

COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

FIFTH REPORT

[Presented on 18 August, 1992]



LOK SABHA SECRETARIAT
NEW DELHI

August, 1992/Sravana, 1914 (Saka)

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LOK SABHA SECRETARIAT

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TO

THE FIFTH 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 S.C. Gupta	— <i>Joint Secretary</i>
Shri R.K. Chatterjee	— <i>Deputy Secretary</i>
Shri Ram Kumar	— <i>Under Secretary</i>

REPORT

I

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 Fifth Report.

2. The matters covered by this Report were considered by the Committee (1991-92) at their sittings held on 19 June, 10 July and 6 August, 1992. The Committee took evidence of the representatives of (i) Ministry of Commerce and Ministry of Law, Justice and Company Affairs (Legislative Department); and (ii) Ministry of Surface Transport (Ports Wing). The Committee wish to express their thanks to the Officers for appearing before the Committee and furnishing the information desired by them.

3. The Committee considered and adopted this Report at their sitting held on 12 August, 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.

NEW DELHI;
August, 1992

SOMNATH CHATTERJEE,
Committee on Subordinate, Legislation.

Shravana, 1914 (Saka)

REPORT

I

THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) BILL, 1992 (BILL NO. 69 OF 1992)

5. The Foreign Trade (Development and Regulation) Bill, 1992 (Bill No. 69 of 1992) was introduced in Lok Sabha on 3 April, 1992. The Bill sought to provide for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from India and for matters connected therewith or incidental thereto, and to repeal the Imports and Exports (Control) Act, 1947. Clause 3 of the Bill read as under:—

“Powers to make provision relating to imports and exports.

3. (1) The Central Government may, by Order published in the official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applied shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly.

1.2 Clause 3 of the said Bill conferred powers on the Central Government to make statutory Orders and such Orders were as well sought to be laid before two Houses of Parliament for modification etc. Normally, full purport and effect of the delegation of power to subordinate authorities were given in the Memorandum of Delegated Legislation annexed to the Bill. However the Memorandum of Delegated Legislation annexed to the Bill, made mention of the power sought to be delegated under Clause 19 of the Bill, but it skipped over the powers of delegation sought to be conferred under Clause 3 *ibid*. In this connection, attention of the Ministry of Commerce was drawn to the following recommendations of the Committee made in para 6 of their First Report (First Lok Sabha):—

- (i) the memorandum accompanying a Bill should give full purport and effect of the delegation of power to the subordinate authorities and also the the points which may be covered by the rules, the particulars of subordinate authorities or the persons who are to exercise the delegated power and the manner in which such power is to be exercised;

- (ii) Government should provide memoranda in respect of all Government Bills which are pending before the House and which contain proposal for rule-making powers; and
- (iii) in future all Bills introduced in the House should invariably contain detailed memoranda on the lines indicated in (i) above."

1.3 The Ministry of Commerce were requested to state the special reasons, if any, for departure from the normal practice in this regard. In their reply dated 1 May, 1992, the Ministry stated as under:—

"....In this connection Legislative Department of Ministry of Law had been consulted who has opined as follows—

The procedure of introduction of a Bill in the Lok Sabha is governed by the Rules of Procedure and Conduct of Business of the Lok Sabha. Rule 70 of the said Rules (7th edition 1989) provides that a Bill involving any proposal for delegation of legislative power shall be accompanied by a memorandum explaining such proposal and drawing attention to their scope and stating also whether they are of normal or exceptional character.

The memorandum regarding delegated legislation accompanying the Foreign Trade (Development and Regulation) Bill, 1992, has explained and drawn attention to clause 19 of the Bill which empowers the Central Government to make subordinate legislation by way of rules. The orders referred to in clause 3 of the Bill are to be made by the Central Government by way of policy directives or information intended for the benefit of general public and do not fall within the category of subordinate legislation. Further, sub-clause (3) of Clause 19 of the Bill makes it mandatory for Central Government to lay before each House of Parliament every order made by the Central Government under the Bill. The said sub-clause also empowers either House of Parliament to make any modification in the Order. We are of the view that the recommendation of the Committee on Subordinate Legislation referred to by Lok Sabha Secretariat in para 2 in their office memorandum does not relate to the subject matter of clause 3 of the Bill.

It is hoped that this will meet your requirement."

1.4 Provisions of Clause 3(2) of the Bill were seemingly identical to those of section 3(1) of the Imports and Exports (Control) Act, 1947 which was sought to be repealed. The Government had already admitted before the Committee that the 'Orders' issued under section 3 of the Imports and Exports (Control) Act, 1947 were instruments of subordinate legislation, as could be seen from the following recommendation of the Committee made in para 19 of their Seventh Report (Eighth Lok Sabha), presented on 2 May, 1986:—

"19. Admittedly, the Exports (Control) Order, 1977 is an instrument of subordinate legislation. The 'Order' has been framed in pursuance of the powers conferred upon the Central Government under section 3 of the Imports and Exports (Control) Act 1947. Section 3 is, however, silent as to the laying of such 'Orders' before Parliament. In this connection, the Committee find that sub-section (3) of section 8 of the said Act explicitly provides for laying of 'every rule made by the Central Government under the Act' before each House of Parliament. In the opinion of the Committee, the provisions in section 3(3) of the Act are sufficient to cover all rule, regulations, bye-laws, orders, etc. that are framed by the Central Government in exercise of the legislative powers conferred by the Act. In this connection, the Committee need hardly stress that the requirement of laying the subordinate legislation by whatever name it might be called e.g. rules, regulations, bye-laws, orders etc., before parliament cannot be dispensed with in any case. In view of the fact that section 8(3) already contains provisions for laying, the Committee feel the Ministry should have no difficulty in laying the 'Orders' issued have under section 3 of the Act before each House of Parliament."

1.5 On 19 June, 1992, the Committee considered the matter at some length. The Committee did not approve of the contention of the Ministry of Law that the 'Orders' referred to in Clause 3 of the Bill were to be made by the Central Government by way of policy directives or information intended for the benefit of general public and did not fall within the category of subordinate legislation. With a view to make the position clear before the Bill was taken up for consideration in the House, the Committee decided to examine the representatives of the Ministry of Commerce as well as the Ministry of Law and Justice to further elucidate the matter.

1.6 On 10 February, 1992, the representatives of the Ministry of Commerce and the Ministry of Law and Justice appeared before the Committee. During evidence, the Secretary, Legislative Department and the Chief Controller of Imports and Exports agreed for the amendment of the Memorandum of Delegated Legislation so as to include therein Clause 3 of the Bill. In keeping with the assurance to the Committee, the Deputy Minister of Commerce accordingly brought forward the Revised Memorandum regarding Delegated Legislation to be appended to the Foreign Trade (Development and Regulation) Bill, 1992, pending for consideration of Lok Sabha.

1.7 The Committee note with satisfaction that on being pointed out by them, the Ministry of Commerce have brought forth the Revised Memorandum of Delegated Legislation to be appended to the Foreign Trade (Development and Regulation) Bill, 1992.

II

THE LIFE INSURANCE CORPORATION OF INDIA (AGENTS) AMENDMENT RULES, 1990 (GSR 4 OF 1991)

(A)

The Life Insurance Corporation of India (Agents) Amendment Rules, 1990 (GSR 4 of 1991) were published in the Gazette of India dated 5 January, 1991 but were deemed to have come into force from 19 January, 1989—retrospectively. In this connection, the Explanatory Memorandum appended to the rules read as under:—

“The Life Insurance Corporation of India has introduced a new Children’s Deferred Endowment Assurance (with-profits) Plan viz., ‘Jeevan Balya’ with effect from 19th January, 1989. Consequently, the rates of commission payable under the Plan to the Agents have been approved with effect from 19th January, 1989. The rules are accordingly given retrospective effect from 19th January, 1989.

It is certified that no insurance agent of the Life Insurance Corporation of India is likely to be affected adversely by the Notification being given retrospective effect.”

2.2 As mentioned above the Life Insurance Corporation of India introduced the children’s deferred endowment assurance plan known as ‘Jeevan Balya’ with effect from 19 January, 1989. However, the notification prescribing the rates of commission payable to the agents in this respect was published in the Gazette of India dated 5 January, 1991 after a lapse of almost two years. The matter was taken up with the Ministry of Finance (Department of Economic Affairs) in March, 1992 for ascertaining the reasons for such inordinate delay in issue of the notification. In their reply dated 8 May, 1992 (which was unfortunately delayed by over two months), the Ministry stated as under:—

“.....draft notification amending the LIC (Agents) Rules, 1972 to insert the Jeevan Balya Plan in the Commission tables was received from LIC in May, 1989 which was examined in this Ministry in consultation with Ministry of Law & Justice (Legislative Department). The draft notification was vetted by the Legislative Department after some correspondence with this Ministry regarding provision of explanatory note in the draft. Thereafter the vetted draft was sent to the Official Language Commission of the Ministry of Law and Justice for Hindi version. On receipt of the Hindi version, LIC’s confirmation that the draft as vetted by the

Legislative Department meets LIC's requirement was obtained. Thereafter, approval of F.M. for the amendment to the Rules was taken. The draft notification as vetted by the Legislative Department was then sent to the Government of India Press for publication in December, 1990. The delay in the issue of the notification is regretted."

2.3 The Committee note with concern that the Ministry of Finance (Department of Economic Affairs) took a period of almost two years in issuing an amendment notification to insert the Jeevan Balya Plan in the commission tables of the Life Insurance Corporation of India (Agents) Rules, 1973 which obviously meant delay in implementing the amendment. According to the Ministry, the draft notification was received from the Life Insurance Corporation in May, 1989. Even thereafter it took them another 19 months in the inter-Ministerial correspondence before its finalisation. The Ministry have regretted the delay in issue of the notification. The Committee desire the Ministry to evolve suitable measures so as to avoid recurrence of such lapses in future, which has been caused due to lack of proper attention being given to important matters affecting a large number of employees.

(B)

2.4 It was noticed that the entries incorporated in Schedule II and Schedule IV of the Life Insurance Corporation of India (Agents) Rules by the amendment notification were at variance in English and Hindi versions thereof. The Ministry of Finance were enquired if they had since issued the requisite corrigendum to rectify the errors. In their reply dated 8 May, the Ministry stated as under:—

"As regards the errors occurring in entireties in Schedule II and Schedule IV, necessary corrigendum has been issued in September, 1991 to rectify the errors....."

2.5 The Committee are unhappy to find that the Ministry took a period of almost 8 months in issuing the corrigendum after publication of the gazette notification in January, 1991. In this connection, they would like to refer to an earlier recommendation, which was circulated to all Ministries/ Departments of the Government of India *vide* Department of Parliamentary Affairs O.M. No. F. 32(4)/77-R&C dated 6 November, 1978, that corrigenda to statutory rules etc. would be published within 30 days of the publication of the rules. The Committee expect the Ministry to be more alert in future so that the errors which creep into the statutory rules are rectified at the earliest and in any case within the stipulated period of 30 days of publication of the rules in the official gazette.

III

REPRESENTATION REGARDING THE INCOME-TAX (APPELLATE TRIBUNAL) RULES, 1963

3.1 In a representation dated 29 November, 1991, addressed to the Chairman, Committee on Subordinate Legislation of Lok Sabha, Shri Chandra Prakash Agrawal, President of the Uddhyog Vepar Prathinidhi Mandal, Kaimganj (District Farrukhabad—Uttar Pradesh) raised the following significant points:

“....That it appears that the Income-tax (Appellate Tribunal) Rules, 1963 have not been laid on the Table of the House nor the same have been scrutinised by the Hon'ble Committee so far.

2. That the Income Tax (Appellate Tribunal) Rules, 1963 should have proper and adequate provision to properly hear the appeals and further there should be clear and express provision in regard to passing speaking order just after hearing the arguments of the parties or otherwise within a reasonable time of 10 days as it is necessary and expedient in the interest of justice and fair play in action, keeping in view the most relevant and material fact that delay in delivery of judgement may not defeat the main purpose of hearing and arguments of the parties in the course of hearing.

3. That now a days it is the general practice that speaking orders are not passed and further it takes months together when judgements are passed and delivered to the parties and it is serious matter. Such specific cases can be made available, if proper opportunity is given to the petitioner.

4. That in the circumstances of the case, it is necessary and expedient in the interest of justice and fair play in action that there should be immediate effective action in the matter to check the prevailing practice.

5. The Tribunal is a quasi-judicial authority and is, as such, required to pass speaking orders for its conclusions recording therein the points addressed before it both pro and against. The Tribunal has reported that to their knowledge, there is no order passed by any member in the country, without giving reasons for the conclusions.

6. Under the administrative instructions given by the President of the Income-tax Appellate Tribunal, the orders of the Tribunal shall have to be passed within 30 days of the conclusion of the arguments

and, in case of delay, the reasons therefor must be given by the Members. The Tribunal in a year disposes of about 45,000 to 55,000 appeals all over the country. There may be a few cases where delay might have taken place in disposing of the appeals beyond 30 days but those orders are very few and they are always monitored by the President and the Vice-Presidents of the Income-tax Appellate Tribunal. Some times, cases do take time for study. Except in small cases, it is not possible to dispose of the appeals on the very date of hearing. Decisions in complicated revenue matters cannot be given on the spot as they need study and discussion among the Members. Still, the period of one month is considered to be reasonable for passing orders on appeals fully-heard.

7. Similarly there are standing instructions to the Registry of the Tribunal that all orders passed by the Tribunal are to be communicated to the parties concerned within three weeks of their being signed by the members constituting the Bench. These instructions are being complied with strictly and the orders of the Tribunal are generally communicated to the parties in time except in very few cases where the orders are voluminous and require corrections, retyping, comparison, etc. There has been no complaint from any quarter either about the delay in passing of orders or of passing of non-speaking orders, either by the parties before the Tribunal or by High Courts to which references lie against the orders of the Tribunal.

8. The existing rules have been working satisfactorily for the last several decades."

That it is the worth-while to be submitted here that the main purpose of hearing and arguments is that the parties are given due opportunity to put their case and in support of the same, make the rulings available to the Tribunal relied by them and this object can be only achieved when judgment is made at the spot or in any case within a very short time and not otherwise.

3.2 In a communication dated 31 March, 1992, the Department of Legal Affairs in the Ministry of Law, Justice and Company affairs furnished the following comments on the points raised in the said representation:—

"Under Section 255(5) of the Income-tax Act, 1961, the Appellate Tribunal has the power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Benches shall hold their sittings. In exercise of the power conferred by this sub-section, the Appellate Tribunal made its Rules called "The Income-tax Appellate Tribunal Rules, 1963" by a Notification No. 1-IT/63 dated 17.4.1963. These Rules are published in the Official Gazette.

2. The Tribunal has constituted a Rules Committee to consider the necessity to amend its Rules as and when circumstances arise and the amendments are also published in the official Gazette. A copy of the said rules is placed at Annexure-A.

3. There is no provision in the Act requiring that Rules framed by the Appellate Tribunal should be laid on the Tables of Parliament.

4. Rules 18 to 35 of the Income-tax Appellate Tribunal Rules lay down the procedure for hearing of appeals and references etc. These rules cover, in clear terms, all aspects of the hearing of appeals, such as preparation of paperbooks, fixation of appeals for hearing, filing of cross objections, ex-parte hearings production of additional evidence, adjournments and the passing of orders by the Tribunal and their communication to the parties."

3.3 The Committee note from the reply of the Ministry of Law that there is no provision in the Income-tax Act for laying of the rules framed by the Appellate Tribunal before the two Houses of Parliament. In this context, the Committee, in paras 10-11 of their Fourteenth Report (Fifth Lok Sabha), earnestly desired all Ministries/Departments to undertake examination of all Acts with which they were administratively concerned in order to find out which of them did not contain a provision for laying of rules before Parliament and to incorporate that provision in the Acts at their earliest. With the enactment of the Delegated Legislation Provisions (Amendment) Act of 1983 and 1985, requisite provisions have already been incorporated as many as 141 Acts. The Committee are surprised to find that still the necessary provisions have not been made in the case of the Income-tax Act. The Ministry should bring forth the necessary amending legislation in this regard without further delay and till such time the Act is so amended, the Government may suo motu lay the rules before the two Houses of Parliament so as to keep the members apprised of the important delegated legislative matters.

3.4 The Committee observe that the Income-tax Appellate Tribunal, being a quasi-judicial body, is required to pass speaking order after hearing the arguments of the parties concerned. To serve the ends of justice and fair play better, the Committee hope that such orders will be passed without any avoidable delay after the conclusion of the hearing. The Committee note that under the administrative instructions issued by the President of the Income-tax Appellate Tribunal, the orders of the Tribunal are required to be passed within 30 days of the conclusion of the arguments and, in case of delay, the reasons therefor must be given by the Members. Similarly, there are standing instructions to the Registry of the Tribunal that all orders passed by the Tribunal are to be communicated to the parties concerned within three weeks of their being signed by the Members constituting the Bench. The Committee hope that such period as mentioned above will not be exceeded.

3.5 The Committee also note with concern that there are administrative instructions or standing instructions issued by the President to regulate various procedural matters related to the Income-tax Appellate Tribunal. In this connection, the Committee would once again like to emphasize that such administrative or standing instructions are no substitute to statutory rules. As these instructions are not published in the official gazette, these escape the notice of this Committee to judge their fairness or otherwise. With a view to make the rules self-contained and for information of the general public, these instructions might be placed on a statutory footing. As the instructions are already in vogue for a long time, the Committee hope there should be no difficulty in incorporating them in the statutory rules.

IV

THE ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFITS) AMENDMENT RULES, 1991 (GSR 57 of 1991)

4.1 The All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1991 (GSR 57 of 1991) were published in the Gazette of India dated 26 January, 1991 but were deemed to have come into effect from 1 January, 1986 retrospectively. The explanatory memorandum appended thereto stated that the limit of family pension was revised with effect from 1 January, 1986. But it was silent as to the circumstances leading to such enormous delay of five years in issuing the amendment. The matter was taken up with the Ministry of Personnel, Public Grievances and Pensions for clarification and for ascertaining as to how the cases of family pension had actually been governed during the intervening period. In their reply dated 7 April, 1992, the Ministry stated as under:—

“(a) Rule 22-B of the AIS (DCRB) Rules, 1958 governs grant of family pension to the family of members of AIS.

(b) Sub-rule (2) of the said rule incorporates the rate of family pension and also prescribes a limit.

(c) Prior to 01.01.1986 the rates were: (i) where the pay of a member of the service is Rs. 1200/- and above, 12% of pay subject to a minimum of Rs. 160/- per month and a maximum of Rs. 250/- a month.

(ii) Where the pay of a member of the service is Rs. 1199 or below, 15% of pay subject to a minimum of Rs. 100 a month and a maximum of Rs. 160 a month.

(d) The above rates and limits were raised w.e.f. 1.1.86 consequent to the acceptance of the recommendations of the Fourth Pay Commission. The revised rates and limits are—

(i) where the pay of a member of the service is rupees three thousand or less, twenty per cent of pay subject to minimum of Rs 450/- per month.

(ii) where the pay of a member of the service is more than rupees three thousand, fifteen per cent of pay subject to a minimum of Rs. 600/- and maximum of rupees one thousand two hundred fifty per month.

(e) Sub-rule (8) of rule 22-B lays down the limit when two family pensions are granted to children of deceased parents who were members of the service. Prior to the amendment carried out vide GSR 57 of 26.01.1991 the limits were as follows:—

- (i) if the surviving child or children is or are eligible to draw two family pensions at the rate mentioned in Rule 22C, the amount of both the pensions shall be limited to five hundred rupees per mensem.
 - (ii) if one of the family pensions ceased to be payable at the rate mentioned in rule 22-C and in lieu thereof the pension at the rate mentioned in sub-rule (2) becomes payable the amount of both the pension shall be limited to five hundred rupees per mensem.
 - (iii) if both the family pensions are payable at the ordinary rate mentioned in sub-rule (2) the amount of two pensions shall be limited to two hundred and fifty rupees per mensem.
- (f) There is a special provision for grant of family pension in certain cases under rule 22-C. This rule provides that for a period of seven years from the date of death or till the date on which the member of the service would have attained the age of 65 years, had he remained alive, whichever period is shorter, the pension payable under sub-rule (2) of rule 22-B shall be at 50% of the basic pay last drawn subject to a maximum of twice the amount admissible under sub-rule (2) of rule 22-B.
- (g) The limit of two family pensions prescribed under sub-rule (8) is directly linked to the limit prescribed in sub-rule (2). When the amendment was carried out in sub-rule (2) in 1987 in the wake of the recommendations of the Fourth Central Pay Commission, amendment to sub-rule (8) was missed. Since pension/family pension are actually disbursed by the State Government/Accountant General, this Department was unaware of the omission. Neither AGs nor the State Governments pointed out this omission, may be for the reason that they have been making family pension in such cases as per the revised rates prescribed under sub-rule (2). This Department noticed the omission towards the end of 1988 when a representation was received wherein it was urged that the limit of two pensions prescribed under sub-rule (8) may be removed.
- (h) Amendment seeking to revise the limit in sub-rule (8) was circulated to State Governments in May, 1989. On receipt of the comments/concurrence of the majority of States, in consultation with the Ministry of Law the amendment was finalised and notified in 1991.

As the above facts would indicate, the delay in carrying out the amendment in sub-rule (8) was caused due to oversight. Since neither AG nor State Governments pointed out the said omission, it is presumed that they have been sanctioning family pensions in accordance with the revised rates as contained in sub-rule (2), as the limits prescribed in sub-rule (8) are directly linked to the limits stipulated under sub-rule (2). In any case, this particular sub-rule will apply only in a few cases where both the

parents are members of the All India Service and both are deceased. This Department is not aware of any such case where this rule would have been applied during this intervening period."

4.2 The Committee note with concern that while carrying out an amendment in sub-rule (2) of rule 22-B of the All India Services (Death-cum-Retirement Benefits) Rules in the year 1987 in the wake of recommendations of the Fourth Central Pay Commission, the Department of Personnel and Training missed the amendment to sub-rule (8) of rule 22-B due to 'oversight'. As no State Government/Accountant General, who actually disbursed pension/family pension, had pointed it out, the Department remained unaware of the omission all along. The omission came to the notice of the Department towards the end of 1988 when a representation was received by them urging that the limit of two pensions prescribed under sub-rule (8) might be removed. Then, in May, 1989, the Department circulated the amendment in sub-rule (8) to the State Governments. On receipt of the comments/concurrence of the majority of States, the Department finalised and notified the amendment in January, 1991. The Department is also not aware of any case where this rule might have been applied during the intervening period.

4.3 The Committee are surprised to find that once an error has crept into the rules, it continues and there is virtually no mechanism or procedure in the Department of Personnel and Training to detect it at any point of time. The Committee are constrained to observe that even when the error came to the notice of the Department of Personnel and Training towards the end of 1988, the amendment seeking to revise the limit in sub-rule (8) of rule 22-B was circulated to State Governments in May, 1989, that is, after a gap of 5 months or so.

4.4 Again, the Department has taken another 20 months in processing and finally notifying the amendment on 26 January, 1991. The Department has not advanced any reasons for such inordinate delay in finalisation of an amendment to the All India Services Rules. Besides the Department has not taken care to ascertain whether any beneficiaries were adversely affected due to lapse on its part in not carrying out the required amendment in sub-rule (8) of rule 22-B at the appropriate time despite the fact that the Committee asked for such information. On the other hand, the Department seemed to be content with mere presumption of certain things. The Committee strongly deprecate the lackadaisical manner adopted by the Department of Personnel and Training in dealing with the important statutory rules governing the All India Services. The Committee desire the Ministry to ensure that the delay in notifying the amendment did not adversely affect any beneficiary.

THE ANDAMAN LAKSHADWEEP HARBOUR WORKS (GROUP 'A' POSTS) RECRUITMENT (AMENDMENT) RULES, 1991 (GSR 295-E OF 1991)

5.1 The Andaman Lakshadweep Harbour Works (Group 'A' Posts) Recruitment (Amendment) Rules, 1991 (GSR 295-E of 1991) were published in the Gazette of India, Extraordinary, Part II, Section 3(i), dated 3 June, 1991. Column 11 of the Schedule appended to the amendment rules provided for appointment to the grade of Deputy Chief Engineer (Civil) by promotion and by transfer on deputation (including short term contract) only. There was no provisions for any direct recruitment of incumbents to the said post. Whereas Columns 9, 10 and 14 of the Schedule contained certain provisions pertaining to the direct recruitment as well. Obviously, such provisions for direct recruitment were inappropriate and redundant. The concerned Ministry of Surface Transport were asked to state if they had any objection to amending the recruitment rules to the necessary effect. In their reply dated 20 February, 1992, the Ministry stated as under:—

“.....this Ministry has no objection to amend the rules by deleting the provision pertaining to direct recruitment in Column 9, 10 and 14 of the Schedule. A copy of the amended Recruitment Rules will be sent to the Secretariat as soon as it is ready.”

5.2 The Committee note that as per provisions of Column 11 of the Schedule appended to the Andaman Lakshadweep Harbour Works (Group 'A' posts) Recruitment (Amendment) Rules, 1991 there was no provisions for any direct recruitment to the post of Deputy Chief Engineer (Civil). As such, the provisions contained in Columns 9, 10 and 14 of the Schedule pertaining to direct recruitment were redundant. The Committee further note that on being pointed out, the Ministry of Surface Transport have agreed to deleting the redundant provisions from the Schedule. The Committee desire the Ministry to process the matter expeditiously and issue the necessary amendment to the rules in this respect at an early date.

VI

THE NEW MANGALORE PORT TRUST EMPLOYEES (CONDUCT) FOURTH AMENDMENT REGULATIONS, 1991 (GSR 308-E of 1991)

6.1 The New Mangalore Port Trust Employees (Conduct) Fourth Amendment Regulations, 1991 (GSR 308 of 1991) were published in the Gazette of India, Extraordinary, dated 12 June, 1991. Sub-regulation (3) of regulation 13 of the New Mangalore Port Trust Employees (Conduct) Regulations (As amended by Fourth Amendment) read as under:

"13. Private Trade or Employment

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(3) Every employee shall report to the Board if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency."

6.2 Article 19(1)(g) of the Constitution of India provided that all citizens shall have the right to practise any profession, or to carry on any occupation trade or business. Regulation 13(3), as amended, of the New Mangalore Port Trust Employees (Conduct) Regulations made it obligatory on an employee to report if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency. The Ministry of Surface Transport were asked to state the rationale behind such provisions and what action was contemplated against an employee if any member of his family was so engaged in trade etc. In their reply dated 24 March, 1992, the Ministry stated as under:—

".....the clarification sought from the concerned port are as below: The genesis for provisions contained in sub-regulation 3 of Regulation 13—Since more than 10 years have elapsed since the publication of N.M.P.T. Employees (Conduct) Regulations, 1980, this provision underwent modifications consequent on the issue of instructions by the Central Government. Therefore, the necessity was felt to modify the clause in sub regulation (3) of regulation 13 in our conduct Regulations to fall in line with the instructions issued by Central Government from time to time. Accordingly the amendment was proposed, which was approved by Government and published in the Gazette GSR No. 308 (E).

As regard the action normally contemplated against an employee, if any member of his family is engaged in trade or business or owns or manages an insurance agency or commission agency under the above amplified provisions, it may be stated that every employee shall report to the Board, if any member of his family is engaged in a trade or business or owns or manages an insurance agency or

commission agency. If he fails to do so, and it is suspected that he is engaged in such activities without the knowledge of the Board of Trustees his action will be deemed to be a breach of this sub-regulation and departmental action will be initiated against him. If it is proved, major or minor penalties will be imposed according to the gravity of the breach."

6.3 The Committee considered the reply of the Ministry at their sitting held on 19 June, 1992. As the information asked for was not forthcoming, the Committee decided to hear oral evidence of the authorities concerned to elicit further clarification in the matter.

6.4 During evidence before the Committee on 6 August, 1992, the Secretary of the Ministry of Surface Transport submitted that an employee, in the discharge of his official duties, should desist from dealing with a case relating to award of a contract to a firm in which a member of his family was employed. He added that the provisions did not prohibit or prevent the members of the family in continuing with their employment. To that extent, the fundamental right guaranteed in the Constitution was there. The witness further submitted that a subsidiary purpose of this regulation could be in that if a particular firm was blacklisted or a particular firm was going against the interests of the country, the Government could check up whether any employee of the Port Trust was having a relation working there. He added that the regulation was, in fact, an exact copy of the provisions that were applicable to all the Central Government employees.

6.5 When asked whether any action had been taken against any employee for not submitting a report as contemplated under the regulation, the Secretary stated that this was only a fact finding provision and he had no information as to a case where action had been taken against an employee for not disclosing the facts. He added that the provisions did not restrict the family members of an employee to do a genuine or a bonafide business.

6.6 The Committee note that sub-regulation (3) of regulation 13 of the New Mangalore Port Trust Employees (Conduct) Regulations, as amended, is in the nature of a fact-finding provision, the main purpose of which is to act as a safeguard to prevent a conflict of duty and of interest between the employee and the employer. The provisions do not prevent or prohibit the members of the family of an employee to carry on any trade or business. The Committee observe that the provision is a general one and similar provision is applicable to all the Central Government employees. Under such circumstances, the Committee do not wish to pursue the matter further.

VII

THE MADRAS PORT TRUST (RECRUITMENT OF HEADS OF DEPARTMENTS) REGULATIONS, 1991 (GSR 167-E of 1991)

Regulation 20 of the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991 (GSR 167-E of 1991) read as under:

"20 Repeal and Savings — All regulations, procedures, practices and customs corresponding to these Regulations and in force immediately before the commencement of these Regulations are hereby repealed.

Provided that any order made or action taken under the Regulations, procedures, practices and customs so repealed shall be deemed to have been made or taken under the corresponding provisions of these Regulations."

7.2 It was felt that the expression 'all regulations, procedures, practices and customs corresponding to these regulations' appearing in regulation 20 was vague inasmuch as it was not known as to what regulations etc. had actually been repealed. The Ministry of Surface Transport, with whom the matter was taken up, stated in reply dated 18 March, 1992 as under:—

"Regulation 20 regarding repeal and savings: In the wake of the commencement of the above mentioned Regulations, it was felt necessary to repeal such practices, procedures and customs which shall have no force in future. However, the orders made or action taken prior to the commencement of the above mentioned regulations, have been made valid as per the saving proviso under the said regulation to have continuity."

7.3 On 26 March, 1992, the Ministry of Surface Transport were further requested to state—

- (i) The exact name/nomenclature/description of the regulations practices and customs which have been sought to repeal under Regulation 20.
- (ii) Whether Government have any objection in specifying the above description in Regulation 20 itself; and
- (iii) Whether the aforesaid regulations, procedures, practices and customs are statutory in character or otherwise, as the case may be.

7.4 In their reply dated 2 April, 1992, the Ministry stated as under:—

"Prior to the Notification of the Madras Port Trust (Recruitment of

Heads of Department) Regulations, 1991 the posts of HODs were filled by applying draft Rules as guidelines. The Government being the appointing authority had exercised its powers by observing certain procedures, practices, draft model rules. None of these were statutory provisions. Different practices were adopted, such as circulation of vacancy, evaluation of performance on the basis of CRs and interviews, etc. All such practices are sought to be repealed, consequent upon the Notification of the said Regulation. The repeal clause was provided in order to maintain continuity in administrative action.

The Ministry has no objection to specify these practices/guidelines, however there being no universal procedures/guidelines, each case being decided on the facts of the case, it is difficult to specify them.

The guidelines/procedures sought to be repealed are non-statutory."

7.5 The Committee observe that none of the regulations, procedures, practices and customs referred to in regulation 20 of the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991 was a statutory provision. In this context, the Committee, in para 66 of their Tenth Report (Sixth Lok Sabha), had observed that "such rules as are not on statutory footing automatically cease to be in operation after notification of statutory rules and there is no necessity to repeal them by a specific provision in the statutory rules." The Committee, therefore, desire the Ministry of Surface Transport to omit regulation 20 forthwith and notify the requisite amendment in the official gazette without delay.

7.6 The Committee are surprised to find that despite there being a full-fledged Central Act, namely, the Major Port Trust Act, 1963 in existence, appointment to a host of posts like Secretary, Traffic Manager, Chief Engineer, Chief Mechanical Engineer, Deputy Port Conservator, Controller of Stores and Chief Medical Officer in the Madras Port Trust was regulated through the use of so called regulations, procedures, practices and customs which were nothing but executive or administrative instructions, prior to the coming into force of the Madras Port Trust (Recruitment of Heads of Department) Regulations, 1991. There may still be some more posts under the Madras Port Trust as also under other Port Trusts which are governed under the administrative flats rather than properly formulated statutory recruitment rules in accord with the provisions of the Major Port Trusts Act. The Committee desire the Ministry of Surface Transport to undertake a reappraisal of all such posts and bring them within the ambit of the proper statutory recruitment rules.

(B)

7.7 For appointment to the post of the Controller of Stores, the following qualifications were prescribed under Column 5 to the Schedule

appended to the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991:

"Essential:

(a) Educational:

Graduate in any branch of Engineering or equivalent.

(b) Experience:

Should have a *recognised qualification* in materials management and at least 10 years experience in a managerial post in the spheres of materials management, purchase of Stores in a Major Port Trust/ Government or Semi-Government Department/Autonomous or Public Sector Undertaking.

Desirable:

Knowledge of purchase procedures in Government Departments, DGS&D and Government licensing."

7.8 It was felt that the term 'recognised qualification' was vague and could be spelt out to make it precise and specific. The Ministry of Surface Transport were enquired if they had any objection to amending the regulations to the necessary effect. In their reply dated 18 March, 1992, the Ministry stated as under:

"Schedule-Column 5 against the post" Controller of Stores—

- 'The term 'Recognised Qualification' referred to by the Committee means post-graduate Diploma in Material Management or MBA'."

7.9 The Committee note from the reply of the Ministry of Surface Transport that the recognised qualification for the post of Controller of Stores has been prescribed as "Post-Graduate Diploma in Material Management or MBA". The Committee feel that it would be quite appropriate if the prescribed qualification together with the word 'recognised: by the Government' are duly incorporated against the post of Controller of Stores in Column 5 of the Schedule appended to the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991, for the information of all concerned. The Committee desire the Ministry to amend the regulations to the necessary effect at the earliest.

NEW DELHI;
August, 1992

Sravana, 1914 (Saka)

SOMNATH CHATTERJEE,

*Chairman,
Committee on Subordinate Legislation.*

APPENDICES

APPENDIX-I

(Vide para 4 of the Report)

**Summary of main Recommendations/Observations made by the Committee
on Subordinate Legislation made in the Fifth Report
(Tenth Lok Sabha)**

S.No.	Para No.	Summary
(1)	(2)	(3)

1. 1.7 *The Foreign Trade (Development and Regulation) Bill, 1991 (Bill No. 69 of 1992).*

The Committee note with satisfaction that on being pointed out by them, the Ministry of Commerce have brought forth the Revised Memorandum of Delegated Legislation to be appended to the Foreign Trade (Development and Regulation) Bill, 1992.

2. 2.3 *The Life Insurance Corporation of India (Agents) Amendment Rules, 1990 (GSR 4 of 1991).*

The Committee note with concern that the Ministry of Finance (Department of Economic Affairs) took a period of almost two years in issuing an amendment notification to insert the Jeevan Balya Plan in the commission tables of the Life Insurance Corporation of India (Agents) Rules, 1973 which obviously meant delay in implementing the amendment. According to the Ministry, the draft notification was received from the Life Insurance Corporation in May, 1989. Even thereafter it took them another 19 months in the inter-Ministerial correspondence before its finalisation. The Ministry have regretted the delay in issue of the notification. The Committee desire the Ministry to evolve suitable measures so as to avoid recurrence of such lapses in future, which has been caused due to lack of proper attention being given to important matters affecting a large number of employees.

(1)	(2)	(3)
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2.5

The Committee are unhappy to find that the Ministry took a period of almost 8 months in issuing the corrigendum after publication of the gazette notification in January, 1991. In this connection, they would like to refer to an earlier recommendation, which was circulated to all Ministries/Departments of the Government of India *Vide* Department of Parliamentary Affairs O.M. No. F.32(4)/77-R&C dated 6 November, 1978, that corrigenda to statutory rules etc. would be published within 30 days of the publication of the rules. The Committee expect the Ministry to be more alert in future so that the errors which creep into the statutory rules are rectified at the earliest and in any case within the stipulated period of 30 days of publication of the rules in the official gazette.

3. 3.3

Representation regarding the Income-tax (Appellate Tribunal) Rules, 1963.

The Committee note from the reply of the Ministry of Law that there is no provision in the Income-tax Act for laying of the rules framed by the Appellate Tribunal before the two Houses of Parliament. In this context, the Committee, in paras 10-11 of their Fourteenth Report (Fifth Lok Sabha); earnestly desired all Ministries/Departments to undertake examination of all Acts with which they were administratively concerned in order to find out which of them did not contain a provision for laying of rules before Parliament and to incorporate that provision in the Acts at their earliest. With the enactment of the Delegated Legislation Provisions (Amendment) Acts of 1983 and 1985, requisite provisions have already been incorporated in as many as 141 Acts. The Committee are surprised to find that still the necessary provisions have not been made in the case of the Income-tax Act. The Ministry should bring forth the necessary amending legislation in this regard without further delay and till such time the Act is so amended, the Government may *suo motu* lay the rules before the two Houses of Parliament so as to keep the members apprised of the important delegated legislative matters.

(1)	(2)	(3)
3.4	<p>The Committee observe that the Income-tax Appellate Tribunal, being a quasi-judicial body, is required to pass speaking orders after hearing the arguments of the parties concerned. To serve the ends of justice and fair play better, the Committee hope that such orders will be passed without any avoidable delay after the conclusion of the hearing. The Committee note that under the administrative instructions issued by the President of the Income-tax Appellate Tribunal, the orders of the Tribunal are required to be passed within 30 days of the conclusion of the arguments and, in case of delay, the reasons therefor must be given by the Members. Similarly, there are standing instructions to the Registry of the Tribunal that all orders passed by the Tribunal are to be communicated to the parties concerned within three weeks of their being signed by the Members constituting the Bench. The Committee hope that such period as mentioned above will not be exceeded.</p>	
3.5	<p>The Committee also note with concern that there are administrative instructions or standing instructions issued by the President to regulate various procedural matters related to the Income-tax Appellate Tribunal. In this connection, the Committee would once again like to emphasize that such administrative or standing instructions are no substitute to statutory rules. As these instructions are not published in the official gazette, these escape the notice of this Committee to judge their fairness or otherwise. With a view to make the rules self-contained and for information of the general public, these instructions might be placed on a statutory footing. As the instructions are already in vogue for a long time, the Committee hope there should be no difficulty in incorporating them in the statutory rules.</p>	
4.	4.2	<p><i>The All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1991.</i></p> <p>The Committee note with concern that while carrying out an amendment in sub-rule (2) of rule 22-B of the All India Services (Death-cum-Retirement Benefits) Rules in the year 1987 in the wake of recommendations</p>

(1)	(2)	(3)
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of the Fourth Central Pay Commission, the Department of Personnel and Training missed the amendment to sub-rule (8) of rule 22-B due to 'oversight'. As no State Government/Accountant General, who actually disbursed pension/family pension, had pointed it out, the Department remained unaware of the omission all along. The omission came to the notice of the Department towards the end of 1988 when a representation was received by them urging that the limit of two pensions prescribed under sub-rule (8) might be removed. Then, in May, 1989, the Department circulated the amendment in sub-rule(8) to the State Governments. On receipt of the comments/concurrence of the majority of States, the Department finalised and notified the amendment in January, 1991. The Department is also not aware of any case where this rule might have been applied during the intervening period.

4.3

The Committee are surprised to find that once an error has crept into the rules, it continues and there is virtually no mechanism or procedure in the Department of Personnel and Training to detect it at any point at time. The Committee are constrained to observe that even when the error came to the notice of the Department of Personnel and Training towards the end of 1988, the amendment seeking to revise the limit in sub-rule (8) of rule 22-B was circulated to State Government in May, 1989, that is, after a gap of 5 months or so. Again, the Department has taken another 20 months in processing and finally notifying the amendment on 26 January, 1991. The Department has not advanced any reasons for such inordinate delay in finalisation of an amendment to the All India Services Rules. Besides the Department has not taken care to ascertain whether any beneficiaries were adversely affected due to lapse on its part in not carrying out the required amendment in sub-rule(8) or rule 22-B at the appropriate time despite the fact that the Committee asked for such information. On the other hand, the Department seemed to be content with mere presumption of certain things. The Committee strongly deprecate the lackadaisical manner adopted by the

(1)	(2)	(3)
		<p>Department of Personnel and Training in dealing with the important statutory rules governing the All India Services. The Committee desire the Ministry to ensure that the delay in notifying the amendment did not adversely affect any beneficiary.</p>
5.	5.2	<p><i>The Andaman Lakshadweep Harbour Works (Group 'A' Posts) Recruitment (Amendment) Rules, 1991 (GSR 295-E of 1991).</i></p> <p>The Committee note that as per provisions of Column 11 of the Schedule appended to the Andaman Lakshadweep Harbour Works (Group 'A' Posts) Recruitment (Amendment) Rules, 1991, there was no provisions for any direct recruitment to the post of Deputy Chief Engineer (Civil). As such, the provisions contained in Columns 9, 10 and 14 of the Schedule pertaining to direct recruitment were redundant. The Committee further note that on being pointed out, the Ministry of Surface Transport have agreed to deleting the redundant provisions from the Schedule. The Committee desire the Ministry to process the matter expeditiously and issue the necessary amendment to the rules in this respect at an early date.</p>
6.	32	<p><i>The New Mangalore Port Trust Employees (Conduct) Fourth Amendment Regulations, 1991 (GSR 308-E of 1991).</i></p> <p>The Committee note that sub-regulation (3) of regulation 13 of the New Mangalore Port Trust Employees (Conduct) Regulations, as amended, is in the nature of a fact-finding provision, the main purpose of which is to act as a safeguard to prevent a conflict of duty and of interest between the employee and the employer. The provisions do not prevent or prohibit the members of the family of an employee to carry on any trade or business. The Committee observe that the provision is a general one and similar provision is applicable to all the Central Government employees. Under such circumstances, the Committee do not wish to pursue the matter further.</p>

(1)	(2)	(3)
7.	7.5	<p><i>The Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991 (GSR 167-E of 1991).</i></p> <p>The Committee observe that none of the regulations, procedures, practices and customs referred to in regulation 20 of the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991 was a statutory provision. In this context, the Committee, in Para 66 of their Tenth Report (Sixth Lok Sabha), had observed that "such rules as are not on statutory footing automatically cease to be in operation after notification of statutory rules and there is no necessity to repeal them by a specific provision in the statutory rules". The Committee, therefore, desire the Ministry of Surface Transport to omit regulation 20 forthwith and notify the requisite amendment in the official gazette without delay.</p>
	7.6	<p>The Committee are surprised to find that despite there being a full-fledged Central Act, namely, the Major Port Trust Act, 1963 in existence, appointment to a host of posts like Secretary, Traffic Manager, Chief Engineer, Chief Mechanical Engineer, Deputy Port Conservator, Controller of Stores and Chief Medical Officer in the Madras Port Trust was regulated through the use of so called regulations, procedures, practices and customs which were nothing but executive or administrative instructions, prior to the coming into force of the Madras Port Trust (Recruitment of Heads of Department) Regulations, 1991. There may still be some more posts under the Madras Port Trust as also under other Port Trusts which are governed under the administrative fiats rather than properly formulated statutory recruitment rules in accord with the provisions of the Major Port Trusts Act. The Committee desire the Ministry of Surface Transport to undertake a reappraisal of all such posts and bring them within the ambit of the proper statutory recruitment rules.</p>
	7.9	<p>The Committee note from the reply of the Ministry of Surface Transport that the recognised qualification for the post of Controller of Stores has been prescribed as "Post-Graduate Diploma in Material Management or MBA". The Committee feel that it would be quite</p>

(1)	(2)	(3)
		<p>appropriate if the prescribed qualification together with the word 'recognised by the Government' are duly incorporated against the post of Controller of stores in Column 5 of the Schedule appended to the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991, for the information of all concerned. The Committee desire the Ministry to amend the regulations to the necessary effect at the earliest.</p>

MINUTES

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:—*

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(ii) *The Andaman Lakshadweep Harbour Works (Group 'A' Posts) Recruitment (Amendment) Rules, 1991 (GSR 295-E of 1991) (Memorandum No. 21)*

6. The Committee noted that as per provisions of column 11 of the Schedule appended to the Andaman Lakshadweep Harbour Works (Group 'A' Posts) Recruitment (Amendment) Rules, 1991, there was no provisions for any direct recruitment to the post of Deputy Chief Engineer (Civil). As such, the provisions contained in columns 8, 10 and 14 of the Schedule pertaining to direct recruitment were redundant. The Committee further noted that on being pointed out, the Ministry of Surface Transport had

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

agreed to deleting the redundant provisions from the Schedule. The Committee recommended the Ministry to process the matter expeditiously and issue the necessary amendments to the rules in that respect at an early date.

(iii) **

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(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) & (vi)

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(vii) *The Foreign Trade (Development and Regulation) Bill, 1992 (Bill No. 69 of 1992) (Memorandum No. 26)*

17. The Committee considered the matter at same length and did not approve the contention of the Ministry of Law that the 'Orders' referred to in clause 3 of the Bill were to be made by the Central Government by way or policy directives or information intended for the benefit of general public and did not fall within the category of Subordinate Legislation. With a view to make the position clear before the Bill was taken up for consideration in the House, the Committee decided to examine the representatives of the Ministry of Commerce as well as the Ministry of Law and Justice to elucidate the matter.

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

SECRETARIAT

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

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

4. The Committee heard the representatives of the Ministry of Commerce and the Ministry of Law, Justice and Company Affairs (Legislative Department) regarding the Foreign Trade (Development and Regulation) Bill, 1992 (Bill No. 69 of 1992).

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

5. The Committee draw the attention of the Law Secretary to the Seventh Report of the Eighth Lok Sabha of the Committee, where it was opined that the Exports (Control) Order, 1977 was an instrument of Subordinate Legislation.

6. On being asked what was the difference between the proposed order under clause 3(1) of the New Bill and the Exports (Control) Order, 1977, the Law Secretary explained as under:—

“....Earlier there was no provision for rule making. Now, we have made a separate provision which is clause 19. Here, the intention under clause 3 is that they will be giving the executive direction. So, we have not given it in the memorandum of the Delegated Legislation. Now, we have made a provision to have it that any order shall be laid on the Table of the House, under 19(3). Even if these are the executive directions, the Parliament will have the Control.”

7. On being asked about the nature of power that was being exercised, under clause (3) of the Bill, the Law Secretary stated them as executive in nature.

8. In reply to a question as to what was subordinate legislation and how did it differ from Administrative order, the law representative stated that in the Bill, they had tried to separate the two things *i.e.* to include the executive order under section 3 and the legislative order under section 19. He further stated that matter was discussed in a case in the Court, in Delhi Laws Act where it was held that.

“....the expressions ‘delegated legislation’ and ‘delegating legislative power’ are sometimes used in a loose sense, and sometimes in a strict sense. These expressions have been used in the loose sense or popular sense in the various treatises or reports dealing with the so-called delegated legislation... There can be no doubt that if the legislature completely abdicates its functions and sets up a parallel legislature transferring all its powers to it, that would undoubtedly be a real instance of delegation of its power. In other words, there will be delegation in the strict sense if legislative power will all its attributes is transferred to another authority.”

9. Stating the reasons for not including clause 3 in the memorandum of Delegated Legislation, the Law Secretary stated:

“.....They say that they will not trade with a particular country and that they will be issuing directions that they will not export or import a particular item. These all are executive directive rules. So, we thought that it is not subordinate legislation.”

10. On being asked, the Law Secretary stated that they have no objection in including clause 3 of the Bill in the Memorandum of the

Delegated Legislation and agreed to bring forth the revised Memorandum of Delegated Legislation.

11. In reply to a query raised by a Member, the Law Secretary agreed that there was no harm if clause 5 of the Bill was also included in the Memorandum of Delegated Legislation, along with clause 3.

The Committee then adjourned.

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

The Committee met on Thursday, 6 August, 1992 from 15.30 hours to 16.15 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri E. Ahamed
3. Shri Chhitubhai Gamit
4. Shri Ram Singh Kashwan
5. Shri Shravan Kumar Patel
6. Shri Tara Singh

SECRETARIAT

1. Shri S.C. Gupta—*Joint Secretary*
2. Shri Ram Kumar—*Under Secretary*

I. REPRESENTATIVES OF THE MINISTRY OF SURFACE TRANSPORT (PORTS
WING)

1. Shri P.M. Abraham—*Secretary (SFT)*
2. Shri A. Joshi—*Joint Secretary (Ports)*
3. Smt. Rashmi S. Sabni—*Under Secretary (PE)*

2. The Committee heard the representatives of the Ministry of Surface Transport (Ports Wing) regarding the New Mangalore Port Trust Employees (Conduct) Fourth Amendment Regulations, 1991 (GSR 308-E of 1991).

3. At the outset the Chairman drew the attention of the Surface Transport Secretary to the fundamental Right guaranteed to every citizen by Art. 19(1)(g) of the Constitution, to carry on any trade or business of profession and asked him to clarify, in the light of the Article, the rationale behind the provisions contained in sub-regulation(3) of regulation 13 of the conduct regulations. In reply, the Secretary submitted that an employee, in the discharge of his official duties, should desist from dealing with a case relating to award of a contract to a firm in which a member of his family was employed. He added that the provision did not prohibit or

prevent the members of the family in continuing with their employment and to that extent, the fundamental right guaranteed in the Constitution were there.

4. On being asked whether this only was the sole purpose of the sub-regulation, the witness submitted that a subsidiary purpose of this regulation could be in that if a particular firm was blacklisted or a particular firm was going against the interests of the country, the government could check up whether any employee of the Port Trust was having a relation working there. He added that the regulation was, in fact, an exact copy of the provisions that were applicable to all the Central Government Employees.

5. When asked whether any action had been taken against an employee for not submitting a report as contemplated under the regulation, the Secretary stated that this was only a fact finding provision and he had no information as to a case where action had been taken against an employee for not disclosing the facts. He added that the provisions did not restrict the family members of an employee to do a genuine or a bonafide business.

The witnesses then withdrew.

6. The Committee then considered Memoranda Nos. 27—30 as under:—

The Life Insurance Corporation of India (Agents) Amendment Rules, 1990 (GSR 4 of 1991) (Memorandum No. 27)

7. The Committee noted with concern that the Ministry of Finance had taken a period of two years in issuing an amendment notification to insert the Jeevan Balya Plan in the commission tables of the Life Insurance Corporation of India (agents) Rules, 1973 which obviously meant delay in implementing the amendment. The Ministry offered regrets for the delay which was attributed mainly to inter-ministerial correspondence. The Committee, however, maintained that delay had caused due to lack of proper attention being given to important matters affecting a large number of employee and desired the Ministry to evolve suitable measures so as to avoid recurrence of such lapses in future.

8. The Committee expressed unhappiness to find that the Ministry of Finance took a period of almost 8 months in issuing the corrigendum after publication of the gazette notification in January, 1991. The Committee reiterated their earlier recommendation, which was circulated to all Ministries/Departments of the Government of India vide Departments of Parliamentary Affairs O.M. No. F32(4)/77-R&C dated 6 November, 1978, that corrigenda to statutory rules etc. should be published within 30 days of the publication of the rules. The Committee

expected the Ministry to be more alert in future so that the errors which creep into the statutory rules were rectified at the earliest and in any case within the stipulated period of 30 days of publication of the rules in the official gazette.

The Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991 (GSR 167-E of 1991). (Memorandum No. 28)

9. The Committee observed that none of the regulations, procedures, practices and customs referred to in regulation 20 of the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991 was a statutory provision.

In this context, the Committee, in para 66 of their Tenth Report (Sixth Lok Sabha), had observed that "such rules as are not on statutory footing automatically cease to be in operation after notification of statutory rules and there is no necessity to repeal them by a specific provision in the statutory rules." The Committee, therefore, desired the Ministry of Surface Transport to omit regulation 20 forthwith and notify the requisite amendment in the official gazette without delay.

10. The Committee expressed surprise to find that a host of posts like Secretary, Traffic Manager, Chief Engineer, Chief Mechanical Engineer, Deputy Port Conservator, Controller of Stores and Chief Medical Officer had been regulated in the past through the administrative fiat rather than properly formulated statutory recruitment rules in accord with the provisions of the Major Port Trusts Act. The Committee desired the Ministry of Surface Transport to undertake a reappraisal of the similar posts under the various port trusts and bring them within the ambit of the proper statutory recruitment rules.

11. The Committee noted from the reply of the Ministry of Surface Transport that the recognised qualification for the post of Controller of Stores had been prescribed as "Post-Graduate Diploma in Material Management or MBA". The Committee felt that it would be quite appropriate if the prescribed qualifications together with the word 'recognised by the Government' were duly incorporated against the post of Controller of Stores in column 5 of the Schedule appended to the Madras Port Trust (Recruitment of Heads of Departments) Regulations, 1991, for the information of all concerned and desired the Ministry to amend the regulations to the necessary effect at the earliest.

Representation regarding the Income-Tax (Appellate Tribunal) Rules, 1963 (Memorandum No. 29)

12. The Committee were sore to find that the Income-tax Act did not provide for laying of the rules framed thereunder by the Income-tax Appellate Tribunal before the two Houses of Parliament, despite their categorical findings in this regard from time to time. The

Committee observed that till such time the Act was so amended, the Government might *suo moto* lay the rules before Parliament so as to keep the Members apprised of the important delegated legislative matters.

13. The Committee further observed that the Income-tax Appellate Tribunal, being a quasi-judicial body, was required to pass speaking orders after hearing the arguments of the parties concerned. To serve the ends of justice and fair play better, the Committee hoped that such orders would be passed without any avoidable delay after the conclusion of the hearing.

14. The Committee expressed concern to find that there were administrative instructions or standing instructions issued by the President to regulate the various procedural matters related to the Income-tax Appellate Tribunal and emphasized once again that such instructions were no substitute to statutory rules as these escaped the notice of the Committee to judge their fairness or otherwise. The Committee desired that with a view to make the rules self contained, these instructions might be placed on a statutory footing, for which, the Committee hoped, there should be no difficulty as the instructions were already in vogue for long.

The All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1991 (GSR 57 of 1991) (Memorandum No. 30)

15. The Committee noted that the All-India Services (Death-cum-Retirement Benefits) Amendment Rules, 1991 were notified in the gazette dated 26 January, 1991 but brought into effect from 1 January, 1986 retrospectively. The concerned Department of Personnel and Training had attributed the delay in notification of the amendment to an 'oversight'. In this connection, the Committee were constrained to observe that even when the error came to the notice of the Department towards the end of 1988, the Department had taken 5 months to circulating the amendment to the State Governments and another 20 months in processing and finally notifying it in January, 1991. The Committee strongly deprecated the lackadaisical manner in which the Department had acted in dealing with the important statutory rules governing the All-India Services. The Committee desired the Department to ensure that the delay had not adversely affected any beneficiary of family pension.

The Committee then adjourned.

XI

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

The Committee on Subordinate Legislation met on Wednesday, 12 August, 1992 from 15.00 to 15.30 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri E. Ahamed
3. Shri Ram Singh Kashwan
4. Shri Tara Singh
5. Kumari Frida Topno

SECRETARIAT

1. Shri R.K. Chatterjee—*Deputy Secretary*
2. Shri Ram Kumar—*Under Secretary*
2. The Committee considered draft Fifth 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 19 August, 1992.

The Committee then adjourned.