the Table of the House after the prescribed time-limit of 15 days, they should be accompanied by a statement explaining the reasons for delay in laying them on the Table of Lok Sabha.

33. The question of delay in laying of 'Orders' has also been raised in the House from time to time. On the 11th March, 1974, Shri H. M. Patel, M.P. drew the attention of the House to the matter under Rule 377 of the Rules of Procedure and Conduct of Business in Lok Sabha. On the 8th August, 1974, Shri Madhu Limaye, M.P. drew the attention of the House to delays in laying of (i) the Wheat (Price Control) Order, 1974 (G.S.R. 261-E of 1974); and (ii) the Foodgrains Movement Restrictions (Exemption of Seeds) Amendment Order, 1974 (G.S.R. 262-E of 1974).

34. The total number of 'Orders' laid on the Table during the Eleventh Session of the Fifth Lok Sabha (from 22nd July to 9th September, 1974) was 167. Out of these 29 'Orders' (vide Appendix II) were laid on the Table of Lok Sabha after the prescribed time-limit of 15 days. A broad break-up of cases of delay is given below:

(i) Over 3 years	—	1 'Order'
(ii) One year and over	—	3 'Orders,
(iii) Over 9 months	—	2 'Orders'
(iv) Over 5 months	—	2 'Orders'
(v) Over 4 months	—	1 'Orders,
(vi) Over 3 months	—	1 'Order'
(vii) One month and over	—	6 'Orders'
(viii) Over 15 days		13 'Orders' —
Total:		<u>29 'Orders'</u>

35. In 12 out of the 29 cases of delay, statements showing reasons for delay were also laid on the Table of the House along with the 'Orders'. According to these Statements, three 'Orders' had been laid on the Table in pursuance of the observations made by the Committee on Subordinate Legislation in para 217 of their Twelfth Report (Fifth Lok Sabha). In other cases, the delay was mainly ascribed to late receipt of G.S.R. numbers or printed copies of the Gazette Notification from the Government of India Press.

36. In 17 cases (*vide* Appendix III), in which Statements showing reasons for delay had not been laid, the Ministries/Departments concerned were asked to state the reasons for delay in laying the 'Orders'. In five cases, the Ministries have stated that they were not aware that 'Orders' were required to be laid within 15 days of their publication in the Gazette. In four cases, the Ministries have stated that it was due to delay in getting the G.S.R. Nos./printed copies of the Gazette Notifications from the Government of India Press. In the remaining eight cases, the delay was attributed to omission/administrative reasons and delay in transit.

37. In case of two Rules—the Railway (Notices of and Inquiries into Accidents) Rules, 1973 and the Statutory Investigation into Railway Accidents, Rules, 1973, where the delay exceeded one year, the Ministries of Railways and Tourism and Civil Aviation have stated that there was no provision in the Indian Railways Act, 1890, for laying the rules on the Table of the House. These were laid on the Table of Lok Sabha after the Committee on Subordinate Legislation had desired them to do so *vide* para 217 of their Twelfth Report (Fifth Lok Sabha). In the case of the Merchant Shipping (Medicines, Medical Stores and Appliances) Amendment Rules, 1972 where the delay in laying on the Table of the House exceeded one year and eight months, the Ministry concerned—Shipping and Transport—have attributed the delay to misplacement of file. And yet in another case—in the case of the Drugs (Price Control) Amendment Order, 1971 (S.O. 226A of 1971), where the delay exceeded three years, the explanation of the Ministry concerned—Ministry of Petroleum and Chemicals—is that the delay was due to administrative oversight.

38. The Committee are distressed to note that in spite of their repeated exhortation from time to time to avoid delay in laying 'Order' such cases of delay continue to occur. The reasons given by the Ministries/Departments of the delay are not convincing.

39. One of the main reasons for delay given by the Ministries/Departments is late receipt of G.S.R. Nos. from the Press. In this

connection, the Committee wish to draw the attention of all Ministries/Departments to their recommendation made in para 35 of their Ninth Report (Fifth Lok Sabha) and reiterated in their Thirteenth and Fourteenth Reports in regard to the new procedure introduced by the Controller of Printing and Stationery for obtaining G.S.R. Nos. of notification. The Committee desire all Ministries, Departments to follow the new procedure scrupulously. Difficulties, if any, in obtaining G.S.R. Nos. under the new procedure should be sorted out in consultation with the Controller of Printing and Stationery.

40. The Committee find it difficult to appreciate another explanation for delay given by the Ministry of Steel and Mines (Department of Mines) and the Ministry of Energy (Department of Coal) that the parent Act under which the Rules had been framed did not specify any limit for laying of Rules on the Table of the House. True, under the Act the Rules are required to be laid before the Houses of Parliament as soon as may be after they are made. But the Committee on Subordinate Legislation, after putting a reasonable construction of the words 'as soon as may be' had recommended as early as in September, 1954 that rules etc. should be laid on the Table of the House within a period of 7 days after their publication in the Gazette (vide para 31.32 of second Report—First Lok Sabha). Later, in view of the difficulties experienced by the Government in complying with this recommendation, the Committee raised the period from 7 days to 15 days vide para 72 of Second Report (Second Lok Sabha). Since then, the Committee have been repeatedly stressing the need of laying Orders on the Table within a period of 15 days after their publication in the Gazette.

41. The Committee are surprised at the explanation given by the Ministry of Agriculture and Irrigation (Department of Agriculture) that the Wild Life (Stock Declaration) Rules, 1974 (G.S.R. 385 of 1974) were not rules but only a Notification issued under sub-section (3) of Section 1 of the Wild Life (Protection) Act, extending the Act to the State of Orissa. In this connection, the Committee wish to invite the attention of the Ministry to the preamble to the Rules which clearly indicates that they were issued under Section 63(1)(a) of the Act. The short title of the Notification also shows that they are rules which are required to be laid on the Table. The Committee desire the Ministry to be careful about such matters in future.

42. The Committee feel that the existing procedure in the Ministries/Departments for keeping a tab on laying of rules etc. on the

Table of the House needs to be tightened. Each Ministry/Department should make a high ranking officer responsible for ensuring timely laying of rules on the Table. The Committee also desire the Department of Parliamentary Affairs to devise some procedure in consultation with the Ministries/Departments of Government of India to avoid recurrence of cases of delay.

VII

THE ENGINEERING SUPERVISORS (RECRUITMENT) RULES, 1974 (G.S.R. 570 of 1974).

(A)

43. Rule 5(1) of the above mentioned rules provide that the selected candidates (both direct recruits and departmental candidates) shall, before appointment, undergo training for such period as may be specified by the Director-General of Posts and Telegraphs.

44. It was felt that the period of training might be mentioned in the rules so as to make them self-contained and for the information of all concerned.

45. The Ministry of Communications to whom the matter was referred, stated as follows:—

“The period of training has not been specifically mentioned in the Recruitment Rules since it has been considered necessary to keep the period of training flexible depending upon the educational qualifications of the candidates—departmental and outsiders.

The direct recruits as Engineering Supervisors are either Engineering graduates or Science graduates or have Engineering diplomas and require comparatively lesser period of training than the departmental candidates whose educational qualifications are much lower. The departmental candidates are given an extended course of training but under emergency conditions when sudden expansions take place, due to unforeseen events, the departmental candidates have also been given a lesser period of training with special syllabi to meet urgent needs of service.

Besides, the training period is also periodically reviewed in consequence of the charges taking place in the Depart-

ment as a result of fast technological developments. With new techniques coming into force and with the consequent utilisation of newer and more sophisticated types of equipment in tele-communications, the training period has from time to time to be changed to ensure that the candidates are adequately trained to discharge their duties in handling the various specialised services in the telecommunications.

If the training period is also stipulated in the Recruitment Rules, it will be necessary for the Administration to have the Recruitment Rules amended every time the need for amending the training period arises. This is likely to hold up recruitment and training of candidates and may result in delay in filling up a large number of vacancies.

Under the circumstances, it is considered that the period of training may not be specified in the body of the Rules."

46. The Committee are not satisfied with the reasons given by the Ministry of Communications for not specifying the period of training in the Rules. The Committee feel that indication of a definite period of training is necessary to obviate any scope of discriminatory treatment between different batches of candidates of the same category.

47. If the Ministry feel that direct recruits being engineering graduates, science graduates, or engineering diploma holders require comparatively lesser period of training than the departmental candidates, they can lay down, on the basis of their past experience, separate periods of training for the two categories of candidates. In cases where it becomes necessary to vary the period of training to meet emergency situations, the Ministry can do so by relaxing the relevant provisions of the rules under rule 7. The Committee desire the Ministry to amend the Rules on these lines at an early date.

(B)

48. Note 1, below Explanation 4 of the above mentioned rules provides that for the quota of 10 per cent of departmental candidates the maximum age-limit may be relaxed by the Director-General of Posts and Telegraphs at his discretion in special cases.

49. It was felt that the maximum limit up to which age could be relaxed in special cases should be mentioned in the rules in order to make self-contained and for the information of all concerned.

50. The Ministry of Communications to whom the matter was referred stated as under:—

“The discretionary power of age relaxation has been vested on the D.G. to meet the special needs to which the P&T services are circumstanced. Such powers though vested on D.G. are exercised very sparingly and in very hard and pressing circumstances. As an instance, the employment of dependents of deceased employees may be mentioned. In such cases, the dependents are to be given suitable jobs immediately. Stipulation of maximum age limit would come in the way of providing this justified facility to the dependents of deceased employees. Age limit in such cases is relaxed by the Director General P&T. As such, this provision in the Recruitment Rules may be retained without change.”

51. The Committee are not convinced with the reply of the Ministry of Communications regarding the use of discretionary power by the D.G.P. & T. for relaxing age of departmental candidates. The Committee desire that either the maximum limit upto which age could be relaxed should be given in the rules or in the alternative, the Note below Explanation 4 should be deleted. The Committee also desire that in all cases where the upper age limit is relaxed, the reasons for doing so should be recorded in writing.

VIII

IMPOSITION OF TAX ON ADVERTISEMENTS IN ST. THOMAS MOUNT-CUM-PALLAVARAM CANTONMENT

(S.R.O. 92 OF 1974).

(A)

52. Paragraph 3(a) of the above-mentioned Order reads as under:—

“No advertisement shall, after the levy of the tax under section 60 of the Cantonments Act, 1924 (2 of 1924) has been approved by the Central Government, be erected exhibited, fixed, or retained upon or over any land, building, wall hoarding or structure within the St. Thomas Mount-cum-Pallavram.”

53. The para as worded gave an impression that the advertisement cannot be exhibited even after the levy of tax under Section 60 of the Cantonments Act, 1925.

54. The Ministry of Defence to whom the matter was referred have stated as under:—

"The intension is that the permission of the Cantonment Executive Officer is essential after the levy of the tax under Section 60 of the Cantonments Act, 1924 has been approved by the Central Government. The Cantonment Board are being requested to consider the question of amending the order so as to add the words 'without the permission of the Cantonment Executive Officer' at the end of this paragraph."

55. The Committee note with satisfaction that on being pointed out, the Ministry of Defence propose to amend paragraph 3(a) to make it clear that the permission of the Cantonment Executive Officer is essential after the levy of tax under Section 60 of the Cantonments Act, 1924 has been approved by the Central Government. The Committee desire the Ministry to issue the amendment at an early date.

(B)

56. Paragraph 3(c) of the above Order reads as follows:—

"Subject to the provisions contained in sub-paragraph (b) above in the case of an advertisement liable to the advertisement tax, the Cantonment Executive Officer shall grant permission for the period to which the payment of the tax relates and no fee be charged in respect of such permission:

Provided that the above provisions shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway company relating to the business of a railway company."

57. It was felt that when the advertisement tax had been levied the provision for payment of fee was superfluous.

58. The Ministry of Defence to whom the matter was referred have stated as under:—

"The expression 'and no fee be charged in respect of such permission' is superfluous and the Cantonment Board are being requested to consider the question of amending the Order so as to delete this expression."

59. The Committee note with satisfaction that, on being pointed out, the Ministry of Defence propose to amend paragraph 3(c) so as to delete the expression 'and no fee be charged in respect of such per-

mission' which is superfluous. The Committee desire the Ministry to issue the amendment at an early date.

IX

THE ARUNACHAL PRADESH CIVIL SERVICE (CLASS I)
RULES, 1974 (G.S.R. 31-E OF 1974).

(A)

60. Rule 5(2) of the above-noted rules provides that if the exigencies of public service so require, the Administrator may, in consultation with the Selection Board, vary the percentage of posts to be filled in the Arunachal Pradesh Civil Service (Class I) by each method specified in sub-rule 5(1).

61. The Ministry of Home Affairs, who were asked to state whether they had any objection to providing for recording or reasons by the Administrator for varying the percentage of posts to be filled by each method, have deleted sub-rule (2) of rule 5 (vide Notification No. U. 14012/11/74UTS dated 15th March, 1975).

62. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have deleted Rule 5(2) of the Arunachal Pradesh Civil Service (Class I) Rules, 1974 vide Notification No. U. 14012/11/74-UTS dated 15-3-75.

(B)

63. Rule 6 of the above-mentioned rules provides for the constitution of a Selection Board comprising of two nominees of the Home Ministry and Chief Secretary of the Arunachal Pradesh.

6. As there was no provision in the rules for the association of U.P.S.C. with selection for appointment to the Arunachal Pradesh Civil Service (Class I), the Ministry of Home Affairs were asked to state the considerations for not making selection through U.P.S.C. as was the case in the Union Territory of Delhi. The Ministry in their reply have stated as under:—

"Posts in Arunachal Pradesh are outside the purview of the U.P.S.C. No. provision has, therefore, been made in the Arunachal Pradesh Civil Service (Class I) Rules, 1974, for the association of the U.P.S.C. with selections for appointment to the Arunachal Pradesh Civil Service (Class I)."

65. The Committee are not satisfied with the reply given by the Ministry of Home Affairs. The Committee feel that, as in the case of other Union Territories e.g. Delhi, recruitment to the Arunachal Pradesh Civil Service Class I should also be made through UPSC. The Committee desire the Ministry of Home Affairs to amend the Rules so as to associate the UPSC with selection for appointment to the Arunachal Pradesh Civil Service Class I.

(C)

66. Rule 11 of the above-mentioned rules provides as under:—

"Inclusion in the list not to confer right to appointment.—..

The inclusion of a candidate's name in the lists referred to in rule 9 confers no right to appointment unless the Administrator is satisfied after such inquiry as may be considered necessary that the candidate is suitable in all respects for appointment to the Service and an actual officer of appointment is made to the candidate."

67. It was felt that the nature of inquiry about the candidate should be specified in the rules in order to make them self-contained and for the information of all concerned. It was also felt that if a candidate whose name appeared in the list of qualified candidates, was not appointed, the reasons for the same should also be recorded in writing.

68. The Ministry of Home Affairs, to whom the matter was referred, have amended the rule as follows (*vide* Notification No. U. 14012/11/74-UTS, dated 15th March, 1975):—

"Inclusion in the list confers no right to appointment.—The inclusion of a candidate's name in the list referred to in rule 9, confers no right to appointment unless, the Administrator is satisfied, after such enquiry as may be considered necessary, that the candidate having regard to his character and antecedents, is suitable in all respects for appointment to the service:

Provided that where a candidate whose name is included in the list, is not appointed to the Service, the reasons for the same shall be recorded in writing, by the Administrator."

69. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended Rule 11 in order to specify the nature of inquiry contemplated thereunder in respect of a candidate before his appointment to the service. The Committee

further note that, as desired by them, the Ministry have also made provision in the Rule for recording of reasons in writing in case a candidate whose name is included in the list is not appointed to the service.

(D)

70. Sub-rule (2) of rule 18 of the above-mentioned rule provides that the Administrator may, in the case of any person, extend or reduce the period of probation.

71. It was felt that where the probation period was extended or reduced, the reasons for the same should be recorded in writing.

72. The Ministry of Home Affairs, to whom the matter was referred have amended the rules accordingly (*vide* Notification No. U. 14012/11/74-UTS dated 15-3-1975).

73. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended sub-rule (2) of rule 18 to provide for recording reasons in writing in cases where probation period is extended or reduced.

(E)

74. Rules 19 and 20 of the above-mentioned rules read as follows:—

“19. *Execution of agreement.*—A probationer who is required to undergo training shall on appointment to the Service execute an agreement in such form as may be prescribed by the Administrator from time to time, binding himself and one surety, jointly and severally, in the event of his failing to comply with any of the provisions of these rules to the satisfaction of the Administrator, to refund any moneys paid to him consequent on his appointment as a probationer.

20. *Training and departmental examination:*—A person appointed under rule 5 or rule 15 to the Service shall undergo such training and pass during the period of probation such departmental examinations as the Administrator may from time to time prescribe:

Provided that the Administrator may exempt, subject to such conditions as it may impose, 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 15.”

75. It was felt that the form of agreement and the details regarding training and departmental examination should be mentioned in the rules in order to make them self-contained and for the information of all concerned.

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

“The form of agreement to be executed by probationers will be on the lines of the Schedule to the IAS (Probation) Rules, 1954. It will be prescribed separately. It is not intended to make the A.P.C.S. (Class I) Rules self-contained in all respects’

As in the case of the Delhi and Andaman and Nicobar Islands Civil Service, details of training and departmental examinations will be laid down separately. It is not intended to make the A.P.C.S. Rules self-contained in all respects as already stated above.”

77. The Committee are not satisfied with the reply given by the Ministry of Home Affairs in regard to making the Rules self-contained. The Committee desire the Ministry to make the rules self-contained by incorporating therein the form of agreement and details of training and departmental examination.

(F)

78. Proviso to rule 20 of the above-mentioned rules provides that the Administrator may exempt, subject to such conditions as it may impose, either wholly or partly from training or departmental examination any person.

79. It was felt that the conditions subject to which exemption from the training could be granted should be mentioned in the rules or some guidelines for such exemptions should be issued.

80. The Ministry of Home Affairs to whom the matter was referred have amended the said proviso as follows:—

“Provided that the Administrator may, subject to such conditions as he may impose and having regard to the past service, experience or academic qualifications, exempt any person appointed under clause (b) of sub-rule (1) of rule 5 or rule 15, either wholly or partly, from any training or departmental examination.”

81. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended the proviso to Rule 20 so as to incorporate therein guidelines for grant of exemption from training or departmental examination.

X

THE LOWER DIVISION CLERK AND STENO-TYPIST (DEFENCE SERVICES) RECRUITMENT (AMENDMENT) RULES, 1973

(S.R.O. 21 OF 1973).

82. While incorporating the amendments made by the above-mentioned Rules in the principal Rules, it was noticed that the principal Rules, i.e., the Lower Division Clerk and Steno-typist (Defence Services) Recruitment Rules, 1968 had already been superseded *vide* Ministry of Defence (Class III Posts) Recruitment Rules, 1969 (S.R.O. 205 dated 5-7-1969).

83. The Ministry of Defence were asked to state (i) the reasons for issuing amendments to the superseded Rules; and (ii) whether any corrigendum rectifying the mistake had been issued by them.

84. In their reply, the Ministry of Defence stated as under:—

“...the Lower Division Clerk and Steno-typist Recruitment (Amendment) Rules, 1973 have been inadvertently published *vide* S.R.O. 21 of 1973 as an amendment to the Lower Division Clerk and Steno-typist (Defence Services) Recruitment Rules, 1968 which had already been superseded by the Ministry of Defence (Class III posts) Recruitment Rules, 1969 published in the Gazette of India *vide* S.R.O. 205 dated the 5th July, 1969. No corrigendum rectifying the above mistake has been issued so far. Necessary action to do so is being taken now.”

85. The Committee note with satisfaction that the Ministry of Defence propose to issue corrigendum for rectifying their mistake in issuing amendment to Rules which had already been superseded. The Committee desire the Ministry to issue the necessary corrigendum at an early date and devise a procedure whereby such mistakes are avoided in future.

IMPLEMENTATION OF RECOMMENDATIONS

- (i) Rules framed under the Salaries and Allowances of Ministers Act, 1952 (Paras 16-17 of Tenth Report—Fifth Lok Sabha).

86. While reiterating their earlier recommendation made in para 15 of their Second Report (First Lok Sabha), the Committee on Subordinate Legislation had observed in paras 16-17 of their Tenth Report (Fifth Lok Sabha) as under:—

"16. The Committee regret to note that though the original recommendation was made by the Committee as far back as in September, 1954 and reiterated in May, 1955, the Ministry of Home Affairs had not cared to send any reply till the matter was taken up afresh with them in November, 1972. The Committee cannot help deploring the casual manner in which the Ministry had treated the recommendation of the Committee.

17. The Committee have carefully considered the Government's reply in all its aspects. They feel that, as matters relating to salaries and allowances of Ministers are essentially financial matters, it will be desirable that, in accordance with democratic principles and in larger public interests, such powers are exercised by the House itself. In cases where it is considered necessary by the House to delegate the power to make rules to a subordinate authority in order to save the time of Parliament, the Committee reiterate their earlier view that the rules made by a subordinate authority should in such cases become operative only after an affirmative vote of the House has been obtained. The Committee need hardly point out that such a course is also necessary to obviate uninformed or misinformed criticism. They further recommend that, if considered necessary for the purpose, the Ministry of Home Affairs should take early steps to amend the Salaries and Allowances of Ministers' Act, 1952, to this effect."

87. In their action taken note dated the 26th February, 1975, the Ministry of Home Affairs have stated as follows:

".....the recommendation contained in paragraph 15 of the Second Report of the Committee on Subordinate Legislation (First Lok Sabha) and reiterated in para 15 of their Third Report (First Lok Sabha) as also in paragraph 17 of their Tenth Report (Fifth Lok Sabha) namely, the Rules framed by the subordinate authority under the Salaries and Allowances of Ministers Act, 1952 should be operative only after an Affirmative vote of the House has been obtained, has been accepted in principle by the Government of India. Necessary amendment in the relevant law would be undertaken in due course."

88. The Committee are glad to note that the Ministry of Home Affairs have accepted in principle their recommendation made as far back as in September, 1954 that the rules framed by a sub-ordinate authority under the Salaries and Allowances of Ministers Act, 1952 should be operative only after an affirmative vote of the House has been obtained. The Committee desire the Ministry to amend the Act accordingly at an early date.

- (ii) University Grants Commission (Terms and Conditions of Service of Employees) Amendment Rules, 1972 (Para 74 of Twelfth Report—Fifth Lok Sabha).

89. In para 74 of their 12th Report (Fifth Lok Sabha) presented to the House on the 10th May, 1974, the Committee on Subordinate Legislation had recommended as under:—

“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 of 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.”

90. The Ministry of Education and Social Welfare accepted the above recommendation of the Committee *vide* their O.M. No. 9-49/73-U. 2 dated the 8th August, 1974 and stated that necessary action to implement the same was being taken in consultation with the University Grants Commission.

91. In their O.M. dated the 8th April, 1975, the Ministry of Education and Social Welfare (Department of Education) stated as under:—

“the University Grants Commission have informed this Ministry that in order to enable them to consider and finalise the cadre and recruitment rules for Classes II, III, and IV employees in the light of the recommendations of the

Third Pay Commission, as accepted by the Government of India, and to separate the service rules from the cadre and recruitment rules, they would require another four months time. After the draft rules have been finalised by the Commission and forwarded to this Ministry, the same will have to be examined in consultation with the Department of Personnel, Ministry of Finance etc. before notifying in the Gazette. It is, therefore, considered that another two months time may be required for examination and notification of the rules by this Ministry.

In the circumstances stated above, it is requested that the Committee on Subordinate Legislation may kindly agree to grant extension of time for six months i.e. upto the end of September, 1975 for implementation of the assurance given in this Ministry's O.M. under reference."

92. The Committee note that the recommendation contained in para 74 of their 12th Report (Fifth Lok Sabha) presented to the House on the 10th May, 1974 was accepted by the Ministry of Education and Social Welfare (Department of Education) in August, 1974. The Committee fail to understand what action was taken by the Ministry to implement the recommendation after that. The Ministry have already taken about an year which is an unduly long time for implementing the recommendation.

93. With a view to ensure speedy implementation of their recommendations, the Committee fix a time-limit of six months within which the Ministries/Departments of Government of India should implement their recommendations. If in any particular case it is not possible for a Ministry/Department to adhere to this time-limit, they should ask for extension of time from the Committee after explaining the difficulties in implementing the recommendation within the prescribed time-limit.

94. As an exceptional case the Committee grant extension of time to the Ministry of Education and Social Welfare (Department of Education) upto the end of September, 1975 for implementing the recommendation contained in para 74 of their 12th Report (Fifth Lok Sabha).

(iii) The Indian Wireless Telegraph Rules, 1973 (G.S.R. 526 of 1973) (Para 36 of Fourteenth Report—Fifth Lok Sabha).

95. Rule 3 of the Indian Wireless Telegraph Rules, 1973, framed under section 7 of the Indian Telegraph Act, 1885, reads as follows:—

“Except as provided in the Convention of these rules or with the general or special permission in writing of the Central Government, no person shall work the transmitting apparatus of a wireless telegraph licensed under the Indian Telegraph Act, 1885, unless—

- (i) he is a citizen of India.
- (ii) he is 18 years of age or above; and
- (iii) he holds a ‘Certificate of proficiency’ and ‘Licence’ of the class specified in the licence to establish, maintain and work wireless telegraph and is duly authorised by the licensee:

Provided that if the service of any ship or aircraft radio telephone station is controlled by a person holding a ‘Certificate of Proficiency’ and ‘Licence’, any person not holding such Certificate of Proficiency and Licence may be permitted to use the radiotelephone equipment.”

96. Similar provision was also made in rules 4, 9 and 10 of the above-mentioned rules envisaging exceptions to be made in the rules. These exceptions were not, however, spelled out under any of those rules. On a reference being made to the Ministry of Communications, they stated as under:—

“That I.W.T. Rules, 1973, regulate the conduct of wireless stations (other than broadcast receivers) licenced under the 1885 Act. The exceptions envisaged under Rules 3, 4, 9 and 10 of the 1973 Rules are as under:—

(a) Rule 3: *Right to work transmitting apparatus:*

Some of the national projects such as development of harbours, oil exploration, laying of oil pipelines, etc., are taken up in collaboration with foreign firms, Wireless stations are licenced to these projects for the purposes of meeting their operational communication requirements connected with the projects. The operation of the licenced stations is at times taken up by foreign technical experts, in which case it becomes necessary to relax the rule by way of a special permission.

The age limit of 18 years for working a licenced transmitting apparatus is relaxed in case of radio amateurs and students engaged in radio research and experiments to encourage youngsters to take up scientific pursuits.

The stipulation in regard to operation of licenced stations by certified operators is temporarily relaxed in certain circumstances, in the national interest where technical personnel of a project are otherwise not qualified to operate the transmitting apparatus and it will take some time before they can obtain requisite qualifications.

(b) *Rule 4: Observance of Convention, rules under the Indian Telegraph Act, 1885 and agreements:*

The exceptions entailed by the Rules pertain to deviation of procedure laid down in the International Radio Regulations for communication relating to safety of life at sea and in the air. i.e. for answering and sending urgency calls and urgency messages, safety calls and safety messages.

(c) *Rule 9: Restriction on sending of messages:*

The rule imposes certain restrictions on sending of messages by a ship while it is within Indian territorial waters. These restrictions are relaxed by way of special permission in case of research vessels engaged in oceanographic survey or those vessels which are engaged in offshore drilling for oil explorations, etc. In these cases they are permitted to communicate with shore stations exclusively set up for the purpose.

(d) *Rule 10: Restrictions on working or using transmitting apparatus:*

The exceptions envisaged in the case relate to operational communication requirements of vessels engaged in dredging operations, hydrographic survey, development of dock-yards, ports, etc., while the vessels are operating within Indian harbours. The operations of such vessels necessitate relaxations of the rule and each case for relaxation is considered on merits."

97. The Ministry of Communications were further asked to state whether they had any objection to incorporating the above excep-

tions in the rules at appropriate places so as to make them self-contained. In their reply the Ministry had stated as follows:—

“The exceptions envisaged under Rule 4 pertain to deviation of procedure laid down in the Radio Regulations annexed to the Convention for Communication relating to safety of life at sea and in the air, i.e., for answering and sending urgency calls and urgency messages safety calls and safety messages. These exceptions are already spelt out in the Rules *vide* provisos to rules 9, 10 and 13 and as such their incorporation in Rule 4 is not considered necessary.

The Ministry— have no objection to incorporation of exceptions envisaged under rules 3, 9, and 10..... at appropriate places in the Indian Wireless Telegraph Rules, 1973. Further action to amend the 1973 Rules will be taken on receipt of the recommendations of the Committee on Subordinate Legislation in this regard.”

98. The Committee in para 86 of their Fourteenth Report (Fifth Lok Sabha) has recommended that the Ministry of Communications might amend the Indian Wireless Telegraph Rules, 1973 incorporating therein the exceptions envisaged under Rules 3, 9 and 10 at the appropriate place so that the rules are self-contained.

99. The Ministry of Communications have now proposed to amend the above-mentioned rules as follows:—

“In rule 3 of the Indian Wireless Telegraph Rules, 1973 hereinafter referred to as said rules:—

(i) for the words “except as provided in the Convention or these rules or with the general or special permission in writing of the Central Government, no person”, the words “No person” shall be substituted;

(ii) After the proviso, the following proviso shall be inserted, namely:—

“Provided further that, if the Central Government is satisfied that it is expedient so to do in public interest it may by general or special order in writing, exempt any person from the operation of this rule or part thereof when the wireless telegraph station is established to meet operational communication requirements of a project.”

In rule 9 of the said rules:—

(i) for the words “except as provided in these rules or with the general or special permission in writing of the

Central Government, no person", the words "No person" shall be substituted;

- (ii) After the proviso, the following proviso shall be inserted, namely:—

"Provided further that, if the Central Government is satisfied that it is expedient so to do in Public interest, it may by general or special order in writing, exempt any person from the operation of this rule when a station on board a ship or an aircraft is engaged in one or more of the specialised tasks like oceanographic survey, meteorological survey and oil exploration."

In sub-rule (1) of rule 10 of the said rules:—

- (i) for the words "except as provided in these rules or with the general or special permission in writing of the Central Government, no person", the words "no person" shall be substituted;
- (ii) After the existing provisos, the following proviso shall be inserted, namely:

"Provided further that if the Central Government is satisfied that it is expedient so to do in public interest, it may, by a general or special order in writing, exempt any person from operation of this rule when a station on board a ship or an aircraft is engaged in one or more of the specialised tasks like hydrographic survey, dredging and development of docks."

100. The Committee are satisfied to note that, on being pointed out, the Ministry of Communications propose to amend Rules 3, 9 and 10 of the Indian Wireless Telegraph Rules, 1973 so as to incorporate therein the exceptions envisaged under them. The Committee desire the Ministry to issue the proposed amendments at an early date.

- (iv) The Cost Accounting Records (Electric Fans) Rules, 1969 (G.S.R. 2298 of 1969)—(Para 8 of Sixth Report—Fifth Lok Sabha).

101. After examining the penalty provision in the Cost Accounting Records (Electric Fans) Rules, 1969, the Committee on Subordinate Legislation (Fifth Lok Sabha) had recommended in para 8 of their Sixth Report, presented on the 7th May, 1973, as follows:—

"One of the basic principles of natural justice is that before penal provisions of a law are invoked against any per-

son, he should be given a reasonable opportunity of being heard. The Committee on Subordinate Legislation have been very particular about the observance of this principle and have, from time to time, recommended amendment of rules to incorporate a provision for affording an opportunity of being heard. In their reply, the Department of Company Affairs have stated that although there was no such provision in the Rules the purpose was served by usual procedure of show cause notice. A similar reply was furnished by the Ministry of Finance in the case of the Central Excise (Ninth Amendment) Rules, 1968. The Committee were not satisfied with the reply of the Ministry of Finance in that case and pointed out (vide para 25 of their First Report—Fifth Lok Sabha) that departmental instructions could hardly be a substitute for a built-in legal safeguard. The Committee, therefore, reiterate their earlier recommendation and desire that the Cost Accounting Records (Electric Fans) Rules, 1969, and all other similar Rules framed under the Companies Act, 1956, should be suitably amended at an early date to provide for giving an opportunity of being heard to an aggrieved Company/Officer before any penalty under the Rules is imposed on it/him.

102. In their reply, the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) stated as under:

“The observations and recommendations.....have been carefully considered by the Department of Company Affairs in consultation with the Legislative and Legal Affairs Department of this Ministry and the matter is further clarified as under.

The Cost Accounting Records Rules for the various classes of companies are being formulated by the Department of Company Affairs in exercise of the powers conferred by sub-section (1) of section 642 read with clause (d) of sub-section (1) of section 209 of the Companies Act, 1956. Rule 4 of the Cost Accounting Records (Electric Fans) Rules, 1969 provides for penalty in respect of first and continuing offences. The penalty will be imposed only by a court of law and not by any departmental authority. Before imposing the penalty, the court will give reasonable opportunity to the person concerned and observe all other formalities as are provided in the Code of Criminal Procedure, 1973.

Having regard to the above position, the Committee on Subordinate Legislation of the Lok Sabha may be requested to consider their recommendations contained in para 8 of their Sixth Report.

This O. M. has the approval of the Minister for Company Affairs."

103. The Committee feel satisfied with the reply given by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs). Had this position been explained earlier, the need for comments by the Committee made in para 8 of their Sixth Report (Fifth Lok Sabha) would not have arisen.

XII

THE INCOME-TAX OFFICERS (CLASS I) SERVICE (REGULATION OF SENIORITY) RULES, 1973 (G.S.R. 54-E of 1973).

104. A Gazette copy containing the Income-Tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973, was laid on the Table of Lok Sabha on the 9th March, 1973. In the Explanatory Memorandum laid along with the Rules, the Ministry of Finance (Department of Revenue and Insurance) stated as follows:—

"In pursuance of the observations and directions contained in the Supreme Court judgement dated 16-8-1972, the Government of India have framed fresh rules of seniority for regulating from the 16th January, 1959, the seniority inter se between the direct recruits and the promotees to the Income-tax Officers (Class I) Service."

105. It was noticed that instead of publishing the Explanatory Memorandum with the Rules in the Gazette, a cyclostyled copy was attached and laid on the Table. In this connection, the attention of the Ministry was invited on 2nd May, 1973, to the following recommendation of the Committee on Subordinate Legislation (Fourth Lok Sabha) made in para 10 of their Second Report:

"Normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries/Departments should take appropriate steps to ensure the publication of rules before they come 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 rules."

106. The Ministry of Finance (Department of Revenue and Insurance) were asked to state the reasons for not publishing the Explanatory Memorandum in the Gazette alongwith the Rules as recommended by the Committee.

107. In their reply, dated the 11th May, 1973, the Ministry stated as follows:—

“...the Supreme Court of India in their judgement delivered on 16-8-72 observed that the Quota Rule regulating appointments to the grade of Income-tax Officers (Class 1), and the Seniority Rule regulating the *inter se* seniority between the direct recruits and the promotees to that grade, collapsed on 16-1-59 and accordingly, directed the Government to frame a fresh Rule to determine the seniority between the direct recruits and the promotees after 15-1-59. The Court further observed that the Government should prepare a revised list of seniority in the grade of Income-tax Officers (Class I) in accordance with the Rule to be freshly framed and file such a list before the Court by 15-2-73. These observations & directions of the Court have been complied with. The proceedings before the Court were kept pending and liberty was given to the parties to the proceedings to apply after the revised seniority list had been so filed before the Court. It would thus be seen that Income-tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973, which have been framed in implementation of the interim judgement dated 16-8-72, are not to be treated as final, for the matter is to be finally decided by the Supreme Court in the light of objection thereto which have already been filed before the Court by the parties to the proceedings. These objections will be considered when the matter comes up for hearing some time in September next. The fact that the rules have been applied from 16-1-59, in pursuance of the express directions of the Supreme Court, which in turn were based on the finding that the previous Rules on the subject collapsed on 16-1-59, do not thus attract the requirement that normally all rules should be enforced from the date of their publication. It was in these circumstances that the need for adding any explanation or footnote on the usual lines was not felt.”

108. In the meantime, the Committee received on 4th September, 1974, a representation from the All India Federation of In-

come-tax Gazetted Services Associations regarding retrospective effect given to the Income tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973, with effect from 16th January, 1959, *vide* sub-rule (2) of rule 1, *ibid.*, whereas the rules were published in the Gazette on 9th February, 1973. It was, *inter alia*, stated in the representation that Government had not appended the explanatory memorandum as repeatedly recommended by the Committee on Subordinate Legislation saying that no one had been adversely affected by retrospective operation of the rules. It was further contended that the said rules had wrought grave injustice on officers promoted years back to class I Service who had already given the best of their years in the service of the Department and they were placed junior to direct recruits who had joined as probationers 3 to 4 years later and started working as Income-tax Officers 5 to 6 years later than the date of promotion of the former.

109. The matter was, therefore, again taken up with the Ministry of Finance (Department of Revenue and Insurance) and their attention was invited to the following recommendations of the Committee made in paras 101—103 of their Ninth Report (Fifth Lok Sabha), presented to the House on the 19th November, 1973, regarding giving of retrospective effect to rules framed under the proviso to Article 309 of the Constitution:—

"101. 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).

102. 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 in 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 *mala fide*.

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

110. It was also pointed out to the Ministry that the above recommendations of the Committee had been noted for compliance by Government and were circulated to all Ministries/Departments with the request to bear this decision in mind while formulating statutory rules, vide Department of Parliamentary Affairs O.M. No. F. 32(1)/69-R&C, dated the 22nd March 1974 (see S. No. 13 of Appendix IV to the Twelfth Report—Fifth Lok Sabha).

111. The Ministry of Finance (Department of Revenue and Insurance) were, therefore, asked to state—

- (i) whether the Income-tax Officers (Class I) Service (Regulation by Seniority) Rules, 1973 stated to have been framed in implementation of the *interim* judgment of the Supreme Court dated the 16th August, 1972 and not to be treated as final had since been published finally in the Gazette after the pronouncement of the final decision by the Supreme Court; and
- (ii) whether an explanatory memorandum that no one has been adversely affected as a result of retrospective effect being given to the rules, had been appended to the above-mentioned rules as finally published, in compliance with the recommendations of the Committee on Subordinate Legislation and circulated by the Department of Parliamentary affairs.

112. In their reply dated the 27th December, 1974, the Ministry of Finance stated as under:

“...in their judgement dated the 16th April, 1974, the Supreme Court have held that the Income-tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973, were just and fair.

The said rules derive their validity from the exercise of the power under the proviso to Article 309 of the Constitution by the President....and not from the observations of the Supreme Court that the Rules were just and fair.

It may be seen that there is nothing in the Rules, as published, indicating that they were provisional.

In the circumstances, a fresh notification does not seem to be called for in respect of the said Rules.

In regard to item (ii).....the power exercised by the President under the proviso to Article 309 of the Constitution is a plenary legislative power. It is as if the Legislative authority itself provides for retrospective operation.

The Supreme Court have held that this power can be exercised retrospectively. It, therefore, follows that rules regarding delegated legislation do not apply in the instant case."

113. At their sitting held on the 27th January and 22nd April, 1975, the Committee heard the oral evidence of the representatives of the Ministry of Finance (Department of Revenue and Insurance) with regard to the non-appending of the explanatory note to the rules laid on the Table and adverse effect on promotee officers complained of by the Federation of All India Income-tax Gazetted Services Associations.

114. The representative of the Ministry during his evidence on 27-1-75 virtually repeated the argument advanced in written reply that these rules were made under the proviso to Article 309, which provided that the appropriate legislature should regulate by law the recruitment and conditions of service of persons appointed to public services under the Union or under the State respectively. Rule-making power was conferred on the President or the Governor of a State and the rules framed under Article 309 were an alternative to an Act of Parliament, or of a State Legislature, till they actually legislated and passed an Act to govern the recruitment and conditions of service, etc. In this connection, the representative of the Ministry of Finance, *inter alia* quoted the opinion of the Law Ministry on this point as follows:

"...No doubt, while exercising the power under the proviso to Article 309, one has to be very careful that retrospective rules should not adversely affect persons. This is exactly why the Legislature ordinarily refuses to do so, except in extraordinary circumstances. Probably we have to follow the same system. But it may not be necessary to publish a memorandum as in the case of other subordinate legislation.

115. The representative of the Ministry of Finance again observed during his evidence on 22-4-1975 that there was no doubt that retrospective effect had been given to rules but there was nothing wrong in doing so, as it was something which Constitution authorised and there was no illegality about it.

116. The Committee have repeatedly emphasised that if, in any particular case the rules had 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 rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules. This recommendation of the Committee was brought to the notice of all the Ministries/Departments of Government of India by the Department of Parliamentary Affairs on the 13th May, 1969. The Committee regret to observed that the Ministry of Finance (Department of Revenue and Insurance) have not complied with the above recommendation of the Committee in this case. The Committee are not convinced with the explanation of the Ministry that since the power exercised by the President under the provision to Article 309 under which the rules in question had been framed, was a plenary legislative power, Government were competent to give retrospective effect to these rules without giving an explanatory note. This explanation of the Ministry indicates that they have not properly comprehended the purport of the above recommendation of the Committee. In terms of the above recommendation of the Committee, the clarificatory note has to be given in all cases where retrospective effect is given to the rules even though Government may be fully competent to give retrospective effect thereto.

117. As regards the reasons for giving retrospective effect to the rules which have been complained of by the All India Federation of Income-tax Gazetted Services Associations, the Committee note that although to begin with the promotees had been given only 20 per cent of the vacancies but that proportion was later on abandoned.* In 1951, the proportion of intake from promotees was fixed as 33-1/3 per cent. The Department continued to expand. Larger number of officers in Class I who could immediately take up assessment work were required. Senior Class II officers who had the necessary experience were always available. Therefore though direct recruitment was made from year to year the department had to promote more officers from Class II to Class I. So much so that there was a spill over of 73 promotee officers on 16-1-59. In the course of the next three years, 214 promotees had to be appointed after upgrading similar number of posts from Class II. This led to the discontentment among direct recruits and they went to the Supreme Court, in what is known as Jai Singhani case. The Supreme Court in their judgment delivered on 16-8-72 held that on Government's decision to promote a large number of Income-tax Officers from Class II to Class I, the quota rule which gave 66-2/3 per cent to direct recruits and 33-1/3 per cent to the promotees collapsed and

*Affidavit filed by Shri R. C. Dutt, Finance Secretary, before Supreme Court.

with that collapse of the quota rule the seniority rule which gave weightage to the promotees of 2 to 3 years also broke down. The Supreme Court thereupon directed the Department to frame fresh rules to determine the seniority between direct recruits and promotees. The proceedings in the case were kept pending till fresh list was prepared and filed in the court. The new seniority rule together with the revised seniority list was furnished to the Court on 15-2-73 and both the direct recruits and promotees were heard. While directing the framing of fresh rules, the Supreme Court held that the Court was not concerned with Government policies in recruiting officers in service. Government runs the service and it is presumed that it knows what is best in the public interest. Government knows the calibre of the candidates available and it is for the Government to determine how a particular service is to be manned whether by direct recruits or by promotees or by both and if both, what should be the ratio between two source having regard to the age factors, experience and other exigencies of service.

118. The new rules promulgated retrospectively from 16-1-1959 provide for relative seniority among the promotees and the direct recruits in the ratio of 1:1 to be determined and regulated in accordance with the roster maintained for the purpose.

119. During evidence on 22-4-1975 the representative of the Ministry of Finance stated as follows:—

"I may say that for the first time the recruitment rules have been put in standard form, and the respective seniorities of direct recruits and promotees are being determined in a very clear-cut, intelligible and well-understood manner. I would respectfully submit that because this was not done previously, there was all this trouble. Perhaps, if this was done right from the beginning we could have avoided all this litigation."

120. The Committee are unhappy over the manner in which the Department of Revenue and Insurance had acted in this case which had necessitated giving of retrospective effect of 14 years to the rules in question. In the year 1951, the intake of promotee officers was fixed at 33-1/3 per cent but it was so unrealistic that in 1959 and 1960 Government had to upgrade 214 posts to be exclusively filled by promotion. This resulted in the collapse of the prescribed intake ratio between the promotees and the direct recruits; and with it, the seniority rule also collapsed. All this led to utter "chaos" in the field of seniority, and "no-body knew where he stood. "In the

opinion of the Committee as soon as it had become evident to Government that the old intake ratio had become unworkable, the proper course for them was to alter the ratio through an amendment to the rules and to give it a prospective effect rather than to continue to fill up post in a haphazard manner. Had this been done at that time there would have hardly been any need for retrospective effect, which had resulted in unfavourable placement of several promotee officers for no fault of theirs.

121. As regards the adverse effect of the retrospective operation of the rules, according to the All India Federation of the Income-tax Gazetted Services Associations, as many as 62 promotee officers appointed as Assistant Commissioners in 1973 had been reverted on 9-10-1974. Also, the seniority of several promotee officers to Class I had been adversely affected as below:—

No. of years lost	No. of officers losing seniority
Over 4 years	96
3-4 years	255
2-3 years	83
	<hr/>
Total :	434
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122. During evidence before the Committee on 27th January, 1975, the representative of the Ministry of Finance admitted that it could not be said honestly that no body would be hurt, but it was their endeavour that the degree of hurt should be equal on both sides (that is direct recruits and promotees). But during his evidence on 22nd April, 1975, the representative of the Ministry stated that "there can be no question of anybody being adversely affected for the simple reason that after the collapse of the old seniority rules and the quota system, there were no rights in respect of any one. So, unless there was something else which had given them specific right or seniority there should be no question of adverse effect."

123. In a written reply dated the 3rd May, 1975, the Department of Revenue and Insurance stated as follows:—

"In regard to 'loss of seniority' to such promotee officers *vis-a-vis* direct recruits appointed since 16th January, 1959 as submitted in the evidence before the Committee, the date of promotion was not the determining factor in fixing the seniority between the direct recruits and the promotees and in any case, there was no rule in existence to determine such seniority after 15th January, 1959 till

the Income-tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973 were issued on 9th February, 1973. Accordingly, no question of loss in seniority of the promotee officers *vis-a-vis* the direct recruits appointed since that date, arises. It is submitted, therefore, that it is not possible to give any figures regarding the alleged loss in seniority. However, a statement showing placements of direct recruits and promotee officers on the basis of the rotation principle (including 73 surplus promotee officers of pre-1959 who have been absorbed along with all direct recruits and promotees of post-1958 period), is annexed herewith."

124. It will be evident from the statement furnished by the Department of Revenue and Insurance *vide* Appendix IV that placement of 361 officers appointed between 1959 to 1966 has been affected as below:—

Year of Promotion	No. of promotions	How adjusted
1959	61	<div> <div>1 with 1961 } Direct</div> <div>30 with 19 62 } Recruit</div> <div>30 with 19 63 }</div> </div> <hr/> <div>61</div>
1960	35	<div> <div>6 with 1963 } Direct</div> <div>29 with 1964 } Recruits.</div> </div> <hr/> <div>35</div>
1961	64	<div> <div>30 with 1964 } Direct</div> <div>34 with 1965 } Recruits.</div> </div> <hr/> <div>64</div>
1962	80	<div> <div>24 with 1965 } Direct</div> <div>56 with 1966 } Recruits.</div> </div> <hr/> <div>80</div>
1964	69	<div> <div>9 with 1966 } Direct.</div> <div>60 with 1967 } Recruits.</div> </div> <hr/> <div>69</div>
1966	52	<div> <div>45 with 1968 } Direct</div> <div>7 with 1969 } Recruits.</div> </div> <hr/> <div>52</div>

Year of promotion	No. of promotions	How adjusted
1971	150	<div> 48 with 1969 } Direct 56 with 1970 } Recruits. 46 with 1971 } </div> <hr/> 150
		15
1973	190	<div> 32 with 1971 } Direct 73 with 1972 } Recruits. 74 with 1973 } </div> <hr/> * 79

125. It is no doubt true that 209 officers promoted in 1971 and 1973 have gained in their placement by one or two years and correspondingly the direct recruits have been relegated. But the total number of promotees who have lost in their placement is more. The Committee are of the opinion that having promoted a large number of officers from time to time according to needs and exigencies of services, it was not proper for the Department to have relegated their placements. It is certainly the concern of the Government to determine what should be the ratio of intake from the direct recruitment and by promotion but the Committee cannot ignore the frustration caused to a section of employees who are told several years after their appointment that their placement stands relegated below the direct recruits who joined the Department after them.

126. On 9th October, 1974, 62 promoted Assistant Commissioners were reverted. When asked during evidence whether these reversions were due to retrospective operation of the rules, the representative of the Ministry stated that it was not so. He further stated that they were clearly told in their appointment letter that their appointment was *ad hoc* and was subject to finalisation of the seniority list.

127. It cannot be denied that 62 Assistant Commissioners, who had been promoted in 1973, were reverted in 1974, on account of their placement below direct recruits who had joined the service later as Income-tax Officers (Class I). No doubt, they were warned that their appointments were *ad hoc* but this can at best be considered only an administrative safeguard in the hands of the Depart-

*11 still to be adjusted and will have placements in later years.

ment. In the opinion of the Committee had the original placements not been disturbed, these 62 Assistant Commissioners would normally not have been reverted.

128. In their evidence before the Committee, much stress has been laid by Government on legality. The Committee will like to make it clear that in their approach to rules, they are concerned not merely with legality, but are also concerned that the rules framed by Government conform to the principles of natural justice. When a rule has the effect of hurting a section of the people from a back date, the Committee cannot remain indifferent. The Committee trust that the Ministry will give a serious thought as how to remove frustration and hardship among the promotee officers. The Committee hope that the Government would see that all the officers work happily for the good of the people and the country at large.

DR. KAILAS

Chairman,

*Committee on Subordinate
Legislation.*

NEW DELHI;

the 6th May, 1975.

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.	8	The Committee note with satisfaction that on being pointed out, the Ministry of Agriculture and Irrigation (Department of Agriculture) propose to amend sub-rule (3) of rule 9, sub-rule (4) of rule 10 and sub-rule (a) of rule 12 of the Insecticides Rules, 1971, so as to incorporate therein the conditions subject to which the licences are issued. The Committee desire the Ministry to issue the amendment at an early date.
2.	11	The Committee note with satisfaction that, on being pointed out, the Ministry of Education and Social Welfare (Department of Education) have agreed to amend sub-rule (2) of rule 24 of the Delhi School Education Rules, 1973 so as to provide one-third of the total membership of the Curriculum Committee as quorum for its sittings. The Committee desire the Ministry to issue the amendment at an early date.
15		The Committee are not satisfied with the reply of the Ministry of Education and Social Welfare (Department of Education) that the instructions to be issued under the Delhi School Education Rules by the Director of Education are of executive nature and need not be published or laid on the Table of Parliament. The Committee note that the Delhi School Education Act under which the Rules have been framed does not empower the Director of Education to issue instructions on any matter. The Act envisages rules to be framed on certain matters which, under the rules, are sought to be covered by instructions.
16		The Committee desire the Ministry of Education and Social Welfare to delete all rules empowering the

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Director of Education to issue instructions. In case the Ministry consider it necessary to empower the Director to issue instructions on any matter, necessary amendment should be made in the Act. The Committee further desire that till such time as the Act is amended, the matters sought to be covered by instructions should be provided for in the Rules which are published and are also required to be laid before Parliament.

- 20 The Committee note that while it is not possible for the Ministry of Education and Social Welfare (Department of Social Welfare) to specify all the circumstances under which the provisions of rule 115(4) of the Delhi School Education Rules, 1973 could be invoked, they have given an example when an order of dismissal or removal from service is set aside on a technical ground and looking into the circumstances of the case, the disciplinary authority decides to hold a further inquiry.

- 21 In para 59 of their Fifteenth Report (Fifth Lok Sabha), Committee, while commenting upon a similar provision contained in the Coir Board Services (Classification, Control and Appeal) Bye-laws, 1969, had desired that the provision be amended so to make it clear that it was designed to meet a situation where, the court passes an order on purely technical grounds without going into the merits at all.

- 22 The Committee desire the Ministry of Education and Social Welfare (Department of Education) to amend rule 115(4) of the Delhi School Education Rules, 1973, on similar lines.

3. 25 The Committee are not convinced of the reply given by the Department of Supply for deleting the provision requiring specification in the Notice of the number of vacancies to be filled on the result of the examination. The Committee feel that this is a salutary provision which enables the prospective candidates to assess their chances of success in the examination and should be retained in the Indian Supply Service/ Indian Inspection Service (Class I-Recruitment by

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Competitive Examination) Rules. To meet the requirement of this provision, the Committee desire the Ministry/Department concerned with the examination to intimate to the Union Public Service Commission at least an approximate number of vacancies to be filled before the Notice of examination is issued by the Commission.

- 26 The Committee desire the Department of Supply to re-incorporate the deleted provision in the Indian Supply Service/Indian Inspection Service (Class I-Recruitment by Competitive Examination) Rules. The Committee further desire the Department of Personnel and Administrative Reforms to emphasise upon all Ministries/Departments the need for including the above provision in all Rules/Regulations relating to competitive examinations with which they might be concerned.

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The Committee are not convinced by the arguments given by the Ministry of Law, Justice and Company Affairs (Legislative Department) for not specifying matters in Clause 24 of the Additional Emoluments (Compulsory Deposit) Bill, 1974 in respect of which rules are to be framed thereunder. In para 29 of their Fourteenth Report (Fifth Lok Sabha), the Committee while commenting upon the Monopolies and Restrictive Trade Practices (Classification of Goods) Rules had recommended that either the rule-making power section should enumerate all matters on which rules have to be framed under various sections of a statute and quote the section to which that matter relates or in the alternative the preamble to the rules should refer not only to the general rule-making power section of the Act but also other sections of the Act under which the rules have been framed. The Committee desire the Ministry of Finance to adopt either of these two alternatives in the case of the Additional Emoluments (Compulsory Deposit) Bill, 1974 also which has already been brought on the statute book.

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The Committee are distressed to note that in spite of their repeated exhortation from time to time to avoid delay in laying 'Orders' such cases of delay continue to occur. The reasons given by the Ministries/Departments of the delay are not convincing.

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39 One of the main reasons for delay given by the Ministries/Departments is late receipt of G.S.R. Nos. from the Press. In this connection, the Committee wish to draw the attention of all Ministries/Departments to their recommendation made in para 35 of their Ninth Report (Fifth Lok Sabha) and reiterated in their, Thirteenth and Fourteenth Reports in regard to the new procedure introduced by the Controller of Printing and Stationery for obtaining G.S.R. Nos. of notifications. The Committee desire all Ministries/Departments to follow the new procedure scrupulously. Difficulties, if any, in obtaining G.S.R. Nos. under the new procedure should be sorted out in consultation with the Controller of Printing and Stationery.

40 The Committee find it difficult to appreciate another explanation for delay given by the Ministry of Steel and Mines (Department of Mines) and the Ministry of Energy (Department of Coal) that the parent Act under which the Rules had been framed did not specify any limit for laying of Rules on the Table of the House. True, under the Act the Rules are required to be laid before the Houses of Parliament *as soon as may be* after they are made. But the Committee on Subordinate Legislation, after putting a reasonable construction of the words 'as soon as may be' had recommended as early as in September, 1954 that rules etc. should be laid on the Table of the House within a period of 7 days after their publication in the Gazette (*vide* paras 31-32 of Second Report (First Lok Sabha), Later, in view of the difficulties experienced by the Government in complying with this recommendation, the Committee raised the period from 7 days to 15 days *vide* para 72 of Second Report (Second Lok Sabha). Since then, the Committee have been repeatedly stressing the need of laying Orders on the Table within a period of 15 days after their publication in the Gazette.

41 The Committee are surprised at the explanation given by the Ministry of Agriculture and Irrigation (Department of Agriculture) that the Wild Life (Stock Declaration) Rules, 1974 (G.S.R. 365 of 1974) were not rules but only a Notification issued under sub-section (3) of Section 1 of the Wild Life (Protection) Act, extending the Act to the State of Orissa. In this connection, the Committee wish to invite the attention of the Ministry to the preamble to the Rules which

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clearly indicates that they were issued under Section 63(1)(a) of the Act. The short title of the Notification also shows that they are rules which are required to be laid on the Table. The Committee desire the Ministry to be careful about such matters in future.

42 The Committee feel that the existing procedure in the Ministries/Departments for keeping a tab on laying of rules etc. on the Table of the House needs to be tightened. Each Ministry/Department should make a high ranking officer responsible for ensuring timely laying of rules on the Table. The Committee also desire the Department of Parliamentary Affairs to devise some procedure in consultation with the Ministries/Departments of Government of India to avoid recurrence of cases of delay.

6. 46 The Committee are not satisfied with the reasons given by the Ministry of Communications for not specifying the period of training in the Engineering Supervisors (Recruitment) Rules, 1974. The Committee feel that indication of a definite period of training is necessary to obviate any scope of discriminatory treatment between different batches of candidates of the same category.

47 If the Ministry feel that direct recruits being engineering graduates, science graduates, or engineering diploma holders require comparatively lesser period of training than the departmental candidates, they can lay down on the basis of their past experience, separate periods of training for the two categories of candidates. In cases where it becomes necessary to vary the period of training to meet emergency situations, the Ministry can do so by relaxing the relevant provision of the rules under rule 7. The Committee desire the Ministry to amend the Rules on these lines at an early date.

51 The Committee are not convinced with the reply of the Ministry of Communications regarding the use of discretionary power by the D.G. P.&T for relaxing age of departmental candidates. The Committee desire that either the maximum limit upto which age could be relaxed should be given in the rules or in the alternative, the Note below Explanation 4 of the Engineering Supervisors (Recruitment) Rules, 1974 should be deleted. The Committee also desire that in all cases where the upper age limit is relaxed, the reasons for doing so should be recorded in writing.

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| 7. | 55 | The Committee note with satisfaction that on being pointed out, the Ministry of Defence propose to amend paragraph 3(a) of the Bye-laws regarding the imposition of Tax on Advertisements in St. Thomas Mount- <i>cum</i> -Pallavaram Cantonment to make it clear that the permission of the Cantonment Executive Officer is essential after the levy of tax under Section 60 of the Cantonments Act, 1924 has been approved by the Central Government. The Committee desire the Ministry to issue the amendment at an early date. |
| | 59 | The Committee note with satisfaction that, on being pointed out, the Ministry of Defence propose to amend paragraph 3(c) of the above Bye-laws so as to delete the expression 'and no fee be charged in respect of such permission' which is superfluous. The committee desire the Ministry to issue the amendment at an early date. |
| | 62 | The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have deleted Rule 5(2) of the Arunachal Pradesh Civil Service (Class I) Rules, 1974 vide Notification No. U.14012/11/74-UTS dated 15-3-75. |
| | 65 | The Committee are not satisfied with the reply given by the Ministry of Home Affairs. The Committee feel that, as in the case of other Union Territories e.g. Delhi, recruitment to the Arunachal Pradesh Civil Service Class I should also be made through UPSC. The Committee desire the Ministry of Home Affairs to amend the Rules so as to associate the UPSC with selection for appointment to the Arunachal Pradesh Civil Service Class I. |
| | 69 | The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended Rule 11 of the Arunachal Pradesh Civil Service (Class I) Rules, 1974 in order to specify the nature of inquiry contemplated thereunder in respect of a candidate before his appointment to the service. The Committee further note that, as desired by them, the Ministry have also made Provision in the Rule for recording of reasons in writing in case a candidate whose name is included in the list is not appointed to the service. |
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- 73 The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended sub-rule (2) of rule 18 of the above Rules to provide for recording reasons in writing in cases where probation period is extended or reduced.
- 77 The Committee are not satisfied with the reply given by the Ministry of Home Affairs in regard to making the Rules self-contained. The Committee desire the Ministry to make the rules self-contained by incorporating therein the form of agreement and details of training and departmental examination.
- 81 The Committee note with satisfaction that on being pointed out, the Ministry of Home Affairs have amended the Proviso to Rule 20 of the above noted Rules so as to incorporate therein guidelines for grant of exemption from training or departmental examination.
9. 85 The Committee note with satisfaction that the Ministry of Defence propose to issue corrigendum for rectifying their mistake in issuing amendment to Rules which had already been superseded. The Committee desire the Ministry to issue the necessary corrigendum at an early date and devise a Procedure whereby such mistakes are avoided in future.
10. 88 The Committee are glad to note that the Ministry of Home Affairs have accepted in principle their recommendation made as far back as in September, 1954 that the rules framed by a subordinate authority under the Salaries and Allowances of Ministers Act, 1952 should be operative only after an affirmative vote of the House has been obtained. The Committee desire the Ministry to amend the Act accordingly at an early date.
- 92 The Committee note that the recommendation contained in para 74 of their 12th Report (Fifth Lok Sabha) presented to the House on the 10th May, 1974 was accepted by the Ministry of Education and Social Welfare (Department of Education) in August, 1974. The Committee fail to understand what action was taken by the Ministry to implement the recommendation after that. The Ministry have already taken about an year which is an unduly long time for implementing the recommendation.
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93 With a view to ensure speedy implementation of their recommendations, the Committee fix a time-limit of six months within which the Ministries/Departments of Government of India should implement their recommendations. If in any particular case it is not possible for a Ministry/Department to adhere to this time-limit, they should ask for extension of time from the Committee after explaining the difficulties in implementing the recommendation within the prescribed time-limit.

94 As an exceptional case the Committee grant extension of time to the Ministry of Education and Social Welfare (Department of Education) upto the end of September, 1975 for implementing the recommendation contained in para 74 of their Twelfth Report (Fifth Lok Sabha).

100 The Committee are satisfied to note that, on being pointed out, the Ministry of Communications propose to amend Rules, 3, 9 and 10 of the Indian Wireless Telegraph Rules, 1973 so as to incorporate therein the exceptions envisaged under them. The Committee desire the Ministry to issue the proposed amendments at an early date.

103 The Committee feel satisfied with the reply given by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs). Had this position been explained earlier, the need for comments by the Committee made in para 8 of their Sixth Report (Fifth Lok Sabha) would not have arisen.

11 116 The Committee have repeatedly emphasised that if, in any particular case the rules had 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 rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules. This recommendation of the Committee was brought to the notice of all the Ministries/Departments of the Government of India by the Department of Parliamentary affairs on the 13th May, 1969. The Committee regret to observe that the Ministry of Finance (Department of Revenue and Insurance) have not complied with the above recommendation of the Committee in the case of

Income tax Officers(Class I) Service (Regulation) of Seniority) Rules, 1973. The Committee are not convinced with the explanation of the Ministry that the power exercised by the President under the proviso to Article 309 under which the rules in question had been framed, was a plenary legislative power, and the refore, Government were competent to give retrospective effect to these rules. without giving and explanatory note. This explanation of the Ministry indicates that they have not properly comprehended the purport of the above recommendation of the Committee. In terms of the above recommendation of the Committee, the clarificatory note has to be given in all cases where retrospective effect is given to the rules even though Government may be fully competent to give retrospective effect thereto.

- 120 The Committee are unhappy over the manner in which the Department of Revenue and Insurance had acted in the matter of recruitment of Income-tax officers (Class I), which had necessitated giving of retrospective effect of 14 years to the rules in question. In the year 1951, the intake of promotee officers was fixed at 33-1/3% but it was so unrealistic that in 1959 and 1960 Government had to upgrade 214 posts to be exclusively filled by promotion. This resulted in the collapse of the prescribed in take ratio between the promotees and the direct recruits; and with it, the seniority rule also collapsed. All this led to utter "chaos" in the field of seniority, and "nobody knew where he stood. In the opinion of the Committee as soon as it had become unworkable, the proper course for them was to alter the ratio through an amendment to the rules and to give it a prospective effect rather than to continue to fill up posts in a haphazard manner. Had this been done at that time there would have hardly been any need for retrospective effect, which had resulted in unfavourable placement of several promotee officers for no fault of theirs.

- 125 It is no doubt true that 209 officers promoted in 1971 and 1973 have gained in their Placement by one or two years and correspondingly the direct recruits have been relegated. But the total number of promotees who have lost in their placement is more. The

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Committee are of the opinion that having promoted a large number of officers from time to time according to needs and exigencies of service, it was not proper for the Department to have relegated their placements. It is certainly the concern of the Government to determine what should be ratio of intake from the direct recruitment and by promotion but the Committee cannot ignore the frustration caused to a section of employees who are told several years after their appointment that their placement stands relegated below the direct recruits who joined the Department after them.

127 It cannot be denied that 62 Assistant Commissioners, who had been promoted in 1973, were reverted in 1974, on account of their placement below direct recruits who had joined the service later as Income-tax Officers (Class I). No doubt, they were warned that their appointments were *ad hoc* but this can at best be considered only an administrative safeguard in the hands of the Department. In the opinion of Committee had the original placements not been disturbed, these 62 Assistant Commissioners would normally not have been reverted.

128 In their evidence before the Committee, much stress had been laid by Government on legality. The Committee will like to make it clear that in their approach to rules, they are concerned not merely with legality but are also concerned that the rules framed by Government conform to the principles of natural justice. When a rule has the effect of hurting a section of the people from a back date, the Committee cannot remain indifferent. The Committee trust that the Ministry will give a serious thought as how to remove frustration and hardship among the promotee officers. The Committee hope that the Government would see that all the officers work happily for the good of the people and the country at large.

APPENDIX II

(Vide para 34 of the Report)

Statements of 'Orders' in respect of which there has been Delay of more than 15 days in laying them on the table of the House from 22-7-74 to 9-9-74

S.No.	No. of 'Order'	Description of 'Order'	Date of publication in the Gazette	Date of laying on the Table	Approximate delay.
(1)	(2)	(3)	(4)	(5)	(6)
*1.	S.O. 215(B) of 1974	The Railways (Rules for Warehousing and Retaining of Goods for regulating the use of Rolling Stock, Engines and Trains and Treatment and Disposal of unclaimed booked Goods Luggage and Parcels) Amendment Rules, 1974 (Ministry of Railways—Railway Board).	.	27-3-74	30-7-74
					Over 4 months.
*2.	G.S.R. 1384 of 1972.	The Merchant Shipping (Medicines, Medical Stores and Appliances) Amendment Rules, 1972 (Ministry of Shipping and Transport)	4-11-72	5-8-74	**Over one year and 8 months.

*A statement showing reasons for delay was also laid on the Table.

**Sixth Session commenced on 13-11-72. Inter-session period from 4-11-72 to 12-11-72 has not been counted.

(1)	(2)	(3)	(4)	(5)	(6)
*3.	S.O. 226 of 1971.	The Drugs (Price Control) Amendment Order, 1971 (Ministry of Petroleum and Chemicals).	11-1-71	6-8-74	**Over 3 years and 4 months.
*4.	G.S.R. 575 of 1973.	The Railway (Notices of and Inquiries into Accidents) Rules, 1973 [Ministry of Railways (Railway Board)]	2-6-73	6-8-74	@Over one year.
*5.	G.S.R. 400 of 1974.	The Coal Mines Family Pension (Second Amendment) Scheme, 1974 (Ministry of Labour).	13-4-74	8-8-74	Over 3 months.
6.	G.S.R. 587 of 1973.	The Statutory Investigation into Railway Accidents Rules, 1973 (Ministry of Tourism and Civil Aviation).	2-6-73	9-8-74	@One year.
*7.	S.O. 449 of 1974.	The Viscoose Staple Fibre Distribution (Second Amendment) Control Order, 1973 (Ministry of Commerce).	16-2-74	9-8-74	%Over 5 months.
8.	Notifn. No. F.4(33)/67-Fin (G) of 1974.	Delhi Sales Tax (Seventh Amendment) Rules, 1974 (Ministry of Finance—Department of Revenue and Insurance).	24-7-74	14-8-74	Over 15 days.

*A statement showing reasons for delay was also laid on the Table.

**First Session commenced on 20-3-71. Inter-session period from 11-1-71 to 19-3-71 has not been counted.

@Eight Session commenced on 23-7-73. Inter-session period from 2-6-73 to 22-7-73 has not been counted.

%Tenth Session commenced on 19-2-74. Inter-session has not been counted.

9.	G.S.R. 738 of 1974.	The Central Silk Board (Amendment) Rules, 1974 (Ministry of Industrial Development).	13-7-74	14-8-74	%Over 15 days.
*10.	S.O. 2534 of 1973.	The Cotton Textiles (Control) (Amendment) Order, 1973 (Ministry of Commerce).	8-9-73	20-8-74	**Over 9 months.
*11.	S.O. 2535 of 1973.	The Textiles (Production and Powerloom) Control (First Amendment) Order, 1973 (Ministry of Commerce).	8-9-73	20-8-74	**Over 9 months.
12.	G.S.R. 733 of 1974.	The Arms (Amendment) Rules, 1974 (Ministry of Home Affairs).	13-7-74	21-8-74	@Over 15 days.
13.	S.O. 440(E) of 1974.	The Aluminium (Control) Amendment Order, 1974 (Ministry of Steel and Mines).	17-7-74	22-8-74	†One month.
14.	G.S.R. 360(E) of 1974.	The Fertilizer (Movement Control) (Third Amendment) Order, 1974 (Ministry of Agriculture—Department of Agriculture).	5-8-74	26-8-74	Over 15 days.

*Eleventh Session commenced on 22-7-74. Inter-session period from 13-7-74 to 21-7-74 has not been counted.

*A statement showing reasons for delay was also laid on the Table.

**@Ninth Session commenced on 12-11-73. Inter-session period from 8-9-73 to 11-11-73 has not been counted.

@11th Session commenced on 22-7-74. Inter-session period from 13-7-74 to 21-7-74 has not been counted.

† 11th Session commenced on 22-7-74. Inter-session period has not been counted.

(1)	(2)	(3)	(4)	(5)	(6)
*15.	G.S.R. 603 of 1974.	The Railways Red Tariff (Fifth Amendment) Rules, 1974 (Ministry of Railways—Railway Board).	15-6-74	27-8-74	**Over one month.
16.	G.S.R. 241(E) of 1974.	The Coal Mines Nationalisation (Provident Fund) Rules, 1974 (Ministry of Labour)	17-5-74	29-8-74	**Over one month.
17.	G.S.R. 248(E) of 1974	The Coal Mines (Statement of Accounts) Rules, 1974 (Ministry of Labour).	25-5-74	29-8-74	**Over one month.
18.	G.S.R. 332(E) of 1974	The Coal Mines (Intimation regarding Mortgage, Charges, Lien or other interests) Rules, 1974 (Ministry of Labour).	26-7-74	29-8-74	Over one month.
19.	G.S.R. 833 of 1974.	The Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour).	3-8-74	29-8-74	Over 15 Days.
20.	G.S.R. 834 of 1974	The Andhra Pradesh Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour)	3-8-74	29-8-74	Over 15 Days.
21.	G.S.R. 835 of 1974	The Rajasthan Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour).	3-8-74	29-8-74	Over 15 Days.
22.	G.S.R. 836 of 1974	The Neyveli Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour).	3-8-74	29-8-74	Over 15 Days.

*A statement showing reasons for delay was also laid on the Table.

**Eleventh Session commenced on 22-7-74. Inter-session period has not been counted.

	S.O. 1990 of 1974	The Export of Steel Wire Ropes (Quality Control and Inspection) Rules, 1974 (Ministry of Commerce)	10-8-74	30-8-74	Over 15 Days.
*24.	G.S.R. 244 of 1974	The Textiles Committee (Second Amendment) Rules, 1973 (Ministry of Commerce)	2-3-74	30-8-74	Over 15 months.
25.	S.O. 273(E) of 1974	The Tyres and Tubes (Movement Control) Order 1974 (Ministry of Industrial Development)	29-4-74	31-8-74	**Over one month.
*26.	G.S.R. 871 of 1974	The Employees' Provident Funds (Sixth Amendment) Scheme, 1974 (Ministry of Labour)	10-8-74	6-9-74	Over 15 Days.
27.	G.S.R. 365 (E) of 1974	The Wild Life (Stock Declaration) Rules, 1974 (Ministry of Agriculture—Department of Agriculture)	14-8-74	9-9-74	Over 15 Days.
28.	G.S.R. 366(E) of 1974.	The Wild Life (Transactions and Taxidermy) Rules, 1974 (Ministry of Agriculture—Department of Agriculture)	14-8-74	9-9-74	Over 15 Days.
*29.	G.S.R. 872 of 1974	The Coal Mines Labour Housing and General Welfare Fund (Recruitment to Class III and Class IV Posts) Amendment Rules, 1974 (Ministry of Labour)	10-8-74	9-9-74	Over 15 Days.

*A statement showing reasons for delay was also laid on the Table.

**Eleventh Session commenced on 22-7-74. Session period from 29-4-74 to 10-5-74 and inter-sessional period from 11-5-74 to 21-7-74 has not been counted.

APPENDIX III

(Vide para 36 of the Report)

'Orders in Respect of which statements showing Reasons for delay were not Laid during the Eleventh session of Fifth Lok Sabha (22nd July 1974 to 9th September 1974)

S. No.	No. of 'Order'	Description of 'Order'	Dated of publication in the Gazette	Dated of laying on the Table	Reasons for delay in laying.
1	2	3	4	5	6
1	G. S. R. 587 of 1973	The Statutory Investigation into Railway Accidents Rules, 1973 (Ministry of Tourism and Civil Aviation).	2-6-73	9-8-74	The time lag between the publication of the Rules in the Gazette of India and their placement before Parliament was due to non-existence of the obligatory provision regarding the laying of the rules before Parliament in the Indian Railways Act, 1890, under which the said rules were framed and published. The rules were subsequently placed in Parliament at the instance of the Committee on Subordinate Legislation.
2	Notfn No. F.4(33)/67-Pin (G) of 1974	Delhi Sales Tax (Seventh Amendment) Rules, 1974 (Ministry of Finance—Department of Revenue and Insurance).	24-7-74	14-8-74	The Delhi Administration was asked to explain the delay in forwarding the notification. They have stated that the notification

was despatched by post on 24th July, 1974 itself when it was sent for publication in the Gazette. The delay in the receipt of the notification in the Ministry is attributable to delay in transit. The Administration is being advised again that they should ensure that papers to be laid before Parliament are sent through special messenger so that no delay occurs in transit of such papers.

14-8-74 Late receipt of information from Press regarding GSR number and the date of its publication in the Gazette of India.

21-8-74 Due to certain unavoidable administrative reasons.

22-8-74 Section 3 (6) of the Essential Commodities Act, 1955 lays down that every order made under Section 3 of the Act shall be laid before both Houses of Parliament as soon as may be after it is made; it does not specify any time limit.

3 G. S. R. 738 of 1974 The Central Silk Board (Amendment) Rules, 1974 (Ministry of Industrial Development).

13-7-74

4 G. S. R. 733 of 1974 The Arms (Amendment) Rules, 1974 (Ministry of Home Affairs)

13-7-74

5 S. O. 440 (E) of 1974 The Aluminium (Control) Amendment Order, 1974 (Ministry of Steel and Mines.)

17-7-74

1)	(2)	(3)	(4)	(5)	(6)
6.	G.S.R. 360 (E) of 1974	The Fertilizer (Movement Control) (Third Amendment) Order, 1974 (Ministry of Agriculture—Department of Agriculture).	5-8-74	26-8-74	Delay in receipt of printed copies from the Press.
7.	G.S.R. 241 (E) of 1974	The Coal Mines Nationalisation (Provident Fund) Rules, 1974 (Ministry of Labour).	17-5-54		
8.	G. S. R. 248(E) of 1974	The Coal Mines (Statement of Accounts) Rules, 1974 (Ministry of Labour).	25-5-74	29-8-74	<div> <div>Section 34 of the Coal Mines (Nationalisation) Act, 1974 lays down that every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made before each House of Parliament. It does not specify any time limit</div> </div>
9.	G.S.R. 332 (E) of 1974	The Coal Mines (Intimation regarding Mortgage, Charges, Lien or other interests) Rules 1974 (Ministry of Labour).	26-7-74		
10.	G. S. R. 833 of 1974	The Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour).	3-8-74	29-8-74	The statement showing the reasons for delay was not appended to these notifications due to an omission.

11	G. S. R. 834 of 1974	The Andhra Pradesh Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour).	3-8-74	29-8-74	The statement showing the reasons for delay was not appended to these notifications due to an omission.
12	G. S. R. 835 of 1974	The Rajasthan Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour).	3-8-74	29-8-74	
13	G. S. R. 836 of 1974	The Neyveli Coal Mines Provident Fund (Amendment) Scheme, 1974 (Ministry of Labour).	3-8-74	29-8-64	
14	S. O. 1990 of 1974	The Export of Steel Wire Ropes (Quality Control and Inspection) Rules, 1974 (Ministry of Commerce).	10-8-74	30-8-74	Delay in receipt of intimation about S. O. No. from the press.
15	S. O. 273 (E) of 1974	The Tyres and Tubes (Movement Control) Order, 1974 (Ministry of Industrial Development).	29-4-74	31-8-74	Not laid due to inadvertence.
16	G. S. R. 365 (E) of 1974	The Wild Life (Stock Declaration) Rules, 1974 (Ministry of Agriculture—Department of Agriculture).	14-8-74	9-9-74	G. S. R. 365 (E) is a notification extending the Wild Life (protection) Act, 1972 to the State of Orissa in exercise of powers conferred by sub-section (3) of Section I of the Act. It is not

1	2	3	4	5	6
17	G. S. R. 366 (E) of 1974	The Wild Life (Transactions and Taxidermy) Rules, 1974 (Ministry of Agriculture—Department of Agriculture).	14-8-74	9-9-74	a rule and, therefore is not required to be placed on the Table of Parliament. Delay occurred in the receipt of Printed copies.

APPENDIX IV

(Vide para 124 of the Report)

Statement showing placements of Direct recruits and promotee officers on the basis of rotation principles (Including 73 surplus promotee officers of pre-1959 who have been absorbed along with all direct recruits and promotees of post-1958 period).

Year	Actual intake		Adjustment of promotees	
	Direct Recruits	Promotees	Number	Composition
(1)	(2)	(3)	(4)	(5)
		73		
1959 . . .	20	61	20	19 of 1956, 1 of 1957
1960 . . .	22	35	22	22 of 1957
1961 . . .	32	64	32	3 of 1957, 28 of 1958, 1 of 1959
1962 . . .	30	80	30	30 of 1959
1963 . . .	36	..	36	30 of 1959, 6 of 1960
1964 . . .	59	69	59	29 of 1960, 30 of 1961
1965 . . .	58	..	58	34 of 1961, 24 of 1962
1966 . . .	65	52	65	56 of 1962, 9 of 1964
1967 . . .	60		60	60 of 1964
1968 . . .	45	..	45	45 of 1966
1969 . . .	55		55	7 of 1966, 48 of 1971
1970 . . .	56	..	56	56 of 1971
1971 . . .	78	149+1	78	46 of 1971, 32 of 1973
1972 . . .	73	..	73	73 of 1973
1973 . . .	74	190	74	74 of 1973.

MINUTES

**MINUTES OF THE SEVENTIETH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)**

(1974-75)

The Committee met on Monday, the 27th January, 1975, from 15.00 to 18.15 hours.

PRESENT

Dr. Kailash—Chairman

MEMBERS

2. Shri T. Balakrishnaiah
3. Shri K. Chikkalingaiah
4. Shri Khemchandbhai Chavda
5. Shri Md. Jamilurrahman
6. Shri Kamala Prasad
7. Shri Mohan Swarup
8. Shri Paokai Haokip
9. Shri M. S. Sanjeevi Rao
10. Shri R. R. Sharma

WITNESSES

I. Representatives of the Ministry of Finance (Department of Revenue and Insurance)

1. Shri H. N. Ray—Secretary
2. Shri S. R. Mehta—Chairman, Central Board of Direct Taxes.
3. Shri B. K. Bagchi—Member, Central Board of Direct Taxes.

II. Representatives of the Ministry of Health and Family Planning (Department of Health)

1. Shri Gian Prakash—Secretary
2. Shri Shravan Kumar—Joint Secretary
3. Dr. S. S. Gothoskar—Drug Controller
4. Shri P. K. Dutta—Asstt. Drug Controller

III. Representatives of the Ministry of Agriculture and Irrigation (Department of Agriculture).

1. Shri T. P. Singh—*Secretary*
2. Shri A. Das Gupta—*Joint Secretary and Legal Adviser, Ministry of Law*
3. Miss Anna R. George—*Joint Secretary*
4. Shri Prakash Narayan—*Joint Commissioner (Fertiliser Distribution)*

SECRETARIAT

Shri H. G. Paranjpe—*Chief Financial Committee Officer*

I

1-8. * * * *

9. The Committee then heard the representatives of the Ministry regarding retrospective effect given to the Income-tax Officer (Class I) Service (Regulation of Seniority) Rules, 1973.

10. Asked to state the reasons for giving retrospective effect to the above rules w.e.f. 16-1-1959, the representative of the Ministry stated that on this date a decision was taken that a certain number of Class II Income-tax Officers should be promoted to Class I on an *ad hoc* basis, and they were promoted in excess of the quota. On that date the quota and the seniority rule stood collapsed. The question of seniority of the direct recruits and that of the promotees had been taken time and again to the Supreme Court. As per the decision of the Supreme Court in 1972, the roster system—i.e. one promotee, one direct recruit—was adopted. Earlier, recruitment was through the quota system, i.e., 20 per cent. by promotion and 80 per cent by direct recruitment, which was revised to 33 1/3 per cent. and 66 2/3 per cent. respectively. The Supreme Court declared that the quota system had broken down in 1959 and, therefore, a completely new set of seniority rules were framed. The matter was again considered by the Supreme Court and in their judgment delivered in April, 1974, they gave their approval to this seniority list, which was of great advantage.

11. When asked to state whether Government were trying to help direct recruits at the expense of the promotees, the representative of the Ministry stated that this was not something peculiar to the Income-tax Department. It was to be found in almost all services and departments of the Government of India and in the State Governments as well. This had become an intrinsic part of the

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

fabric of Indian Administration as such. This had grown over the years and was blessed by various bodies including the Administrative Reforms Commission, Wanchoo Committee and the Third Pay Commission. There must be some rationale behind this system.

12. When asked to explain the reasons for not giving a clarification, as recommended by the Committee in para 10 of their Second Report (4LS) and reiterated in subsequent Reports, that no one would be adversely affected as a result of retrospective effect being given to the rules, the representative of the Ministry stated that these rules were made under the proviso to Article 309, which provided that the appropriate legislature should regulate by law the recruitment and conditions of service of persons appointed to public services under the Union or under the State respectively. Rule-making power was conferred on the President or the Governor of a State and the rules framed under Article 309 were an alternative to an Act of Parliament, or of a state Legislature, till they actually legislated and passed an Act to govern the recruitment and conditions of service, etc. In this connection, the representative of the Ministry of Finance, *inter alia*, quoted the opinion of the Law Ministry on this point:—

“—No doubt, while exercising the power under the proviso to Article 309, one has to be very careful that retrospective rule should not adversely affect persons. This is exactly why the Legislature ordinarily refuses to do so, except in extraordinary circumstances. Probably we have to follow the same system. But it may not be necessary to publish a memorandum as in the case of other subordinate legislation.”

13. In reply to a question, the representative of the Ministry submitted that there was nothing wrong in giving retrospective effect to the rules. Asked why the seniority rules were not framed earlier, he stated that nothing could be done earlier for the reason that the matter was then being agitated before the Supreme Court both by direct recruits and the promotees and these rules were framed pursuant to the directions of the Supreme Court *vide* their judgment in 1972. It was soon after the judgment, at the very first opportunity, that these rules regulating the seniority of direct recruits and the promotees were issued. He further submitted that it was only after the Supreme Court's decision that they were able to tackle this matter in a systematic way and seniority rules could be framed and enforced. Before that, every thing was open and fluid. No body

knew where he stood and these rules were an endeavour to introduce a certain element of order into what was utter chaos earlier.

14. In reply to another query, the representative of the Ministry explained the background regarding reversion of 62 Assistant Commissioners promoted in 1973, who were placed below direct recruits by an order issued in October, 1974. The question of framing rules of seniority was under consideration because of a judgment of the Supreme Court. That court had directed that they would like to see the seniority rules and the seniority list framed by Government. During this period, there were a very large number of vacancies in the Assistant Commissioners' Cadre. Government felt that it would be in the interest of work if so many vacancies were not allowed to remain unfilled. Therefore, the witness added that 107 promotions were made on a purely temporary and *ad hoc* basis. It was made absolutely clear to the promotees in their orders of promotion that their promotions were subject to the final orders of the Supreme Court. The question of reversion came only after the seniority list and the rules of seniority were held to be just and fair by the Supreme Court.

15. When asked whether any one was adversely affected, the representative of the Ministry of Finance admitted that it could not be said honestly that no body would be hurt, but it was their endeavour that the degree of hurt should be equal on both the sides.

16. The Committee desired the representatives of the Ministry to furnish the following information on the points arising out of evidence:—

- (i) copy of Law Ministry's opinion on retrospective effect given to the rules framed under the proviso to Article 309 and appending an explanatory note thereto;
- (ii) copy of order issued in July, 1974, regarding reservation of posts for scheduled castes/scheduled tribes candidates; and
- (iii) written replies to the questionnaire handed over to them at the time of evidence.

(The witnesses withdrew)

17—25 • • • •

26. The Committee then adjourned to meet again on Tuesday, the 28th January, 1975.

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

LXXIV

**MINUTES OF THE SEVENTY-FOURTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION**

(FIFTH LOK SABHA)

(1974-75)

The Committee met on Tuesday, the 22nd April, 1975, from 15.00 to 16.45 hours.

PRESENT

Dr. Kailas—Chairman

MEMBERS

2. Shrimati Premalabai Dajisaheb Chavan
3. Shri Md. Jamilurrahman
4. Shri M. S. Sanjeevi Rao
5. Shri Tayyab Hussain

WITNESSES

1. Shri H. N. Ray, *Secretary, Ministry of Finance (Deptt. of Revenue and Insurance).*
2. Shri S. R. Mehta, *Chairman, Central Board of Direct Taxes.*

SECRETARIAT

Shri H. G. Paranjpe—Chief Financial Committee Officer.

2. The Committee heard the oral evidence of the representatives of the Ministry of Finance (Department of Revenue and Insurance) regarding retrospective effect given to the Income-tax Officer (Class I) Service (Regulation of Seniority) Rules, 1973.

3. When asked to state whether 62 Assistant Commissioners who were promoted in the year 1973 have been reverted by an Order issued on 9th October, 1974 as Income-tax Officers and placed below the direct recruits as a sequel to the retrospective effect given to

new seniority rules, the representative of the Ministry stated as under:—

"...this is not consequential to the retrospective effect given to the new Seniority Rules. I would submit that, for a proper understanding of the entire situation, we must go through the entire background and history of the case which is unique and which has a lot of litigation behind it. I would respectfully submit that these particular Income-tax Officers were merely promoted *ad hoc*. They were appointed on the clear understanding that this was a provisional arrangement, and this was specifically mentioned in the orders. They were told that when the Supreme Court decision was out and seniority was regularised, they were liable to reversion. This is what happened."

4. When asked to state whether the promotions were on officiating capacity or *ad hoc* basis, the representatives of the Ministry stated as follows:

"I will read out the relevant portion:

"The following Income-tax Officers, Class I, are hereby provisionally appointed to officiate as Assistant Commissioners of Income-tax, with effect from 2-4-73 or such subsequent date which they take over charge and until further orders.

* * * * *

The above promotions are purely *ad hoc* and have been made on the basis of the suitability as decided by the Central Board of Direct Taxes, in terms of directions issued by the Supreme Court of India in their order dated 21st December, 1972.

"These promotions will not confer any claim for continued officiation in the grade of Assistant Commissioner of Income tax or for seniority in that grade. Appointments against these posts will eventually be made on the basis of the revised list of seniority of Income-tax Officers, Class II as finally approved by the Supreme Court and on selection by a duly constituted DPC to be convened in accordance with the prescribed procedure. The promotion presently ordered will not establish any claim or eligibility or for selection on merit, by a properly constituted DPC when the same is convened'.

All that I can say is that the Government by this time have become thoroughly demoralised and alarmed because of the litigation and by way of abundant caution, they put in every possible safeguard, that they could result of."

5. Stating the background of the promotion quota *visa-vis* direct recruits, the representative of the Ministry informed the Committee that at one stage it was 80 per cent direct recruits and 20 per cent promotees; later it became 66-2/3 per cent and 33-1/3 per cent. Subsequently in 1973, the entire quota rule was given up and new orders were issued on a sandwich basis, one below the other. He further stated that this matter had gone up to the Supreme Court and to various High Courts a number of time.

6. About the fixation of seniority w.e.f. 1959 the representative of the Ministry stated as under:

"...What happened in 1959 was that a number of *ad hoc* promotions from Class II to Class I posts were decided upon—100 in the first instance and another lot of about 100 persons. The total was about 214 promotions from Class I and this was the root cause of the trouble. In the words of the Supreme Court judgement, it was made clear that the quota system became unworkable and so the whole system for determining seniority collapsed. Then they said that we must review the entire matter. This was done by 1973 and they accepted the roster system in 1974. In fact in the judgement of 1974, they also stated that the new rule was just and fair. The court had asked the promotee officers whether they had any other solution which was more equitable and just than this, and thereafter this rule was accepted and commended. I will submit that no harm has been done to either category because after the collapse of the whole quota system and the weightage system, there was nothing left and to that extent it cannot be argued that our rules in 1973 were in any way affecting the vested interests of the right of any category. There was no way of determining the *inter se* seniority of direct recruits and promotees with the collapse of the old system and the Supreme Court itself gave a clear indication that the new seniority rule must be brought into effect from 1959 when the large influx of Class II to Class I took place. I would submit that a very large number of promotees had been inducted for in excess of the quota system. In fact, about 1967 there was an excess people promoted from the ranks of the Class II

officers and to that extent if there is anything propably the direct recruits could have a grievance."

7. When enquired whether with the passage of time the number of posts in the grade of Assistant Commissioners available to the promotees would be drastically reduced as compared to that available direct recruits, the representative of the Ministry stated that it is not the case as they treat both the promotees and direct recruits at par. He further stated as under:—

"The history of the case is that originally, it was the direct recruit who went to the High Court and Supreme Court. They felt that they were being discriminated against. In the original order, there was a question of weightage of three years. This was a matter on which both sides went to the Supreme Court. What today we are doing is, that we are giving effect to certain decisions of the highest judicial forum. Not only has the Supreme Court has satisfied itself about the fairness and propriety of the roster system, but they have also scrutinised the seniority list that was prepared in pursuance of their directions. This is one of the cases where we have something definite which has been pronounced upon by the Supreme Court and, I submit, about its propriety, this Committee need not have any doubts".

8. In this connection, the representative of the Ministry further stated as under:

"I may say that for the first time, the seniority rules have been put in standard legal form, and the respective seniorities of direct recruits and promotees are being determined in a very clear-cut, intelligible and well-understood manner. I would respectfully submit that because this was not done previously, there was all this trouble. Perhaps, if this had been done right from the beginning we could have avoided all this litigation. Now, the Supreme Court had laid down rules should be framed in accordance with equity, justice and fairness. So, a seniority list was drawn up taking into account all relevant circumstances. We do not do so, we would submit that the Class I direct recruit would also have a very clear cut case. Officers belonging to this category would have asked: 'Look, there is a decision of the Supreme Court and why are you not implementing it?' They had told us time

and again before the reversion took place. Some Assistant Commissioners who were promoted in the year 1973, by *ad hoc* orders, have not yet been reverted as Income-tax Officers although they were placed below the Direct Recruits. This is a case of clear contempt of Supreme Court. You might be hearing only one side. We have to hear both the sides."

9. When asked whether they agree that the new seniority rules which have already resulted in reversion of 62 Assistant Commissioners are further going to upset the seniority of officers promoted to Class I more than 20 years ago and their chances in the next higher grade are also going to recede, the representative of the Ministry stated that they do not agree with this. He further stated that if things had occurred in the normal course, they would not have been promoted at all, they secured an advantage in Class I during the period when they were not entitled to work in that class.

10. In reply to a question whether the Supreme Court while delivering their judgement on 16-8-72 directing the Government to frame fresh seniority rules after 15-1-1959 also directed the Government that it should be done without regard to the adverse effect it would have on any category, the representative of the Ministry stated as under:—

"The relevant portion of the Supreme Court judgement is as follows:—

'Since the old seniority rules cease to operate by reasons of the recent infringement of the quota rule, it will be for the Government to devise, if necessary, in consultation with the U.P.S.C. a just and fair seniority rule as between the direct recruits and the promotees for being given effect to from 16-1-1959.'

This is what I have mentioned to you in the very beginning. I do not think there is any injustice to anyone. There was no attempt to unsettle a thing which had already been settled. With the sudden induction from Class II into Class I the whole quota system collapsed and the replacement of that system took time and naturally it had to be given effect to from 16-1-1959. The demand made by the officers for the implementation of the mandamus is unfulfilled and it can be achieved only after the Government files a proper list of seniority. This is J. Singhania's case. Then it goes on to say:

These proceedings, therefore, will have to be kept pending till such a seniority list is prepared and filed in Court. Respondents are, therefore, directed to prepare a fresh seniority list and file in the Court. It will be appreciated that this dispute regarding seniority is pending before the Court for several years and it is very essential that it should be resolved without further delay. We are, therefore of the view that the respondents charged with the preparation of the fresh list shall prepare it and file it in Court within six months from the Order. After the same is filed, liberty to apply is given to the parties to the proceedings.'

It was pursuant to this direction of the Supreme Court that the revised seniority list was prepared and the principle of 1:1 on a roster basis was adopted and this was put up before the Supreme Court. On the basis of the roster seniority list was prepared and thereafter in the decision of the 16th April, 1974, the Supreme Court upheld those particular principles and said that those quota rules were in order. And, in fact, something unique had happened in the annals of the Supreme Court, in that they gave their blessings to the particular seniority list that had been prepared. Now, we cannot deviate from that list.

In the Income-tax Department, people come as L.D.C.'s. They have 50 per cent quota for becoming UDC's. The posts of Inspectors are filled (66.2/3 per cent) by promotion from UDC's. Then 100 per cent quota exist Inspectors to become ITO (Class II). Then the ITOs (Class II) have a chance to become ITOs (Class I) on the basis of 50 : 50 according to this roster. I cannot imagine a more favourable situation so far as the promotion prospects are concerned and I would respectfully submit that it might be dangerous and it might be against the public interest to dilute quality any further."

11. When asked that the Ministry have not acted according to the directions given by the Supreme Court judgement, the representative of the Ministry stated as under:

"I don't think so. In fact, as I mentioned a short while ago, the Supreme Court had occasions to look at it three times. According to the 1972 decision, they wanted us to lay down certain principles and those principles were considered when the Supreme Court delivered judgement in

1974. They accepted those principles as well as the seniority list that came about as a result of operation of those principles, and that is today's seniority list."

12. The representative of the Ministry agreed that although the judgement was delivered on 16-8-1972 the proceedings before the Court were kept pending and liberty was given to the parties to the proceedings to apply after the revised seniority list had been filed before the Court.

13. When asked whether the Government had filed their objections and did they point out to the Supreme Court the adverse effect it will have on promotee officers, the representative of the Ministry replied that it was actually Government which put before the Supreme Court certain principles on the basis of which the rules and the seniority list were drawn up.

14. Attention of the representative of Ministry was invited to para 10 of the Second Report of the Committee (Fourth Lok Sabha) regarding giving of explanatory memorandum where retrospective effect is given to rules and asked why the Ministry did not give a certificate that no one was adversely affected and whether the adverse effect was not contemplated originally. The Secretary of the Ministry stated that these rules were framed under Article 309 of the Constitution and they do not constitute Subordinate Legislation. He further stated that according to the opinion given by the Ministry of Law, when particular rules happen to be framed in exercise of the authority conferred upon the Government by the Constitution itself as an alternative to framing a legislation as such, it does not amount to subordinate legislation.

15. Regarding retrospective effect given to the rules, the representative of the Ministry stated as under:

"I would entirely agree that, on the face of it, if orders are issued on the 9th February, 1973 and they are given effect to from the 16th January, 1959, then it would be giving retrospective effect; there is no doubt about it. But I would submit that there is nothing wrong in doing so; it is in perfect order. It is something which the Constitution authorises and there is no illegality about it at all."

16. In reply to a question whether they were aware of a circular issued by the Department of Parliamentary Affairs on 13-5-1969 about framing of rules, the representative of the Ministry stated that in view of the fact that it was not a subordinate legislation

those things do not arise. He further informed the Committee as under:

"Assuming that something has to be done in exercise of the rule making authority of the Government and as an alternative to a formal legislation, then in this particular situation, those rules could only be issued in February, 1973. They also had to be given effect to from a prior date, because with the collapse of the old system which would determine the seniority. Something has to be done with regard to the period from 1959, when this sudden induction of 214 promotees took place. Their seniority had to be fixed *vis-a-vis* direct recruits. It was only on the 16th April, 1974, that the Supreme Court delivered their judgement. So, naturally, the orders, which were issued in 1973 and in pursuance of the earlier judgment of 1972 had to go back to the earlier period. I would submit that there can be no question of anybody being adversely affected for the simple reason that after the collapse of the old seniority rules and the quota system, there were no rights according to anyone. So, unless there was something else which had given them a specific right or seniority, there should be no question of 'adverse effect'."

17. When asked that above explanation of the Ministry should have been given in the form of foot note in the rules, the representative of the Ministry stated as under:

"We did not consider it necessary to do that either. This is a matter which was agitated by both sides before the Supreme Court—not once, but three times—and the Government was merely giving effect to the decisions of the Supreme Court."

18. In reply to a question regarding seniority, the representative of the Ministry stated as under:

"...the question of seniority is a slightly complicated one; it does not depend purely on the length of service. This is all the more so when you have people being appointed to the same service from two to three different sources and the nature of appointments is different.... But what I am saying is that so far as the Income-tax Officers, Class I are concerned, there are at least two channels through which the posts are filled up. One is by direct recruitment and the other is by promotion. The nature of seniority you are thinking of would be of relevance for

each category taken separately. In other words, so far as direct recruits are concerned, a direct recruitment appointed as a result of an earlier examination would rank higher than a direct recruitment appointed after a later examination. But this does not apply when you have to determine the inter se seniority between a direct recruit and a promotee. It is for this purpose that you have all these elaborate rules like that of the quota system, weightage to be given, roster, etc., because it is often contended that, so far as a promotee is concerned, he has got a certain experience as Class II Officer and this experience would render him more valuable to the Government and, therefore, his previous service in Class II should also entitle him to a certain seniority in Class I and so on. This varies from Department to Department and from organisation to organisation and, in this particular case, it was done on the basis of 1:1—which the Supreme Court also considered just and equitable.”

(The witnesses withdrew)

19. The Committee then adjourned to meet again on Monday, the 28th April, 1975.

MINUTES OF THE SEVENTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTH LOK SABHA)

(1974-75)

The Committee met on Monday, the 28th April, 1975 from 15.30 to 16.30 hours.

PRESENT

Dr. Kailas—Chairman

MEMBERS

2. Shri T. Balakrishnaiah
3. Shrimati Premalabai Dajisaheb Chavan
4. Shri Md. Jamilurrahman
5. Shri Kamala Prasad
6. Shri M. S. Sanjeevi Rao

SECRETARIAT

Shri H. G. Paranjpe—Chief Financial Committee Officer.

2. The Committee considered Memoranda Nos. 296 to 310 on the following subjects:

Sl. No.	Memo. No.	Subject
(1)	(2)	(3)
1	296	
2	297	(i) Indian Supply Service (Class I—Recruitment by Competitive Examination) Amendment Rules, 1973 (G.S.R-255 of 1973); and (ii) Indian Inspection Service (Class I—Recruitment by Competitive Examination) Amendment Rules, 1973 (G.S.R. 256 of 1973).

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

(1)	(2)	(3)
3	298	The Lower Division Clerk and Stenotypist (Defence Services) Recruitment (Amendment) Rules, 1973 (S.R.O. 21 of 1973).
4	299	* * *
5	300	The Additional Emoluments (Compulsory Deposit) Bill, 1974 (as introduced in Lok Sabha)—matters to be included in the rule-making clause.
6	301	The Insecticides Rules, 1971 (G.S.R. 1650 of 1971).
7	302	Delay in laying 'Orders—on the Table of Lok Sabha during the Eleventh Session, 1974.
8	303	The Engineering Supervisors (Recruitment) Rules, 1974 (G.S.R. 570 of 1974).
9	304	The Arunachal Pradesh Civil Service (Class I) Rules 1974 (G.S.R. 31-E of 1974).
10	305	Imposition of Tax on Advertisements in St. Thomas Mount-cum-Pallavaram Cantonment (S.R.O. 92 of 1974).
11	306	Implementation of recommendations contained in para 86 of the Fourteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Indian Wireless Telegraph Rules, 1973 (G.S.R. 526 of 1973).
12	307	Implementation of recommendations contained in paras 16-17 of Tenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) <i>re</i> : rules framed under the Salaries and allowances of Ministers Act, 1952.
13	308	Implementation of recommendation contained in para 8 of Sixth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) <i>re</i> : the Cost Accounting Records (Electric Fans) Rules, 1969 (G.S.R. 2298 of 1969).
14	309	Implementation of recommendation contained in para 74 of the Twelfth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) <i>re</i> : University Grants Commission (Terms and Conditions of Service of Employees) Amendment Rules, 1972.
15	310	The Delhi School Education Rules, 1973.

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

(i)

3.

(ii) (a) Indian Supply Service (Class I—Recruitment by Competitive Examination) Amendment Rules, 1973 (G.S.R. 255 of 1973); and

(b) Indian Inspection Service (Class I—Recruitment by Competitive Examination) Amendment Rules, 1973 (G.S.R. 256 of 1973)—(Memorandum No. 297).

4. The Committee considered the above Memorandum and were not satisfied with the reply given by the Department of Supply for deletion of the words "Every such notice may specify the number of vacancies to be filled on the result of the examination." from sub-rule (1) of Rule 3 of the Rules relating to recruitment by competitive examination to Class I of the Indian Supply Service and Indian Inspection Service. They were of the opinion that the information given in the notice for examination about the number of vacancies to be filled as a result of the examination was very vital in so far as the prospective candidates were concerned. They also desired the Ministry/Department, concerned with the examination to intimate to the Union Public Service Commission at least an approximate number of vacancies to be filled as a result of an examination before the Commission issued the Notice of examination.

(iii) The Lower Division Clerk and Steno-typist (Defence Services) Recruitment (Amendment) Rules, 1973 (S.R.O. 21 of 1973)—(Memorandum No. 298).

5. The Committee considered the above Memorandum and were satisfied to note that the Ministry of Defence were taking action for issue of a corrigendum to the above amendment Rules as the Original Rules to which the amendment relates had already been superseded by the Ministry of Defence (Class III posts) Recruitment Rules, 1969. The Committee desired the Ministry to issue the necessary corrigendum at an early date and devise a procedure to avoid such mistakes in future.

(iv)

6. * * *

7. The Committee considered the above memorandum and were 1974 (as introduced in Lok Sabha)—matters to be included in the rule-making clause—(Memorandum No. 300)

7 The Committee considered the above memorandum and were not satisfied with the reasons given by the Ministry of Law for not specifying matters in respect of which the Central Government was empowered to make rules under Clause 24 of the Bill. The Committee felt that either the Section giving rule-making power should enumerate all matters on which rules have to be framed under various sections of the statute and quote the section to which that matter relates or in the alternative, the preamble to the rules should refer not only to the general rule-making power section of the Act but also other sections of the Act under which the rules have been framed.

(vi) The Insecticides Rules, 1971 (G.S.R. 1650 of 1971)—(Memorandum No. 301).

8 The Committee considered the above Memorandum and were satisfied to note that the Ministry of Agriculture and Irrigation (Department of Agriculture) had agreed to amend sub-rule (3) of rule 9 and sub-rule (4) of rule 10 and sub-rule (a) of rule 12 so as to specify the conditions subject to which a licence could be granted. The Committee desired the Ministry to issue the amendment at an early date.

(vii) Delay in laying 'Orders' on the Table of Lok Sabha during the Eleventh Session, 1974. (Memorandum No.—302).

9. The Committee considered the above Memorandum and were not convinced with the reasons given by the Ministries/Departments for delay in laying 29 Orders out of 167 Orders laid on the Table during the Eleventh Session, 1974. They felt that with due care on the part of the Ministry/Department, the delay in most cases could have been avoided. The Committee desired that the Department of Parliamentary Affairs in consultation with the Ministries/Departments of Government of India should devise some procedure to avoid recurrence of such cases in future.

(viii) The Engineering Supervisors (Recruitment) Rules, 1974 (G.S.R. 570 of 1974)—(Memorandum No. 303).

10. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Communications for not specifying in Rule 5(1) the period of training of selected candi-

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

dates. The Committee felt that on the basis of their past experience the Ministry should lay down separate periods of training for direct recruits and departmental candidates. This was necessary to obviate any scope of discriminatory treatment being made between different batches of candidates of the same category.

(B)

11. The Committee were not satisfied with the reasons given by the Ministry of Communications for not specifying in the Rules the maximum limit upto which age for departmental candidates could be relaxed by the Director General, Posts and Telegraphs at his discretion. The Committee felt that either the maximum limit upto which age could be relaxed should be given in the rules or in the alternative the provision for relaxation should be deleted. The Committee further felt that in all cases where the upper age limit was relaxed, the reasons for doing so should be recorded in writing.

(ix) The Arunachal Pradesh Civil Service (Class I) Rules, 1974 (G.S.R. 31-E of 1974)—(Memorandum No. 304).

(A)

12. The Committee were satisfied to note that on being pointed out, the Ministry of Home Affairs had deleted Rule 5(2) of the above Rules which empowered the Administrator to vary the percentage of posts to be filled by each method specified in sub-rule 5(1).

(B)

13. The Committee were not satisfied with the reply of the Ministry of Home Affairs for not making selection through U.P.S.C. for appointment to the Arunachal Pradesh Civil Service (Class I). The Committee desired the Ministry to associate U.P.S.C. for selection to the Service.

(C)

14. The Committee were satisfied to note that on being pointed out, the Ministry of Home Affairs had amended Rule 11 of the above Rules so as to specify therein the nature of inquiry contemplated under that rule and for recording of reasons in writing in cases where a candidate whose name appeared in the list of qualified candidates was not appointed.

(D)

15. The Committee were satisfied to note that on being pointed out the Ministry of Home Affairs had amended Rule 18(2) to provide for reasons to be recorded in writing in cases where the probation period was extended or reduced.

(E)

16. The Committee were not convinced with the reply given by the Ministry of Home Affairs for not giving in the Rules the form of agreement and details regarding training and departmental examination under Rules 19 and 20. The Committee desired the Ministry to provide the above details in the rules in the form of appendices in order to make the rules self-contained.

(F)

17. The Committee were satisfied to note that on being pointed out the Ministry of Home Affairs had amended the proviso to rule 20 so as to spell out considerations on which the Administrator could exempt a person from training or departmental examination.

(x) Imposition of Tax on Advertisements in St. Thomas Mount-cum—Pallavaram Cantonment (S.R.O. 92 of 1974)—(*Memorandum No. 305*).

(A)

18. The Committee considered the above Memorandum and were satisfied with the clarification given by the Ministry of Defence that the intention of para 3(a) of the above Order was that the permission of the Cantonment Executive Officer was essential after the levy of the tax under Section 60 of Cantonment Act, 1924 had been approved by the Central Government. The Committee desired the Ministry to issue necessary amendment in the Order at an early date.

(B)

19. The Committee were satisfied to note that on being pointed out the Ministry of Defence had agreed that the expression 'and no fee be charged in respect of such permission' was superfluous. They desired the Ministry to issue necessary amendment to the Order at an early date.

(xi) Implementation of recommendations contained in para 86 of the Fourteenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Indian Wireless Telegraph Rules 1973 (*G.S.R. 526 of 1973*)—(*Memorandum No. 306*).

20. The Committee considered the above Memorandum and were satisfied to note that the Ministry of Communications had agreed to amend the Indian Wireless Telegraph Rules, 1973 as recommended by the Committee in Para 86 of their Fourteenth Report

(Fifth Lok Sabha). The Committee desired the Ministry to issue the amendments at an early date.

- (xii) Implementation of recommendations contained in paras 16-17 of Tenth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding rules framed under the Salaries and Allowances of Ministers Act, 1952—(Memorandum No. 307).

21. The Committee considered the above Memorandum and noted with satisfaction that the Ministry of Home Affairs had accepted in principle their recommendation made in para 15 of Second Report (First Lok Sabha) and reiterated in para 15 of their Third Report (First Lok Sabha) as also in para 17 of their Tenth Report (Fifth Lok Sabha), namely, the rules framed by the subordinate authority under the Salaries and Allowances of Ministers Act, 1952 should be operative only after an affirmative vote of the House has been obtained. The Committee desired the Ministry to take early action for amendment of the Act accordingly.

- (xiii) Implementation of recommendation contained in para 8 of Sixth Report of Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Cost Accounting Records (Electric Fans) Rules, 1969 (G.S.R. 2298 of 1969)—(Memorandum No. 308).

22. The Committee considered the above Memorandum and felt that had the position been clarified earlier by the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) the Committee would not have commented upon the Rules as done by them in para 8 of Sixth Report (Fifth Lok Sabha). In view of the position now explained by the Ministry, the Committee decided not to pursue the matter further.

- (xiv) Implementation of recommendation contained in para 74 of the Twelfth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) re: University Grants Commission (Terms and Conditions of Service of Employees) Amending Rules, 1972—(Memorandum No. 309).

23. The Committee considered the above Memorandum and were surprised to note that the Ministry of Education and Social Welfare (Department of Education) were asking for extension of time by another six months for implementing the recommendation of the Committee made in May 1974 and accepted by the Ministry in August, 1974. The Ministry had already taken one year which was an unduly long period for implementing the recommendation.

24. With a view to ensure speedy implementation of their recommendations, the Committee decided to fix a time-limit of six months within which the Ministries|Departments should implement the recommendations of the Committee. If in any particular case, it was not possible for any Ministry|Department to adhere to this time-limit, they should ask for extension of time from the Committee after explaining the difficulties in implementing the recommendation within the prescribed time-limit.

25. As an exceptional case, the Committee agreed to grant extension to the Ministry of Education and Social Welfare upto end of September, 1975 for implementing the recommendation made in para 74 of their Twelfth Report (Fifth Lok Sabha).

(xv) *The Delhi School Education Rules, 1973—(Memorandum No. 310) .*

(A)

26. The Committee considered the above Memorandum and were satisfied to note that on being pointed out, the Ministry of Education and Social Welfare (Department of Education) had agreed to amend sub-rule (2) of Rule 24 of the above Rules so as to provide one-third of the total membership of the Curriculum Committee as quorum for its meetings. The Committee desired the Ministry to amend the rule accordingly at an early date.

(B)

27. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Education and Social Welfare (Department of Education) that the instructions which might be issued by the Director of Education under Rule 64, 69(a), 77(3) 86, 100 (c), 144, 149(2) and 150(2) were of executive nature and need not be published or laid on the Table in the absence of any legal requirement on that behalf. The Committee noted that the Delhi School Education Act, 1973 did not empower the Director to issue instructions on any matter. The Act required rules to be framed in respect of matters which were sought to be covered by the instructions to be issued under the Rules. The Committee, therefore, desired the Ministry to delete Rules which empowered the Director to issue instructions. In case it was considered necessary to empower the Director to issue instructions on any matter necessary amendment should be made in the Act. Till such time as the Act was amended, the matters sought to be covered by the instructions should be provided in the rules which are published in the Gazette and are also required to be laid before Parliament.

(C)

28. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry that Rule 115(4) applied only in those cases where a further inquiry was decided to be made in consideration of the circumstances of the case, as for example, when the order of dismissal or removal from service was set aside on a technical ground. The Committee desired that as recommended by them in para 59 of Fifteenth Report (Fifth Lok Sabha) in respect of a similar provision contained in the Coir Board Services (Classification Control and Appeal) Bye-laws, 1969, Rule 115(4) of the above rule should be amended to make it clear that action under it would be taken only when the Court passed an order on purely technical grounds without going into the merits of the case at all.

29. The Committee considered the matter from another angle also. The legal effect of setting aside by a court of law of an order of dismissal or removal or compulsory retirement of an employee was that the order was illegal ab initio and of no effect at all. Consequently the employee would be deemed to be in service continuously and as such the making of the suspension order under the rule effective from the date of the original order of dismissal etc. would appear to be inequitable. If the concerned authority wishes to hold a further inquiry under the rule, a fresh order of suspension should be passed which would be effective from the date of passing of that order and not from an earlier date. The Committee desired the Ministry of Education and Social Welfare to examine this aspect of the matter.

The Committee then adjourned to meet again on Tuesday, the 6th May, 1975 at 10.30 hours.

LXXVI

MINUTES OF THE SEVENTY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA)

The Committee met on Tuesday, the 6th May, 1975 from 15.30 to 16.00 hours.

PRESENT

Dr. Kailas—Chairman

MEMBERS

- 2. Shri K. Chikkalingaiah**
- 3. Shrimati Premalabai Dajisaheb Chavan**
- 4. Shri Md. Jamilurrahman**
- 5. Shri Kamala Prasad**
- 6. Shri Mohan Swarup**
- 7. Shri M.S. Sanjeevi Rao**
- 8. Shri R.R. Sharma**

SECRETARIAT

Shri H. G. Paranjpe—Chief Financial Committee Officer—

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

3. The Committee authorised the Chairman to make changes of a verbal/minor character.

4. The Committee authorised the Chairman and in his absence Shri M.S. Sanjeevi Rao, M.P. to present the Sixteenth Report to the House on their behalf on the 9th May, 1975.

The Committee then adjourned to meet again on the 16th and 17th May, 1975.