

COMMITTEE ON SUBORDINATE LEGISLATION

(EIGHTH LOK SABHA)

Eleventh Report

(Presented on 2 December, 1986)



LOK SABHA SECRETARIAT
NEW DELHI

November, 1986/Agrahayana, 1908 (Saka)

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1986-87)**

1. Shri Mool Chand Daga—*Chairman*
2. Shri D.L. Baitha
3. Shri Anil Basu
4. Shri H.A. Dora
5. Dr. (Shrimati) Phulrenu Guha
9. Shri Abdul Rashid Kabuli
7. Shri Dharam Pal Singh Malik
8. Shri Shantaram Naik
9. Shri Mohanbhai Patel
10. Shri Vakkom Purushothaman
11. Shri Mullappally Ramchandran
12. Shri K.S. Rao
13. Shri Bholanath Sen
14. Shri Saleem I. Shervani
15. Shri Yogeshwar Prasad Yogesh

SECRETARIAT

1. Shri M.K. Mathur —*Joint Secretary*
2. Shri R.S. Mani —*Senior Legislative Committee Officer*

REPORT

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee (1986-87) at their sitting held on 16 May, 25 June, 2 September and 28 October 1986.

3. The Report was considered and adopted by the Committee (1986-87) at their sitting held on 27 November, 1986. The Minutes of the sitting relevant to the Report are appended thereto.

4. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have been also been reproduced in a consolidated form in the Appendix I to the Report.

II

THE INDIAN FOREIGN SERVICE BRANCH 'B' (RECRUITMENT, CADRE, SENIORITY AND PROMOTION) AMENDMENT RULES, 1977 (G.S.R. 437 OF 1978)—IMPLEMENTATION OF RECOMMENDATIONS MADE IN PARAGRAPHS 33-34 OF FIRST REPORT (EIGHTH LOK SABHA)

5. The Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1977 (G.S.R. 437 of 1978) inserted the following sub-rule (6) in Rule 12 of the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 :—

“(6) Notwithstanding anything contained in sub-rules (1) to (5), any vacancy in Grade I of the General Cadre may, in exceptional cases and in public interest, be filled, by the controlling authority in consultation with the Commission, by transfer of an officer holding

a permanent Group 'A' ex-cadre post in the Ministry of External Affairs. Seniority of such an Officer in Grade I of the General Cadre shall be such as may be determined by the controlling authority in consultation with the Commission."

6. The above rule, which provided for lateral entry of ex-cadre officials into the Indian Foreign Service (B), was likely to result in curtailment of the promotional avenues of the existing employees otherwise eligible under the rules. In this context, the observations of the Committee as contained in paragraph 13 of their Seventh Report (Fourth Lok Sabha), presented to the House on 16 December, 1970, expressing the view that 'amendments to rules which are likely to have the effect, of denying or curtailing the existing opportunities available to employees should not be brought forward save for compelling reasons' were brought to the notice of the Ministry of External Affairs. The Ministry were accordingly requested on 12 April, 1978 to specify the special reasons if any, for incorporating the said amendment and whether in view of the Committee's observations they had any objection to deleting the same from the rules. The Ministry were also requested to state whether the principles for fixing seniority could be laid down in the rules rather than leaving them to be determined by the controlling authority and whether any guidelines had been issued as to what would constitute 'exceptional cases.'

7. After a good deal of correspondence between the Ministries of External Affairs, Law, Department of Personnel and Administrative Reforms and Union Public Service Commission on the one hand, and between the Ministry of External Affairs and the Committee on the other, and after considering the matter in all pros and cons, the Committee on Subordinate Legislation, in their First Report (Eighth Lok Sabha) presented to the House on 14 August, 1985, had observed in paragraphs 33-34 as under :—

"33. The Committee note that, after protracted correspondence lasting almost six years, the Ministry of External Affairs have ultimately agreed in principle, in consultation with the then Department of Personnel and Administrative Reforms and the Ministry of Law and with the approval of the Foreign Minister after ascertaining the views of the representatives of the staff side in the Regional Council of the Ministry, to rescind the amendment made in 1978 incorporating the sub-rule (6) in rule 12 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964. There has also been no lateral entry of any ex-cadre official into the Indian Foreign Service (B) in pursuance of the amended provisions. In this connection the Committee find that the Union

Public Service Commission have persistently contended that an ex-cadre official (Shri G.S. Bhatia, Deputy Director in the pay scale of Rs. 1100-1600), in whose case the process of induction into the Indian Foreign Service (B) in terms of the said amendment had already been finalised as far back as on 17 March, 1978 should be absorbed into the Indian Foreign Service (B) before the amendment is repealed by the administrative Ministry. Further according to the Commission, with the finalisation of the above case in 1978, a right had been created which could not be denied to the incumbent.

34. In the present context of the case where a decision to rescind the amendment made in 1978 has since been taken at the highest level in the administrative Ministry in consultation with the Department of Personnel and the Ministry of Law, and the amended provisions have been kept inoperative for all these years, the absorption of an ex-cadre official in a regular service before repeal of the said amendment seems to be somewhat odd. However, as the Union Public Service Commission have felt rather strongly about it and the question relates to absorption of only one single ex-cadre official into the Indian Foreign Service (B) whose case had been decided by them long back, the Committee reluctantly agree to the proposal as put forth by the Commission, as a special case which, they desire should not be taken as a precedent for future. In this connection, the Committee could not emphasize too strongly that the rules should not be circumvented to give benefit to any individual. In the present case, the Government have taken an unduly long time of six years in deciding to rescind the amendment made in 1978 and, as a consequence, an exception has to be made. The Committee, therefore, recommend that the Ministry of External Affairs should take necessary action accordingly in this regard without further loss of time. The Committee would also like to stress that before notifying such amendment rules the Ministry should examine them carefully with a view to seeing that they do not contain any vague stipulations which might give unreasonable leverage to any authorities or cause grievance to any individual officer."

8. Commenting on the aforesaid recommendation of the Committee, the Ministry of External Affairs in their communication dated 20 November, 1985, stated as under :—

"In this connection kind attention of the Lok Sabha Secretariat is

invited to the Secretariat's own Office Memorandum No. 38/1/CII/78 dated April 12, 1978 wherein the Ministry of External Affairs were requested to consider deletion of the Amendment to Rule 12 (6) of the IFS (B) (RCSP) Rules in view of the recommendation contained in para 13 of the 7th Report of the Committee on Subordinate Legislation (4th Lok Sabha) and para 95 of the 6th Report (6th Lok Sabha).

It may be mentioned here that the staff side of the Regional Council of the Joint Consultative Machinery in this Ministry had protested against the amendment as it was designed to favour one particular officer only and no action was being proposed for encadring any other officer. An assurance was given to the staff side in the JCM that no appointment would be made under this Amendment until there were adequate safeguards and detailed guidelines were put out as a memorandum. However, on reconsideration as per the recommendation of the Committee on Subordinate Legislation, action was taken to repeal the Amendment in question, without issuing any explanatory memorandum. This was also made clear vide our O.M. No. Q/GA/792/3/72 dated the 13 July, 1978 addressed to Lok Sabha Secretariat.

In answer to Unstarred Question No. 324 answered in the Rajya Sabha on 13 June, 1980 the Minister of External Affairs had stated that "further consideration of matters relating to the 'Amendment' of 1978 has been postponed for the time being since the Ministry is, at present, examining the possibility of some basic cadre reforms.

On the basis of the recommendation of the Committee on Subordinate Legislation, this Ministry had obtained the concurrence of the Department of Personnel and the Ministry of Law to the deletion of this Amendment. It was only the Union Public Service Commission who insisted on en-cadring of the officer before repealing of the Amendment. It is evident that encadrement of the Officer concerned prior to repealing of the Amendment as recommended by the Committee in paragraph 34 would go against the very grounds on which the Committee had recommended deletion of the said Amendment in 1978 and which had led to protracted correspondence with other Government agencies involved, including the Union Public Service Commission, for the last 7 years. As the Committee itself has stated that they were agreeing reluctantly to the proposal and that Rules should not be circumvented to give benefit to any individual, it is submitted that agreeing to the proposal of the Commission to encadre

the Officer concerned, even as a special case, will go against the decision of the Ministry taken on the basis of the Committee's own earlier recommendation made in 1978.

Further as the Committee itself has emphasised strongly, the rules should not be circumvented to give benefit to any one individual and that.....the absorption of an ex-cadre official in a regular service before repeal of the said amendment seems to be some what odd....., Even a one time operation of the rule to encadre an individual and the repeal of the rule thereafter would lay this Ministry open to actions which may not stand the test of judicial scrutiny. Also no guidelines on what may be regarded as 'exceptional cases' and 'public interest' have been laid down ; nor have definite norms been evolved for fixing seniority of any individual inducted under this proviso. With reference to the Commission's stand as indicated in paragraph 33 of the report under reference that a right had been created in the case of one individual, it does not appear to be entirely correct as only certain stages of the process had been gone through and the process would be complete only after the person has been formally inducted and his induction notified. This Ministry is of the view that no such right is created until and unless it has been formally and duly conferred upon the individual.

It is, therefore, requested that the Lok Sabha Secretariat may kindly put up the matter again to the Committee on Subordinate Legislation so that their approval for repealing the Amendment prior to encadring of the officer is obtained and communicated to the Ministry, in modification of the recommendation contained in paragraph 34 of the First Report of the Committee on Subordinate Legislation (8th Lok Sabha)".

9. Subsequently, a representation* from Shri G.S. Bhartia, OSD (Prop) addressed to the Secretary (West), Ministry of External Affairs and copy endorsed to the Chairman, Committee on Subordinate Legislation of Lok Sabha was received on 12.6.1986. In his representation, Shri Bhatia had brought to notice certain facts which according to him had been the main point of contention of UPSC in support of his case and had also figured in the recommendations of the Committee made in paras 33 and 34 of their First Report (Eighth Lok Sabha). He high-lighted the following points which according to him had not been brought to the notice of the Committee by the Ministry of External Affairs earlier :—

*See Appendix II.

- “(1) I started my career in the Ministry of External Affairs in Grade IV of IFS (B) in 1956 on the basis of UPSC competitive examination. Later in 1965, I was selected by UPSC for the ex-cadre post of Deputy Director (Purchase) in NEA in the revised scale of Rs. 1100-1600 and on that post I had been working till 1972.
- 2) Foreign Secretary of MEA in 1972 issued orders to the effect that in order to implement the directives of Central Vigilance Commission for providing rotation to the public dealing posts after every 2 years, the incumbent of the post of Deputy Director (Purchase) should be rotated which could only be possible by the inclusion of the post of Deputy Director (Purchase) in IFS (B) (Copy enclosed as Annexure I).
- (3) The Ministry of External Affairs, for the purpose of implementing the orders of then Foreign Secretary, issued an amendment to the IFS (B) Recruitment Rules called (RCSP Rules), 1964 in consultation with DP&AR, Law and UPSC. The amendment of the Rules was duly published in the Gazette of India. Thereafter the Ministry of External Affairs also got the *approval of the UPSC for my appointment as Grade I of IFS (B)* under the amended Rules (Copy enclosed as Annexure II). I as incumbent of the post of Deputy Director (Purchase) was also transferred from my substantive post to the regular cadre posts of MEA and another Under Secretary of the regular cadre was posted to hold my post. *In this way the Ministry of External Affairs de-facto implemented the decision of the UPSC.* However, without any genuine reason and contrary to its own decision and that of UPSC, MEA has been delaying the issue of regular orders of my appointment to Grade I of IFS (B).
- (4) The factual position is that my entry under the amended rules will not repeat not at all curtail the promotional avenues of the existing employees because my substantive post of Deputy Director (Purchase) will also be transferred to the regular IFS (B) cadre. In fact after my retirement in a couple of years my inclusion with my post will benefit the Cadre because the strength of the cadre will increase.
- (5) It is also pertinent to mention here that the amendment to IFS (B) Recruitment Rules issued on 8 March, 1978 was no innovation but a long awaited measure to adopt the pattern already in vogue in the case of other Central Services.

Further there exist identical provisions in the Recruitment Rules of some of the selected services of the Central Government. In fact similar provisions for entry of ex-cadre ISI officers of MEA into IFS (A) and IFS (B) were made by MEA in 1968 and the relevant amendments are still there in IFS (A) Recruitment Rules (See Annexures IV & V).

- (6) On the same subject the Estimate Committees in para 4.86 of their 29th Report had separately and strongly recommended that non-cadre officers working in MEA for 8-10 years should be integrated in the Main cadre. Further in answer to Lok Sabha Unstarred Question No. 10081 of 15.5.78 tabled by Shri M.G. Mavalankar, the then Foreign Minister had replied that ex-cadre Class I officers with longer years of service would be integrated in the main cadre under the amended rules of IFS (B).
- (7) It is true that there are other categories of ex-cadre posts in Legal, Research and Historical Division of MEA. But all these posts have their own cadres with avenues of promotions provided and as such these posts could not be equated with my isolated post which is without promotional avenues. This factual position has been upheld and highlighted by the UPSC in para 3 to 5 of their letter No. F-3/6 (6)/76-RR dated 21st October, 1983 (copy enclosed as Annexure III).
- (8) This recommendation contained in the First Report (Eighth Lok Sabha) of Committee which is based on the recommendation of UPSC has not been implemented by the Ministry of External Affairs."

10. Subsequent to the aforesaid representation, the Ministry in their communication dated 21 July, 1986 informed the Committee that Shri G.S. Bhatia had since filed a petition in the Central Administrative Tribunal for redressal of his grievance. The matter was pending for hearing by the Tribunal. As regards the representation of Shri Bhatia, the Ministry in their communication dated 6 August, 1986 had communicated as under :

"With reference to the representation dated May 20, 1986 from Shri Bhatia, a copy of which has been endorsed to the Chairman, Committee on Subordinate Legislation, it may be stated that no new facts have been brought out in the representation which would warrant reconsideration of the request by the Ministry to the Committee on Subordinate Legislation to review its earlier recommendation. The circumstances leading to the Ministry seeking a repeal of the amendment to Rule 12 (6) of IFS (B) RCSP Rules are explained in this

Ministry's O.M. of even no. dated November 20, 1985. It was as a result of the recommendation of the Committee on Subordinate Legislation and as a result of the assurances given to the Staff side in JCM that the Ministry initiated steps to repeal the amendment. The allegations in Shri Bhatia's representation dated May 20, 1986 that the repeal of the amendment is as a result of 'intrigue' are totally baseless.

In view of the above considerations, the Ministry would once again request that the matter be put up to the Committee on Subordinate Legislation so as to seek a review of the Committee's earlier recommendation."

11. The Committee note from the reply of the Ministry of External Affairs that Shri G.S. Bhatia, the Officer concerned has since filed a petition in the matter which is pending before the Central Administrative Tribunal. Since the matter is pending for adjudication by the Tribunal, the Committee do not wish to comment further on the case. The Committee also generally do not go into individual cases especially when they relate to service matters like promotions etc.

12. The Committee strongly feel that amendments to rules which are likely to have the effect of denying or curtailing the existing opportunities available to the employees, should not be brought forward save for compelling reasons. Judging from this angle, the Committee do not see any valid reasons for inhibition on the part of the Ministry of External Affairs in implementing their recommendation regarding repealing of the amendment inserting sub-rule (6) in rule 12 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 and desire that their recommendations in this regard made in their First Report (Eighth Lok Sabha) be implemented without prolonging the matter any further.

III

RESOLUTION NO. F. 6(I)—PD/86 DATED THE 30 APRIL, 1986 ISSUED BY THE MINISTRY OF FINANCE (DEPARTMENT OF ECONOMIC AFFAIRS) REGARDING RATE OF INTEREST ON GENERAL PROVIDENT FUND ACCUMULATIONS

13. Resolution No. F.6(I)—PD/86 dated 30 April, 1986 issued by the Ministry of Finance (Department of Economic Affairs) regarding rate of interest on General Provident Fund accumulations reads as follows :—

"It is announced for general information that during the year 1986-87, accumulations at the credit of subscribers to the General Provident Fund and other similar funds shall carry interest at the rate of 12% (Twelve per cent annum.) The rate will be in force during the financial year beginning on 1.4.1986.

The funds concerned are :—

1. General Provident Fund (Central Services)
2. The State Railway Provident Fund
3. The General Provident Fund (Defence Services)
4. The Contributory Provident Fund (India)
5. The All India Services Provident Fund
6. The Indian Ordnance Department Provident Fund
7. The Indian Defence Service Officers Provident Fund
8. The Armed Forces Personnel Provident Fund
9. The Indian Ordnance Factories Workmen's Provident Fund.
10. The Indian Naval Dockyard Workmen's Provident Fund.
11. Other Miscellaneous Provident Funds.

There will be no separate incentive bonus. In cases where withdrawals (not in the nature of temporary advance) are made during the year, an amount equivalent to one per cent of the amount withdrawn, rounded to the nearest rupee, shall be deducted from the interest creditable to the account of the subscriber."

* * * * *

14. The Committee on Subordinate Legislation at their sitting held on 25 June, 1986 decided that the above resolution might be referred to the Ministry of Finance asking them to clarify whether the imposition of penalty in the form of deduction of one per cent from the interest through an executive order was proper from the point of view of principles of sound subordinate legislation and whether the Government was empowered to do so under the relevant Act.

15. The Ministry of Finance (Department of Economic Affairs) to

whom the matter was referred for comments, *vide* their O.M. No. F. 10 (2)-PD/86 dated 14 August, 1986 stated as under :—

“The interest and the method of calculations are prescribed by Government under Rule 11(1) of the General Provident Fund (Central Services) Rules, 1960 which have been made by President in exercise of the powers conferred by the proviso to Article 309 of the Constitution.

The subject matter has been reconsidered in view of the representations made by staff side requesting deletion of the provision for deduction from interest in case of withdrawals and it has been decided that no deduction need be made from the interest even if there are withdrawals from the balances during the year.”

16. The Ministry of Finance was requested to state as to whether the Government Resolution No. F. 6(I)-PD/86 dated 30 April, 1986 was rescinded following the above decision. In their reply dated 28 August, 1986, the Ministry forwarded a copy of the Gazette Notification dated 14 August, 1986 deleting paragraph 2 from the Government Resolution requiring deduction of 1% of the amount withdrawn from the interest creditable to the account of the subscriber with effect from 1 April, 1986.

17. The Committee note with satisfaction that on a reference being made by them in the matter, the Ministry of Finance (Department of Economic Affairs) have since repealed the provision made in paragraph 2 of Government Resolution No. F.6(I)—PD/86 dated the 30 April, 1986 requiring deduction from the interest creditable to the account of the subscriber in the General Provident Fund an amount equivalent to one per cent of the amount withdrawn during the financial year beginning from 1 April, 1986 *vide* their Resolution Notification dated 14 August, 1986. The Committee express their appreciation over the prompt action taken by the Ministry in this regard.

NEW DELHI;
November 27, 1986.
Agrahayana 6, 1908 (Saka)

MOOL CHAND DAGA
Chairman,
Committee on Subordinate Legislation

APPENDIX I

(Vide paragraph 4 of the Report)

*Summary of main recommendations/observations made
by the Committee*

S. No.	Para No.	Summary
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1(ii)	12	The Committee strongly feel that amendments to rules which are likely to have the effect of denying or curtailing the existing opportunities available to the employees, should not be brought forward save for compelling reasons. Judging from this angle, the Committee do not see any valid reasons for inhibition on the part of the Ministry of External Affairs in implementing their recommendation regarding repealing of the amendment inserting sub-rule (6) in rule 12 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 and desire that their recommendations in this regard made in their First Report (Eighth Lok Sabha) be implemented without prolonging the matter any further.
2.	17	The Committee note with satisfaction that on a reference being made by them in the matter, the Ministry of Finance (Department of Economic Affairs) have since repealed the provision made in paragraph 2 of Government Resolution No.F. 6 (I)-PD/86 dated the 30 April, 1986 requiring deduction from the interest creditable to the account of the subscriber in the General Provident Fund an amount equivalent to one per cent of the amount withdrawn during the financial year beginning from 1 April, 1986 vide their Resolution Notificationa dated 14 August, 1986. The Committee express their appreciation over the prompt action taken by the Ministry in this regard.

APPENDIX II

(Vide paragraph 9 of the Report)

Representation from Shri G.S. Bhatia, OSD (Prop), Ministry of External Affairs addressed to the Secretary (West) Ministry of External Affairs and copy endorsed to Chairman, Committee on Subordinate Legislation, Lok Sabha.

To

The Secretary (West),
Ministry of External Affairs,
New Delhi.

SUBJECT : *Implementation of the First Report (Eighth Lok Sabha) of the Committee on Subordinate Legislation in r/o Shri G.S. Bhatia, Officer on Special Duty in the Ministry of External Affairs.*

Sir,

I started my career in the Ministry of External Affairs in Grade IV of IFS (B) in 1956 on the basis of UPSC competitive examination. Later in 1965, I was selected by UPSC for the ex-cadre post of Deputy Director (Purchase) in MEA in the revised scale of Rs. 1100-1600 and on that post I had been working till 1972.

2. Foreign Secretary of MEA in 1972 issued orders to the effect that in order to implement the directives of Central Vigilance Commission for providing rotation to the public dealing posts after every 2 years, the incumbent of the post of Deputy Director (Purchase) should be rotated which could be only possible by the inclusion of the post of Deputy Director (Purchase) in IFS (B) (Copy enclosed as Annexure I).

3. The Ministry of External Affairs, for the purpose of implementing the orders of then Foreign Secretary, issued an amendment to the IFS (B) Recruitment Rules called (RCSP Rules) 1964 in consultation with DP&AR, Law and UPSC. The amendment of the Rules was duly published in the Gazettee of India. Thereafter the Ministry of External Affairs also got the approval of the UPSC for my appointment as Grade I of IFS (B) under the amended Rules (Copy enclosed as Annexure II,

I as incumbent of the post of Deputy Director (Purchase) was also transferred from my substantive post to the regular cadre posts of MEA and another Under Secretary of the regular cadre was posted to hold my post. In this way the Ministry of External Affairs de-facto implemented the decision of the UPSC. However, without my genuine reason and contrary to its own decision and that of UPSC, MEA has been delaying the issue of regular orders of my appointment to Grade I of IFS (B).

4. In the meantime some persons of intriguing character and because of sheer jealousy brought the Committee on Subordinate Legislation into the picture. It is still a mystery how the Committee on Subordinate Legislation without any reference from MEA initiated action on this issue. However, the Committee was given false information that the amendment was likely to result in curtailment of the promotional avenues of the existing employees. The factual position is that my entry under the amended rules will not repeat nor at all curtail the promotional avenues of the existing employees because my substantive post of Deputy Director (Purchase) will also be transferred to the regular IFS (B) cadre. In fact after my retirement in a couple of years my inclusion with my post will benefit the Cadre because the strength of the cadre will increase. MEA in reply to the Committee's earlier communication had replied that they will issue clarification to this amendment specifying the circumstances and will lay down the conditions subject to which the appointment would be made under the amendment.

5. It is also pertinent to mention here that the amendment to IFS (B) Recruitment Rules issued on 8 March, 1978 was no innovation but a long awaited measure to adopt the pattern already in vogue in the case of other Central Services. It cannot be denied that a couple of ex-cadre isolated officers who have no further avenues of advancement look to the Ministry for relief and the Ministry as arbiter of justice cannot ipso-facto ignore such minor reliefs. Further there exist identical provisions in the Recruitment Rules of some of the selected services of the Central Government. In fact similar provisions for entry of ex-cadre ISI officers of AME into IFS (A) and IFS (B) were made by AME in 1968 and the relevant amendments are still there in IFS (A) Recruitment Rules. (See Annexure IV and V).

6. On the same subject the Estimate Committee in para 4.86 of their 29th Report had separately and strongly recommended that non-cadre officers working in MEA for 8-10 years should be integrated in the main cadre. Further in answer to Lok Sabha Unstarred Question No. 10081 of 15.5.78 tabled by Shri M.G. Mavalankar, the then Foreign Minister had replied that ex-cadre Class I Officers with longer years of service would be integrated in the main cadre under the amended rules of IFS (B).

7. Notwithstanding all this, MEA under the pressure of intriguing characters decided to delete the amendment. Ministry of Law had initially agreed that there should be no legal objection to the proposed appointment of Shri Bhatia and that rule could be repealed only after his induction into Grade I of IFS (B). However, subsequently, MEA presented to Ministry of Law an absolutely incorrect picture in regard to other ex-cadre officers by arguing that if the amended rule was invoked even once there will be an opposition to its repeal from other officers. It is true that there are other categories of ex-cadre posts in Legal, Research and Historical Division of MEA. But all these posts have their own cadres with avenues of promotions provided and as such these posts could not be equated with my isolated post which is without promotional avenues. This factual position has been upheld and highlighted by the UPSC in para 3 to 5 of their letter No. F-3/6 (6)/76-RR dated 21st October, 1983 (Copy enclosed as Annexure III).

8. The Committee on Subordinate Legislation considered in depth all the relevant factors in their 107 sitting and thereafter issued instructions to MEA to implement the recommendation of UPSC in regard to my appointment into Grade I of IFS (B) under the amended rule. This recommendation contained in the First Report (Eighth Lok Sabha) of Committee which is based on the recommendation of UPSC has not been implemented by the Ministry of External Affairs. Unfortunately, due to some unknown intrigue in the MEA, the implementation is being delayed and to achieve their sinister ends, the case has again been referred back to the Committee for its review. It is relevant to mention here that the MEA has not repeat not at all brought any new justificatory reason in support of their request for review.

9. The above facts have been mentioned to place the issue in the proper perspective and to present the appropriateness of the amendment in its totality. I shall be grateful if you very kindly consider the case in its entirety and issue instructions to MEA to implement the decision of their Committee which is also the decision of the UPSC and thus settle this 8 years old case. I also wish to add here that I was appointed to the post of Deputy Director (Purchase) equivalent to Under Secretary with the approval of UPSC in 1965 and I have been continuing in the same scale of Rs. 1100-1600 for the last 20 years. I have also been stagnating at the maximum stage of Rs. 1600 of my pay scale for the last 8 years without any promotion and my service career has been adversely affected resulting in indescribable amount of frustration, demoralisation and financial loss.

* * * * *

Copy to Shri M.C. Daga, Chairman of the Committee on Subordinate Legislation, Lok Sabha, New Delhi.

ANNEXURE-I

(Uide para 2 of the Appendix—I)

Orders of Foreign Secretary of MEA date 30.12.1972

The post of Deputy Director (Purchase) in the Ministry has naturally to do a good deal by contacts with sales houses and other sales organisations. The incumbent is likely to come in for criticism according to some party or the other has a grievance. Would it not be better if we do provide for a rotation of the incumbancy of the post so that we can transfer the official concerned after every two years or so. This could only be possible by including the post in our cadre. Such a decision will also meet with the requirements of the directive issued by the Central Vigilance Commission that an officer dealing with the public should not hold the post for more than three years. I believe Secretary (West) had already agreed, in principle, to ex-cadre the post of Deputy Director (Purchase).

ANNEXURE-II

(Vide para 3 of the Appendix-II)

No. F. 3/6 (6)/76-RR

UNION PUBLIC SERVICE COMMISSION

(Sangh Lok Seva Ayog)

DHOLPUR HOUSE

New Delhi, the 17th March, 1978.

The Secretary to the Govt. of India,

Ministry of External Affairs,

New Delhi

Attention : Shri A.N. Rao, Director (Finance).

SUBJECT : *Proposal to include the ex-cadre post of Deputy Director (Purchase) into Grade I of IFS (B).*

Sir,

I am directed to refer to the correspondence resting with your letter No. Q(GA)792(3)/72, dated the 11th January, 1978 and this office letter of even number dated 28th March, 1977 on the above subject and to say that the Commission have considered the question of appointment of Shri G.S. Bhatia, permanent Deputy Director (Purchase) to Grade I of the IFS (B) under the new sub-rule 6 of Rule 12 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 and they consider him suitable for appointment to Grade I of the Service. I am, however, to suggest that the appointment of Shri Bhatia may be notified only after the insertion of sub-rule 6 in the Gazette of India. A copy of the orders appointing Shri Bhatia to Grade I of the IFS (B) may please be endorsed to this office.

I am also to request that the question of assigning seniority to Shri Bhatia in Grade I of IFS (B) may be examined in consultation with the Department of Personnel and Administrative Reforms and a self-contained proposal forwarded for the consideration of the Commission.

2. The Character Role of Shri G.S. Bhatia received with your letter No. Q (GA) 792 (3)/72 dated the 11th January, 1978 is returned herewith. Its receipt may please be acknowledged.

Yours faithfully,

Sd/-

K.R. Parthasarthy

Under Secretary

Union Public Service Commission.

ANNEXURE-III

(Vide paragraph 7 of the Appendix-II)

No. F. 3/6 (6)/76-RR

UNION PUBLIC SERVICE COMMISSION

(SANGH LOK SEVA AYO)

DHOLPUR HOUSE SHAHJAHAN ROAD

New Delhi, 21-10-1983

To

**The Secretary to the Government of India,
Ministry of External Affairs,
New Delhi.**

Attention : Shri K.K.S. Rana, Joint Secretary (A)

SUBJECT : *Proposal to include the ex-cadre post of Deputy Director (Purchase) into Grade I of the IFS (B).*

Sir,

I am directed to refer to your D.O. letter No. 1239/JSAD/82 dated 15-12-1982 on the above subject and to state as follows :—

2. In reply to the Ministry's letter No. Q/GA/792/2/72-CAD, dated 23-12-1981, the position with regard to various points raised in the Lok Sabha Secretariat O.M. No. 38/1/C-II/78, dated 12-4-1978 was explained at length in paras 8 and 9 of this office letter of even number dated 2-9-1982. The final observations communicated in para 10 thereof were as under :—

- (i) The Commission do not consider it advisable that the amendment notified on 8-3-1978 which was made by the Ministry themselves should be deleted. Further the appointment of Shri G.S. Bhatia, Deputy Director (Purchase) to Grade I of IFS (B) was approved as far back as 17-3-1978 after assessing the suitability. It may not, therefore, be fair at this**

late stage to delete this provision and to nullify the action already taken thereunder :

- (ii) Ministry of External Affairs may consider the desirability of inclusion of the few isolated posts as well in Grade I of the General Cadre of the IFS(B) who do not have any avenue of promotion and can appropriately be included in the Service in accordance with the guidelines circulated by the Department of Personnel and A.R. on 22.5.1979.
- (iii) Alternatively the Ministry may consider keening such isolated posts in the field of promotion to senior-scale of posts in IFS(A) alongwith Grade I officers of the IFS(B) in the context of increased promotion quota from $15\frac{1}{2}$ per cent to $22\frac{1}{2}$ per cent.

3. With regard to (i) and (ii), the Ministry have stated in their above D.O. letter dated 15.12.1982 that invoking the provision of sub-rule (6) for Shri G.S. Bhatia will result in demand and pressure from 78 other officers who are similarly placed for appointment to Grade I of General Cadre of IFS(B), thus curtailing opportunities or promotion of officers as pointed out by the Committee on Subordinate Legislation. In addition the JCM has been continuously demanding deletion of sub-rule (6). Regarding (iii), it has been merely intimated that the approved provision increasing the promotion quota from IFS(B) to IFS(A) from 15 per cent to $22\frac{1}{2}$ per cent was published in the Gazette of India on 30.12.1982 and action has already been initiated to promote more IFS(B) officers into the IFS(A).

4. It appears that the Ministry have not communicated the views/ observations contained in this office letter of even number dated 2.9.1982 to the Lok Sabha Secretariat, nor to the Ministry of Law and Department of Personnel and Administrative Reforms. They have forwarded extracts of notings between them and the Ministry of Law and Department of Personnel and AR on the subject exchanged in February-March 1982, i.e. prior to this office letter of even number dated 2.9.1982. It is observed that the Ministry of Law had initially agreed that there could be no legal objection to the proposed appointment of Shri Bhatia and that sub-rule (6) could be repealed after his induction into IFS(B). However, subsequently the Ministry brought out the argument which was also there earlier that there were 78 other officers similarly placed as Shri Bhatia and if sub-rule (6) is invoked even once, there will be opposition to its repeal from these officers and even there may be a court case. It was only after this that the Ministry of Law reversed their earlier advice and consented to the deletion of sub-rule (6) without

utilising it even in a single isolated case stating that the nexus of exceptional cases had not been elaborated.

5. It may be stated in this connection that it was clearly brought out in paras 8 and 9 of this office letter of even number dated 2.9.1982 that the inclusion of posts will be confined only to those posts which are isolated and do not have any avenue of promotion. It is true that there are various categories of posts in the Legal, Research and Historical Divisions of the Ministry which are outside the IFS(B) or IFS(A), but all these posts have their own regular cadres with avenues of promotion provided and as such cannot be equated with the isolated posts without promotional avenues. Further as already indicated in this office letter dated 2.9.1982, it is unlikely that the isolated posts without any avenue of promotion would be more than 3 or 4. Thus the inclusion of 3 or 4 posts is not likely to affect the promotion prospects of the existing officers in Grade I of the General Cadre of IFS(B). In fact that inclusion may benefit the cadre because while the officers will vacate the posts the strength of the cadre would increase.

6. In the light of the foregoing, it is requested that the position mentioned in paras 8 and 9 of this office letter of even number dated 2.9.1982 may kindly be explained to the Lok Sabha Secretariat. In case the Committee on Subordinate Legislation (Lok Sabha) still consider that sub-rule (6) needs to be deleted, the Commission agree to its repeal with the observation that the action already approved by them under the notified provision on specific proposals from the Ministry themselves, may be taken first and their advice regarding appointment of Shri G.S. Bhatia to Grade I of the General Cadre of IFS(B) implemented which will be in accord with the advice of the Ministry of Law originally tendered.

Yours faithfully,

Sd/-

(D.S. JAGOPATA)

Under Secretary

Union Public Service Commission

Tele : 383604.

ANNEXURE-IV

(Vide para 5 of the Appendix-II)

Extracts taken from Recruitment Rules of Central Services Class I other than IFS Recruitment Rules which have Provisions similar to the Amendment recently made under Rule 12 of IFS(B) RCSP Rules 1964

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I. Indian Administrative Service, Recruitment Rules 1954

Sub Rules (C) to Rule 4 and Sub Rule (2) to Rule 8 of the Indian Administrative Service (Recruitment) Rules 1954 empowers the Central Government to appoint a member of the State Civil Service of a State of outstanding ability and merits to the IAS in consultation with the State Government and the UPSC. This mode of recruitment is in addition to the normal mode of induction of the members of the State Civil Service to the IAS.

II. Indian Posts and Telegraphs accounts and Finance Service class I (Recruitment) Amendment Rules, 1976

“Rule 18—Recruitment by deputation or transfer. In the event of non-availability of suitable officers at the maintenance stage by direct recruitment or by promotion, the Government may, in consultation with the commission, appoint on deputation to a post borne on the cadre of the Service an officer of the appropriate grade from the Indian Administrative Service or a Central Service, Group ‘A’ and the period of deputation shall not ordinarily exceed three years:

Provided that for a period upto the end of 1985, the Government may, in consultation with the Commission, also appoint on permanent transfer, to the extent necessary, to a post borne on the cadre of the Service an officer holding an analogous or comparable post in any of the aforesaid services.”

III. Indian Naval Armament Service (Group ‘A’) Recruitment Rules 1977

“Para 5—The Government may, in consultation with the Commission, appoint an officer whose post is excluded in the Service under

sub-rule 4 to the appropriate grade of the Service in a temporary capacity as may be deemed fit and fix has seniority in the grade in consultation with the Commission.

Sub-Rule (5)—Government may, in consultation with the Commission, include in the Service any post other than those included in the Appendix enclosed to these Rules or exclude post included in the said Appendix.

IV. Indian Railway Service

Rule 4 (c) and Rule 21 (9) of Indian Railway Service of Mechanical Engineers Recruitment Rules, 1968 legislate for filling up the posts in the Senior Scale, Junior Administrative Grade and Senior Administrative Grade by direct recruitment otherwise than through competitive examination or by occasional recruitment from *other sources* in consultation with the Commission.

V. Comptroller & Auditor General's Service:

PARA 110 of the Comptroller & Auditor General's Manual of Standing Orders (Administrative) Volume I confers unrestricted powers on the Comptroller & Auditor General who may make direct appointments of officers having specialist qualifications e.g. Chartered Accountants or otherwise to the Indian Audit and Accounts Service.

ANNEXURE-V

(Vide para 5 of the Appendix-II)

Indian Foreign Service (RCS&P) Rules, 1961

Appointments to senior scale posts—(1) There shall be no direct recruitment to a cadre post in the senior scale of the service.

(2) Such number of posts in the senior scale of the Service as do not exceed 15% of the senior scale and higher posts in the cadre (excluding one-half of the post of Heads of Missions/Posts, but including the leave reserve and deputation reserve, if any) shall be filled in consultation with the Commission by promotion on the basis of merit from among officers of Grade I of the Indian Foreign Service Branch 'B' who have completed not less than 3 years of service in that grade:

Provided that no such officers shall ordinarily be considered for promotion under this sub-rule if, on the first day of January of the year in which the meeting of the Departmental Promotion Committee, which is competent to consider such promotion, is held, he has attained the age of 55 years.

(3) All other posts in the senior scale of the Service shall be filled by promotion on the basis of seniority-cum-fitness from among officers in the Junior scale of the services who have been confirmed in that scale, subject only to the provisions of Rule 10.

*(4) Notwithstanding the provisions of sub-rule (3), such number of posts in the senior scale of the Service as do not exceed six percent of the senior scale and higher posts which were existing in the Cadre on the 1st day of January, 1968 (excluding one-half of the posts of Heads of Missions/Posts, but including the leave reserve and deputation reserve, if any) shall be filled in consultation with the Commission by promotion on the basis of merit who are ex-cadre not already members of the Indian Foreign Service, Branch 'A', or Branch 'B', and have completed not less than six years of service in any post or posts not lower than that of an Information Officer:

* No longer applicable.

Provided that no such officer staff ordinarily be considered for promotion under this sub-rule if on the 1st day of January of the year in which the meeting of the Departmental Promotion Committee, which is competent to consider such promotion, is held, he has attained the age of 55 years:

Provided further that no promotion under this sub-rule shall be made after the 1st day of January, 1972.

MINUTES

**MINUTES OF THE TWENTY EIGHTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(1985-86)**

The Committee sat on Friday, 16 May, 1986 from 15.00 to 15.45 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Dharam Pal Singh Malik
3. Shri I. Rama Rai
4. Shri Ram Swarup Ram
5. Shri K.S. Rao
6. Shri Dharamgaj Singh
7. Shri Yogeshwar Prasad Yogesh

SECRETARIAT

1. Shri M.K. Mathur—*Joint Secretary*
2. Shri R.S. Mani—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 44 and 45 as under :—

* * * *

(ii) *Implementation of recommendations made in paragraphs 33-34 of the First Report (Eighth Lok Sabha) regarding the Indian Foreign Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1977 (G.S.R. 437 of 1978)—(Memorandum No. 45)*

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

The Committee postponed consideration of Memorandum No. 45 regarding the Indian Foreign Branch 'B' (Recruitment, Cadre, Seniority, and Promotion) Amendment Rules, 1977, to a later date.

3. Being the last sitting of the current Committee, (1985-86), the Chairman, expressed his thanks to all the Members of the Committee for extending their co-operation to him. He said that it was a matter of pleasure that the Committee presented record number of Reports during their term of office and deliberations of the Committee had all along been of high standard. He also expressed his thanks to the staff and officers of the Secretariat for their exemplary services and pains taken by them in assisting the Committee. The Members also thanked the Chairman for his whole-hearted cooperation and for conducting the deliberations of the Committee in a distinguished manner.

The Committee then adjourned.

**MINUTES OF THE THIRTY-FIRST SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)
(1986-87)**

The Committee sat on Wednesday, 25 June, 1986 from 15.00 to 16.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri D.L. Baitha
3. Shri Anil Basu
4. Dr. (Shrimati) Phulrenu Guha
5. Shri Abdul Rashid Kabuli
6. Shri Dharam Pal Singh Malik
7. Shri Shantaram Naik
8. Shri Vakkom Purushothaman
9. Shri Mullappally Ramachandran
10. Shri Yogeshwar Prasad Yogesh

SECRETARIAT

Shri R.S. Mani—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda No. 48 to 52 and took the following decisions thereon :

- * * * *
- (iii) *Resolution No. F. 6(I)—PD/86 dated 30 April, 1986 issued by the Ministry of Finance (Department of Economic Affairs) regarding rate of interest on General Provident Fund accumulations. (Memorandum No. 50)*

The Committee while considering the above Memorandum desired that in order to consider the matter in all its aspects and in detail, the comments of the Ministry of Finance thereon be obtained in the first instance.

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The Committee then adjourned

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

**MINUTES OF THIRTY SIXTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)
(1986-87)**

The Committee sat on Tuesday, 2 September, 1986 from 15.00 to 17.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri D.L. Baitha
3. Shri Anil Basu
4. Dr. (Shrimati) Phulrenu Guha
5. Shri Abdul Rashid Kabuli
6. Shri Dharam Pal Singh Malik
7. Shri Shantaram Naik
8. Shri Vakkom Purushothaman
9. Shri Mullappally Ramachandran
10. Shri K.S. Rao
11. Shri Yogeshwar Prasad Yogesh

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SECRETARIAT

1. Shri M.K. Mathur—*Joint Secretary*
2. Shri R.S. Mani—*Senior Legislative Committee Officer*

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2. At the outset, the Committee took up for consideration Memorandum No. 45 regarding Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1977 (G.S.R. 437 of 1978). The Committee considered the action-taken reply dated 20 November,

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

1985 received from the Ministry of External Affairs wherein the Ministry had requested that the Committee may accord approval for repealing the Amendment prior to encadering Shri G S. Bhatia into IFS(B). The Committee also considered the representation addressed by Shri G.S. Bhatia to the Secretary (West), Ministry of External Affairs and copy endorsed to the Chairman, Committee on Subordinate Legislation of Lok Sabha regarding his induction into the Foreign Service Branch 'B'. In view of the fact that the officer concerned had already filed a petition on the subject which was now pending before the Central Administrative Tribunal, the Committee unanimously decided not to involve themselves in the matter which was *sub-judice*. The Committee also observed that such individual cases should not be commented upon by the Committee especially when they were related to service matters like promotion etc. The Committee, however, desired that their recommendation regarding repealing of the Amendment inserting sub-rule (6) in rule 12 of the aforesaid rules should be implemented without delay.

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The Committee then adjourned

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**MINUTES OF THE THIRTY-NINTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)
(1986-87)**

The Committee sat on Tuesday, 28 October, 1986 from 11.00 to 12.00 hours.

PRESENT

Shri Mool Chand Daga—Chairman

MEMBERS

2. Dr. (Shrimati) Phulrenu Guha
3. Shri Abdul Rashid Kabuli
4. Shri Dharam Pal Singh Malik
5. Shri Shantaram Naik
6. Shri Vakkom Purushothaman
7. Shri Mullappally Ramachandran
8. Shri Yogeshwar Prasad Yogesh

SECRETARIAT

1. Shri M.K. Mathur—*Joint Secretary*
2. Shri R.S. Mani—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 53 and 54 as under :—

- (i) *Resolution No. F.6(I)—PD/86 dated 30 April, 1986 issued by Ministry of Finance (Department of Economic Affairs) regarding the rate of interest on General Provident Fund accumulations—(Memorandum No. 53)*

The Committee note with satisfaction that consequent upon an objection by them regarding imposition of penalty in the form of deduction of interest, the Ministry of Finance (Department of Economic Affairs) had omitted the provision made in paragraph 2 of Government Resolution No. F.(I)—6PD/86 dated 30 April, 1986 requiring deduction of one per cent of the amount withdrawn from the interest creditable to the account of the

subscriber in the General Provident Fund or other similar funds during the financial year beginning on 1 April, 1986 *vide* Resolution of even number dated 14 August, 1986. The Committee expressed their gratification over the quick action taken by the Ministry concerned in that regard.

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The Committee then adjourned :

MINUTES OF THE FOURIETH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)

The Committee sat on Thursday, 27 November, 1986 from 15.00 to 15.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Dr. (Shrimati) Phulrenu Guha
3. Shri Dharam Pal Singh Malik
4. Shri Vakkom Purushothaman
5. Shri K.S. Rao
6. Shri Bholanath Sen

SECRETARIAT

1. Shri M.K. Mathur—*Joint Secretary*
2. Shri R.S. Mani—*Senior Legislative Committee Officer*

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2. The Committee considered the draft Eleventh Reports and adopted them. However, the Eleventh Report was adopted with modifications in paras 11 and 12 of this Report as follows :—

- “11. The Committee note from the reply of the Ministry of External Affairs that Shri G.S. Bhatia, the Officer concerned has since filed a petition in the matter which is pending before the Central Administrative Tribunal. Since the matter is pending for adjudication by the Tribunal, the Committee do not wish to comment further on the case. The Committee also generally do not go into individual cases especially when they relate to service matters like promotions etc.

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

12. The Committee strongly feel that amendments to rules which are likely to have the effect of denying or curtailing the existing opportunities available to the employees, should not be brought forward save for compelling reasons. Judging from this angle, the Committee do not see any valid reasons for inhibition on the part of the Ministry of External Affairs in implementing their recommendation regarding repealing of the amendment inserting sub-rule (6) in rule 12 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 and desire that their recommendations in this regard made in their First Report (Eighth Lok Sabha) be implemented without prolonging the matter any further."

3. The Committee authorised the Chairman and, in his absence, Shri Vakkom Purushothaman, M.P. to present the Eleventh Report to the House on their behalf on 2 December, 1986.

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The Committee then adjourned.