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COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

FOURTH REPORT

(Presented on 14 July, 1992)



**LOK SABHA SECRETARIAT
NEW DELHI**

July, 1992/Asadha, 1914 (Saka)

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LOK SABHA SECRETARIAT

CORRECTIONS

TO

THE FOURTH REPORT OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (TENTH LOK SABHA)

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION**

(1991-92)

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| Shri Ram Kumar | — Assistant Director |

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 8 May and 19 June, 1992.

3. The Committee considered and adopted this Report at their sitting held on 10 July, 1992. The Minutes of the sittings relevant to this Report are appended* to it.

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 also been reproduced in a consolidated form in Appendix I* to the Report.

SOMNATH CHATTERJEE,

Chairman,

NEW DELHI;

July, 1992/Asadha, 1914 (Saka) Committee on Subordinate Legislation

REPORT

I

THE RUBBER BOARD OF INDIA FINANCIAL ADVISER AND PROJECT OFFICER RECRUITMENT (AMENDMENT) RULES, 1991 (GSR 358 of 1991)

1.1 The Rubber Board of India Financial Adviser and Project Officer Recruitment (Amendment) Rules, 1991 (GSR 358 of 1991) were published in the Gazette of India, Part II, Section 3 (i), dated 15 June, 1991. It was noticed that the amendment notification did not contain the usual foot-note indicating the particulars of publication of the principal rules and the amendments subsequent thereto from time to time. The matter was taken up with the concerned Ministry of Commerce who were asked to intimate the special reasons, if any, for departure from the normal practice in this respect. In their reply dated 19 February, 1992 the Ministry stated as under:

".....the Rubber Board of India Financial Adviser and Project Officer Recruitment (Amendment) Rules' were for the first time published in the Gazette of India *vide* GSR 846 (E) dated 16th October, 1990. These Rules had not been earlier notified as these were not based on the model Recruitment Rules followed by the Government. With a view to bringing uniformity in respect of these Recruitment Rules in line with the model Recruitment Rules, it was decided that the approval of the Ministry of Finance and the Department of Personnel & Training to modify the Recruitment rules and notify the same after obtaining due approval of the Legislative Department. Accordingly, these Recruitment Rules were notified on 16th October, 1990. However, since certain discrepancies were noticed subsequent to their publication, an amendment was also issued *vide* Notification dated 15th June, 1991. However, due to omission, the foot-note was not provided indicating details of the original Notification dated 16th October, 1990, which is very much regretted. Action is being taken to rectify the above omission. Copies of the original as well as subsequent Notifications are also being submitted to Parliament separately".

1.2 The Committee note that on being pointed out, the Ministry of commerce have agreed to provide the requisite foot-note indicating the details of the original notification dated 16th October, 1990. The Ministry have also expressed regrets for the omission on their part for not doing so at the time of issue of the amendment notification. The Committee desire the Ministry of finalise the requisite corrigendum expeditiously and notify the same at the earliest.

II

THE INDIA SECURITY PRESS AND CURRENCY NOTE PRESS (DRAFTSMAN AND TRACER) RECRUITMENT RULES, 1991 (GSR 204 of 1991)

2.1 The India Security Press and Currency Note Press (Draftsman and Tracer) Recruitment Rules, 1991 were Published in the Gazette of India, Part II, Section 3(i), dated 30 March, 1991. Column 11 of the Schedule appended to the recruitment rules provided for appointment of the post of Tracer by direct recruitment only. Since there did not exist any provision for appointment by promotion, the entry under column 5 of the Schedule which provided for 'Selection' of candidates was apparently inappropriate and aredundant. No reference to the Consolidated Instructions regarding framing of the recruitment rule for the Posts Services or amendments thereto, issued by the Department of Personnel and Administrative Reforms in May, 1979, it was found that the entry in Column 5 (whether Selection Post or Non-Selection Post) should be 'Not Applicable' in the case of direct recruitment or transfer on deputation or transfer, as the case many be. The matter was then taken up with the concerned Ministry of Finance to ascertain if they had any objection to amending the Schedule to the necessary effect. In their reply dated 12 March, 1992, the Ministry stated as under.

"....this Ministry has no objection to amend the Schedule appended to Recruitment Rules, 1991 (GSR 204 of 1991) in the appointment to the post of Tracer Col. 5 of Schedule to read as 'Not Applicable' instead of 'Selection'".

2.2 The Committee note that the Ministry of Fiance (Department of Economic Affairs) have agreed to amend the Schedule appended to the India Security Press and Currency Note Press (Draftsman and Tracer) Recruitment Rules to describe the entry in Column 5 against the post of Tracer to read as 'Not Applicable' instead of 'Selection' so as to put the provisions in order. The Committee desire the Ministry to do the needful at the earliest.

2.3. In this connection, the Committee are constrained to observe that had the Ministry taken due care of the instructions issued by the then Department of Personnel and Administrative Reforms as early as in 1979, such infirmities in the recruitment rules could have been averted in time. This is simply illustrative of the casual approach with which the statutory rules are dealt with in the Ministry. The Committee need hardly point out that the statutory rules ought to be finalised with utmost care and caution at all levels in the Ministry.

III

THE MINISTRY OF HOME AFFAIRS, DEPARTMENT OF OFFICIAL LANGUAGE, CENTRAL HINDI TRAINING INSTITUTE (ACCOUNTS OFFICER) RECRUITMENT RULES, 1991 (GSR 201 OF 1991)

3.1. The Ministry of Home Affairs, Department of Official Language, Central Hindi Training Institute (Accounts Officer) Recruitment Rules, 1991 (GSR 201 of 1991) were published in the Gazette of India, Part II, Section 3(i), dated 30 March, 1991. The recruitment rules *inter alia* provided for induction of the armed forces personnel as under:

"For Armed Forces Personnel

Transfer on deputation/re-employment (for ex-servicemen).

Armed Forces Personnel who are due to retire or to be transferred to reserve within a period of one year and having experience in accounts shall also be considered. Such officers will be given deputation terms upto the date on which they are due for release from the Armed Forces and thereafter, they may be continued on re-employment."

3.4. The Ministry of Home Affairs were enquired if any minimum rank had been prescribed for the armed forces personnel to become eligible for appointment as Accounts Officer. In their reply dated 3 April, 1992, the Ministry stated as under:

".....the Department of Personnel and Training *vide* their O.M. dated 18.3.1988 have circulated the guidelines according to which, in respect of Group 'A' and 'B' posts required to be filled by transfer on deputation of Government servants belonging to more than one service, a provision should be made in the recruitment rules whereby the Armed Forces Personnel due to retire or to be transferred to reserve within a period of one year and having requisite experience and qualifications can also be considered for appointment to such posts. Nothing has been said in these guidelines for prescribing minimum rank for these personnel. These Recruitment Rules have been issued in consultation with the Department of Personnel and Training and the Union Public Service Commission and after vetting by the Legislative Department.

Applications of the Armed Force Personnel who fulfil the conditions regarding pay scales/experience etc. prescribed in the Recruitment Rules are also acceptable. Moreover, it is also necessary to send the circular regarding filling up of these posts to the Director General (Resettlement) alongwith others.

In view of the above, there seems to be no necessity for prescribing minimum rank for the Armed Forces Personnel in the Recruitment Rules."

3.5. The Committee note that in accordance with the guidelines issued by the Department of Personnel and Training in March, 1988, such of the armed forces personnel as are due to retire or to be transferred to reserve within a period of one year and having requisite experience and qualifications, can also be considered for appointment to Group 'A' and 'B' posts required to be filled up by transfer on deputation of Government servants belonging to more than one service. However, the Committee find that the extant recruitment rules do not lay down the minimum qualifications and experience in accounts which the armed forces personnel ought to possess to become eligible for the post of Accounts Officer. Consequently, all the candidates irrespective of their rank or qualifications but having some experience in accounts might claim eligibility for a civilian post in the grade of Rs. 2000-3500, which can not be the intention of these guidelines. The Committee, therefore, desire the Ministry of Home Affairs to review the provisions in the recruitment rules and prescribe the minimum conditions of eligibility for the armed forces personnel as well in more specific terms so as to make the rules self-contained and to do away with any element of uncertainty in these respects.

IV

THE NATIONAL ATLAS AND THEMATIC MAPPING ORGANISATION (ASSISTANT MANAGER) RECRUITMENT RULES, 1991 (GSR 220 of 1991)

4.1. The National Atlas and Thematic Mapping Organisation (Assistant Manager) Recruitment Rules, 1991 (GSR 220 of 1991) were published in the Gazette of India, Part II, section 3 (i), dated 30 March, 1991. The recruitment rules *inter alia* provided for appointment to the posts of Assistant Manager as under:

'50%' by promotion/transfer on deputation failing which by direct recruitment, 50% by transfer on deputation failing which by direct recruitment."

4.2. Obviously, the provisions with regard to transfer on deputation seemed to be overlapping and needed to be rectified. The matter was taken up with the concerned Ministry of Science and Technology to ascertain if they had any objection to amending the provisions to the necessary effect. In their reply dated 20 March, 1992, the Ministry stated as under:

"The rule position for recruitment to the post of Assistant Manager is as follows:

'50%' by Promotion/*transfer on deputation* failing which by direct recruitment, 50% by *transfer on deputation* failing which by direct recruitment.

The Department feels there is no need to change the seemingly overlapping provisions of transfer on deputation" for the reasons that are as follows:—

The printing establishment of the NATMO, Calcutta have the following sanctioned staff available with them:—

S.No	Designation	Scale of Pay	No. of posts
1	2	3	4
1.	Manager (Group 'A') Gazetted	2200-4000	1
2.	Assistant Manager (Group 'B') Gazetted	2000-3500	2

1	2	3	4
3.	Sr. Technical Assistant (Process) Gr. 'R' N-Gazetted	1640-2900	1
4.	Technical Asstt. (Process) (Group 'C')	1400-2300	4

Recruitment to the 4 posts of Technical Assistant (Process) is by 100% promotion from a lower feeder cadre. The recruitment to next higher one post of senior Technical Assistant (Process) is also by 100% promotion from the post of Technical Assistant (process). Now, since at the level of Assistant Manager there are two posts as against one sanctioned post, in the feeder grade, it was thought fit to have promotion only in the 50% of the sanctioned post (i.e against one post) and for next 50% through other means.

As it may be possible that in the 50% promotion quota (for one post) at some time, the eligible person from the feeder grade is not available it was, therefore thought fit to have the option of filling the promotion quota also by way of transfer on deputation basis. In so far as the other 50% quota (in the other one post) is concerned, the first choice of having direct recruitment may not be advisable as a direct recruit candidate gets only one promotion to the Manager's post (pay scale Rs. 2200-4000) and thereafter he will stagnate. Because of this it was advised by UPSC that the first choice to fill up this post should be by way of transfer on deputation basis, failing which through direct recruitment.

Keeping the above in view, the Ministry is of the view that the existing provisions in the recruitment rules may be allowed to stand."

4.3. The Committee find that the provisions regarding transfer on deputation for appointment to the post of Assistant Manager in the National Atlas and Thematic Mapping Organisation are overlapping in as much as this mode of appointment has been resorted to in both the slabs of 50% each. However, with a view to avoid possible stagnation that might cause to the candidates emanating from the direct recruitment, the inclusion of the provisions of transfer on deputation on both the occasions is considered essential by the Ministry as also the Union Public Service Commission. Keeping in view the limited number of posts in the various grades of officers manning the organisation, the Committee do not consider it expedient to interfere with the existing scheme of appointment as laid down in the recruitment rules for the time-being.

THE PARADIP PORT EMPLOYEES (GENERAL PROVIDENT FUND) REGULATIONS, 1989 (GSR 150-E of 1991)

5.1. The Paradip Port Employees (General Provident Fund) Regulations, 1989 (GSR 150-E of 1991) were published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 19 March, 1991. It was observed that the regulations were published in the official gazette in March, 1991 whereas the short title thereto indicated the year of publication as 1989. Normally, the year in short title should reflect the year of publication of the regulations in the official gazette. The matter was taken up with the Ministry of Surface Transport for clarification. In their reply dated 24 February, 1992, the Ministry stated as under:-

“.....necessary corrigendum would be issued for the year of publication.”

5.2. The Committee note that the Ministry of Surface Transport have agreed to issue corrigendum to describe the regulations as of 1991 instead of 1989. The Committee desire the Ministry to do the needful without further delay. In this connection, the Committee cannot but re-stress that the responsibility of the Ministry/Department does not cease with the sending of a notification to the Press. After the rules, regulations are published in the gazette, the Ministry/Department should take immediate steps to examine whether the same have been correctly printed and if necessary, to issue a corrigendum thereto. The observations of the Committee were circulated to all Ministries/Departments by the then Department of Parliamentary Affairs vide O.M. No. F.32-40/72-R&C dated 28 February, 1973. Despite these standing instructions, the Ministry had not taken any action after publication of the notification in March, 1991 till the error was pointed out by the Committee. The Committee desire the Ministry to devise suitable measures so that such lapses do not recur in future.

VI

THE MORMUGAO PORT EMPLOYEES' (LEAVE TRAVEL CONCESSION) (SECOND AMENDMENT) REGULATIONS, 1990 (GSR 180-E OF 1991)

(A)

6.1. The Mormugao Port Employees' (Leave Travel Concession) (Second Amendment) Regulations, 1990 were published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 25 March, 1991. It was noticed that the regulations were published in the official gazette in March, 1991 but the short title indicated the year as 1990. Normally, the year in the short title should have relevance to the year of publication of the notification in the official gazette. The matter was referred to the concerned Ministry of Surface Transport for ascertaining their comments. In their reply dated 2 April, 1992, the Ministry stated as under:—

"Year in the short title

The amendment regulations were framed in the year 1990, the proposal was approved by the Board's meeting on 31-1-91, as such the year indicated in the short title was not changed. A corrigendum would be issued."

6.2. The Committee observe it is a well-accepted practice that short title to rules, regulations, bye-laws etc. should bear the year in which they are published and not some other year. Indication of incorrect year in the short title might cause difficulty in location of the 'order'. The Committee have time and again impressed the need for indicating the correct year in the short title. Some observations of the Committee made in paras 27-28 of their Fifth Report (Fifth Lok Sabha) to this end were circulated to all Ministries/Departments as early as in January, 1974 by the Ministry of Law and Justice. Hence, the plea advanced by the Ministry of Surface Transport for not changing the year in the short title because the proposal was approved by the Board later in January, 1991, is not at all tenable.

6.3. The Committee note that the Ministry have now agreed to issue a corrigendum to rectify the error in the short title to the regulations. Still the fact remains that if they would have exercised due vigilance in this regard, the error could have been avoided. The Committee desire the Ministry to notify the requisite corrigendum at the earliest and also take other remedial steps so as to avoid recurrence of such lapses.

(B)

6.4. It was further observed from the short title of the Mormugao Port Employees' (Leave Travel Concession) (Second Amendment) Regulations,

1990 that it was the Second Amendment that was being made during the year 1990 to the principal regulations. However, in the footnote to the notifications, the particulars of the first amendment made to the principal regulations during 1990 had not been mentioned. The matter was referred to the concerned Ministry of Surface Transport for clarifications. In their reply dated 2 April, 1992, the Ministry stated as under:

"Amendment number in the short title

In the year 1990 there was no other amendment carried out to the said Regulations. The word 'Second Amendment' is inadvertantly indicated instead of 'First Amendment'. Necessary corrigendum will be issued."

6.5. The Committee observe that the purpose of indicating amendment number in the short title to the amending rules, regulations, etc. notified during a calendar year is mainly to facilitate easy referencing of such amendments made from time to time. Otherwise, it may often turn out to be a cumbersome exercise for anyone to trace out as to how many other amendments have already taken place. On the other hand, if an amendment 'Order' contains a wrong or incorrect serial number as to the amendments made, the very purpose of assigning serial numbers may be defeated in as much as it may lead to confusion in the mind of the concerned public in tracing back the previous amendments.

6.6. The Committee note that in the instant case, the first amendment was inadvertently mentioned as the second amendment. This might lead the public to believe that some earlier amendment had also taken effect whereas the same did never exist. Thus, instead of helping easy referencing, the erroneous serial number would mislead the people. The Committee note that the Ministry of Surface Transport have attributed the error to inadvertence and agreed to issue a corrigendum. The Committee desire the Ministry to streamline their procedure with a view to exercise more vigilance in the matter of framing statutory 'Orders' in future so that the errors of the like nature are detected and remedied in time before such instruments are publicised in the gazette.

VII

AMENDMENT TO VISAKHAPATNAM FISHING HARBOUR REGULATIONS, 1986 (GSR 297-E OF 1991)

(A)

7.1. Amendment to Visakhapatnam Fishing Harbour Regulations, 1986 (GSR 297-E of 1991) was published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 4 June, 1991. The Amendment Notification was found deficient in respect of the following attributes:

(i) *Short title*

The Amendment Regulations did not contain the usual short title. For easy and quick referencing, the Committee have recommended that 'Orders' whether original or amending, should bear short titles both in the body and at the top.

(ii) *Commencement*

The date of commencement of the Amendment Regulations had not been indicated, therein. To obviate any scope of confusion in the minds of persons for whose benefit the rules are framed, the Committee have recommended that a sub-rule regarding the date of coming into force of rules should always be included therein.

(iii) *Foot-note*

There was no foot-note added to the Amendment Regulations. In the case of amending 'Orders', the Committee have recommended that reference should be given therein to the original 'Order' and the subsequent amendments or atleast, to the last amendments, if any, so that one could keep track of the amendments in the principal rules.

7.2 The matter was taken up with the Ministry of Surface Transport (Ports Wing) to ascertain if they had any objection to amending the Regulations to the desired effect. In their reply dated 21 April, 1992, the Ministry stated as under:

"This Ministry have no objection to carry out the amendments suggested by the Committee."

7.3 The Committee note that the Amendment to Visakhapatnam Fishing Regulations, 1986 was deficient in respect of certain essential attributes of

Subordinate Legislation like short title, date of commencement and the usual foot-note at the end. On being pointed out, the Ministry of Surface Transport have indicated that they have no objection to carry out the amendments suggested by the Committee. The Committee desire the Ministry to process the matter expeditiously in consultation with the Ministry of Law and Justice with a view to remove the infirmities that have crept into the regulations. The Committee also direct the Ministry to take suitable remedial steps so that such lapses do not recur in future.

(B)

7.4 Item 1 of regulation VI, as amended, of the Visakhapatnam Fishing Harbour Regulations read as under:

"VI. DEPOSITS:

1. Security Deposit:

The Following amounts shall be deposited with the Board of Trustees by the owner of the Fishing Trawler/Fishing Vessel/Boat as Security Deposit in addition to the prescribed fees payable at the time of issue of licence within 10 days from the date of receipt of intimation.

- (i) If only one Fishing Trawler/ Fishing Vessel is owned. Rs. 10,000/-
- (ii) If two Fishing Trawlers/Fishing Vessels are owned. Rs. 15,000/-
- (iii) If more than two Fishing Trawlers/Fishing Vessels are owned. Rs. 20,000/-
- (iv) Fishing Boat. Rs. 500/-

This deposit will normally be refunded on the expiry of the licence period after adjusting the outstanding dues, if any, payable to the Board. If the licence is cancelled for any of the reasons stipulated in these regulations, the security deposit shall be forfeited without any notice to the owner."

7.5 In this connection, the concerned Ministry of Surface Transport (Ports Wing) were requested to State whether the enabling Act viz. the Major Ports Trust Act, 1963 conferred any explicit power on the Board of Trustees to realise amounts by way of Security Deposits. If so, the relevant provisions of the Act might be indicated. In their reply dated 21 April, 1992, the Ministry stated as under:

"Under the M.P.T. Act, there are no explicit powers conferred on the port trust board to raise security deposits."

7.6 The Committee note that the Visakhapatnam Fishing Harbour Regulations, 1986 were formulated in exercise of the powers conferred under section 123 of the Major Port Trusts Act, 1963. In their reply, the Ministry of Surface Transport have conceded that there are no explicit powers conferred on the Port Trust Board to raise security deposits under the Major Port Trusts Act. The Ministry have also not indicated the source of any implied power either enabling the Port Trust to raise such deposits.

7.7 The Committee find that regulation VI of the Visakhapatnam Fishing Harbour Regulations not only makes provision for raising substantial amounts ranging from Rs. 500/- to Rs. 20,000/- from the owners of the Fishing Trawlers/Vessels/Boats as security deposits but it also lays down for forfeiture of such security deposits without any notice to the owner if the licence is cancelled. The Committee are of the view that such provisions are of substantive nature and they seek to levy charges without any express authorisation therefor in the parent enactment. In the absence of such authorisation, the subordinate authority ought not resort to such extreme remedies of substantive nature. The Committee, therefore, direct the Ministry to omit the provisions from the regulations forthwith. However, if the Government so consider necessary, they may bring forth the requisite amending Legislation before Parliament for the purpose.

(C)

7.8 While scrutinising the Amendment to Visakhapatnam Fishing Harbour Regulations (GSR 297-E of 1991), it was observed that the Amendment Order was deficient with respects to certain essential ingredients of formulation and did not conform to the prescribed form. Against this background, the concerned Ministry of Surface Transport were requested to state whether the Amendment Regulations were got vetted from the Ministry of Law at any stage. In reply, the Ministry stated as under:

“Regarding vetting of the regulation by the Ministry of Law it is stated that a view was taken by the Ministry of Law that the regulations sent by Port Trust Board need not be got vetted from that Ministry.

It is further stated here that the port trust have their own legal department and all such regulations are required to be vetted by the legal department of the concerned port trust.”

7.9 To the Committee, the Amendments to Visakhapatnam Fishing Harbour Regulations appears to be the outcome of a hasty exercise made by the Visakhapatnam Port Trust. Consequently, several infirmities have crept into the formulation of this tiny piece of subordinate legislation. To mention a few, there is no short title, no amendment number, no year of publication, and no date of its coming into force, which normally form part of any such amendment.

7.10 Subordinate law is in no way less important than the principal law as it always carries with it the full force of the principal law. The Committee need hardly stress that such law should as well receive utmost care and expertise in its formulation and in fact, there can be no short-cuts to be applied to its formulation. The Committee, therefore, desire the Ministry of Surface Transport to reconsider the whole matter with a view to evaluate the existing procedures obtaining in the Port Trusts in this regard and they would do well if all subordinate legislation is routed through one single agency like the Legislative Department of the Ministry of Law and Justice with the aim of imparting a certain amount of uniformity in its form and construction and to get rid of any avoidable discrepancies in its formulation.

VIII

The New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 (GSR 312-E of 1991)

8.1 The New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 (GSR-312E of 1991) were published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 21 June, 1991. Sub-regulation (b) of regulation 4 of the aforesaid regulations read as under:

"4. Registration:

- (b) On receipt of the application of the Head of Department the contents of the application will be scrutinised with reference to records available in that department and forwarded to the Chief Medical Officer. The Head of Department or an Officer appointed by him, while forwarding the application to the Chief Medical Officer, should certify on the application as detailed hereunder:

'I have personally verified the contents of the application with reference to records available with this department and it is certified that the applicant is eligible for the benefit under the New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1990'."

8.2 During the course of scrutiny, the notification was found to contain printing errors at several places. However, attention of the concerned Ministry of Surface Transport was, in particular, drawn to the error in the year of the regulations referred to as '1990' instead of '1991' appearing regulation 4(b) *ibid*. It was enquired whether a corrigendum had since been issued by the Ministry to rectify the error that had crept in. In reply dated 24 February, 1992, the Ministry stated as under:

".....necessary corrigendum will be issued shortly as desired."

8.3 The Committee note that the Ministry of Surface Transport have agreed to issue necessary corrigendum to rectify the errors that have crept into the regulations at the printing stage. However, the fact remains that the Ministry had not acted in the matter till it was pointed out by the Committee. The Committee hope that the Ministry would now streamline the procedure in order that such lapses do not recur.

(B)

8.4 Sub-regulation (c) of regulation 4 of the New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 read as follows:

"4. Registration:

**

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(c) On receipt of the recommendations from the Head of the Department, the Chief Medical Officer will issue to the retired/invalid employee or spouse as the case may be, an identity card in the prescribed proforma Annexure 'B' (attached)—with a copy of photograph duly pasted on it. The second copy of the photograph should be pasted on the application and kept for records. The cost of the identity card, if any, should be borne by the retired employee/spouse."

8.5 In this connection, the Ministry of Surface Transport were asked to state whether the cost of the identity card had since been prescribed and if so, the rates thereof and the specific authority in the enabling enactment empowering the Government/Board to impose such a levy. In reply dated 24 February, 1992, the Ministry stated as under:

"3(a) of the regulation indicating the amount of one time lumpsum contribution of individual class indicates that it includes the cost of identity card if any."

8.6 The Committee note from the reply of the Ministry that the cost of the identity card forms part of the one time lumpsum contribution payable under regulation 3(a) of these regulations. It flows from this that once the lumpsum contribution is paid, no further charge is payable by the beneficiary towards the cost of the identity card. Hence, the provisions "the cost of the identity card, if any, should be borne by the retired employee/spouse" appearing in regulation 3(e) have become redundant. To obviate any confusion in the minds of the beneficiaries in this respect, the Committee desire the Ministry to omit the redundant provisions from the statutory regulations at the earliest. In this connection, the Committee would further like to observe that while formulating subordinate law, care should always be taken to ensure that the charges of either description are not levied without proper and express authorisation therefor in the parent statute.

IX

THE COCHIN PORT TRUST EMPLOYEES (CONTRIBUTORY OUTDOOR AND INDOOR MEDICAL BENEFIT AFTER RETIREMENT) REGULATIONS, 1991 (GSR 313-E of 1991)

9.1 The Cochin Port Trust Employees (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 (GSR 313-E of 1991) were published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 21 June, 1991. Sub-regulation (c) of Regulation 3 of the aforesaid regulations read as under:—

“3. Definitions

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- (c) Class I, Class II, Class III and Class IV posts shall have the meanings respectively assigned to them as under.

Class I posts *i.e.*, posts carrying a scale of pay the maximum of which is more than 1930/- in terms of the pay scales approved *vide* Ministry of Surface Transport's letter No. PW/PEO-2/84 dated 1-2-84 or as may be revised from time to time.

Class II posts *i.e.*, posts carrying a scale of pay the maximum of which is not more than Rs. 1930/- in terms of the pay scales approved *vide* Ministry of Surface Transport's letter No. PW/PEO-2/84 dated 1-2-84 or as may be revised from time to time.

Class III posts *i.e.* posts carrying a scale of pay the maximum of which is more than Rs. 1580/- but not more than Rs. 2800/- in terms of the pay-scales approved *vide* Ministry of Surface Transport's letter No. LB-12011/1/86-R.O. (Vol. II) dated 3-8-89 or as may be revised from time to time.

Class IV posts *i.e.* posts carrying a scale of pay the maximum of which is not more than Rs. 1580/- in terms of the pay scales approved *vide* Ministry of Surface Transport's letter No. LB-12011/1/86-R.O. (Vol. II) dated 3-8-89 or as may be revised from time to time.”

9.2 The Ministry of Surface Transport were requested to furnish their comments on the following points arising out of the above regulation:—

- (a) The minimum limits of pay-scales assigned to Class I, II, III & IV are not quite clear and contain an element of overlapping and require to be elaborated.
- (b) Reference to letters of the Ministry of Surface Transport seems to be redundant as the schedule of the regulations is already

approved by the Central Government in the preamble to the regulations and hence may be omitted to avoid confusion. Besides these letters have not been appended to the regulation for information of all concerned.

- (c) The phrase 'as may be revised from time to time' seems to have the effect of eroding the very provisions of this regulations."

9.3 The Ministry of Surface Transport, in their reply dated 24 February, 1992, stated as under:—

"Regulation 3 (c)

- (a), (b), (c) — As desired by the Committee, necessary changes will be made and corrigendum will be issued."

9.4 The Committee note that on being pointed out, the Ministry of Surface Transport have agreed to carry out the requisite amendments in sub-regulation (c) of regulation 3 of the Cochin Port Trust Employees (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 by issue of necessary corrigendum. The Committee desire the Ministry to hasten the process of finalisation of the proposed amendments and notify the same at the earliest so as not to prolong the infirmities that have crept into the regulations.

Interpretation Clause

9.5 Regulation 9 of the New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 read as under:

"9. Interpretation:

When a doubt arises as to the interpretation of these Regulations the matter will be referred to the Chairman, New Mangalore Port Trust, whose decision shall be final."

9.6 Likewise, regulation 11 of the Cochin Port Trust Employees (Contributory Outdoor) and Indoor Medical Benefit After Retirement Regulations) 1991 read as under:

"11. Interpretation:

Where any doubt arises as to the interpretation of these Regulations, it shall be referred to the Board and its decision shall be final."

9.7 Similarly, regulation 27 of the Paradip Port Employees (General Provident Fund) Regulations, 1989 read as under:

"27. Interpretation :

If any question arises relating to the interpretation of these regulations, it shall be referred to the Board whose decision thereon shall be final."

9.8 The phrases like 'whose decision shall be final', 'its decision shall be final' and 'whose decision thereon shall be final' were apt to give an impression in the minds of the general public that the jurisdiction of the courts of law was being ousted. The matter was referred to the Ministry of Surface Transport for their comments. In their reply—identical to all the three cases, the Ministry stated as under:

"....regarding regulation we have sought legal opinion and the same is as below:—

'The clause in question is a usual clause found in most of the statutory rules. The intention is not to exclude the jurisdiction of court. The basic idea behind the clause is that the authority which issued the rule, alone knows the intention behind the rule and if any dispute arises between the various implementing agencies with regard to interpretation of the said rules, decision of such authority in so far as implementing agencies are concerned, will be final. Resort can always be had by an aggrieved person to a civil court.'

In view of the above, it is felt that there is no need to amend this regulation."

9.9 The Committee have time and again held the view that interpretation clause should not be so worded as to give an impression that power of interpretation of rules which should vest in the courts, had been taken away or the jurisdiction of the courts is being ousted in any way.

9.10 Further, in para 18 of their Fourth Report (Third Lok Sabha), the Committee have observed as under:

"18. The Committee are of the view that although it is true that the interpretation of the rules given by the Executive is not binding on the Courts, yet the rules should not be so worded in a manner which may give an impression on the mind of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be worded on the lines of regulation 24 of the Kandla Port Employees' (Allotment of Residence) Regulations, 1964 which reads as under:

"24. Interpretation of regulations:— If any question arises as to the interpretation of these regulations, the same shall be decided by the Board."

9.11 The Committee reiterate their earlier recommendations as aforesaid and desire the Ministry of Surface Transport to bring forth the requisite amendments to the regulations at the earliest.

NEW DELHI;
July, 1992/Asadha, 1914 (Saka)

SOMNATH CHATTERJEE,
Chairman,
Committee on Subordinate Legislation.

A P P E N D I C E S

APPENDIX-I

(Vide para 4 of the Introduction of the Report)

Summary of main Recommendations/Observations made by the Committee in their Fourth Report (Tenth Lok Sabha)

S.No.	Para No.	Summary
1	2	3
1.	1.2	<i>The Rubber Board of India Financial Adviser and Project Officer Recruitment (Amendment) Rules, 1991 (GSR 358 of 1991)</i> The Committee note that on being pointed out, the Ministry of Commerce have agreed to provide the requisite foot-note indicating the details of the original notification dated 16th October, 1990. The Ministry have also expressed regrets for the omission on their part for not doing so at the time of issue of the amendment notification. The Committee desire the Ministry to finalise the requisite corrigendum expeditiously and notify the same at the earliest.
2.	2.2 and 2.3	<i>The India Security Press and Currency Note Press (Draftsman and Tracer) Recruitment Rules, 1991 (GSR 204 of 1991)</i> The Committee note that the Ministry of Finance (Department of Economic Affairs) have agreed to amend the Schedule appended to the India Security Press and Currency Note Press (Draftsman and Tracer) Recruitment Rules to describe the entry in Column 5 against the post of Tracer to read as 'Not Applicable' instead of 'Selection' so as to put the provisions in order. The Committee desire the Ministry to do the needful at the earliest. In this connection, the Committee are constrained to observe that had the Ministry taken due care of the instructions issued by the then Department of Personnel and Administrative Reforms as early as in 1979, such infirmities in the recruitment rules could have been averted in time. This is simply illustrative of the casual approach

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with which the statutory rules are dealt with in the Ministry. The Committee need hardly point out that the statutory rules ought to be finalised with utmost care and caution at all levels in the Ministry.

3. 3.5 *The Ministry of Home Affairs, Department of Official Language, Central Hindi Training Institute (Accounts Officer) Recruitment Rules, 1991 (GSR 201 of 1991)*

The Committee note that in accordance with the guidelines issued by the Department of Personnel and Training in March, 1988, such of the armed forces personnel as are due to retire or to be transferred to reserve within a period of one year and having requisite experience and qualifications, can also be considered for appointment to Group 'A' and 'B' posts required to be filled up by transfer on deputation of Government servants belonging to more than one service. However, the Committee find that the extent recruitment rules do not lay down the minimum qualifications and experience in accounts which the armed forces personnel ought to possess to become.

4. 4.3 *The National Atlas and Thematic Mapping Organisation (Assistant Manager) Recruitment Rules, 1991 (GSR 220 of 1991)*

The Committee find that the provisions regarding transfer on deputation for appointment to the post of Assistant Manager in the National Atlas and Thematic Mapping Organisation are overlapping in as much as this mode of appointment has been resorted to in both the slabs of 50% each. However, with a view to avoid possible stagnation that might cause to the candidates emanating from the direct recruitment, the inclusion of the provisions of transfer on deputation on both the occasions is considered essential by the Ministry as also the Union Public Service Commission. Keeping in view the limited number of posts in the various grades of officers manning the Organisation, the Committee do not consider it expedient to interfere with the existing scheme of appointments as laid down in the recruitment rules for the time-being.

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The Ministry of Home Affairs, Department of Official Language, Central Hindi Training Institute (Accounts Officer) Recruitment Rules, 1991 (GSR 201 of 1991)

The Committee note that in accordance with the guidelines issued by the Department of Personnel and Training in March, 1988, such of the armed forces personnel as are due to retire or to be transferred to reserve within a period of one year and having requisite experience and qualifications, can also be considered for appointment to Group 'A' and 'B' posts required to be filled up by transfer on deputation of Government servants belonging to more than one service. However, the Committee find that the extant recruitment rules do not lay down the minimum qualifications and experience in accounts which the armed forces personnel ought to possess to become eligible for the post of Accounts Officer. Consequently, all the candidates irrespective of their rank or qualifications but having some experience in accounts might claim eligibility for a civilian post in the grade of Rs. 2000-3500, which can not be the intention of these guidelines. The Committee, therefore, desire the Ministry of Home Affairs to review the provisions in the recruitment rules and prescribe the minimum conditions of eligibility for the armed forces personnel as well in more specific terms so as to make the rules self-contained and to do away with any element of uncertainty in these respects.

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5. 5.2 *The Paradip Port Employees (General Provident Fund) Regulations, 1989 (GSR 150-E of 1991)*

The Committee note that the Ministry of Surface Transport have agreed to issue corrigendum to describe the regulations as of 1991 instead of 1989. The Committee desire the Ministry to do the needful without further delay. In this connection, the Committee cannot but re-stress that the responsibility of the Ministry/Department does not cease with the sending of a notification to the Press. After the rules, regulations are published in the gazette, the Ministry/Department should take immediate steps to examine whether the same have been correctly printed and if necessary, to issue a corrigendum thereto.

The observations of the Committee were circulated to all Ministries/Departments by the then Department of Parliamentary Affairs vide O.M. No. F. 32-40/72-R&C dated 28 February, 1973. Despite these standing instructions, the Ministry had not taken any action after publication of the notification in March, 1991 till the error was pointed out by the Committee. The Committee desire the Ministry to devise suitable measures so that such lapses do not recur in future.

6. 6.2 *The Mormugao Port Employees' (Leave Travel*
6.3 *Concession) (Second Amendment) Regulations, 1990*
6.5 *(GSR 180-E of 1991)*
6.6

The Committee observe, it is a well-accepted practice that short title to rules, regulations, bye-laws etc. should bear the year in which they are published and not some other year. Indication of incorrect year in the short title might cause difficulty in location of the 'Order'. The Committee have time and again impressed the need for indicating the correct year in the short title. Some observations of the Committee made in paras 27-28 of their Fifth Report (Fifth Lok Sabha) to this end were circulated to all Ministries/Departments as early as in January, 1974 by the Ministry of Law and Justice. Hence, the plea advanced by the Ministry of Surface Transport for not changing the year in the short title because the proposal was approved by the Board later in January, 1991, is not at all tenable.

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The Committee note that the Ministry have now agreed to issue a corrigendum to rectify the error in the short title to the regulations. Still the fact remains that if they would have exercised due vigilance in this regard, the error could have been avoided. The Committee desire the Ministry to notify the requisite corrigendum at the earliest and also take other remedial steps so as to avoid recurrence of such lapses.

The Committee observe that the purpose of indicating amendment number in the short title to the amending rules, regulations, etc. notified during a calendar year is mainly to facilitate easy referencing of such amendments made from time to time. Otherwise, it may often turn out to be a cumbersome exercise for anyone to trace out as to how many other amendments have already taken place. On the other hand, if an amendment 'Order' contains a wrong or incorrect serial number as to the amendments made, the very purpose of assigning serial numbers may be defeated in as much as it may lead to confusion in the mind of the concerned public in tracing back the previous amendments.

The Committee note that in the instant case, the first amendment was inadvertently mentioned as the second amendment. This might lead the public to believe that some earlier amendment had also taken effect whereas the same did never exist. Thus, instead of helping easy referencing, erroneous serial number would mislead the people. The Committee note that the Ministry of Surface Transport have attributed the error to inadvertence and agreed to issue a corrigendum. The Committee desire the Ministry to streamline their procedure with a view to exercise more vigilance in the matter of framing statutory 'Orders' in future so that the errors of the like nature are detected and remedied in time before such instruments are publicised in the gazette.

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*Amendment to Visakhapatnam Fishing Harbour
Regulations, 1986 (GSR 297-E of 1991)*

- 7.3., The Committee note that the Amendment to
 7.6 Visakhapatnam Fishing Regulations, 1986 was deficient in
 7.7, respect of certain essential attributes of Subordinate
 7.8, Legislation like short title, date of commencement and the
 7.9 usual foot-note at the end. On being pointed out, the
 Ministry of Surface Transport have indicated that they
 have no objection to carry out the amendments suggested
 by the Committee. The Committee desire the Ministry to
 process the matter expeditiously in consultation with the
 Ministry of Law and Justice with a view to remove the
 infirmities that have crept into the regulations. The
 Committee also direct the Ministry to take suitable
 remedial steps so that such lapses do not recur in future.

The Committee note that the Visakhapatnam Fishing Harbour Regulations, 1986 were formulated in exercise of the powers conferred under section 123 of the Major Port Trusts Act, 1963. In their reply, the Ministry of Surface Transport have conceded that there are no explicit powers conferred on the Port Trust Board to raise security deposits under the Major Port Trusts Act. The Ministry have also not indicated the source of any implied power with enabling the Port Trust to raise such deposits.

The Committee find that regulation VI of the Visakhapatnam Fishing Harbour Regulations not only makes provision for raising substantial amounts ranging from Rs. 500/- to Rs. 20,000/- from the owners of the Fishing Trawlers/Vessels/Boats as security deposits but it also lays down for forfeiture of such security deposits without any notice to the owner if the licence is cancelled. The Committee are of the view that such provisions are of substantive nature and they seek to levy charges without any express authorisation therefor in the parent enactment. In the absence of such authorisation, the subordinate authority ought not resort to such extreme remedies of substantive nature. The Committee, therefore, direct the Ministry to omit the provisions from the regulations

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forthwith. However, if the Government so consider necessary, they may bring forth the requisite amending Legislation before Parliament for the purpose.

To the Committee, the Amendments to Visakhapatnam Fishing Harbour Regulations appears to be the outcome of a hasty exercise made by the Visakhapatnam Port Trust. Consequently, several infirmities have crept into the formulation of this tiny piece of subordinate legislation. To mention a few, there is no short title, no amendment number, no year of publication, and no date of its coming into force, which normally form part of any such amendment.

Subordinate law is in no way less important than the principal law as it always carries with it the full force of the principal law. The Committee need hardly stress that such law should as well receive utmost care and expertise in its formulation and in fact, there can be no short-cuts to be applied to its formulation. The Committee, therefore, desire the Ministry of Surface Transport to reconsider the whole matter with a view to evaluate the existing procedures obtaining in the Port Trusts in this regard and they would do well if all subordinate legislation is routed through one single agency like the Legislative Department of the Ministry of Law and Justice with the aim of imparting a certain amount of uniformity in its form and construction and to get rid of any avoidable discrepancies in its formulation.

8. 8.3 and 8.6 The New Mangalore Port Trust Employees' (Contributory Outdoor And Indoor Medical Benefit After Retirement) Regulations, 1991 (GSR 312-E of 1991)
- The Committee note that the Ministry of Surface Transport have agreed to issue necessary corrigendum to rectify the errors that have crept into the regulations at the printing stage. However, the fact remains that the Ministry had not acted in the matter till it was pointed out by the Committee. The Committee hope that the Ministry would now streamline the procedure in order that such lapses do not recur.

The Committee note from the reply of the Ministry that the cost of the identity card forms part of the one time lumpsum contribution payable under regulation 3(a) of these regulations. It flows from this that once the lumpsum

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contribution is paid, no further charge is payable by the beneficiary towards the cost of the identity card. Hence, the provisions "the cost of the identity card, if any, should be borne by the retired employee's spouse" appearing in regulation 3(c) have become redundant. To obviate any confusion in the minds of the beneficiaries in this respect, the Committee desire the Ministry to omit the redundant provisions from the statutory regulations at the earliest. In this connection, the Committee would further like to observe that while formulating subordinate law, care should always be taken to ensure that the charges of either description are not levied without proper and express authorisation therefor in the parent statute.

9. Paras The Cochin Port Trust Employees' (Contributory Outdoor and 9.44 and Indoor Medical Benefit After Retirement Regulations, 1991 9.8 to 9.11 (GSR 313-E of 1991)

The Committee note that on being pointed out, the Ministry of Surface Transport have agreed to carry out the requisite amendments in sub-regulation (c) of regulation 3 of the Cochin Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 by issue of necessary corrigendum. The Committee desire the Ministry to hasten the process of finalisation of the proposed amendments and notify the same at the earliest so as not to prolong the infirmities that have crept into the regulations.

The Committee have time and again held the view that interpretation clause should not be so worded as to give an impression that power of interpretation of rules which should vest in the courts, had been taken away or the jurisdiction of the courts is being ousted in any way.

Further, in para 18 of their Fourth Report (Third Lok Sabha), the Committee have observed as under:

"18. The Committee are of the view that although it is true that the interpretation of the rules given by the Executive is not binding on the Courts, yet the rules should not be so worded in a manner which may give an impression on the mind of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be worded on the lines of regulation 24 of the Kandla Port Employees' (Allotment of Residence) Regulations, 1964 which reads as under:

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"24. *Interpretation of regulations*:—If any question arises as to the interpretation of these regulations, the same shall be decided by the Board."

The Committee reiterate their earlier recommendations as aforesaid and desire the Ministry of Surface Transport to bring forth the requisite amendments to the regulations at the earliest.

M I N U T E S

APPENDIX II

(Vide para 3 of the Introduction of the Report)

VII

MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1991-92)

The Committee met on Friday, 8 May, 1992 from 15.30 to 16.30 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri E. Ahamed
3. Shri Chetan P.S. Chauhan
4. Shri Chhitubhai Gamit
5. Shri Ram Singh Kashwan
6. Shri Shravan Kumar Patel
7. Shri A. Venkata Reddy
8. Kumari Frida Topno

SECRETARIAT

1. Shri S.C. Gupta—*Additional Secretary*
2. Shri R.K. Chatterjee—*Deputy Secretary*
3. Shri Ram Kumar—*Assistant Director*

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| 2. ** | ** | ** |
| 3. ** | ** | ** |

4. The Committee then considered Memoranda Nos. 15 to 19 as under:—

(i) *The Paradip Port Employees (General Provident Fund) Regulations, 1989 (GSR 150-E of 1991) (Memorandum No. 15).*

(A)

5. On being pointed out, the Ministry of Surface Transport had agreed to issue necessary corrigendum for the year of Publication to describe the regulations as of 1991. The Committee, however, desired the Ministry to take an early action in the matter.

** Omitted portions of the minutes are not covered in the Report.

(B)

6. The Committee note that the phrase like 'whose decision thereon shall be final' was apt to give an impression in the minds of the general public that the jurisdiction of the courts of law was being ousted. The Committee were not satisfied with the reply furnished by the Ministry and, therefore, reiterated their earlier recommendations as made in para 29, Second Report (Third Lok Sabha) and recommended the Ministry to bring forth the requisite amendments to the regulations at the earliest.

(ii) The Ministry of Home Affairs, Department of Official Language, Central Hindi Training Institute (Accounts Officer) Recruitment Rules, 1991 (GSR 201 of 1991)—(Memorandum No. 16)

7. The Committee noted that the Recruitment Rules had been formulated on the basis of guidelines issued by the Department of Personnel and Training and nothing had been said in these guidelines for prescribing the minimum rank of Armed Forces Personnel, but they were only required to possess the requisite experience and qualification for appointment to group 'A' and 'B' posts to be filled up by transfer on deputation. The Committee, therefore, desired the Ministry to review the matter and to put the conditions of eligibility for armed personnel in more specific terms so as to do away with any element of uncertainty in the minds of the eligible candidates.

(iii) The New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 (GSR 312-E of 1991) (Memorandum No. 17)

(A)

8. The Committee noted that the Ministry had agreed to issue necessary corrigendum. The Committee, therefore, recommended the Ministry to rectify the error as pointed out by the Committee at the earliest.

(B)

9. The Committee noted that the Ministry had come out with the reply that the cost of identity card, if any, was already included in the one time lumpsum contribution of the individual class. Therefore, the provisions "the cost of the identity card, if any should be borne by the retired employee/spouse" had become redundant and right be omitted from the regulation 4(3) of the regulations *ibid* to obviate any confusion. The Committee, therefore, recommended the Ministry not to levy any charges unless there was express authorisation thereof in the parent statute.

(C)

10. The Committee noted that the phrase like 'whose decision thereon shall be final' was apt to give an impression in the minds of the general public that the jurisdiction of the courts of law was being ousted. The

Committee were not satisfied with the reply furnished by the Ministry and, therefore, reiterated their earlier recommendations as made in para 29, Second Report (Third Lok Sabha) and recommended the Ministry to bring forth the requisite amendments to the regulations at the earliest.

(iv) *The India Security Press and Currency Note Press (Draftsman and Tracer) Recruitment Rules, 1991 (GSR 204 of 1991) (Memorandum No. 18)*

11. The Committee noted that on being pointed out by them, the Ministry of Finance (Department of Economic Affairs) had agreed to amend the schedule appended to the India Security Press and Currency Note Press (Draftsman and Tracer) Recruitment Rules, 1991 to describe the entry in column 5 against the post of Tracer to read as 'not Applicable' instead of 'Selection' so as to put the provisions at the proper footing. The Committee desired the Ministry to do the needful at the earliest.

(v) *The National Atlas and Thematic Mapping Organisation (Assistant Manager) Recruitment Rules, 1991 (GSR 220 of 1991) (Memorandum No. 19)*

The Committee were satisfied with the reply furnished by the Ministry. Hence, the Committee decided not to interfere with existing scheme of appointments as laid down in the rules.

The Committee then adjourned.

VIII

MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1991-92)

The Committee met on Friday, 19 June, 1992 from 15.30 to 16.00 hours.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

2. Shri E. Ahamed
3. Shri R. Dhanuskodi Athithan
4. Dr. K.D. Jeswani
5. Shri Guman Mal Lodha
6. Shri Ram Niwas Mirdha
7. Shri A. Venkata Reddy
8. Shri Mohan Singh
9. Shri Shivendra Bahadur Singh
10. Shri Tara Singh

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R.K. Chatterjee — *Deputy Secretary*
3. Shri Ram Kumar — *Assistant Director*

2. The Committee considered memoranda Nos. 20-26 as follows:—

(i) *The Mormugao Port Employees' (Leave Travel Concession) (Second Amendment) Regulations, 1990 (GSR 180-E of 1991) (Memorandum No. 20)*

(A)

3. The Committee were not satisfied with the reasons furnished by the Ministry of Surface Transport for not indicating the correct year in the short title to the regulations. The Committee, therefore, desired the Ministry to strictly follow the observations/recommendations made by them in paras 27-28 of their Fifth Report (Fifth Lok Sabha) which were circulated to all Ministries/Departments as early as in January, 1974 by the Ministry of Law and Justice.

4. The Committee noted that, on being pointed out, the Ministry had agreed to indicate the correct year in the short title to the regulations by issue of a corrigendum. The Committee felt that had the Ministry exercised due vigilance in that regard, the error could have been avoided. The

Committee desired the Ministry to issue the requisite corrigendum at the earliest and also take other remedial measures so as to avoid recurrence of such lapses.

(B)

5. The Committee noted that in the instant case, the first amendment was wrongly mentioned as the second amendment which would lead the public to believe that some earlier amendment had also taken effect whereas the same did never exist. On being pointed out by the Committee, the Ministry of Surface Transport had attributed the error to inadvertence and agreed to issue a corrigendum. The Committee desired the Ministry to exercise due vigilance in the matter of framing statutory 'Orders' in future that the errors of the like nature were detected and remedies in time before such instruments were published.

(ii) **

(iii) *Amendment to Visakhapatnam Fishing Harbour Regulations, 1986 (GSR 297-E of 1991) (Memorandum No. 22)*

(A)

7. The Committee noted that on being pointed out by them the Ministry of Surface Transport had indicated that they have no objection to carryout the amendments in respect of certain essential attributes of Subordinate Legislation like short title, date of commencement and the usual footnote at the end. The Committee desired the Ministry to process the matter expeditiously in consultation with the Ministry of Law and Justice with a view to remove the infirmities that had crept into the regulations. The Committee also recommended the Ministry to take suitable remedial steps so that such lapses did not recur in future.

(B)

8. The Committee noted that the Visakhapatnam Fishing Harbour Regulations, 1986, were formulated in exercise of the powers conferred under section 123 of the Major Port Trusts Act, 1963. The Ministry of Surface Transport, in their reply, had conceded that there were no explicit powers conferred on the Port Trust Board to raise security deposits under the Major Port Trusts Act. The Ministry had also not indicated the source of any implied power either enabling the Port Trust to raise such deposits.

9. The Committee also noted that the regulation VI of the above regulations not only made provision for raising substantial amounts ranging from Rs. 500/- to Rs. 20,000 from the owners of the Fishing Trawlers/Vessels/Boats as security deposits but it also laid down for forfeiture of such security deposits without any notice to the owner if the licence was cancelled.

The Committee were of the view that such provisions were of substantive nature and they sought to levy charges without any express authorisation therefore in the parent enactment. In the absence of such authorisation, the subordinate authority might not resort to such extreme remedies of substantive nature. The Committee, therefore, directed the Ministry to omit the provisions for the regulation forthwith or bring forth the requisite amending legislation before Parliament for the purpose, if the Government so considered necessary.

(C)

10. The Committee noted from the reply of the Ministry that the Port Trust had their own legal department and all such regulations were required to be vetted by the legal department of the concerned port trust and so these regulations were not got vetted from the Ministry of Law.

11. The Amendments to Visakhapatnam Fishing Harbour Regulations appeared to be the outcome of nasty exercise made by the Visakhapatnam Port Trust. Consequently, several infirmities had crept into the formulation of that tiny piece of Subordinate Legislation. Subordinate law was no way less important than the principal law as it always carried with it the full force of the principal law. The Committee, therefore, desired the Ministry to reconsider the whole matter with a view to evaluate the existing procedures obtaining in the Port Trust in that regard and they would do well if all Subordinate Legislation was routed through one single agency like the Legislative Departments of the Ministry of Law & Justice with

(iv) *The New Mangalore Port Trust Employees (Conduct) Fourth Amendment Regulations, 1991 (GSR 308-E of 1991) (Memorandum No. 23)*

12. The Committee considered the above Memorandum and were not satisfied with the reply received from the Ministry of Surface Transport in regard to Regulation 13(a), as amended, of the New Mangalore Port Trust Employees (Conduct) Regulations which made it obligatory on an employee to report if any member of his family was engaged in a trade or business or owns or managed an insurance agency or commission agency. The Committee, therefore, decided to hear the authorities in person to elicit further clarifications in the matter.

(v) *The Cochin Port Trust Employees (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 (GSR 313 — E of 1991) (Memorandum No. 24)*

(A)

13. The Committee noted that on the matter being pointed out by them, the Ministry of Surface Transport had agreed to make necessary changes in sub-regulation (c) of regulation 3 of the Cochin Port Trust Employees (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1991 by issue of Corrigendum. The Committee

desired the Ministry to hasten the process of finalisation and to take all necessary steps to remove the infirmities that had crept into the regulations.

14. The Committee had time and again held the view the interpretation clause should not be so worded as to give an impression that power of interpretation of rules, which should vest in the courts, had been taken away or the jurisdiction of the courts was being ousted in any way. The Committee, therefore, desired the Ministry to strictly follow the observations/recommendations made by them in para 18 of their Fourth Report (Third Lok Sabha).

15. The Committee reiterated their earlier recommendations and desired the Ministry of Surface Transport to bring forth the suitable amendment to this regulations at the earliest.

(vi) *The Rubber Board of India Financial Adviser and Project Officer Recruitment (Amendment) Rules, 1991 (GSR 358 of 1991) (Memorandum No. 25)*

16. The Committee noted that, on the matter being pointed out by them, the Ministry of Commerce had agreed to provide the requisite footnote indicating the details of the original notification dated 16 October, 1990. The Committee desired the Ministry to finalise the requisite corrigendum expeditiously and to notify the same at the earliest.

(viii) **

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The Committee then adjourned.

IX

MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1991-92)

The Committee met on Friday, 10 July, 1992 from 15.00 hours to 15.45 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri E. Ahamed
3. Shri Chhitubhai Gamit
4. Shri Ram Singh Kashwan
5. Shri Ram Niwas Mirdha
6. Shri Shravan Kumar Patel
7. Shri A. Venkata Reddy
8. Shri Shivendra Bahadur Singh
9. Shri Tara Singh
10. Kumari Frida Topno

I. REPRESENTATIVES OF THE MINISTRY OF COMMERCE

Shri D.R. Mehta—*Chief Controller of Imports and Exports*

II. REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri K.L. Mohanpuria — *Secretary*
2. Shri A.C. Unni — *Additional Secretary*
3. Shri N.K. Agrawal — *Joint Secretary and
Legislative Counsel*

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R.K. Chatterjee — *Deputy Secretary*
3. Shri Ram Kumar — *Assistant Director*

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

3. The Committee authorised the Chairman and in his absence, Shri Tara Singh, M.P. to present the Report to the House on 14 July, 1992.

4 to 11

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The Committee then adjourned.

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