

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(FIFTH LOK SABHA)

(Presented on the 7th January, 1976)

SEVENTEENTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

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

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION
(1975-76)**

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SECRETARIAT

Shri P. K. Patnaik—*Additional Secretary.*

Shri Y. Sahai—*Chief Legislative Committee Officer.*

REPORT

I

INTRODUCTION

1. The Chairman of the Committee on Subordinate Legislation having been authorised to present the Report on their behalf, present this their Seventeenth Report.

2. The Committee have held four sittings—on the 30th August, 5th December, 1974, 17th July and 6th October, 1975.

3. The Committee considered and adopted this Report at their sitting held on the 6th October, 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 EMERGENCY RISKS (UNDERTAKINGS) INSURANCE SCHEME, 1971 (S.O. 5486 OF 1971)

5. Para 20 of the Emergency Risks (Undertakings) Insurance Scheme, 1971 reads as follows:—

“Persons authorised for certain purposes of the Act.—The Central Government may authorise *any person* under section 8 of the Act to obtain any information and to do any other thing as provided for in the said section, and every person who is liable to take out, or who has taken out, a policy of insurance under this scheme shall at all times provide and cause to be provided all reasonable facilities to the person so authorised for enabling him to discharge his duties in pursuance of or in relation to this Scheme”.

6. The term ‘any person’ used in above para appeared to be vague as it did not lay down the minimum rank of officer who could be empowered to exercise powers under the scheme.

7. The Ministry of Finance (Department of Revenue and Insurance), to whom the matter was referred, have stated as under:—

“Para 20 of the Emergency Risks (Undertakings) Insurance Scheme has been framed in pursuance of, and to follow closely, section 8 of the Emergency Risks (Undertakings) Insurance Act, 1971. The words ‘any person’ which are contained in the section are, therefore, used also in the Scheme.

Though it would seem as if the Scheme gives very wide powers to the Central Government to designate the officers empowered to exercise the powers vested under the section, Government has exercised these powers only by a notification issued under that section. The objective behind the suggestion that the names of officers should be specified in the Scheme itself is, therefore, substantially already met in view of the persons being specified by a notification. In other words, the scheme and the notification when read together would seem to meet the suggestion of the Committee on Subordinate Legislation.”

8. The Committee are not satisfied with the above reply of the Ministry of Finance (Department of Revenue and Insurance). They note that section 8 of the Act gives very wide powers to the ‘authorised’ person in the matter of calling for information, inspection of books and other documents. It also empowers him to enter any premises comprising or containing the property and inspect such premises, etc. The Committee desire that the Ministry of Finance (Department of Revenue and Insurance) should amend the Emergency Risks (Undertakings) Insurance Scheme so as to indicate therein the minimum rank of officers to be authorised to exercise the powers under para 20 of the Scheme. The Committee would in this connection like to draw the attention of the Ministry of Finance (Department of Revenue and Insurance) to sections 133 and 134 of the Income-tax Act, 1961, under which an officer of the rank of at least an Income-tax Officer has been empowered to call for information, inspect registers of companies, etc.

III

THE SENIOR HINDI OFFICER (CLASS I GAZETTED) MINISTRY
OF HOME AFFAIRS RECRUITMENT RULES, 1972 (G.S.R.
1164 OF 1972).

9. Under the Heading ‘circumstances in which Union Public Service Commission is to be consulted in making recruitment’ in

Column 13 of the Scheduled to the above Rules, it is stated that it will be as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958'. Similar provision exists in several other Rules* also. This entry did not appear to be correct as the Union Public Service Commission (Exemption from Consultation) Regulations enumerate only those matters in regard to which Government are exempted from consulting the Union Public Service Commission.

10. The Ministry of Home Affairs, with whom the matter was taken up, in their reply dated the 21st June, 1973, stated as under:—

"...recruitment rules for the post of Senior Hindi Officer were finalised in consultation with the Department of Personnel and Administrative Reforms. The suggestion of the Lok Sabha Secretariat as regards the amendment of the entry under Col. 13 of the Schedule has been examined in consultation with the Department of Personnel and Administrative Reforms. It may be stated that the U.P.S.C. (Exemption from Consultation) Regulations, 1958, relate to matters in respect of which it is not necessary for the Government to consult the U.P.S.C. This implies that in other matters which are not covered by these Regulations, the Commission have to be consulted. Since Col. 13 refers to the circumstances in which the U.P.S.C. is to be consulted in making recruitment, it is clear that in respect of matters which are not covered by the Regulations of 1958 the consultation with the Commission is necessary. It is to cover such contingencies that the entry under Col. 13 of the Schedule of the recruitment rules for the post of Senior Hindi Officer has been made. This Ministry, therefore, are of the opinion that entry under Col. 13 does not need any amendment."

11. In a further reply dated the 23rd February, 1974 the Ministry stated as under:—

"The suggestion of the Lok Sabha Secretariat regarding the amendment of the entry under Column 13 of the Schedule has again been examined in consultation with the Department of Personnel and Administrative Reforms, Ministry of Law and the Union Public Service Commission. The U.P.S.C. have stated that the old entry under Column 13 i.e. "As required under the rules" was vague since there were no rules as such under which the consultation is required to be made and what was intended to

be referred to, was the U.P.S.C. (Exemption from Consultation) Regulations. As such it was decided by the U.P.S.C. in consultation with the Ministry of Law that the entry under Column 13 should read as 'As required under the U.P.S.C. (Exemption from Consultation) Regulations, 1958'.

The matter is still under examination in consultation with the Ministry of Law, Department of Personnel and the Union Public Service Commission. A further communication will follow when the matter is finalised".

12. The Ministry of Home Affairs who were requested to send the opinion of the Ministry of Law on the subject have on 16-3-74 stated as under:—

"..... opinion of the Ministry of Law has been obtained regarding the entry under Column 13 of the Schedule, which is reproduced below:

"The objection raised by the Committee on Subordinate Legislation *has some validity* because the expression "as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958" is not an accurate one. The said regulation does not *require* consultation with the Commission; on the contrary, it provides for the cases in which consultation with the Commission is not necessary. The said regulation is, therefore, of a negative character. Since there is no regulation which positively specifies the cases in relation to which the Commission is to be consulted, the proposition can be put only in the negative form, and that is exactly what has been done: The intention having been clearly expressed, no amendment in the entry in the said column appears to be necessary'....."

13. The Committee note that the Ministry of Law have seen the validity of the objection raised by the Committee that the expression 'as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958' in Column 13 of the Schedule is not an accurate one in that the said Regulation does not require consultation with the Commission. On the contrary, it provides for cases where consultation with the Commission is not necessary. Even so, the Ministry of Law have pleaded for the retention of this expression in Column 13 of the Schedule, as there is no other regulation which positively specifies the cases in which the Commission is to be consulted. The Committee can hardly accept this explanation. They feel that it should not be difficult for the De-

partment of Personnel and Administrative Reforms to devise, in consultation with the Ministry of Law and the U.P.S.C., some formula to precisely indicate the cases in which the U.P.S.C. is to be consulted. The Committee will like the Department of Personnel and Administrative Reforms to take early action in the matter as the expression objected to in this case occurs in a large number of Recruitment Rules.

IV

THE INDIAN ECONOMIC SERVICE (NINTH AMENDMENT) RULES, 1974 (G.S.R. 113 OF 1974)

14. The preamble to above rules reads as follows:

"In exercise of the powers conferred by the proviso to article 309 of the Constitution *and all other powers enabling him in that behalf*, the President hereby makes the following rules further to amend....."

15. Normally, the preamble to recruitment rules reads as under:

"In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules to amend....."

16. The Cabinet Secretariat (Department of Personnel and Administrative Reforms) who were asked to state the reasons for deviating from the normal practice in the above case, have stated as under:

"...all amendments to the Indian Economic Service Rules are vetted by the Ministry of Law, Justice and Company Affairs (Legislative Department) before issue. As this amendment was also vetted by them before issue, that Ministry were requested for their comments. The Ministry have given their opinion *vide* copy of their note reproduced below:—

"The Rules have been issued by the President in exercise of the powers conferred by the proviso to article 309 of the Constitution and this expression has been used in the principal rules as well as in all the amendment rules issued so far.

It is now well settled that the omission to include a reference to the Section under which a rule or notification is made or issued will not affect the validity of the rule or notification so long as the power to make such

a rule or issue a notification is contained in the Act. A rule or notification may sometimes have to provide for certain matters which will not be relatable to the power under which the rule or notification is proposed to be made or issued. The authority making the rule or issuing the notification may have power to provide such matters under a different provision in the same law or under a different law. In such a case, the legislative practice has been that instead of enumerating all the powers, which in certain cases may not be exhaustive, the aforesaid expression is used to relate to all the powers which the rule making authority may have in making in such provisions. For instance, in certain service rules, provisions may have to be made affecting the Indian Audit and Accounts Service so as to attract article 148 of the Constitution incidentally.

An argument may, however, be raised that in view of the said law referred to above, there may not be any necessity to include this expression at all. It may be mentioned that this is only to shut out even any preliminary objection that may be possibly raised in a court of law that certain provision included in a rule or notification are not relatable to the power enumerated in the rule or notification.

In the circumstances mentioned above, it is necessary that this expression should be included in the preamble to all the amendment rules that may be made to the Indian Economic Service Rules. This may be brought to the notice of the Committee on Subordinate Legislation.'

This Department feels that in view of the position stated by the Legislative Department, it would be necessary to continue using the existing phraseology in the preamble to the notifications containing amendment to the Rules."

17. In their previous Reports, the Committee have repeatedly emphasised the need for citation of precise statutory authority in the preamble to the Rules. The above reply of Government indicates that neither the Department of Personnel and Administrative Reforms nor the Ministry of Law have appreciated the purport of the aforesaid recommendation of the Committee. It has inter alia been argued by the Ministry of Law that non-citation of the precise statutory authority does not affect the validity of a rule. The Committee

will like to make it clear that they have not made the above recommendation on considerations of validity. The purpose underlying the said recommendation is to enable one to know whether the rules have due legal backing, and do not go beyond the scope of the parent law. The words "and all other powers enabling him in that behalf" used in the preamble to rules, as in the instant case, keep a person aguessing as to what 'other powers' are. The Committee are of the view that if there are other provisions under which the rules have been framed, those provisions should also be mentioned in the preamble, as has been done by Government in a number of recruitment rules. The Committee desire the Department of Personnel and Administrative Reforms to amend the preamble to the rules in question so as to mention therein all the constitutional or statutory provisions under which the rules have been framed. The Committee further desire the Department of Personnel and Administrative Reforms to issue necessary instructions to all Ministries/Departments of Government in this regard.

V

THE MOTOR CARS (DISTRIBUTION AND SALE) CONTROL (2ND AMENDMENT) ORDER, 1974 (S.O. 163-E OF 1974)

18. Clause 7A of the Motor Cars (Distribution and Sale) Control Order, as substituted by above amending Order, reads as under:—

"7A. Restrictions on purchase of a new motor car.—No person who has purchased a new motor car shall be permitted to purchase another new motor car until two years have elapsed from the date of purchase of the said motor car, except under a permit in writing from the Controller or, in a State, an officer appointed for the purpose by the Government of that State:

Provided that where a purchaser is a company, association or other body of persons, whether incorporated or not, the Controller or the officer so appointed may, having regard to the nature of its business or functions or any other circumstances by order in writing stating the reasons therefor, authorise the purchase of such number of new motor cars in any calendar year as he may fix."

19. It was felt that while permitting an individual to purchase new motor car before the specified period of 2 years, the reasons for

granting the permission should be recorded in writing by the controlling officer as has been provided for in the case of a company where the controlling officer has to record the reasons in writing for authorising the purchase of such number of new motor cars as he may fix.

20. The Ministry of Industry and Civil Supplies (Department of Heavy Industry), to whom the matter was referred, have stated as under:

".....the matter has been considered in this Ministry. It is felt that in view of the recent amendment to the Motor Cars (Distribution and Sale) Control Order, 1959 excluding the Ambassador and Standard Gazel Cars from its purview, it is not necessary to amend further the Motor Cars (Distribution and Sale) Control Order, 1959 particularly when the number of applications for allotment of Premier President cars are fast receding."

21. The Committee are not convinced by the argument advanced by the Ministry of Industry and Civil Supplies (Department of Heavy Industry) that in view of the recent amendment to the Motor Cars (Distribution and Sale) Control Order excluding the Ambassador and Standard Gazel cars from its purview, it is not necessary to amend the Order particularly when the number of applications for allotment of Premier President cars are fast receding. They feel that when in the case of a company the reasons for granting permission are required to be recorded in writing, the Department of Heavy Industry should have no difficulty in applying the same principle in the case of individuals. In the opinion of the Committee, such a provision is necessary to guard against the possible abuse of the discretionary powers vested in the officers empowered to issue. Permits for purchase of motor cars before the specified period of two years. They desire that the Ministry of Industry and Civil Supplies (Department of Heavy Industry) should amend the Order in question to the necessary effect at a very early date.

VI

THE COMPENSATION TRIBUNAL ORDER, 1974

(G.S.R. 149-E OF 1974) .

(A)

22. Para 7 of the above Order provides that every memorandum of appeal shall be accompanied by a court fee of Rs. 5.00. Similarly,

para 19 of the Order provides that if an application is presented by any party to the proceedings for examination of any witnesses, the Tribunal may on payment of such expenses and fees, as it considers reasonable, issue summons for the appearance of such witness.

23. The Ministry of Home Affairs were requested to indicate the section of the Defence of India Act which authorised Government to levy such fees.

24. In reply, the Ministry of Home Affairs have stated that, according to the advice given by the Ministry of Law, the above fees were not legally tenable. Steps were, accordingly, being taken to delete above provisions relating fees from the Order.

25. The Committee are happy to note that on being pointed out, the Ministry of Home Affairs have agreed to delete provisions for fees levied under paras 7 and 19 of the Compensation Tribunal Order, 1974, which have been considered by the Ministry of Law as not legally tenable. They desire that the Ministry should issue necessary amendment to this effect at an early date.

(B)

26. The above Order has been framed under Defence of India Rules, 1971. The Defence of India Rules are required to be laid on the Table of Lok Sabha, *vide* Section 35 of the Defence of India Act. It was felt that when the Defence of India Rules are required to be laid on the Table, the Compensation Tribunal Order which had been framed under the Defence of India Rules should also be laid on the Table.

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

“As regards the suggestion that the Compensation Tribunal Order, 1974 should also be laid on the Table of the House, the Ministry of Law have agreed with our view that as Section 35 of the Defence of India Act, 1971 only requires the rules made under the Act to be laid before the Houses of Parliament and it is not, therefore, to lay any orders, either executive or statutory made under the various rules of the Defence of India Rules before the Houses of Parliament.”

28. The Committee are not convinced by the reply of the Ministry of Home Affairs that the Compensation Tribunal Order, 1974, is not required to be laid before Parliament as section 35 of the Defence of India Act, 1971, requires only the rules made under the

Act to be laid before Parliament; and that orders either executive or statutory made under the Defence of India Rules are not required to be laid before Parliament. The Committee are of the view that when the principal rules are required to be laid before Parliament, all statutory orders made under the rules should also be laid on the Table. The Committee note in this connection that in the case of regulations framed under the Rules made under the All India Services Act, 1951, relying on the judgement of Supreme Court in *Narendra Kumar vs. Union of India* (1960, SCR Vol. II. 375), the Ministry of Law had advised the Ministry of Home Affairs that regulations made by the Central Government should be taken to form an integral part of the rules under the All India Services Act, and as such they were required to be laid before Parliament. The Committee, therefore, recommend that all statutory orders made under the Defence of India Rules should also be laid before Parliament.

VII

THE RAILWAY BOARD SECRETARIAT CLERICAL SERVICE (AMENDMENT) RULES, 1974 (G.S.R. 519 OF 1974)

29. Rule 9(3)(b) of the Railway Board Secretariat Clerical Service Rules, 1970, as substituted by above amending rules, provides that substantive appointment to the substantive vacancies shall be made in order of seniority of the temporary officers except when, for reasons to be recorded in writing, a person is not considered fit for substantive appointment in his turn.

30. The Ministry of Railways (Railway Board) were asked to state whether the person who was not considered fit for substantive appointment was informed in writing so that he may make up his deficiencies, have stated as under:—

"The intention behind Rule 9(3)(b) of the Railway Board Secretariat Clerical Service Rules, 1970, as amended under GSR 519 of 1974 is that whenever an officer of the Railway Board Secretariat Clerical Service is not considered fit for substantive appointment to the relevant grade in his turn and the officers junior to him in that grade are found fit for substantive appointment in that grade, the competent authority has to record in its minutes the reason for not finding him fit for substantive appointment in that grade. The competent authority generally makes its assessment with regard to the suitability or otherwise of the officer concerned for substan-

tive appointment by consulting the Confidential Reports of the officer.

As in the Central Secretariat Clerical Service, in this office also it is not the practice to inform the reasons to the person who is not considered fit for substantive appointment."

31. The Committee are not satisfied with the above reply of the Ministry of Railways (Railway Board). They feel that as the competent authority has to record its reasons in writing, the Ministry of Railways should have no objection to communicating the same to the person concerned so that he may make up his deficiency. The Committee, therefore, recommend that the Ministry of Railways (Railway Board) should take early steps to amend the rules in question to the desired effect.

VIII

THE CENTRAL SECRETARIAT SERVICE ASSISTANTS' GRADE (LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION) REGULATIONS, 1974 (G.S.R. 657 OF 1974).

(A)

32. Regulation 4(2) of the above regulations reads as under:

"Fees.—Subject to such exemption or concessions or both, as may be notified in this behalf by the Department of Personnel and Administrative Reforms in the Cabinet Secretariat, from time to time, he shall pay the fees prescribed by the Institute."

33. It was felt that the amount of fee which a candidate has to pay should be mentioned in the regulations in order to make them self-contained and for the information of all concerned.

34. The Department of Personnel and Administrative Reforms to whom the matter was referred have proposed to substitute the said regulation as under:

"4(2). Fees.—He shall pay such fees as may be prescribed from time to time by the Institute provided that candidates belonging to the categories indicated below shall be required to pay such fees as indicated against each:—

- | | |
|---|---|
| (i) Candidates belonging to Scheduled Castes and Scheduled Tribes | One-fourth of the fees prescribed by the Institute from time to time. |
|---|---|

- (ii) Candidates belonging to various classes or category of persons notified from time to time by the Government for exemption or concessions or both in fees. Such proportion of the fees subject to such conditions etc. as may be prescribed in the orders issued by the Government from time to time."

35. The Committee are not satisfied with the amendment to Regulation 4(2) proposed by the Cabinet Secretariat (Department of Personnel and Administrative Reforms). They observe that the proposed amendment does not indicate the precise amount of fee to be paid by a candidate under Regulation 4(2). The Committee, therefore, desire that the Department of Personnel and Administrative Reforms should amend the regulations so as to mention therein the precise amount of fee which a candidate has to pay.

36. Regulation 8 of the above regulations reads as under:—

"Selection—Success in the examination confers no right to selection unless the Central Government is satisfied, after such enquiry as may be considered necessary, that the candidate is eligible and suitable in all respects for selections."

37. It was felt that the nature of enquiry referred to in above regulations should be mentioned therein in order to make them self-contained and for the information of all concerned.

38. The Department of Personnel and Administrative Reforms to whom the matter was referred have proposed to substitute the regulation as follows:—

"8. Selection.—(1) Success in the examination confers no right to selection unless the Central Government is satisfied, after such inquiry as may be considered necessary, that the candidate having regard to *his conduct* in service, is suitable in all respects for a selection:

Provided that the decision as to whether a particular candidate recommended for selection by the Institute is not suitable shall be taken in consultation with the Department of Personnel and Administrative Reforms".

39. The Committee note with satisfaction that on being pointed out, the Department of Personnel and Administrative Reforms have agreed to amend regulation 8 of the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, to indicate therein the nature of enquiry to

be conducted thereunder. They desire that the Department of Personnel and Administrative Reforms should issue necessary amendment at an early date.

IX

PRINTING ERRORS IN RULES

(I) THE TELHAN VIKAS NIDESHALAYA (DIRECTORATE OF OIL SEEDS DEVELOPMENT) HYDERABAD (CLASS I AND CLASS II POSTS) RECRUITMENT (SECOND AMENDMENT) RULES, 1974 (G.S.R. 178 OF 1974).

(II) THE INDIAN ECONOMIC SERVICE (FIRST AMENDMENT) RULES, 1974 (G.S.R. 113 OF 1974).

(A)

40. The Telhan Vikas Nideshalaya (Directorate of Oil Seeds Development) Hyderabad (Class I and Class II Posts) Recruitment (Second Amendment) Rules, 1974, which were published in the Gazette of India on 16th February, 1974, provide for the substitution of an entry in column 2 against item No. 12 of the Schedule to the principal rules, viz. the Telhan Vikas Nideshalaya (Directorate of Oil Seeds Development) Hyderabad (Class I and Class II Posts) Recruitment Rules, 1968.

41. It was noticed that the requisite entry which had been substituted was not printed in the Gazette.

42. The Ministry of Agriculture and Irrigation (Department of Agriculture) to whom the matter was referred issued the necessary corrigendum on 15th February, 1975.

(B)

43. In the English version of the amendment to the Indian Economic Service (First Amendment) Rules, 1974, published in the Gazette of India, Part II, Section 3(i), dated 2-2-74 as G.S.R. 113 of 1974, the distinctive number of the amendment had been shown as 'Ninth' in the short title.

44. The Cabinet Secretariat (Department of Personnel and Administrative Reforms) to whom the matter was referred have stated that it was the 'First Amendment' which had been shown as 'Ninth Amendment' due to a typographical error. They issued necessary corrigendum on 21-10-1974.

45. While the Committee note that printing errors in both the cases have since been rectified, they cannot help taking note of the

fact that in one case this was done nearly a year after the publication of the relevant rules, and in the second case more than six months after such publication. In both the cases, the Departments concerned had not taken any action till the errors were pointed out by the Committee. The Committee are not happy over such state of affairs. The Committee will like to reiterate their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha) that the responsibility of a Ministry|Department should not cease with the sending of a notification to the Press. After the rules|regulations, etc. have been published in the Gazette, the Ministries|Departments concerned should take immediate steps to examine whether the same have been correctly printed, and if necessary, to issue corrigendum thereto. The Committee trust that this recommendation will be strictly complied with by the Ministries|Departments of Government of India in future.

X

THE AMBALA CANTONMENT (REGULATION OF REGISTRATION AND CLASSIFICATION OF CONTRACTORS) BYE-LAWS, 1974 (S.R.O. 85 OF 1974)

46. Bye-law 5 of the above bye-laws provides that persons seeking to be registered as approved contractors of the Cantonment Board, Ambala, have to pay a registration fee of Rs. 100/- for class A category and Rs. 50 for class B.

47. There is no provision in the Cantonments Act, 1924, under which the above bye-laws have been framed, authorising Cantonment Boards to levy such a registration fee. There is also no provision in the above bye-laws for the refund of fee in case the Contractor's name is removed from the list of approved contractors or in the event of his death. In a similar case regarding bye-laws for regulating the registration and classification of contractors in the Morar Cantonment (S.R.O. 128 of 1969), the Committee in para 75 of their Eighth Report (Fifth Lok Sabha) had noted that on being pointed out the Ministry of Defence had decided to amend the bye-laws so as to indicate that the amount of Rs. 100/- and Rs. 50/- required to be deposited by Class A and Class B contractors with the Cantonment Board were deposits, which were refundable and not fees as mentioned in the bye-laws.

48. Bye-law 7(ii) of the above bye-laws provides that before commencing the work awarded to the tenderer, the successful tenderer shall be required to furnish to the Cantonment Board a

cash deposit equal to 5 per cent of the estimated cost of works towards security for proper performance of the contract.

49. There is no provision in the bye-law to indicate that security deposit would be refunded to the tenderer after the successful completion of the work.

50. The Ministry of Defence with whom the matter was taken up, have stated as under:

“.....this Ministry has *prima facie* no objection to amend the bye-laws in question as suggested by the Committee on Subordinate Legislation and the matter is one to be decided by the Cantonment Board. The matter has been remitted to the Cantonment Board for their consideration. After the amendments to bye-laws as approved by the Board are received, a long drawn out process involving compliance with statutory requirements like publication of the draft bye-laws for inviting objections/suggestions from the public after scrutiny by the Ministry of Law, consideration of the objections and suggestions received and final publication of the bye-laws bilingually in the official gazette, will have to be gone through. The Director, Military Lands and Cantonments has been advised to request the Cantonment Board Ambala to consider the proposed amendments to the bye-laws and forward draft amendment bye-laws to this Ministry”.

51. The Committee note with satisfaction that on being pointed out, the Ministry of Defence have agreed to amend the Ambala Cantonment (Regulation of Registration and Classification of Contractors) Bye-Laws, 1974, to indicate therein that the registration amount of Rs. 100 and Rs. 50 required to be deposited by Class A and Class B contractors respectively with the Cantonment Board are deposits, which are refundable, and not fees as now mentioned in the bye-laws. They further note that the Ministry have also agreed to make a provision in the bye-laws to indicate that a cash deposit of 5 per cent of the estimated cost of works deposited by a tenderer towards security for proper performance of the contract under bye-law 7(ii) will be refundable to the tenderer, after the successful completion of the work. The Committee desire the Ministry of Defence to issue necessary amendments to the above effect at an early date.

XI

THE VICTORIA MEMORIAL (SECOND AMENDMENT) RULES,
1973

(G.S.R. 46 of 1974).

52. Rule 7 of the Victoria Memorial Rules, as substituted by above amending rules, provides that the Trustee who is elected to preside in the absence of Governor shall have a deliberative and casting vote at a meeting of the Trustees.

53. The Victoria Memorial Act, 1903, under which above rules have been framed, does not authorise the Trustee elected to preside to have a casting vote. It was, therefore, felt that this power should be authorised by the Act.

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

"It is true that the provision in the Victoria Memorial Act is limited in the sense that it merely provides that all acts done by a majority of those present and voting at a meeting of the Trustees and all acts done in pursuance of a majority decision of the Trustees shall be deemed to be the acts of the Trustees. The Act, however, does not provide, as stated in Rule 7, that the Governor of West Bengal or in his absence the Trustee elected to preside shall have a deliberative and casting vote at the meeting of the Trustees. Ordinarily, the provision, as contained in Rule 7, should not be objectionable as it is not inconsistent with the provisions of the Act. However, a view can be taken that as there is no positive provision in the Act itself regarding the casting vote of the Trustee presiding at a meeting, it may be advisable to make a provision as contained in Rule 7 in Section (2) (iii) of the Act itself. On the other hand, it can also be contended that Rule 7 deals with a matter of detail regarding the procedure for the meetings of the Trustees and that the Central Government has power to provide for such a rule under sub-section (1) of Section 5, read with clause (b) of sub-section (2) of that section which provides for the rules to be framed for the procedure of the meetings of the Trustees. Rule 7 appears to have been provided to cover a contingency when there may be an equality of votes at a meeting.

In this connection, it may be mentioned that although the Act provides that the decision taken by the Trustees

should be by a majority of those present and voting at a meeting of the Trustees, it is hardly ever that in actual practice a resort is made to voting. Almost invariably the decisions of the Trustees are made unanimously. As such, Rule 7, more or less, remains inoperative.

It is also relevant here to mention that the original Rules were framed in 1903. These were amended in 1972 to substitute the words "The President" by the words "The Minister-in-charge of the Union Ministry concerned with matters relating to the Victoria Memorial". In 1973, the words "the Minister-in-charge of the Union Ministry concerned with matters relating to the Victoria Memorial" were substituted by the words "The Governor of West Bengal". Though the whole rule was substituted for facility of reference, in effect, the amendment was only to substitute the words "Governor of West Bengal".

If, however, it is still felt that this Rule is not authorised by the Act, this Department would be agreeable to omit Rule 7 from the Victoria Memorial (Second Amendment) Rules, 1973, and this would obviate the necessity of amending the Act. ** ***.

55. The Committee note that there is no positive provision in the Victoria Memorial Act, 1903, regarding the casting vote of the Trustee presiding at a meeting. The Committee, therefore, desire the Department of Culture to delete Rule 7 of the Victoria Memorial Rules, as the same is not authorised by the parent Act.

XII

THE MICA MINES LABOUR WELFARE FUND ORGANISATION (CLASS I AND II POSTS) RECRUITMENT (AMENDMENT) RULES, 1974 (G.S.R. 30 OF 1974)

56. In Col. 11 of the Schedule to the above rules, the method of recruitment has been shown as "by promotion or transfer on deputation (the selection being made in consultation with the Union Public Service Commission) failing which by direct recruitment".

57. As worded, it gave an impression that selection by promotion or transfer would be made in consultation with Union Public Service Commission whereas the direct recruitment will be made without the consultation of Union Public Service Commission.

58. The Ministry of Labour to whom the matter was referred for amending the rules so as not to give such an impression, have stated

that there is no necessity to make any amendment to rules in view of following advice of the Union Public Service Commission:—

“.....the working of the method of recruitment for the posts of Secretary, Mica Mines Labour Welfare Organisation Andhra Pradesh and Rajasthan, namely 'by promotion or transfer on deputation (selection being made in consultation with the Union Public Service Commission), failing which by direct recruitment' was prescribed by the Commission for the reason that there was no adequate field for providing promotion as the prior method of recruitment for the post. A composite field consisting of deputationists and the departmental candidates was found suitable for appointment to the post, it was to be treated as having been filled by promotion. The field for promotion being inadequate it was necessary to stipulate that the selection from the composite field had to be made in consultation with the Commission and hence the entry selection being made in consultation with the Union Public Service Commission was incorporated in the Rules. As regards the point that there will be an impression that 'direct recruitment' will be made without consultation of the Union Public Service Commission, I am to state that direct recruitment is always done through the Union Public Service Commission and there is, therefore, no necessity to stipulate that direct recruitment will be made by the Commission.

In view of the position explained above, there is no necessity to make any amendment to the approved rules.”

59. The Committee are not satisfied with the argument advanced by the Ministry of Labour that as direct recruitment is always done through the Union Public Service Commission, there is no necessity to stipulate in the rules that direct recruitment will be made by the Union Public Service Commission. The Committee are of the view that the language of the rules should be such as not to give a wrong impression on the mind of the general public.

60. The Committee, therefore, desire the Ministry of Labour to amend Col. 11 of the Schedule to the Mica Mines Labour Welfare Fund Organisation (Class I & II Posts) Recruitment Rules so as not to give an impression that direct recruitment could be made without the consultation of Union Public Service Commission. They also desire that the Ministry of Law, Justice and Company Affairs (Legislative Department) while vetting such rules in future should

ensure that the rules, as drafted, clearly spell out the intention of Government and do not give a wrong impression.

XIII

THE NATIONAL SAVINGS CERTIFICATES (IV ISSUE) RULES, 1970 (G.S.R. 319 OF 1974)

61. Rules 11(2), 12(1), 13(2)(b), 15(1) and 16(3) of the National Savings Certificates (IV Issue) Rules, 1970, empower the Director General of Posts and Telegraphs to lay down certain forms.

62. Apart from the fact that there was no specific provision in the Act authorising laying down of forms by the Director General, Posts and Telegraphs, it was felt that the Rules should, as far as possible, be self-contained and the different forms referred to therein appended thereto.

63. The Ministry of Finance (Department of Economic Affairs) to whom the matter was referred, have stated as under:—

“While the views expressed.....are correct from a strict legal point of view, it is felt that only the forms which are mentioned in the Government Savings Certificates Act, 1959 (No. 46 of 1959) have got statutory force and importance. These forms are already appended to the National Savings Certificates (IV Issue) Rules, 1970.

The other forms.....are only the procedural forms, e.g., form of declaration of loss of identify slip, form for transferring a certificate from a post office at which it stands registered to another post office, application form for transfer of the certificate from one person to another etc. These forms are only articles of ‘convenience’ for the purpose of execution of the Act and the notified rules and are not contextually so important that they need necessarily have statutory force. It is only these procedural forms that are laid down by the D.G.P.&T. These forms are common to all the Savings Certificates and accounts. Appending of these forms to the main rules will make them unnecessarily cumbersome since in that event all these forms will have to be appended not only to the National Savings Certificates (IV Issue) Rules, 1970 but to all other rules governing the Savings Certificates and deposits. Even a slight amendment or modification of the forms will in that event require

amendment of statutory rules which are required to be laid on the Table of both Houses of Parliament and it may result in delay in revising the forms if and when required.

It will be appreciated if the position is suitably explained to the Committee on Subordinate Legislation. If the Committee still insists upon scrutiny of these forms, the D.G.P.&T. can be requested to supply these forms for being placed before the Committee".

64. The Committee on Subordinate Legislation at their sitting held on the 3rd October, 1973 considered the above reply of the Ministry. Subsequently a set of forms laid down by the D.G.P.&T. was perused by the Committee.

65. After a perusal of the forms devised by the Director General of Posts and Telegraphs under the powers vested in him by rules 11(2), 12(1), 12(2)(b), 15(1) and 16(3) of the National Savings Certificates (IV Issue) Rules, 1970, the Committee are satisfied that these are only of a purely procedural nature of not much importance. The Committee also note that the forms mentioned in the Government Savings Certificates Act, 1959, are already appended to the Rules. They, therefore, agree that the forms in question laid down under the above mentioned rules need not be appended to the rules.

XIV

THE DIRECTORATE GENERAL OF HEALTH SERVICES CHIEF DRAFTSMAN RECRUITMENT (SECOND AMENDMENT) RULES, 1972(G.S.R. 1255 OF 1972)

66. According to their short title, the above rules relate to recruitment of Chief Draftsman in the Directorate General of Health Services but in the Schedule attached to rules, the name of the post is given as Chief Architectural Assistant.

67. The Ministry of Health and Family Planning (Department of Health) with whom the matter was taken up have stated in their reply as under:—

"The recruitment rules for the post of Chief Draftsman were notified vide our Notification No. F. 38-32/63-Estt(P), dated the 4th February, 1964. First amendment to the rules was issued on the 9th June, 1964. Thereafter, in 1971, it was considered necessary to re-designate certain posts in the Architectural Wing of the Director General of Health Ser-

vices keeping in view the posts in the Central P.W.D. The posts were accordingly re-designated and thereafter it was considered necessary to amend the recruitments for those posts. For this purpose, three notifications were issued by us in September, 1972 after obtaining the approval of the Department of Personnel and Administrative Reforms and the Union Public Service Commission (in respect of Class II posts). The draft notifications were duly vetted by the Ministry of Law, Justice and Company Affairs.

In the instant case, the post of Chief Draftsman was re-designated as Chief Architectural Assistant. The original schedule attached to this Ministry's notification of the 4th February, 1964, was, therefore, substituted by the new schedule with the designation of the post as 'Chief Architectural Assistant' vide our notification of the 22nd September, 1973 which was vetted by the Ministry of Law, Justice and Company Affairs before issue.

There is thus no ambiguity as pointed out in your O.M. of the 1st August, 1973. However, we are referring our file to the Ministry of Law, Justice and Company Affairs for favour of their advice/opinion in the matter".

68. In their further communication, the Ministry of Health and Family Planning have stated as under:

"The Ministry of Law, Justice and Company Affairs, (Legislative Department) have now advised that the short title of the Dte. G.H.S. Chief Draftsman Recruitment Rules, 1964 notified with this Ministry's Notification No. F 38-32/63-Ests. (P) dated the 4th February, 1964, be amended to read as D.G.H.S. Chief Architectural Assistant Recruitment Rules, 1964. Action is being taken to make the amendment proposed by the Law Ministry. A copy of the notification will be sent to you when it is issued."

The Ministry have since issued the necessary amendment.

69. The Committee note with satisfaction that on being pointed out, the Ministry of Health and Family Planning (Department of Health) have amended the short title to the Directorate General of Health Services Chief Draftsman Recruitment Rules, 1964, to read as the Directorate General of Health Services (Chief Architectural Assistant) Recruitment Rules, 1964, consequent upon the re-designation of the post of Chief Draftsman as Chief Architectural Assistant vide notification No. A 12018/6/72-Estt. (P), dt. 22-5-1974.

**THE BOMBAY UNREGISTERED DOCK CLEARING AND
FORWARDINGS WORKERS (REGULATION OF EMPLOY-
MENT) SCHEME, 1973 (S.O. 1449 OF 1973)**

(A)

70. According to Clauses 7, 8 and 9 of the Bombay Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1973, the responsibilities and duties of the Board in meeting, the Chairman and the Deputy Chairman will be as laid down respectively in clauses 8, 9 and 10 of the Bombay Dock Workers (Regulation of Employment) Scheme, 1956.

71. Attention of the Ministry of Labour was invited to the recommendation of the Committee made in para 13 of their First Report (Fourth Lok Sabha) that the rules should be self-contained and legislation by reference should be avoided as far as possible.

72. In their reply, the Ministry of Labour have agreed to make clauses, 7, 8 and 9 of the Scheme self-contained.

73. The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to make clauses 7, 8 and 9 of the Bombay Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1973, self-contained by providing therein the responsibilities and duties of the Board in meeting, the Chairman and the Deputy Chairman. They desire that the Ministry of Labour should issue the necessary amendment at an early date.

(B)

74. Clause 19(1) of the above Scheme provides that a worker found medically unfit by Medical Officer is required to deposit fee for examination by the Medical Board.

75. The Dock Workers (Regulation of Employment) Act, 1948, under which the Scheme has been framed does not provide for charging of fees for medical examination.

76. On the matter being taken up with the Ministry of Labour, they have agreed to delete the provision regarding charging of fees for re-medical examination from clause 19(1) of the Scheme.

77. The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to delete the provision regarding charging of fees for re-examination by the Medical Board from clause 19(1) of the above Scheme as it is not authorised by

the Dock Workers (Regulation of Employment) Act under which the Scheme has been framed. They desire the Ministry of Labour to issue the necessary amendment at an early date.

(C)

78. Clause 25 of the above Scheme reads as under:

"25. Disappointment Money:

When a worker in the reserve pool present himself for work and for any reason the work for which he has attended cannot commence or proceed and no alternative work can be found for him and he is relieved within 2 hours of his attending for work he shall be entitled to disappointment money equal to half the wages rate inclusive of dearness allowance appropriate to the category to which he belongs. A worker detained for more than 2 hours shall be paid full wages inclusive of dearness allowance:

Provided that in the case of a worker who is subject to the piece rate system of wages, under any agreement, with the listed employer the payment, if any, due to him under this clause, shall be reduced by the amount of the idle time payment made, if any, under such agreement, in respect of the same period.

Explanation: The 'wage rate' inclusive of 'dearness allowance' or 'full wages inclusive of dearness allowance' in respect of workers subject to piece rates under any agreement with the listed employer shall be the same as the 'daily wage rate' thereunder".

79. The Ministry of Labour were requested to give the genesis of the proviso to the above clause. In their reply, the Ministry have stated that the proviso is proposed to be deleted from the scheme, as it is found to be redundant.

80. The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to delete the proviso to clause 25 of the above Scheme regarding reduction of disappointment money paid in case of workers who are subject to the piece rate system of wages. They desire the Ministry of Labour to issue the necessary amendment at an early date.

81. After the declaration of emergency under clause 38(1) of the Scheme, the Chairman is empowered to take action against listed employees or workers under clause 38(2). There is no provision for giving an opportunity of being heard to the persons concerned before action is taken against them.

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

“In order that the employers/workers may have a reasonable opportunity of being heard before any action is taken against them, the following provisions are proposed to be added to change 38(i) and (ii) of the Scheme respectively:—

- (a) Provided that no such removal shall be made except after giving the employer a reasonable opportunity of being heard.
- (b) Provided that no such termination or dismissal shall be made except after giving the worker a reasonable opportunity of being heard.”

83. The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to amend clause 38(1) and (2) of the above Scheme by making a provision for giving of an opportunity of being heard to the persons concerned before action is taken against them. They desire the Ministry of Labour to amend the Scheme at an early date.

XVI

THE DEPARTMENT OF EDUCATION (SENIOR EXHIBITION ASSISTANT) RECRUITMENT RULES, 1973 (G.S.R. 132 OF 1974)

84. Column 7 of the Schedule to the above rules regarding educational and other qualifications required for direct recruits provides that qualifications are relaxable at the discretion of the Union Public Service Commission in case a candidate is otherwise well qualified.

85. From the wording of the above provision it appeared that recruitment to the post of Senior Exhibition Assistant would be made through the Union Public Service Commission. However, there was nothing in rule 5 regarding power to relax to indicate that relaxation would be done in consultation with the Union Public Service Commission. Normally, where the recruitment to a post

is made through Union Public Service Commission, the relaxation provision is also exercised in consultation with the Union Public Service Commission.

86. The Ministry of Education and Social Welfare (Department of Education), with whom the matter was taken up, have stated that they have no objection to amend rule 5 of above rules accordingly.

87. The Committee note with satisfaction that on being pointed out, the Ministry of Education and Social Welfare (Department of Education) have agreed to amend the Department of Education (Senior Exhibition Assistant) Recruitment Rules, 1973, to indicate therein that the power of relaxation under rule 5 thereof will be exercised in consultation with the Union Public Service Commission. They desire the Department of Education to issue the necessary amendment to the above effect at an early date.

XVII

THE KANDLA UNREGISTERED DOCK WORKERS (REGULATION OF EMPLOYMENT) AMENDMENT SCHEME, 1974 (S.O. 811 OF 1974)

88. Clause 14(1) of the Kandla Unregistered Dock Workers (Regulation of Employment) Scheme, as substituted by above amending Order, reads as under:

"14-Medical Examination.—1 (1) a new worker before he is listed, shall undergo free of charge, a medical examination for physical fitness by a Medical Officer nominated by the Chairman for this purpose. A worker found medically unfit by a Medical Officer may apply in writing to the Chairman and simultaneously deposit with him such fees as may be prescribed in this behalf, for examination by a Medical Board. On receipt of such a request, the Chairman shall set up a Medical Board. The decision of Medical Board shall be final and a worker who is declared medically unfit shall not be entitled to listing."

89. The Dock Workers (Regulation of Employment) Act, 1948, under which above Scheme has been framed does not expressly authorise the levy of fee for re-examination by a Medical Board if a worker found medically unfit by the Medical Officer applies in writing to the Chairman for such examination.

90. In this connection, attention of the Ministry of Shipping and Transport was invited to the following recommendation of the

Committee on Subordinate Legislation contained in para 146 of their Twelfth Report (Fifth Lok Sabha):

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

91. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up have stated that action is being taken to amend the Kandla Unregistered Dock Workers (Regulation of Employment) Scheme suitably.

92. The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Kandla Unregistered Dock Workers (Regulation of Employment) Scheme so as to omit therefrom the provision for charging of fee for re-examination by a Medical Board of a worker initially found medically unfit. The Committee desire that the Ministry of Shipping and Transport should take early steps to amend the said Scheme.

XVIII

THE REGISTRAR OF NEWSPAPERS FOR INDIA (JUNIOR STENOGRAPHERS) RECRUITMENT RULES, 1972 (G.S.R. 1196 OF 1972)

93. Rule 4 of the above Rules provides as under:—

"4. Probation:—All persons appointed to the post specified in column 2 of the aforesaid schedule shall be on probation for a period of two years which may be extended at the discretion of the appointing authority."

94. Normally the provision about probation is made only in the Schedule to Recruitment Rules. The Ministry of Information and Broadcasting who were asked to state the reasons for incorporating the provision in Rule 4, *ibid.*, in addition to that given in the Schedule, have replied as under:—

“With reference to the mention of probation in the notification of the rules, it may be mentioned that the rules were notified in consultation with the Ministry of Law. However, this office has no objection in deleting para 4 of the relevant notification relating to the probation, as that will ensure uniformity with other recruitment rules.”

95. The Committee note with satisfaction that on being pointed out, the Ministry of Information and Broadcasting have agreed to delete rule 4 relating to probation with a view to ensure uniformity with other recruitment rules. They desire that the Ministry of Information and Broadcasting should issue the necessary amendment at an early date.

XIX

IMPLEMENTATION OF RECOMMENDATIONS

(i) THE BORDER SECURITY FORCE RULES, 1969 (S.O. 2336 OF 1969) (PARA 45 OF FIRST REPORT—FIFTH LOK SABHA)

96. Rule 170 of the Border Security Force Rules, 1969 provided that a court of inquiry shall consist of an officer as presiding officer and at least two members who may be either officers or subordinate officers or both.

97. In para 45 of their First Report (Fifth Lok Sabha), presented on 10-8-71, the Committee recommended as follows:

“The Committee note that under the Rules in question, there is no bar to the appointment of an officer of the same rank or a rank lower than that of the officer being proceeded against as a member of the court of inquiry. In the opinion of the Committee, it is wrong in principle to appoint a junior officer to go into the conduct of a senior officer, for, apart from the fact that such an inquiry cannot command the confidence it deserves, it is apt to put both the inquiry officer, and the officer being proceeded against in an embarrassing position. The Committee, therefore, reiterate their earlier recommendation made in para 22 of their Sixth Report (Fourth Lok Sabha) that

inquiries should be conducted by an officer who is sufficiently senior to the officer being proceeded against. The Committee desire that Government should amend the rule in question accordingly".

98. In their reply dated 13-7-73, the Ministry of Home Affairs stated that in the case of Border Security Force even though it was initially decided to amend the Border Security Force Rules as recommended by the Committee, certain difficulties in the operation of the rules as proposed to be amended were anticipated. These were being sorted out and it might take a little time for the relevant rules to be amended.

99. In a further reply dated 16-10-1973, the Ministry of Home Affairs have stated as under:

"In so far as the amendment of the Border Security Force Rules, 1969 is concerned, the matter has been reconsidered in all its aspects. The nature of duties performed by the Border Security Force is very much akin to Army and the circumstances under which Courts of Inquiry are ordered are also similar. Rule 177 of the Army Rules, 1954, reads:

"COURTS OF INQUIRY—(1) A Court of Inquiry is an Assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(2) The Court may consist of any number of officers of any rank or of one or more officers or warrant officers or non-commissioned officers. The members of court may belong to any branch or department of the service, according to the nature of the investigation.

(3) A Court of Inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps".

Though Rule 170 of the Border Security Force Rules, 1969 is similar to Rule 177 of the Army Rules, 1954 which has stood the test of time, it has been objected to by the Committee on Subordinate Legislation on the ground that the Rule as it is presently worded leaves the room open for appointment of an officer of the same rank or even of a rank lower than that of the officer being proceeded against

as a member of the Court of Inquiry. In this connection, it may be pointed out that the Court of Inquiry is only a fact finding body. The findings cannot, even in a remote sense, be the basis for awarding any punishment. For taking action against officers, the procedure of 'record of evidence' and following it up with a regular trial or inquiry under Rules 20 and 21 of Border Security Force Rules, has to be followed. The presence of junior officer, if required by exigencies of the situation, therefore, *ipso facto* cannot lead to the consequence of the type mentioned by the Committee in its report.

Moreover, notwithstanding what has been stated above the normal practice when the character and reputation of a person is known to be involved in the incidents sought to be enquired into by the Court of Inquiry only officers senior to such a person are detailed as members except when having due regard to the exigencies of public service such officers are not available as in the case when the Border Security Force units were committed to the border during the recent Indo-Pakistan conflict.

As the Court of Inquiry is only a fact finding body, at the time of ordering such an Inquiry it may not be possible to know the involvement of Supervisory Officers in the incident to be enquired and if the contention of the Committee on Subordinate Legislation is accepted in all cases bringing out facts against the Supervisory Officers the previous Courts of Inquiry may have to be dissolved in each case and fresh Court of Inquiry consisting of officers higher in rank than the senior most supervisory officer who will generally be the Commandant of a Unit, have to be constituted. Looking to the wide area of development of the Force, it may become impossible to collect higher officers at any one place for holding the proceedings of the Court of Inquiry.

Apart from the expense and the weakening of command and control due to frequent absence of senior officers which would result from constituting such Courts of Inquiry, it may be difficult to order Court of Inquiry proceedings freely in order to ascertain facts on account of the difficulties of forming a board of officers having the appropriate ranks. This will tell on the discipline of the force. Even routine enquiries involving administrative matters may be inordinately delayed.

In view of the position explained in the foregoing paragraphs, we feel that for the smooth and effective administration of the Border Security Force, it will not be desirable to move for the amendment of Rule 170 of Border Security Force Rules, 1969".

100. The Committee have given a careful thought to the Ministry's reply. They note that, according to the normal practice followed by the Border Security Force, when the character and reputation of a person are known to be involved in the incidents sought to be enquired into by the Courts of Inquiry, only officers senior to such a person are detailed as members except when having due regard to the exigencies of public service such officers are not available as in the case of a War. The Committee feel that in other cases also, not involving the character and reputation of the officers concerned, courts of inquiry should as far as possible be manned by senior officers. In case, however, in any particular case it is not possible to man the court wholly by senior officers, at least the presiding officer of the court should be sufficiently senior to the officer being proceeded against. The Committee desire that early action should be taken by the Ministry of Home Affairs to amend Rule 170 of the Border Security Force Rules, 1969, to the above effect.

(II) NUMBERING OF AMENDMENTS TO 'ORDERS' (PARA 143 OF FOURTEENTH REPORT—FIFTH LOK SABHA)

101. While examining the 'Orders' of 1973, it was noticed that the Delhi Sikh Gurdwara Management Committee (Registration of Electors) Amendment Rules, 1973 (G.S.Rs 671 and 991 of 1973) did not carry the distinctive amendment number.

102. The Ministry of Home Affairs were asked to state the reasons for not giving the distinctive amendment number to the above 'Orders'.

103. As no reply was received from the Ministry, the Committee in para 143 of their Fourteenth Report (Fifth Lok Sabha) took serious note of the lapse on the part of the Ministry of Home Affairs for not sending any reply and desired them to take necessary action in the matter without further delay.

104. The Ministry of Home Affairs in reply to the above recommendation of the Committee have replied as under:—

"The question of giving numbers to the amendments which were undertaken in 1973 and 1974 to the Delhi Sikh Gur-

dwarda Management Committee (Registration of Electors) Rules, 1973 was examined in consultation with the Ministry of Law so that if they so advise, necessary amendments to give serial numbers could be taken up. The Ministry of Law have advised in the following terms:—

The matter under consideration relates to the question of giving number to the amendments which were undertaken in 1973 and 1974 to the Delhi Sikh Gurdwaras Management Committee (Registration of Electors) Rules, 1973.

In the first instance, out of the three amendments effected, two were in 1973 and one was in 1974. It is never the practice to give the number in the case of the *first amendment*. Further, the numbering is done serially for each year. In view of this, it is not necessary to give any number in respect of the first one for 1973 and the one which is effected in 1974, in other words, the question would arise only in respect of the second amendment effected in 1973.

So far as this is concerned, it may be mentioned that no amendment survives by itself or has a personality and identity of its own.

It merely gets merged with the parent rules and as such there is no question of the amendments made in 1973 and 1974 subsisting now at this stage in respect of which a change can be made at this juncture so as to give number for the amendments.

Therefore, there is no doubt that it is necessary to give the number of the amendment in accordance with the directive of the Committee on Subordinate Legislation. Nothing can be done in this behalf at this stage excepting to ensure that such a thing does not recur in future for which purpose it would be necessary for the administrative Ministry to keep a constant check over the amendments that are being effected from time to time and see that the exact number is inserted before it is published.'

In view of the above, no action is called for."

105. The Committee observe that the Ministry of Home Affairs have failed to give the distinctive number of the amendment in the short title to the rules in question, as recommended by the Committee on Subordinate Legislation in para 44 of their First Report (Third

Lok Sabha). This is not just a solitary instance. In para 141 of their Fourteenth Report (Fifth Lok Sabha), the Committee have commented upon a number of similar cases. The Committee would like to impress the Ministries/Departments to keep a constant check over the amendments to rules that were effected from time to time and ensure that exact number was inserted before it was published so that such errors do not recur. The Committee also desire the Ministry of Law, Justice and Company Affairs (Legislative Department) to issue necessary instructions to all Ministries/Departments in this regard.

DR. KAILAS,

Chairman,

Committee on Subordinate
Legislation.

NEW DELHI;

The 6th October, 1975.

APPENDICES

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 are not satisfied with the reply of the Ministry of Finance (Department of Revenue and Insurance). They note that section 8 of the Emergency Risks (undertakings) Insurance Act, 1971 gives very wide powers to the 'authorised' person in the matter of calling for information, inspection of books and other documents. It also empowers him to enter any premises comprising or containing the property and inspect such premises etc. The Committee desire that the Ministry of Finance (Department of Revenue and Insurance) should amend the Emergency Risks (undertakings) Insurance Scheme so as to indicate therein the minimum rank of officers to be authorised to exercise the powers under para 20 of the Scheme. The Committee would in this connection like to draw the attention of the Ministry of Finance (Department of Revenue and Insurance) to sections 133 and 134 of the Income-tax Act, 1961, under which an officer of the rank of at least an Income-tax Officer has been empowered to call for information, inspect registers of companies, etc.
2	13	The Committee note that the Ministry of Law have seen the validity of the objection raised by the Committee that the expression 'as required under the Union Public Service Commission (Exemption from Consultation) Registrations,

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1958' in Column 13 of the Schedule is not an accurate one in that the said Regulation does not require consultation with the Commission. On the contrary, it provides for cases where consultation with the Commission is not necessary. Even so, the Ministry of Law have pleaded for the retention of this expression in Column 13 of the Schedule, as there is no other regulation which positively specifies the cases in which the Commission is to be consulted. The Committee can hardly accept this explanation. They feel that it should not be difficult for the Department of Personnel and Administrative Reforms to devise, in consultation with the Ministry of Law and the U.P.S.C., some formula to precisely indicate the cases in which the U.P.S.C. is to be consulted. The Committee will like the Department of Personnel and Administrative Reforms to take early action in the matter as the expression objected to in this case occurs in a large number of Recruitment Rules.

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In their previous Reports, the Committee have repeatedly emphasised the need for citation of precise statutory authority in the preamble to the Rules. The reply of Government indicates that neither the Department of Personnel and Administrative Reforms nor the Ministry of Law have appreciated the purport of the aforesaid recommendation of the Committee. It has *inter-alia* been argued by the Ministry of Law that non-citation of the precise statutory authority does not affect the validity of a rule. The Committee will like to make it clear that they have not made the above recommendation on considerations of validity. The purpose underlying the said recommendation is to enable one to know whether the rules have due legal backing, and do not go beyond the scope of the parent law. The words "and all other powers enabling him in that behalf" used in the preamble to rules, as in the instant case, keep a person guessing as to

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what 'other powers' are. The Committee are of the view that if there are other provisions under which the rules have been framed, those provisions should also be mentioned in the preamble, as has been done by Government in a number of recruitment rules. The Committee desire the Department of Personnel and Administrative Reforms to amend the preamble to the rules in question so as to mention therein all the constitutional or statutory provisions under which the rules have been framed. The Committee further desire the Department of Personnel and Administrative Reforms to issue necessary instructions to all Ministries/Departments of Government in this regard.

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The Committee are not convinced by the argument advanced by the Ministry of Industry and Civil Supplies (Department of Heavy Industry) that in view of the recent amendment to the Motor Cars (Distribution and Sale) Control Order excluding the Ambassador and Standard Gazel cars from its purview, it is not necessary to amend the Order particularly when the number of applications for allotment of Premier President cars are fast receding. They feel that when in the case of a company the reasons for granting permission are required to be recorded in writing, the Department of Heavy Industry should have no difficulty in applying the same principle in the case of individuals. In the opinion of the Committee, such a provision is necessary to guard against the possible abuse of the discretionary powers vested in the officers empowered to issue permits for purchase of motor cars before the specified period of two years. They desire that the Ministry of Industry and Civil Supplies (Department of Heavy Industry) should amend the Order of question to the necessary effect at a very early date.

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The Committee are happy to note that on being pointed out, the Ministry of Home Affairs have

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agreed to delete provisions for fees levied under paras 7 and 19 of the Compensation Tribunal Order, 1974, which have been considered by the Ministry of Law as not legally tenable. They desire that the Ministry should issue necessary amendment to this effect at an early date.

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The Committee are not convinced by the reply of the Ministry of Home Affairs that the Compensation Tribunal Order, 1974, is not required to be laid before Parliament as section 35 of the Defence of India Act, 1971 requires only the rules made under the Act to be laid before Parliament; and that orders either executive or statutory made under the Defence of India Rules are not required to be laid before Parliament. The Committee are of the view that when the principal rules are required to be laid before Parliament all statutory orders made under the rules should also be laid on the Table. The Committee note in this connection that in the case of regulations framed under the Rules made under the All India Services Act, 1951, relying on the Judgement of Supreme Court in *Narender Kumar vs. Union of India* (1960, SCR Vol. II, 375), the Ministry of Law had advised the Ministry of Home Affairs that regulations made by the Central Government should be taken to form an integral part of the rules under the All India Services Act, and as such they were required to be laid before Parliament. The Committee, therefore, recommend that all statutory orders made under the Defence of India Rules should also be laid before Parliament.

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The Committee are not satisfied with the reply of the Ministry of Railways (Railway Board). They feel that as the competent authority has to record its reasons in writing, the Ministry of Railways should have no objection to communi-

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cating the same to the person concerned so that he may make up his deficiency. The Committee, therefore, recommend that the Ministry of Railways (Railway Board) should take early steps to amend the rules in question to the desired effect.

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The Committee are not satisfied with the amendment to Regulation 4(2) of the Central Secretariat Service Assistants Grade (Limited Departmental Competitive Examination) Regulations, 1974, as proposed by the Cabinet Secretariat (Department of Personnel and Administrative Reforms). They observe that the proposed amendment does not indicate the precise amount of fee to be paid by a candidate under Regulation 4(2). The Committee, therefore, desire that the Department of Personnel and Administrative Reforms should amend the regulations so as to mention therein the precise amount of fee which a candidate has to pay.

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The Committee note with satisfaction that on being pointed out, the Department of Personnel and Administrative Reforms have agreed to amend regulation 8 of the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, to indicate therein the nature of enquiry to be conducted thereunder. They desire that the Department of Personnel and Administrative Reforms should issue necessary amendment at an early date.

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While the Committee note that printing errors in the case of the Telhan Vikas Nideshalaya (Directorate of Oil Seeds Development) Hyderabad (Class I and Class II posts) Recruitment (Second Amendment) Rules, 1974 and the Indian Economic Service (First Amendment) Rules, 1974 have since been rectified, they cannot help taking note

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of the fact that in one case this was done nearly a year after the publication of the relevant rules, and in the second case more than six months after such publication. In both the cases, the Departments concerned had not taken any action till the errors were pointed out by the Committee. The Committee are not happy over such state of affairs. The Committee will like to re-iterate their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha) that the responsibility of a Ministry/Department should not cease with the sending of a notification to the Press. After the rules/regulations, etc. have been published in the Gazette, the Ministries/Departments concerned should take immediate steps to examine whether the same have been correctly printed, and if necessary, to issue corrigendum thereto. The Committee trust that this recommendation will be strictly complied with by the Ministries/Departments of Government of India in future.

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The Committee note with satisfaction that on being pointed out, the Ministry of Defence have agreed to amend the Ambala Cantonment (Regulation of Registration and Classification of Contractors) Bye Laws, 1974, to indicate therein that the registration amount of Rs. 100/- and Rs. 50/- required to be deposited by Class A and Class B contractors respectively with the Cantonment Board are deposits, which are refundable, and not fees as now mentioned in the bye-laws. They further note that the Ministry have also agreed to make a provision in the bye-laws to indicate that a cash deposit of 5 per cent of the estimated cost of works deposited by a tenderer towards security for proper performance of the contract under bye-law 7(ii) will be refundable to the tenderer, after the successful completion of the work. The Committee desire the Ministry of Defence to issue necessary amendments to the above effect at an early date.

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12	55	<p>The Committee note that there is no positive provision in the Victoria Memorial Act, 1903, regarding the casting vote of the Trustee presiding at a meeting. The Committee, therefore, desire the Department of Culture to delete Rule 7 of the Victoria Memorial Rules, as the same is not authorised by the parent Act.</p>
13	59	<p>The Committee are not satisfied with the argument advanced by the Ministry of Labour that as direct recruitment is always done through the Union Public Service Commission, there is no necessity to stipulate in the rules that direct recruitment will be made by the Union Public Service Commission. The Committee are of the view that the language of the rules should be such as not to give a wrong impression on the mind of the general public.</p>
	60	<p>The Committee, therefore, desire the Ministry of Labour to amend Col. 11 of the Schedule to the Mica Mines Labour Welfare Fund Organisation (Class I & II Posts) Recruitment Rules so as not to give an impression that direct recruitment could be made without the consultation of the Union Public Service Commission. They also desire that the Ministry of Law, Justice and Company Affairs (Legislative Department) while vetting such rules in future should ensure that the rules, as drafted, clearly spell out the intention of Government and do not give a wrong impression.</p>
14	65	<p>After a perusal of the forms devised by the Director General of Posts and Telegraphs under the powers vested in him by rules 11(2), 12(1), 13(2) (b), 15(1) and 16(3) of the National Savings Certificates (IV Issue) Rules, 1970, the Committee are satisfied that these are only of a purely procedural nature of not much importance. The Committee also note that the forms mentioned in the Government Savings Certificates Act, 1959</p>

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are already appended to the Rules. They, therefore, agree that the forms in question laid down under the above mentioned rules need not be appended to the rules.

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The Committee note with satisfaction that on being pointed out, the Ministry of Health and Family Planning (Department of Health) have amended the short title to the Directorate General of Health Services Chief Draftsman Recruitment Rules, 1964, to read as the Directorate General of Health Services (Chief Architectural Assistant) Recruitment Rules, 1964, consequent upon the redesignation of the post of Chief Draftsman as Chief Architectural Assistant, *vide* notification No. A. 129/18/6/72-Estt(P), dt. 22-5-1974.

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The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to make clauses 7, 8 and 9 of the Bombay Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1973, self-contained by providing therein the responsibilities and duties of the Board in meeting, the Chairman and the Deputy Chairman. They desire that the Ministry of Labour should issue the necessary amendment at an early date.

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The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to delete the provision regarding charging of fees for re-examination by the Medical Board from clause 19(1) of the Bombay Unregistered Dock clearing and Forwarding Workers (Regulation of Employment) Scheme, 1973 as it is not authorised by the Dock Workers (Regulation of Employment) Act under which the Scheme has been framed. They desire the Ministry of Labour to issue the necessary amendment at an early date.

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18	80	<p>The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to delete the proviso to clause 25 of the Bombay Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1973 regarding reduction of disappointment money paid in case of workers who are subject to the piece rate system of wages. They desire the Ministry of Labour to issue the necessary amendment at an early date.</p>
19	83	<p>The Committee note with satisfaction that on being pointed out, the Ministry of Labour have agreed to amend clause 38(1) and (2) of the Bombay Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1973 by making a provision for giving of an opportunity of being heard to the persons concerned before action is taken against them. They desire the Ministry of Labour to amend the Scheme at an early date.</p>
20	87	<p>The Committee note with satisfaction that on being pointed out, the Ministry of Education and Social Welfare (Department of Education) have agreed to amend the Department of Education (Senior Exhibition Assistant) Recruitment Rules, 1973, to indicate therein that the power of relaxation under rule 5 thereof will be exercised in consultation with the Union Public Service Commission. They desire the Department of Education to issue the necessary amendment to the above effect at an early date.</p>
21	92	<p>The Committee note with satisfaction that on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend the Kandla Unregistered Dock Workers (Regulation of Employment) Scheme so as to omit therefrom the provision for charging of fee for re-examination by a Medical Board of a worker initially found medically unfit. The Committee</p>

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desire that the Ministry of Shipping and Transport should take early steps to amend the said Scheme.

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The Committee note with satisfaction that on being pointed out, the Ministry of Information and Broadcasting have agreed to delete rule 4 of the Registrar of Newspapers for India (Junior Stenographers) Recruitment Rules, 1972 relating to probation with a view to ensure uniformity with other recruitment rules. They desire that the Ministry of Information and Broadcasting should issue the necessary amendment at an early date.

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The Committee have given a careful thought to the Ministry of Home Affairs reply. They note that, according to the normal practice followed by the Border Security Force, when the character and reputation of a person are known to be involved in the incidents sought to be enquired into by the Courts of Inquiry, only officers senior to such a person are detailed as members except when having due regard to the exigencies of public service such officers are not available as in the case of a War. The Committee feel that in other cases also, not involving the character and reputation of the officers concerned, courts of inquiry should as far as possible be manned by senior officers. In case, however, in any particular case it is not possible to man the court wholly by senior officers, at least the presiding officer of the court should be sufficiently senior to the officer being proceeded against. The Committee desire that early action should be taken by the Ministry of Home Affairs to amend Rule 170 of the Border Security Force Rules 1969 to the above effect.

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The Committee observe that the Ministry of Home Affairs have failed to give the distinctive number of the amendment in the short title to the Delhi Sikh Gurdwara Management Committee (Registration of Electors) Amendment Rules, 1973 as recommended by the Committee on Sub-

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ordinate Legislation in para 44 of their First Report (Third Lok Sabha). This is not just a solitary instance. In para 141 of their Fourteenth Report (Fifth Lok Sabha), the Committee have commented upon a number of similar cases. The Committee would like to impress the Ministries/Departments to keep a constant check over the amendments to rules that were effected from time to time and ensure that the exact number was inserted before it was published so that such errors do not recur. The Committee also desire the Ministry of Law, Justice and Company Affairs (Legislative Department) to issue necessary instructions to all Ministries/Departments in this regard.

APPENDIX II

(Vide para 9 of the Report)

List of Rules in which the heading 'circumstances in which U.P.S.C. is to be consulted in making recruitment' mentions the words' as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1952,

Sl. No.	Name of the 'Order'	Number and date of Order.	Ministry/Department concerned
<hr/>			
1	Department of Personnel and Administrative Reforms Research Officer (Class II) Recruitment Rules, 1973.	G.S.R. 622 16-6-1973	Cabinet Secretariat (Department of Personnel and Administrative Reforms).
2	All India Radio (Class I Posts) Recruitment Amendment Rules, 1973.	G.S.R. 635 16-6-1973	Information and Broadcasting.
3	Central Ground Water Board Junior Geophysicist and Asst. Geophysicist Recruitment Rules, 1973.	G.S.R. 657 23-6-1973	Agriculture (Department of Agriculture).
4	Department of Education, Special Officer (Adult Education) Recruitment Rules, 1973.	G.S.R. 679 30-6-1973	Education and Social Welfare (Department of Education).
5	Ministry of Education and Social Welfare (Department of Education) Project Manager Recruitment Rules, 1973.	G.S.R. 680 30-6-1973	Do.

APPENDIX—III

LXII

MINUTES OF THE SIXTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75)

The Committee met on Friday, the 30th August, 1974 from 10.00 to 11.00 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shri K. Chikkalingaiah
3. Shrimati Premalabai Dajisaheb Chavan
4. Shri Khemchandbhai Chavda
5. Shri Md. Jamilurrahman
6. Shri Dinesh Joardar
7. Shri Kamala Prasad
8. Shri Mohan Swarup
9. Shri M. S. Sanjeevi Rao
10. Shri Ebrahim Sulaiman Sait
11. Shri Tayyab Hussain

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee considered Memoranda Nos. 223, 233-234 and 239 to 242 on the following subjects:—

S. No.	Memo. No.	Subject
(1)	(2)	(3)
(i)	223	• • •
(ii)	233 b	Implementation of recommendation contained in para 45 of First Report of the Committee on Subordinate Legislation (Fifth Lok Sabha)—Border Security Force Rules, 1969.

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

(1)	(2)	(3)
(iii)	234	The Emergency Risks (Undertaking) Insurance Scheme, 1971 (S.O. 5486 of 1971).
(iv)	239	The Registrar of Newspapers for India (Junior Stenographers) Recruitment Rules, 1972 (G.S.R. 1196 of 1972).
(v)	240	The National Saving Certificates (IV Issue) Rules, 1970 (G.S.R. 319 of 1970).
(vi)	241	Director General of Health Services Chief Draftsman Recruitment (Second Amendment) Rules, 1972 (G.S.R. 1255 of 1972).
(vii)	242	Senior Hindi Officer (Class I Gazetted) Ministry of Home Affairs Recruitment Rules, 1972 (G.S.R. 1164 of 1972).

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(ii) Implementation of recommendation contained in para 45 of First Report of the Committee on Subordinate Legislation (Fifth Lok Sabha)—Border Security Force Rules, 1969. (Memorandum No. 233).

4. The Committee considered the Memorandum and were not satisfied with the reply of the Ministry of Home Affairs. However, in view of the difficulties explained in the reply, the Committee decided that in case it was not possible to appoint only higher officers as members of the Court of Inquiry, atleast the Presiding Officer should be sufficiently senior to the officer being proceeded against.

(iii) The Emergency Risks (Undertaking) Insurance Scheme, 1971 (S.O. 5486 of 1971) (Memorandum No. 234).

5. The Committee considered the above Memorandum and were not satisfied with the reply of the Ministry of Finance that the names of the persons to be authorised under para 20 of the Scheme were specified by a notification. They desired the Ministry of Finance to mention in the Scheme the minimum rank of officers to be authorised to exercise the powers under para 20 of the Scheme.

(iv) The Registrar of Newspapers for India (Junior Stenographers) Recruitment Rules, 1972 (G.S.R. 1196 of 1972) (Memorandum No. 236).

6. The Committee considered the Memorandum and noted with satisfaction that the Ministry of Information and Broadcasting had

no objection to delete Rule 4 relating to probation from the above Rules with a view to ensure uniformity with other recruitment Rules. The Committee desired the Ministry to issue the amendment at an early date.

(v) The National Saving Certificates (IV Issue) Rules, 1970 (G.S.R. 319 of 1970) (*Memorandum No 240*)

7. The Committee considered the Memorandum and were satisfied with the reply of the Ministry of Finance that the Forms which were laid down by the Director General of Posts and Telegraphs under the powers given by Rules 11 (2), 12 (1), 13 (2) (b), 15(1) and 16(3) of the National Saving Certificates (IV Issue) Rules, 1970 were only procedural forms for the purpose of execution of the Act. The forms mentioned in the Government Saving Certificates Act, 1959 were already appended to the Rules. The Committee decided that in view of the position explained, the procedural forms need not be appended to the Rules.

(vi) Director General of Health Services Chief Draftsman Recruitment (Second Amendment) Rules 1972 (G.S.R. 1255 of 1972) (*Memorandum No. 241*).

8. The Committee noted with satisfaction that on being pointed out, the Ministry of Health and Family Planning had decided to amend the short title of the D.G.H.S Chief Draftsman Recruitment Rules, 1964 to read as the DGHS Chief Architectural Asstt. Recruitment Rules, 1964. The Committee desired the Ministry to issue the amendment at an early date.

(vii) Senior Hindi Officer (Class I Gazetted) Ministry of Home Affairs Recruitment Rules, 1972 (G.S.R. 1164 of 1972 (*Memorandum No. 242*).

9. The Committee considered the above memorandum and noted that the Ministry of Law had seen the validity of the objection raised by the Committee, because the expression 'as required under the Union Public Service Commission (Exemption from Consultation) Regulations, 1958, under Col. 13 of the Schedule did not require consultation with the Commission. On the contrary, it provided for cases where consultation with the Commission was not necessary. The Committee also noted that similar entry was contained in other rules also, (*vide Annexure*). The Committee desired the Ministry of Home Affairs to delete the entry under Col. 13 of the Schedule to the above rules. They also desired the Cabi-

net Secretariat (Department of Personnel and Administrative Reforms) to issue necessary instructions to all Ministries/Departments for deleting similar entry in Recruitment Rules with which they were concerned.

The Committee then adjourned to meet again on 28th and 30th September, 1974.

ANNEXURE
(Vide para 9 of Minutes)

Sl. No.	Name of the 'Order'	No. and date of 'order'	Ministry/Department concerned.
1	Department of Personnel and Administrative Reforms Rec- search Officer (Class II) Re- cruitment Rules, 1973.	G.S.R. 622 ----- 16-6-1973	Cabinet Sectt. (Deptt. of Per- sonnel & Administrative Reforms).
2	All India Radio (Class I posts) Recruitment Amendment, Rules 1973.	G.S.R. 635 ----- 16-6-1973	Information and Broadcasting.
3	Central Ground Water Board Junior Geophysicist and Asstt. Geophysicist Recruitment Rules, 1973.	G.S.R. 647 ----- 23-6-1973	Agriculture (Deptt. of Agri- culture.)
4	Department of Education, Spe- cial Officer (Adult Education) Recruitment Rules, 1973.	G.S.R. 679 ----- 30-6-1973	Education and Social Welfare (Deptt. of Education).
5	Ministry of Education and Social Welfare (Department of Edu- cation) Project Manager Rec- ruitment Rules, 1973.	G.S.R. 680 ----- 30-6-1973	Do.

LXVIII

MINUTES OF THE SIXTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1974-75)

The Committee met on Thursday, the 5th December, 1974 from 10.00 to 10.45 hours.

PRESENT

Dr. Kailas—Chairman

MEMBERS

2. Shrimati Premalabai Dajisaheb Chavan
3. Shri Md. Jamilurrahman
4. Shri Dinesh Joardar
5. Shri R. R. Sharma

SECRETARIAT

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

2. The Committee considered Memoranda Nos. 282 to 287 and 294

S.No.	Memo. No.	Subject
(1)	(2)	(3)
1 to 4	282 to 285	• • • •
5	286	The Bombay Unregistered Dock Clearing and Forwarding Worker (Regulation of Employment) Scheme, 1973 (S.O. 1449 of 1973)
6&7	287&294	

- (v) The Bombay Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1973 (S.O. 1449 of 1973). (Memorandum No. 286).

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

(A)

8. The Committee considered above memorandum and noted with satisfaction that on being pointed out, the Ministry of Labour had agreed to make clauses 7, 8 and 9 of the Scheme self-contained by providing therein the responsibilities and duties of the Board in meeting the Chairman and the Deputy Chairman.

(B)

9. The Committee further noted with satisfaction that on being pointed out, the Ministry of Labour had agreed to delete the provision regarding charging of fees for re-medical examination from clause 19(1) of the above Scheme as it was not authorised by the Dock Workers (Regulation of Employment) Act under which the Scheme had been framed.

(C)

10. The Committee also noted that the Ministry of Labour had proposed to delete proviso to clause 25 of the Scheme regarding reduction of disappointment money paid in the case of workers who were subject to the piece rate system of wages.

(D)

11. The Committee noted with satisfaction that on being pointed out, the Ministry of Labour had agreed to amend clauses 38 (1) and 38 (2) of above Scheme by making a provision for giving an opportunity of being heard to the persons concerned before action was taken against them.

12 to 16. * * * *

LXXX

MINUTES OF THE EIGHTIETH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) (1975-76)

The Committee met on Thursday, the 17th July, 1975 from 11.00 to 12.30 hours.

PRESENT

Dr. Kailas—*Chairman*

MEMBERS

2. Shri R. N. Barman
3. Shrimati Premalabai Dajisaheb Chavan
4. Shrimati Marjorie Godfrey
5. Shri Md. Jamilurrahman
6. Shri Dinesh Joarder
7. Shri Tayyab Hussain

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

2. The Committee considered Memoranda Nos. 311 to 325 on the following subjects:—

S.No.	Memo No.	Subject
(1)	(2)	(3)
1	311	The Victoria Memorial (Second Amendment) Rules, 1973 (G.S.R. 46 of 1974) a b.
2	312
3	313	The Indian Economic Service (Ninth Amendment) Rules, 1974 (G.S.R. 113 of 1974).
4	314	The Ambala Cantonment (Regulation of Registration and Classification of Contractors) Bye-laws, 1974 (S.R.O. 85 of 1974).

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

(1)	(2)	(3)
5	315	Implementation of recommendations contained in para 143 of the Fourteenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding numbering of amendments to 'Orders'.
6	316	The Motor Cars (Distribution and Sale) Control (Second Amendment) Order, 1974 (S.O. 163—E of 1974).
7	317	The Department of Education (Senior Exhibition Assistant) Recruitment Rules, 1973 (G.S.R. 132 of 1974).
8	318	The Telhan Vikas Nideshalaya (Directorate of Oil Seeds Development) Hyderabad (Class I and Class II posts) Recruitment (Second Amendment) Rules, 1974 (G.S.R. 178 of 1974).
9	319	* * * *
10	320	* * * *
11	321	The Compensation Tribunal Order, 1974 (G.S.R. 149—E of 1974).
12	322	The Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974 (G.S.R. 657 of 1974).
13	323	The Railway Board Secretariat Clerical Service (Amendment) Rules, 1974 (G.S.R. 519 of 1974).
14	324	The Kandla Unregistered Dock Workers (Regulation of Employment) Amendment Scheme, 1974 (S.O. 811 of 1974).
15	325	The Mica Mines Labour Welfare Fund Organisation (Class I and II Posts) Recruitment (Amendment) Rules, 1974 (G.S.R. 30 of 1974).

(i) The Victoria Memorial (Second Amendment) Rules, 1973 (G.S.R. 46 of 1974) (Memorandum No. 311).

3. The Committee considered the above Memorandum and desired the Department of Culture to delete rule 7 of the Victoria Memorial (Second Amendment) Rules, 1973, as the same was not authorised by the Victoria Memorial Act, 1903.

4 and 5. ** ** ** **

(iii) The Indian Economic Service (Ninth Amendment) Rules, 1974 (G.S.R. 113 of 1974) (Memo. No 313)

(A)

6. The Committee considered the above memorandum and were not satisfied with the reply of the Department of Personnel and Administrative Reforms for not citing precise statutory provisions in place of the words "and all other powers enabling him (the

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

President) in that behalf" in the preamble to the above rules. The Committee noted that in their previous Reports they had repeatedly emphasised the need for citation of precise statutory authority in the preamble to the rules. The Committee had not made this recommendation on considerations of validity. The purpose underlying the recommendation of the Committee was to enable one to know whether the rules had due legal backing, and did not go beyond the scope of the parent law. In their opinion, the words "and all other powers enabling him in that behalf" used in the preamble to rules kept a person guessing as to what 'other powers' were. If there were any other powers under which the rules had been framed, those powers should also be mentioned in the preamble.

(B)

7. The Committee noted that the Department of Personnel and Administrative Reforms had not taken any action to correct the printing error till the Committee pointed it out to the Department more than six months after the rules had been published. The Committee decided to reiterate their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha).

- (iv) The Ambala Cantonment (Regulation of Registration and Classification of Contractors) Bye-laws, 1974 (S.R.O. 85 of 1974) (Memo. No. 314).

8. The Committee considered the above memorandum and were satisfied to note that on being pointed out the Ministry of Defence had agreed to amend the Bye-laws in question to indicate that the amount of registration Rs. 100/- and Rs. 50/- required to be deposited by Class A and Class B contractors respectively with the Cantonment Board were deposits, which were refundable, and not fees as mentioned in the bye-laws. The Ministry had also agreed to make a provision to indicate that a cash deposit of 5 per cent of the estimated cost of the works deposited by a tenderer towards security for proper performance of the contract under bye-law 7 (ii) would be refunded to the tenderer, after the successful completion of the work.

- (v) Implementation of the recommendations contained in para 143 of the Fourteenth Report of the Committee on Subordinate Legislation regarding numbering of amendments to 'Orders' (Memorandum No. 315).

9. The preamble to the Delhi Sikh Gurdwara Management Committee (Registration of Electors) Amendment Rules, 1973

(G.S.R. 671 and 991 of 1973) did not carry a distinctive amendment number. The Committee had also come across a number of similar cases in para 141 of their 14th Report (Fifth Lok Sabha). The Committee noted in this connection that according to the advice given by the Ministry of Law to ensure that such errors did not recur, it would be necessary for the Ministries to have a constant check over the amendments that were effected from time to time and see that the exact number was inserted before it was published. The Committee desired the Ministry of Law, Justice and Company Affairs (Leg. Department) to re-issue necessary instructions in this regard to all the Ministries/Departments of Government of India.

- (iv) The Motor Car (Distribution & Sale Control 2nd Amendment) Order, 1974 (S.O. 163-E of 1974) (Memo No. 316).

10. The Committee considered the above memo. and were not convinced by the reply of the Ministry of Industry and Civil Supplies (Department of Heavy Industry). They felt that when in the case of a company the reasons for granting permission were required to be recorded in writing, the Department of Heavy Industry should have no difficulty in applying the same principle in the case of an individual. In their view, such a provision was necessary against the possible abuse of discretionary powers vested in the officers empowered to issue permits for purchase of motor cars before the specified period of two years.

- (vii) The Department of Education (Senior Exhibition Assistant), Recruitment Rules, 1973 (G.S.R. 132 of 1974) (Memo. No 317).

11. The Committee considered the above memorandum and were satisfied to note that the Ministry of Education and Social Welfare (Department of Education) have agreed to amend the above rules to indicate therein that the relaxation of rules will be done in consultation with the U.P.S.C.

- (viii) The Telhan Vikas Nideshalaya (Directorate of Oil Seeds Development) Hyderabad (Class I and Class II posts) Recruitment (Second Amendment) Rules, 1974 (G.S.R. 178 of 1974) (Memo. No. 318)

12. The Committee noted that although the printing error pointed out by the Committee has since been rectified, the Ministry of Agriculture and Irrigation (Department of Agriculture) has not taken any action in this regard for one year till the Committee

pointed it out to them. In this connection, the Committee decided to reiterate their earlier recommendation made in para 36 of their Fourth Report (Fifth Lok Sabha).

13 and 14.	**	**	**
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(xi) The Compensation Tribunal Order, 1974 (G.S.R. 149-E of 1974) (Memo. No. 321).

(A)

15. The Committee considered the above memo. and were satisfied to note that the Ministry of Home Affairs on being pointed out had agreed to delete provisions for fees levied under paras 7 and 19 of above order.

(B)

16. The Committee were not convinced by the reply of the Ministry of Home Affairs that the above order was not required to be laid before Parliament as section 35 of the Defence of India Act, 1971 only required the rules made under the Act to be laid before Parliament; and that Orders either executive or statutory made under the Defence of India Rules were not required to be laid before Parliament. The Committee were of the view that when the principal rules are required to be laid before Parliament, all statutory Orders made under the rules should also be laid on the Table. The Committee noted in this connection that in the case of regulations framed under the Rules made under the All-India Services Act, 1951, relying on the Judgment of the Supreme Court in *Narendra Kumar Vs. Union of India* (1960, S. C. R., Vol. II 375), the Ministry of Law had advised the Ministry of Home Affairs that regulations made by the Central Government should be taken to form an integral part of the rules under the All India Services Act, and as such they were required to be laid before Parliament.

(xii) The Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974 (G.S.R. 657 of 1974) (Memo. No. 322)

(A)

17. The Committee considered the above memorandum and noted that even the regulations, as proposed to be amended by the Cabi-

* Certain portions of the minutes are not covered by this Report.

net Secretariat (Department of Personnel and Administrative Reforms) did not indicate the precise amount of fee to be paid by a candidate under Regulation 4(2). The Committee desired the Department of Personnel and Administrative Reforms to amend the Regulations in order to mention there in the precise amount of fee which a candidate had to pay.

(B)

18. The Committee were satisfied to note that on being pointed out, the Department of Personnel and Administrative Reforms had agreed to amend regulation 8 to indicate there in the nature of enquiry to be conducted there under.

(xiii) The Railway Board Secretariat Clerical Service (Amendment) Rules, 1974 (G.S.R. 519 of 1974) (Memo. No. 323).

19. The Committee considered the above memorandum and were not satisfied with the reply of the Ministry of Railways (Railway Board) that a person who was not considered fit for substantive appointment need not be informed in writing for doing so. In the opinion of the Committee, as the competent authority had to record their reasons in writing, the Ministry of Railways should have no objection to communicating the same to the persons concerned so that they might make up their deficiency.

(xiv) The Kandla Unregistered Dock Workers (Regulation of Employment) Amendment Scheme, 1974 (S.O. 811 of 1974) (Memo. No. 324).

20. The Committee considered the above memorandum and were satisfied to note that on being pointed out, the Ministry of Shipping and Transport had agreed to amend the above scheme in order to delete the provision for charging of fee for re-examination of a worker initially found medically unfit.

(xv) The Mica Mines Labour Welfare Fund Organisation (Class I and II posts) Recruitment (Amendment) Rules, 1974 (G.S.R. 30 of 1974) (Memo. No. 325).

21. The Committee considered the above memorandum and desired the Ministry of Labour to amend col. 11 of the schedule to the above rules so that it might not give an impression that direct recruitment could be made without the consultation of the U.P.S.C. They also desired that the Ministry of Law, Justice and Company Affairs

(Legislative Department), while vetting such rules in future, should ensure that these did not give a wrong impression on the mind of the general public that direct recruitment could be made without the constitution of the U.P.S.C.

22. The Committee then adjourned to meet again on the 16th August, 1975.

LXXXIV

**MINUTES OF THE EIGHTY-FOURTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTH LOK SABHA)**

The Committee met on Monday, the 6th October, 1975, from 15.30 to 16.15 hours.

PRESENT

Dr. Kailas—Chairman

MEMBERS

2. Shri R. N. Burman
3. Shrimati Premalabai Dajisaheb Chavan
4. Shrimati Marjorie Godfrey
5. Shri Md. Jamilurrahman
6. Shri Dinesh Joarder
7. Shri Ram Singh Bhai
8. Shri M. Satyanarayan Rao
9. Shri Tayyab Hussain
10. Shri Shiv Shankar Prasad Yadav

SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer.

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

3. The Committee authorised the Chairman and in his absence, Shri M. Satyanarayan Rao, M.P., to present the Seventeenth Report to the House on their behalf on a date to be fixed by the Chairman.

4 to 11.

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