

**COMMITTEE
ON
SUBORDINATE LEGISLATION**

(EIGHTH LOK SABHA)

FIRST REPORT

(Presented on 14 August, 1985)



**LOK SABHA SECRETARIAT
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Corrigenda to the 1st Report of the
Committee on Subordinate Legislation
(Eighth Lok Sabha)

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
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1. Shri Mool Chand Daga—*Chairman*,
2. Shri M. Arunachalam
3. Shri D. L. Baitha
4. Shri G. M. Banatwalla
5. Shrimati Usha Chaudhari
6. Shri Dharam Pal Singh Malik
- *7. Shri Yogeshwar Prasad Yogesh
8. Shri Syeed Masudal Hossain
9. Shri Mohanbhai Patel
10. Shri I. Ram Rai
- **11. Shri H. G. Ramulu
12. Shri K. S. Rao
13. Shri Saleem I. Shervani
14. Shri Dharamgaj Singh
15. Shri D. Narayana Swami

SECRETARIAT

1. Shri N. N. Mehra—*Joint Secretary*,
2. Shri S. Balasubramanian—*Chief Legislative Committee
Officer*,
3. Shri R. S. Mani—*Senior Legislative Committee Officer*.

*Nominated w.e.f. 7 August 1985, Vice Shri Lalit Madan died.

**Resigned w.e.f. 29 July, 1985.

I

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee (1984-85) at their sittings held on 27 June, 1983, 30 January, 10 & 20 September and 19 October, 1984.

3. The Report was considered and adopted by the Committee (1985-86) at their sitting held on 12 August, 1985. The Minutes of the sittings relevant to the Report are appended thereto.

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

II

THE MINISTRY OF FOREIGN TRADE, IMPORT AND EXPORT TRADE CONTROL ORGANISATION (CLASS I AND CLASS II POSTS) RECRUITMENT (AMENDMENT) RULES, 1980 (G.S.R. 1081 OF 1980).

5. The Ministry of Foreign Trade, Import and Export Trade Control Organisation (Class I and Class II posts) Recruitment (Amendment) Rules, 1980, published in the Gazette in October, 1980, were given retrospective effect from September, 1977. In the Explanatory Memorandum appended thereto, it was not stated clearly and unequivocally that no one would be adversely affected as a result of the retrospective effect being given to the rules, as required by the recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha). The Certificate contained in the Explanatory Memorandum was a conditional one in that it was preceded by the phrase "excepting the consequences which normally flow as a result of merger of two similar or equivalent cadres".

6. On the matter being pointed out, the Ministry of Commerce (Department of Commerce) in their reply dated 24 March, 1981, stated that it would not be possible or appropriate to give unqualified and unconditional certificate that nobody would be adversely

affected due to retrospective operation since some persons in the Import and Export Trade Control Organisation had suffered hardships after merger in matters of seniority etc.

7. At their sitting held on 27 June, 1983, the Committee considered the above reply of the Ministry and desired that the Ministry might be asked to intimate the number of persons who were likely to be affected adversely by giving retrospective effect to the Amendment Rules in question. The Ministry in their reply dated 5 November, 1983 stated that no one had been affected adversely by the retrospective operation.

8. The Committee considered the matter again at their sitting held on 30 January, 1984 and desired that before a final view was taken in the matter, the Ministry might be asked to reconcile the position as stated by the Ministry in their two communications dated 24 March, 1981 and 5 November, 1983. Accordingly, another reference was made to the Ministry who in their further reply, dated 18 May, 1984 have clarified that although at the time of making the amendment to the above rules it was not possible to anticipate the number of persons likely to be affected by it, later on an examination of the position by the CCI & E, it had been observed that no person was adversely affected by the retrospective effect given to the amendment.

9. While the Committee note that, according to the Ministry's reply dated 5 November, 1983, no one has been adversely affected as a result of retrospective operation of the Rules, they cannot help observing that the Ministry had presented an altogether different picture in their earlier reply dated 24 March, 1981 which had apparently been submitted without going into the full facts of the case. The Committee trust that the Ministry of Commerce will take care to avoid such lapses in future.

10. The Committee would like to emphasise once again that if in any particular case, Rules have to be given retrospective effect in view of any unavoidable circumstances, it should invariably be certified that no one will be adversely affected as a result of retrospective effect being given to the Rules. The Committee insist on this certificate as, in their opinion, it is highly inequitable that any one should be hit from a back date as a result of retrospective operation of the Rules. The Committee would like to make it clear that the certificate desired by them should be unqualified and unequivocal; and the type of certificate as given in the instant case does not meet the requirements of their recommendation. The Committee trust

that the Ministries/Departments of Government of India will bear this in mind, while giving retrospective effect to subordinate legislation in future.

11. The Committee have carefully gone into the reasons for a gap of over three years between the date of operation of the Rules and the date of their publication. In their opinion, with due despatch on the part of the Ministry at every stage, the above gap could have been substantially reduced, if not eliminated altogether. The Committee trust that the Ministry of Commerce will draw upon their experience in the present case and avoid such delays in future. In particular, the Committee would like the Ministry to streamline their decision-making processes and avoid such delays by taking decisions on contentious/ticklish issues at meetings of senior officers of Ministries/Departments concerned, rather than waiting indefinitely for receipt of their opinions on files.

III

THE CEMENT CONTROL (FOURTH AMENDMENT) ORDER, 1982 (S.O. 851-E OF 1982)

12. Sub-paragraph (2) of paragraph 9 of the Cement Control Order, 1967, inserted by the Cement Control (Fourth Amendment) Order, 1982, read as under:—

“(2) Where any producer fails to pay the amount within the period specified in sub-paragraph (1), he shall be liable to pay simple interest on such amount to be calculated at the rate of 20 per cent per annum, for the period of default of such payment.”

13. The then Ministry of Industry (Department of Industrial Development) were asked to state if there was a provision in the Industries (Development and Regulation) Act, 1951 which empowered Government to levy interest at the rate of 20 per cent per annum for the period of default of payment by the producer under the said Order.

14. In their reply, dated 18 January, 1984, the Ministry stated as under:—

“

2. Paragraph 9(2) has been inserted in the Cement Control Order, 1967 on 18th December, 1982 *vide* Cement Control (4th Amendment) Order, 1982 to provide for payment of interest in cases where any producer fails to pay the

amounts to the Cement Regulation Account within the period specified in sub-para I of clause 9 of the Cement Control Order. This provision had been made in consultation with the Ministry of Law.

3. The matter was again taken up with the Ministry of Law for their advice on the observation of the Committee on Subordinate Legislation referred to above. The Ministry of Law have now opined that the requirements of payment of interest is in the nature of a penalty and Section 18 G of the Industries (Development & Regulation) Act, 1951 does not sanction the imposition of such penalty. The Ministry of Law have further observed that the Act makes separate provision i.e., Section 24, for the imposition of penalties for contravention of any order made under Section 18 G of the Industries (Development & Regulation) Act, 1951. The Ministry of Law have also observed that imposition of penalty except the penalties envisaged under Section 24 will not be valid unless the Act provides for the same.
4. In view of the recent advice of the Ministry of Law referred to in paragraph 3 above, this Ministry proposes to withdraw the amendment inserted *vide* Cement Control (4th Amendment) Order, 1982 on 18th December, 1982....."

15. In their further communication dated 19 March, 1984, the Ministry intimated that the Cement Control Order, 1967 had since been amended by omitting sub-paragraph (2) of paragraph 9 of the said Order *vide* Notification No. 1-60/82-Cem. dated 1-3-1984.

16. The Committee, note that, according to the opinion given by the Ministry of Law, the requirement of payment of interest at the rate of 20 per cent per annum for the period of default, is in the nature of penalty and Section 18G of the parent Act viz. Industries (Development and Regulation) Act, 1951 does not sanction the imposition of such penalty. The Committee note with satisfaction that the Ministry of Industry (Department of Industrial Development) have since amended the Cement Control Order, 1967 by omitting sub-paragraph (2) of paragraph 9 thereof, which contained the aforesaid impugned provision.

IV

THE CALCUTTA PORT (AMENDMENT) RULES, 1982 (G.S.R. 281 OF 1983)

17. The Preamble to the Calcutta Port (Amendment) Rules, 1982 (G.S.R. 281 of 1983) showed that the draft Amendment Rules were published in the Gazette dated 5 June, 1982 for inviting objections| suggestions thereon from the public till the expiry of a period of forty-five days from the date of publication thereof. The rules in final form were, however, published after an interval of over 8 months i.e. on 2 April, 1983 despite the fact that no objection|suggestion thereon was received from the public.

18. The Ministry of Shipping and Transport (Ports Wing), were asked to state on 26 August, 1983 (i) the reasons for the delay in the publication of final rules indicating the time taken at each stage; and (ii) the manner in which the matters, which were sought to be provided for by the Amendment Rules, were regulated during that period.

19. The Ministry in their reply dated 10 November, 1983 informed that no action could be taken till the expiry of a period of forty-five days from the date of publication of the notification i.e. upto 20 July, 1982. Thereafter, during September, 1982, there were changes in the incumbents of the posts of officers and the relevant file was not retrieved in time. During November, 1982, the matter was taken up with the Ministry of Law for their clearance and to get Hindi translation etc. which led to delay in notifying the final rules. The Ministry further stated that to ensure that such delays did not recur, they were trying to improve the system by impressing upon the officers concerned the need of according personal attention to the cases involving enacting of Subordinate Legislation and issue of legal notifications, etc.

20. In regard to point (ii), the Ministry in their subsequent reply dated 8-12-1983 stated that the Chairman, Calcutta Port Trust had informed that no action was taken by them in the intervening period on matters relating to the amendment rules in question. As such the question of regulating such cases during that period did not arise.

21. The Committee are not satisfied with the reasons furnished by the Ministry of Shipping and Transport for the delay in the publication of rules in the final form. The Committee regret to note that their earlier recommendation in paragraphs 68 of their Twenty-fourth Report (Seventh Lok Sabha) to the effect that in cases where

no objections|suggestions on the draft rules were received, the rules in the final form should be notified within a period of three months, has not been complied with.

22. The Committee trust that the assurance given by the Ministry for improving the system to obviate such delays would be kept in view and that the existing procedure would be streamlined to ensure that such delays do not recur.

V

THE MINISTRY OF LAW (DEPARTMENT OF LEGAL AFFAIRS—CENTRAL AGENCY SECTION) GENERAL CENTRAL SERVICE—CLASS I POSTS RECRUITMENT (AMENDMENT) RULES, 1983 (G.S.R. 454 OF 1983)

23. The Ministry of Law (Department of Legal Affairs—Central Agency Section) General Central Service—Class I Posts Recruitment (Amendment) Rules, 1983, published in the Gazette dated 25 June, 1983, were given retrospective effect with effect from 1 January, 1977. In the Explanatory Memorandum appended to these Rules, the reasons for giving retrospective effect were not, however, given.

24. The Ministry of Law whose attention was drawn to the above matter, in their reply dated 20 December, 1983 stated that as a result of the Advocates (Amendment) Act, 1976 (107 of 1976), the nomenclatures of the posts of 'Solicitors' 'Junior Solicitors' and 'Government Advocates' in the Department were changed *w.e.f.* 1-1-77 to 'Central Government Advocate' and 'Senior Government Advocate' respectively and were notified on 9-2-1977. The Ministry further stated that the relevant recruitment rules were not amended at that stage due to oversight. Hence, the Ministry felt it necessary to change the designation of the posts in the Recruitment Rules also *w.e.f.* 1-1-1977, which necessitated retrospective effect to the rules *w.e.f.* 1-1-1977.

25. The Committee note that the Ministry of Law (Department of Legal Affairs—Central Agency Section) General Central Service—Class I Posts Recruitment (Amendment) Rules, 1983, which were published in the Gazette of India dated 25 June, 1983, were given retrospective effect from 1-1-1977. The explanation given by the Ministry of Law for not amending the Rules in 1977, when the nomenclatures of the posts in question were changed was 'oversight'. It is indeed regrettable that such a lapse should have occurred in the Ministry of Law, who are supposed to be a model in observing correct legal practices and procedures. The Committee trust that the Ministry of Law will take care to avoid such lapses in future.

26. The Committee also note that while the Ministry of Law had duly mentioned in the Explanatory Memorandum appended to the Rules that the interest of no one would be prejudicially affected as a result of the retrospective effect given to the Rules, they had failed to mention the circumstances in which retrospective effect had been given to the Rules. The Committee desire that with a view to enable the Committee to judge whether retrospective effect to any set of Rules was really unavoidable in the given circumstances, such circumstances should invariably be mentioned in the Explanatory Memorandum appended to the Rules.

VI

THE INDIAN FOREIGN SERVICE, BRANCH 'B' (RECRUITMENT, CADRE, SENIORITY AND PROMOTION) AMENDMENT RULES, 1977 (G. S. R. 437 OF 1978)

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

“(6) Notwithstanding anything contained in sub-rules (1) to (5), any vacancy in Grade I of the General Cadre may, in exceptional cases and in public interest, be filled, by the controlling authority in consultation with the Commission, by transfer of an officer holding a permanent Group 'A' ex-cadre post in the Ministry of External Affairs. Seniority of such an officer in Grade I of the General Cadre shall be such as may be determined by the controlling authority in consultation with the Commission.”

28. The above sub-rule, which provided for lateral entry of ex-cadre officials into the Indian Foreign Service (B), was likely to result in curtailment of the promotional avenues of the existing employees otherwise eligible under the rules. In this context, the observations of the Committee as contained in paragraph 13 of their Seventh Report (Fourth Lok Sabha) presented to the House on 16 December, 1970, expressing the view that 'amendments to rules, which are likely to have the effect, of denying or curtailing the existing opportunities available to employees should not be brought forward, save for compelling reasons' were brought to the notice of the Ministry of External Affairs. The Ministry were accordingly requested on 12 April, 1978 to specify the special reasons if any, for

incorporating the said amendment and whether in view of Committee's observations they had any objection to deleting the same from the rules. The Ministry were also requested to state whether the principles for fixing seniority could be laid down in the rules rather than leaving them to be determined by the controlling authority and whether any guidelines had been issued as to what would constitute 'exceptional cases'.

29. In an interim reply dated 13 July, 1978, the Ministry intimated the position as under:—

"The amendment in question was also the subject of discussion in the 21st Meeting of the Regional Council of this Ministry under the JCM Scheme... Taking into consideration the views expressed by the representatives of the staff side in the Regional Council, it has been decided to issue a memorandum explanatory to this amendment specifying the circumstances in which and laying down the conditions subject to which the appointments would be made in terms of this amendment. This is likely to take some time as it is likely to require consultation with the Department of Personnel, Ministry of Law and UPSC.

Since the amendment would remain inoperative till the issue of this explanatory memorandum and no appointments would be made in terms of its provisions, it is suggested that its examination by the Committee on Subordinate Legislation may be taken up after the issue of the proposed memorandum when a clear picture of the circumstances in which this amendment will be worked, would also emerge."

30. On 19 August, 1983, the Ministry intimated that they had since decided, in principle, to delete the amendment in question of consultation with the Department of Personnel and Administrative Reforms and the Ministry of Law pending concurrence of the Union Public Service Commission in the matter. The Ministry had also apprised the Commission in October, 1983 of the above decision and its approval by the Foreign Minister.

31. However, the suggestion to rescind the said amendment at this late stage did not find favour with the Union Public Service Commission. Thereupon, the Ministry once again moved the Department of Personnel and Administrative Reforms and the Minis-

try of Law soliciting their advice on the opinion tendered by the Commission. In their communication dated 2 November, 1983, to the Department of Personnel, the Ministry of External Affairs stated, *inter alia*, as follows:—

“Pursuant to a decision taken by the Ministry in 1977, Rule 12 of the IFS(B) RCSP Rules.... was amended and para 12(6) was inserted to provide for lateral entry of ex-cadre officials into the IFS(B)..... The amendment was notified on 8th March, 1978.

Prior to the notification, there was extensive debate and consultation within this Ministry, the DP&AR and the Ministry of Law on the file. Initially, both DP&AR and the Ministry of Law were against the amendment but subsequently agreed to it.

In April, 1978, a reference from the Lok Sabha Secretariat.... to this Ministry cited the amended rule, questioning its text..... The Lok Sabha Secretariat was of the opinion that the amendment should be deleted.

It was conceded that the fundamental problem in the notification is that it is open-ended. There being no time limit and no numerical limit to lateral entry into the IFS (B), the ramifications were unforeseeable. On the other hand, restricting lateral entry to a few officials, would be unfair to other officials in the same situation. There is also the fact that interpretation of ‘public interest’ and ‘exceptional cases’ would necessarily be subjective in different cases. Other attendant problems are questions of seniority to be assigned to the officials thus inducted and prospects of regular IFS(B) officials which would thereby be affected, at levels beyond that in which lateral entry is effected.

Accordingly, the matter was referred to the Ministry of Law whose opinion can be seen... * It will be seen that Ministry of Law was firmly against the amendment and advised for deletion of sub-clause 6 to Rule 12. The file was then referred to Department of @Personnel..... The DP&AR concurred with the views of the Ministry of Law.

* See Appendix II.

@ See Appendix III.

The UPSC, on a reference made thereupon for deletion of the amendment were of the opposite view*.

Simultaneous with consideration of the amendment was the issue of induction of Shri G. S. Bhatia, Deputy Director (Purchase) in the MEA, an ex-cadre post in the pay scale of Rs. 1100-1600. Pursuant to the notification of the amendment, the UPSC's approval was obtained on 17-3-1978 for induction of Shri Bhatia into Grade I IFS(B).

The UPSC in its second rejoinder** to the Ministry on the matter of repeal of the amendment..... has stated that while they reluctantly agree to the deletion of the amendment, they are of the opinion that as far as Shri G. S. Bhatia is concerned, since the process of his induction into the IFS(B) has been finalised, a right has been created which cannot be denied to him. They are, therefore, of the opinion that Shri Bhatia should be inducted into the IFS(B) after which the amendment to Rule 12 of the IFS (B) RCSP Rules may be deleted.

It is felt that such action would nullify the very basis of reasoning on which the amendment is being sought to be deleted. The amendment has been held as bad in law and in practice. It may be added here that at the time when the amendment was being processed there was an alternative proposal for bettering prospects of Shri Bhatia, Deputy Director (Purchase) by revising his pay scale from the present Rs. 1100-1600 to Rs. 1500-2000 in recognition of his years of service and in order that he may not suffer from stagnation. Shri Bhatia has also in the meantime, been posted to HCI. London, as First Secretary against a post of the Ministry of External Affairs.

The advice of the DP&AR and the Ministry of Law is once again solicited as to whether the MEA can as per UPSC's advice appoint Shri G. S. Bhatia while simultaneously reaping the amendment."

32. On 27 February, 1984, the Ministry of External Affairs furnished to the Lok Sabha Secretariat a copy each of the two letters† dated 2 September, 1982 and 21 October, 1983 containing the views

*See Appendix IV.

**See Appendix V.

†See Appendices IV and V.

of the Union Public Service Commission on this matter and further stated, *inter alia*, as under:—

"In brief, the UPSC has desired that Shri G. S. Bhatia, currently an ex-cadre official in this Ministry, be absorbed into the Grade I of IFS (B) under the terms of Sub-clause 6 of Rule 12 of the IFS (B) RCSP Rules, before the amendment incorporating the said Sub-Clause is repealed by this Ministry.

The DP&AR's views have been solicited and they are of the opinion that the UPSC's views may be communicated to the Lok Sabha Secretariat and consider the action on receipt of your reaction. It would be thus appreciated if the comments of the Lok Sabha Secretariat could please be forwarded to this Ministry on the issue under consideration."

33. The Committee note that, after protracted correspondence lasting almost six years, the Ministry of External Affairs have ultimately agreed, in principle, in consultation with the then Department of Personnel and Administrative Reforms and the Ministry of Law and with the approval of the Foreign Minister after ascertaining the views of the representatives of the staff side in the Regional Council of the Ministry, to rescind the amendment made in 1978 incorporating sub-rule (6) in rule 12 of the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964. There has also been no lateral entry of any ex-cadre official into the Indian Foreign Service (B) in pursuance of the amended provisions. In this connection, the Committee find that the Union Public Service Commission have persistently contended that an ex-cadre official (Shri G. S. Bhatia, Deputy Director in the pay-scale of Rs. 1100-1600), in whose case the process of induction into the Indian Foreign Service (B) in terms of the said amendment had already been finalised as far back as on 17 March, 1978, should be absorbed into the Indian Foreign Service (B) before the amendment is repealed by the administrative Ministry. Further according to the Commission, with the finalisation of the above case in 1978, a right had been created which could not be denied to the incumbent.

34. In the present context of the case where a decision to rescind the amendment made in 1978 has since been taken at the highest

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

VII

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARAGRAPHS 22-23 OF THE ELEVENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) RE. THE ALL INDIA SERVICES (LEAVE TRAVEL CONCESSION) RULES, 1975 [PARAGRAPH 62 OF THE SIXTH REPORT OF THE COMMITTEE (SIXTH LOK SABHA)]

35. In paragraphs 22-23 of their Eleventh Report (Seventh Lok Sabha), presented to the House on 19 March, 1982, the Committee on Subordinate Legislation had observed as under:—

“In view of the clarifications given and difficulties explained by the representatives of the Department of Personnel and Administrative Reforms and Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) in making the All India Services (Leave Travel Concession) Rules, 1975 self-contained by incorporating therein all the executive instructions, the Committee do not insist upon the implementation of their recommendation to this effect

made in paragraph 62 of their Sixth Report (Sixth Lok Sabha): At the same time, the Committee do not see any justification in not framing statutory Rules in place of executive instructions regulating the Leave Travel Concession applicable to Group 'A' Officers of the Central Civil Services. In this connection, the Committee note that the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) are also of the view that it would be desirable to codify the executive instructions into the form of Statutory Rules. The Committee, therefore, cannot but reiterate their oft repeated observation that the executive instructions are no substitute for statutory Rules. Whereas the Rules are published in the Gazette of India, the executive instructions are not so published and therefore, do not come to the notice of the Committee so as to judge their fairness.

The Committee, therefore, recommend that statutory Rules be framed in place of executive instructions regarding Leave Travel Concession availed of by the Group 'A' Officers of the Central Civil Services."

36. In their action-taken reply dated 31 January, 1984, the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) stated as under:—

"The recommendations of the Committee on Subordinate Legislation have been carefully examined. As the Committee are no doubt aware Leave Travel Concession is at present regulated by the administrative instructions which make for flexibility in modifying the scheme according to the requirements of the Government from time to time. It is felt that this flexibility will be lost if the LTC Scheme is notified in the form of statutory rules as every little amendment to the scheme will thereafter have to be carried out only by amending the rules. Further, since the Government have announced the setting up of the Fourth Central Pay Commission, that body is in any case expected to review the existing scheme of LTC. Any changes that may be required as a result of the review can be carried out easily in view of the flexibility inherent in the present system of regulating LTC by administrative instructions. This easy facility of modifying the scheme to suit the requirements of the Government will be lost once statutory rules are framed.

Further, Article 73 of the Constitution permits the Government to exercise executive powers i.e. to regulate by instructions, any matter in respect of which the Parliament has power to make laws and, therefore, the present system of regulating the LTC through administrative instructions is not against the spirit of the Constitution.

In view of the reasons explained above, it has been decided by Government that the recommendation of the Committee on Subordinate Legislation may not be accepted."

37. The Committee have given a careful thought to the reply of the Department of Personnel and Administrative Reforms. They are not convinced of the reasons given by the Department for not framing statutory rules, in place of executive instructions to regulate Leave Travel Concession applicable to Group 'A' Officers of the Central Civil Services. Time and again, the Committee have emphasised that executive instructions are no substitute for statutory rules. Flexibility has been urged as the main consideration for not placing the executive instructions on a statutory footing. The Committee do not see any force in this argument, for, as they observe even now every modification of the executive instructions has got to be circulated to all concerned. The only additional work involved will be notification of the modifications in the gazette. The Committee, therefore, reiterate their earlier recommendation and desire that executive instructions should be placed on a statutory footing without any further loss of time.

VIII

IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE ON SUBORDINATE LEGISLATION MADE IN PARAGRAPHS 202 AND 203 OF EIGHTEENTH REPORT (SEVENTH LOK SABHA) REGARDING THE EXPLOSIVES (AMENDMENT) RULES, 1971 (G.S.R. 1077 OF 1971)

38. The Committee in paragraph 202 of their Eighteenth Report (Seventh Lok Sabha) presented to the House on 9 May, 1983, made a reference to para 151 of their Thirteenth Report (Fifth Lok Sabha) presented to the House on 12 August, 1974, wherein the Committee had reiterated their earlier recommendation to the Ministry of Industry (Department of Industrial Development) to amend rule 93 of the Explosives Rules, 1940 so as to provide an opportunity of being heard to a licence holder before his licence was cancelled. Subsequently in the year 1978 the Indian Explosives Act had been amended (though not enforced) and under that Act statutory powers were given to the authorities mentioned in Section 6E thereof to

vary, suspend or revoke licences granted under the Act which would now not be dependent on the Rules. In view of the fundamental change in the factual position, the Committee did not wish to pursue the matter any further.

39. However, in para 203 of their aforesaid Report, the Committee had deplored the fact that between the period 1974 and 1978, the Ministry of Industry (Department of Industrial Development) had not taken any action to amend the said Rules as recommended by the Committee. The first action-taken reply of the Ministry in the matter was received only on 5 June, 1980. The Committee, therefore, took a serious view of the inordinate delay and had desired the Ministry to fix responsibility for that lapse.

40. In their action taken note dated 10 May, 1984 on the aforesaid observation of the Committee, the Ministry had requested that the delay involved might be condoned as it was not deliberate but due to non-availability of relevant files and papers and subsequent attempts to trace them.

41. Giving of an opportunity for being heard before an adverse action is taken against a party is one of the basic tenets of natural justice. The Committee regret to observe that after the Committee had recommended amendment of Rule 93 of the Explosive Rules, 1940 so as to include a provision to the above effect in 1974, the Ministry of Industry had failed to take necessary action on the above recommendation till 1978 when the parent Act was amended. The Committee are not satisfied with the plea of non-availability of the relevant file for the above lapse. In their opinion, the above explanation is only indicative of the casual approach of the Ministry in the matter. They fail to understand why the Ministry should have taken years to trace an important file like the present one. While the Committee do not desire to pursue the matter further in the present case, they would no doubt like the Ministry of Industry to take concrete steps to ensure that such lapses do not recur.

IX

IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE ON SUBORDINATE LEGISLATION CONTAINED IN PARAGRAPHS 218—220 OF THEIR EIGHTEENTH REPORT (SEVENTH LOK SABHA) REGARDING HIGH SPEED DIESEL OIL AND LIGHT DIESEL OIL (RESTRICTION ON USE) ORDER, 1974.

42. In paragraphs 218 to 219 of their Eighteenth Report (Seventh Lok Sabha) presented to the House on 9 May, 1983, the Committee

had *inter alia* desired the then Ministry of Energy (Department of Petroleum) to fix responsibility for the delay in implementation of their recommendation made in paragraph 31 of their Eighteenth Report (Sixth Lok Sabha) presented to the House on 9 April, 1979 regarding amendment of the High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974.

43. In paragraph 219 of their aforesaid Report, the Committee while expressing their profound distress over the Ministry's indifferent attitude towards this Secretariat's communications sent to them in the matter, had also hoped that the Ministry would not adopt such an attitude in future and would be prompt in replying to the Committee's communications.

44. In implementation of the above recommendation of the Committee, the Ministry of Energy (Department of Petroleum), in their communication dated 7 May, 1984, stated as follows:—

“The Government sincerely regrets the delay that had occurred in the implementation of the recommendations of the Committee on Subordinate Legislation referred to above, and cannot offer a valid explanation for the inordinate delay. It will be the endeavour of the Ministry to act promptly on the communications received from the Committee in future and take expeditious action in its recommendations.

However, regarding the question of fixing the responsibility for the delay referred to in para 219 of their 18th Report referred to above, the matter has been looked into. As already observed by the Committee the original file had been lost and in addition there was redistribution of work and change of officers at different levels and in the process the communications from the Committee were lost sight of. In the circumstances, it has not been possible to fix responsibility on any particular individual(s). The Ministry accepts the blame.”

45. The Committee note the explanation of the Ministry for not being able to fix responsibility on any particular individual for the delay in implementing their recommendation which was made as

far back as April, 1979. The Committee also note the assurance given by the Ministry for expeditious action on their recommendations in future. While the Committee are unhappy over the tardy manner in which the Ministry had handled this case, considering that the Ministry have gracefully accepted the blame and have assured the Committee that they would act promptly on the communications received from them in future, the Committee do not desire to pursue the matter further. They trust that every effort will be made by the Ministry to keep up their assurance to the Committee.

X

IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE ON SUBORDINATE LEGISLATION MADE IN PARAGRAPH 41 OF THEIR TWENTY-THIRD REPORT (SEVENTH LOK SABHA) REGARDING THE CENTRAL SECRETARIAT OFFICIAL LANGUAGE SERVICE (GROUP 'C' POSTS) RULES, 1981 (G.S.R. 842 OF 1981).

46. In paragraph 41 of their Twenty-third Report (Seventh Lok Sabha) the Committee on Subordinate Legislation made the following observations:—

“41. The Committee find that the practice of intimating the reasons to the officer concerned for extending the period of his probation or while discharging or reverting him to his substantive post is already being followed. The Committee feel that the Ministry should, therefore, have no difficulty in placing the same on a statutory footing. The Committee desire the Ministry of Home Affairs (Department of Official Language) to amend Rule 10 of the Central Secretariat Official Language Service (Group 'C' Posts) Rules, 1981 to the desired effect at an early date.”

47. In their action-taken note dated 2 July, 1984, the Ministry of Home Affairs (Department of Official Language) stated as under:—

“.....the recommendation contained in paragraph 41 of the report regarding rule 10 relating to 'Probation' has been considered by this Department, in consultation with the Department of Personnel & A.R. It has been decided to amend rule 10(1) to incorporate the provision for communicating the reasons for extension of the period of probation, as recommended by the Committee. Action is

being taken separately to notify the amendment. As regards communication of the reasons for discharging or reverting him to the post held by him prior to his appointment, it was *incorrectly stated* earlier that it is the normal practice to communicate such reasons. In fact it is not considered desirable to make such a provision in rule 10(3) because a Government servant is placed on probation to enable the Government to judge his suitability for the post. If the Government servant proves to be unsuitable, it should be possible to remove him from the post either by termination of his service or by his reversion. In the letters of appointment of persons placed on probation there is a specific condition regarding termination of his service without any notice during or at the end of probation. If the recommendation of the Committee for communicating reasons for termination of service or reversion is accepted, it will amount to giving the person concerned an opportunity to appeal against the decision and as such, the purpose behind placing a Government servant on probation would be defeated. This would result in prolongation of cases and then it will not be possible to terminate the services of a person on probation or to revert him to the lower post without any notice. This will mean that an unsuitable person will remain in service for a longer period than necessary. Moreover, in terms of CCS(CCA) Rules, termination of service of a person appointed on probation is not a punishment. In view of this it is not desirable to amend the existing provision in rule 10(3). The Committee on Subordinate Legislation may kindly be informed accordingly."

48. The Committee note that as recommended by them, the Ministry of Home Affairs (Department of Official Language) are taking action to amend sub-rule (1) of rule 10 of the Central Secretariat Official Language Service (Group 'C' Posts) Rules, 1981 so as to provide for communicating the reasons for extension of the period of probation to the probationers. The Committee hope that the amendment would be notified at an early date.

49. The Committee accept the view of the Ministry that a probationer need not be informed of the reasons for his discharge or reversion to his substantive post. However, with a view to ensure objectivity and justice in such a decision, the Committee recommend that a suitable machinery like a departmental Committee consisting of senior officials be devised to go into the case fully.

XI

IMPLEMENTATION OF RECOMMENDATION OF THE COMMITTEE ON SUBORDINATE LEGISLATION MADE IN PARAGRAPH 63 OF THEIR TWENTY-THIRD REPORT (SEVENTH LOK SABHA) REGARDING THE SCIENTIFIC AND TECHNICAL OFFICERS GRADE I, ASSISTANT DIRECTOR AND DEPUTY DIRECTORS (TELECOMMUNICATION RESEARCH CENTRE OF THE POSTS AND TELEGRAPHS DEPARTMENT) RECRUITMENT RULES, 1978 (G.S.R. 348 OF 1979)

50. In the Schedule to the Scientific and Technical Officers Grade I, Assistant Director and Deputy Directors (Telecommunication Research Centre of Posts and Telegraphs Department) Recruitment Rules, 1978, the number of posts was not indicated.

51. In paragraph 63 of their Twenty-third Report (Seventh Lok Sabha), presented to the House on 19 December, 1983, the Committee on Subordinate Legislation had desired the P & T Board to indicate the number of posts against each category of officers viz. Deputy Director and Assistant Director in the Schedule to the aforesaid Rules as per instructions issued in that regard by the Department of Personnel and Administrative Reforms *vide* their Office Memorandum dated 22 May, 1979.

52. In their action-taken note dated 10 May, 1984 the P & T Board stated that the scheme for inducting the Scientific and Technical Officers directly into the Telecommunication Research Centre had been discontinued and a large number of posts had been converted into Indian Telephone Service Cadre. The question of merger of directly recruited officers with the main stream *i.e.* Indian Telecommunication Service Grade 'A' was under consideration. In view of the changed position, the Ministry felt that there was no need to specify the number of posts. The Department of Personnel and Administrative Reforms had also been consulted in that regard.

53. The Committee note that the Posts and Telegraphs Department has taken up the question of merger of directly recruited officers with the main stream, *i.e.* the Indian Telecommunication Service Grade 'A'. As the insertion of number of posts in the schedule to the Recruitment Rules in question at this stage will serve no purpose, the Committee would not like to insist on amending the Schedule to the Rules as desired by them in paragraph 63 of their Twenty-third Report (Seventh Lok Sabha).

XII

IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE ON SUBORDINATE LEGISLATION MADE IN PARAGRAPHS 93-94 OF THEIR TWENTY-THIRD REPORT (SEVENTH LOK SABHA) REGARDING THE BHAKRA BEAS MANAGEMENT BOARD RULES, 1974 (G.S.R. 1330 OF 1974)

54. Rule 3(2) of the Bhakra Beas Management Board Rules, 1974 provided that the Chairman or a wholetime member might resign his office by writing under his hand addressed to the Central Government after giving notice of at least three months. It further provided that the Chairman or a whole-time member shall continue in office until his successor was appointed.

55. It was felt that the designation of the officer in the Ministry of Energy to whom the letter of resignation could be addressed and the maximum time-limit within which the resignation should be accepted should be provided in the rules. After considering the reply of the Ministry in that regard, the Committee on Subordinate Legislation made the following observations in paragraphs 93-94 of their Twenty-third Report (Seventh Lok Sabha), presented to the House on 19 December, 1983:

"93. The Committee note from the reply that the letter of resignation can be addressed to the Secretary in the Ministry of Energy (Department of Power) being the nodal Ministry for all administrative matters concerning the Bhakra Beas Management Board. The Committee, therefore, desire the Ministry to amend Rule 3(2) of the Bhakra Beas Management Board Rules, 1974 so as to make the underlying intention expressly clear.

94. The Committee are also inclined to subscribe to the view that it would not be proper to compel a person to continue in office even after the expiry of statutory period of notice of resignation tendered by him. The Committee, therefore, desire the Ministry of Energy to omit the Proviso to Rule 3(2) of the Bhakra Beas Management Rules, 1974 and prescribe a suitable maximum time-limit within which the resignation must be accepted."

56. In their action-taken reply dated 9 August, 1984, the Ministry

had pointed out that in practice, letter of resignation was addressed to the Secretary of the Administrative Ministry which was the Ministry of Energy (Department of Power). However, in the event of any change in the Allocation of Business Rules, consequent on the re-grouping/re-organisation of the Government Departments in future, this position might change and thus rules might require frequent amendments. As none had experienced any difficulty so far in this regard, the Ministry had pleaded that the proposed amendment as observed by the Committee in paragraph 93 of the Report aforesaid, was not necessary.

57. As regards observations of the Committee made in paragraph 94 of the said Report, the Ministry were taking necessary action to amend Rule 3(2) of the Bhakra Beas Management Rules, 1974, so as to prescribe the maximum time-limit within which the resignation must be accepted.

58. Keeping in view the administrative inconvenience pointed out by the Ministry of Energy (Department of Power) in giving effect to the Committee's recommendation made in paragraph 93 of the Report (23R-7LS), the Committee do not insist on an amendment to the rules to that effect.

59. The Committee, however, note that necessary action is being taken by the Ministry for issuing an amendment to the proviso to sub-rule 3(2) of the Rules *ibid* so as to prescribe the maximum time-limit, within which the resignation must be accepted.

XIII

IMPLEMENTATION OF RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE ON SUBORDINATE LEGISLATION MADE IN PARAGRAPH 100 OF THEIR TWENTY-THIRD REPORT (SEVENTH LOK SABHA) RE: DANDAKARANYA PROJECT (CLASS I POSTS) RECRUITMENT RULES, 1973.

60. In paragraph 100 of their Twenty-third Report (Seventh Lok Sabha), presented to the House on 10 December, 1983, the Committee on Subordinate Legislation had made the following observations:—

“The Committee note with concern that the Ministry of Labour and Rehabilitation (Department of Rehabilitation) have not been able to procure the original gazette notification containing the principal rules *viz.*, the Dandakaranya Project (Class I Posts) Recruitment Rules, 1973, despite their earnest efforts made for locating it in the Central Library, the National Archives Library and

the Library of the Ministry of Law, etc. In the circumstances, the Committee cannot but agree to the suggestion of the Ministry to notify the proposed amendment without mentioning in the foot-note thereto about the gazette reference to the principal rules, as a special case. The Committee would, however, like that responsibility should be fixed for such gross neglect."

61. In their action-taken note dated 7 February, 1984, the then Ministry of Labour and Rehabilitation (Department of Rehabilitation) stated as under:—

".....the notification regarding amendment of.....rules has since been issued *vide* this Department's notification No. 11(13)/79Adm. III dated the 7th January, 1984.

As regards fixing the responsibility, it may be stated that the principal rules were published in 1973. At this stage it is difficult to fix the responsibility, as the concerned officers have since retired from service. Now we are however keeping a watch to ensure publication of every notification we send to the Government Press by obtaining the GSR number and date of publication from the Press, so as to avoid such lapses."

62. While the Committee have no alternative but to accept, with reluctance, the explanation of the Ministry that as the principal rules were published in 1973 and the concerned officers have since retired from service, it is difficult at this stage to fix responsibility for their failure to locate the original Gazette Notification containing the principal rules, they need hardly stress that the present case only points to the need for utmost care in proper upkeep of records of subordinate legislation. The Committee note the averment of the Ministry that they are now keeping a watch to ensure publication of every notification they are sending to the press by obtaining its GSR number and the date of its publication. The Committee trust that the Ministry will at the same time evolve a foolproof system for proper maintenance of records of subordinate legislation so that such lapses do not recur.

NEW DELHI;
August 12, 1985

MOOL CHAND DAGA
Chairman,
Committee on Subordinate
Legislation.

APPENDIX I

(Vide para 4 of the Report)

Consolidated statement of Recommendations/Observations made by the Committee

S. No.	Para No.	Recommendations Observations
(1)	(2)	(3)
1 (i)	9	While the Committee note that, according to the Ministry's reply dated 5 November, 1983, no one has been adversely affected as a result of retrospective operation of the Rules, they cannot help observing that the Ministry had presented an altogether different picture in their earlier reply dated 24 March, 1981 which had apparently been submitted without going into the full facts of the case. The Committee trust that the Ministry of Commerce will take care to avoid such lapses in future.
1 (ii)	10	The Committee would like to emphasise once again that if in any particular case, Rules have to be given retrospective effect in view of any unavoidable circumstances it should invariably be certified that no one will be adversely affected as a result of retrospective effect being given to the Rules. The Committee insist on this certificate as, in their opinion, it is highly inequitable that any one should be hit from a back date as a result of retrospective operation of the Rules. The Committee would like to make it clear that the certificate desired by them should be unqualified and unequivocal; and the type of certificate as given in the instant case does not meet the requirements of their recommendation. The Committee trust that the Ministries/Departments

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of Government of India will bear this in mind, while giving retrospective effect to subordinate legislation in future.

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| 1 (iii) | 11 | <p>The Committee have carefully gone into the reasons for a gap of over three years between the date of operation of the Rules and the date of their publication. In their opinion, with due despatch on the part of the Ministry at every stage, the above gap could have been substantially reduced, if not eliminated altogether. The Committee trust that the Ministry of Commerce will draw upon their experience in the present case and avoid such delays in future. In particular, the Committee would like the Ministry to streamline their decision-making processes and avoid such delays by taking decisions on contentious/ticklish issues at meetings of senior officers of Ministries/Departments concerned, rather than waiting indefinitely for receipt of their opinions on files.</p> |
| 2 | 16 | <p>The Committee note that, according to the opinion given by the Ministry of Law, the requirement of payment of interest at the rate of 20 per cent per annum for the period of default, is in the nature of penalty and Section 18G of the parent Act viz. Industries (Development and Regulation) Act, 1951 does not sanction the imposition of such penalty. The Committee note with satisfaction that the Ministry of Industry (Department of Industrial Development) have since amended the Cement Control Order, 1967 by omitting sub-paragraph (2) of paragraph 9 thereof, which contained the aforesaid impugned provision.</p> |
| 3 (i) | 21 | <p>The Committee are not satisfied with the reasons furnished by the Ministry of Shipping and Transport for the delay in the publication of rules in the final form. The Committee re-</p> |
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gret to note that their earlier recommendation in paragraph 68 of their Twenty-fourth Report (Seventh Lok Sabha) to the effect that in cases where no objections/suggestions on the draft rules were received, the rules in the final form should be notified within a period of three months, has not been complied with.

3 (ii)

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The Committee trust that the assurance given by the Ministry for improving the system to obviate such delays would be kept in view and that the existing procedure would be streamlined to ensure that such delays do not recur.

4 (i)

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The Committee note that the Ministry of Law (Department of Legal Affairs—Central Agency Section) General Central Service—Class I Posts Recruitment (Amendment) Rules, 1983, which were published in the Gazette of India dated 25 June, 1983, were given retrospective effect from 1-1-1977. The explanation given by the Ministry of Law for not amending the Rules in 1977, when the nomenclatures of the posts in question were changed was 'oversight'. It is indeed regrettable that such a lapse should have occurred in the Ministry of Law, who are supposed to be a model in observing correct legal practices and procedures. The Committee trust that the Ministry of Law will take care to avoid such lapses in future.

4 (ii)

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The Committee also note that while the Ministry of Law had duly mentioned in the Explanatory Memorandum appended to the Rules that the interest of no one would be prejudicially affected as a result of the retrospective effect given to the Rules, they had failed to mention the circumstances in which retrospective effect had been given to the Rules. The Committee desire that with a view to enable the Committee to judge whether retrospective effect

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to any set of Rules was really unavoidable in the given circumstances, such circumstances should invariably be mentioned in the Explanatory Memorandum appended to the Rules.

5 (i) 33

The Committee note that, after protracted correspondence lasting almost six years, the Ministry of External Affairs have ultimately agreed, in principle, in consultation with the then Department of Personnel and Administrative Reforms and the Ministry of Law and with the approval of the Foreign Minister after ascertaining the view of the representatives of the staff side in the Regional Council of the Ministry, to rescind the amendment made in 1978 incorporating sub-rule (6) in rule 12 of the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964. There has also been no lateral entry of any ex-cadre official into the Indian Foreign Service (B) in pursuance of the amended provision. In this connection, the Committee find that the Union Public Service Commission have persistently contended that an ex-cadre official (Shri G. S. Bhatia, Deputy Director in the pay-scale of Rs. 1100—1600), in whose case the process of induction into the Indian Foreign Service (B) in terms of the said amendment had already been finalised as far back as on 17 March, 1978, should be absorbed into the Indian Foreign Service (B) before the amendment is repealed by the administrative Ministry. Further according to the Commission, with the finalisation of the above case in 1978, a right had been created which could not be denied to the incumbent.

5 (ii) 34

In the present context of the case where a decision to rescind the amendment made in 1978 has since been taken at the highest level in the administrative Ministry in consultation with the Department of Personnel and the Ministry of

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

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The Committee have given a careful thought to the reply of the Department of Personnel and Administrative Reforms. They are not convinced of the reasons given by the Department for not framing statutory rules, in place of executive instructions to regulate Leave Travel Concession applicable to Group 'A' Officers of the Central Civil Services. Time and again, the Committee have emphasised that executive instructions are

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no substitute for statutory rules. Flexibility has been urged as the main consideration for not placing the executive instructions on a statutory footing. The Committee do not see any force in this argument for, as they observe even now every modification of the executive instructions has got to be circulated to all concerned. The only additional work involved will be notification of the modifications in the gazette. The Committee, therefore, reiterate their earlier recommendation and desire that executive instructions should be placed on a statutory footing without any further loss of time.

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Giving of an opportunity for being heard before an adverse action is taken against a party is one of the basic tenets of natural justice. The Committee regret to observe that after the Committee had recommended amendment of Rule 93 of the Explosive Rules, 1940 so as to include a provision to the above effect in 1974, the Ministry of Industry had failed to take necessary action on the above recommendation till 1978 when the parent Act was amended. The Committee are not satisfied with the plea of non-availability of the relevant file for the above lapse. In their opinion, the above explanation is only indicative of the casual approach of the Ministry in the matter. They fail to understand why the Ministry should have taken years to trace an important file like the present one. While the Committee do not desire to pursue the matter further in the present case, they would no doubt like the Ministry of Industry to take concrete steps to ensure that such lapses do not recur.

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The Committee note the explanation of the Ministry for not being able to fix responsibility on any particular individual for the delay in

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implementing their recommendation which was made as far back as April, 1979. The Committee also note the assurance given by the Ministry for expeditious action on their recommendations in future. While the Committee are unhappy over the tardy manner in which the Ministry had handled this case, considering that the Ministry have gracefully accepted the blame and have assured the Committee that they would act promptly on the communications received from them in future, the Committee do not desire to pursue the matter further. They trust that every effort will be made by the Ministry to keep up their assurance to the Committee.

9 (i)

48

The Committee note that as recommended by them, the Ministry of Home Affairs (Department of Official Language) are taking action to amend sub-rule (1) of rule 10 of the Central Secretariat Official Language Service (Group 'C' Posts) Rules, 1981 so as to provide for communicating the reasons for extension of the period of probation to the probationers. The Committee hope that the amendment would be notified at an early date.

9 (ii)

49

The Committee accept the view of the Ministry that a probationer need not be informed of the reasons for his discharge or reversion to his substantive post. However, with a view to ensure objectivity and justice in such a decision, the Committee recommend that a suitable machinery like a departmental Committee consisting of senior officials be devised to go into the case fully.

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The Committee note that the Posts and Telegraphs Department has taken up the question of merger of directly recruited officers with the main stream, i.e. the Indian Telecommunication Service Grade 'A'. As the insertion of number

(1)	(2)	(3)
		<p>of posts in the schedule to the Recruitment Rules in question at this stage will serve no purpose, the Committee would not like to insist on amending the Schedule to the Rules as desired by them in paragraph 83 of their Twenty-third Report (Seventh Lok Sabha).</p>
11 (i)	58	<p>Keeping in view the administrative inconvenience pointed out by the Ministry of Energy (Department of Power) in giving effect to Committee's recommendation made in paragraph 93 of the Report (23R—7 LS), the Committee do not insist on an amendment to the rules to that effect.</p>
11 (ii)	59	<p>The Committee, however, note that necessary action is being taken by the Ministry for issuing an amendment to the proviso to sub-rule 3 (2) of the Rules <i>ibid</i> so as to prescribe the maximum time-limit, within which the resignation must be accepted.</p>
12	62	<p>While the Committee have no alternative but to accept, with reluctance, the explanation of the Ministry that as the principal rules were published in 1973 and the concerned officers have since retired from service, it is difficult at this stage to fix responsibility for their failure to locate the original Gazette Notification containing the principal rules, they need hardly stress that the present case only points to the need for utmost care in proper upkeep of records of subordinate legislation. The Committee note the averment of the Ministry that they are now keeping a watch to ensure publication of every notification they are sending to the press by obtaining its GSR number and the date of its publication. The Committee trust that the Ministry will at the same time evolve a fool-proof system for proper maintenance of records of subordinate legislation so that such lapses do not recur.</p>

APPENDIX II

(See para 31 of the Report)

*Extract from U.O. Note No. 349|82 Adv. (A) dated 18-2-82 of
Ministry of Law & Justice (Deptt. of Legal Affairs)*

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2. Incidentally, it may also be relevant to point out that some of the factual aspects had not been correctly stated in the earlier referring note dated 4-9-80 now placed and incorporated in this file at pages 67-68|N ante (formerly referred to us separately and P. 1 & 2|N order without linking of the relevant papers and without giving the detailed factual position).

3. Even at that stage we desired to see the earlier file in which the reference was stated to have been made to this Ministry in the year 1978 prior to the issue of the Notification GSR dated 8-3-78. It is also unfortunate that in spite of the request made by this Ministry in our earlier note date 12-9-80 the said file was not referred to us and we could not lay our hands on the circumstances in which sub-clause (6) was added after sub-clause (5) in Rule 12 of the IFS Branch 'B' (RCS&P) Rules, 1964.

4. The subsequent note of the Department dated 28-11-81 followed by the instant note dated 10-12-81 are however highly revealing. The special factual features revealed in the aforesaid subsequent notes are discussed, succinctly as below:

5. In the earlier note dated 4-9-80 this Ministry was given to understand that the proposal of the Department would cover only the isolated case and that the consequent promotional prospects of IFS 'B' Officers will not be adversely effected. These factual aspects have now been found to be incorrect inasmuch as it has now been stated in the subsequent note of the Department that there are about 78 other officers similarly placed as Shri Bhatia and that by invoking sub-clause (6) of the aforesaid IFS Branch 'B' Rules, it may cause injustice or inequality to such other similarly placed officers if the said clause is not invoked in the case of said 78 other similarly placed officers.

6. In view of the facts now revealed by the Department it is clear that there would be a violation of the provisions of Article 14 of the Constitution of India, if the sub-clause 6 is invoked merely for Shri Bhatia and not for other similarly placed officers.

7. If the Department feels administrative and procedural difficulties in not invoking the said sub-clause (6) in respect of other similarly placed officers, it may not be legally or constitutionally proper to invoke the said sub-clause (6) merely for Shri G. S. Bhatia.

8. It is further stated in para 8 of the note of the Department at page 72|N ante that the said sub-clause (6) has not been utilised even in a single isolated case up till now. It is further understood during discussion with Shri B. K. Mitra that the Notification for appointing Shri G. S. Bhatia by invoking sub-clause (6) has not yet been issued and the said sub-clause (6) has not been utilised up till now. If that be so, it may be proper to accept the recommendations of the Committee on Subordinate Legislation as incorporated in their recommendations dated 12-4-78 now placed at S. No. 21A of F.Q.|8A|792|3|72-CAD.

9. We are also inclined to agree with the views already expressed by the Legislative Department of this Ministry (P 73|N ante).

10. As there is no justification to indicate the exceptional circumstances for invoking the sub-clause (6) inserted on 8-3-73, it may be proper not to invoke the said sub-clause at this stage particularly when it may amount to be discriminatory. It has also been held by the Courts that if a provision is discriminatory the same cannot be treated to be sustainable in public interest. The expression 'public interest' envisages equality before law and equality of opportunity. As has already been pointed out by the Department that by invoking the said sub-clause merely in favour of Shri Bhatia it would open the flood-gate of objections from other 78 similarly placed officers, the consequences would be violation of doctrine of equality. We therefore agree with the views of the Department that the said sub-clause (6) may be omitted without utilising it even in a single isolated case, as the nexus of exceptional cases have not been elaborated nor the same could be elaborated according to the detailed facts averred by the Department in their subsequent note dated 28.11.1981.

APPENDIX III

(See paragraph 31 of the Report)

Department of Personnel & AR

The notes from p. 70|N ante would explain the case. The amendment of 8-5-79(P|A) was agreed to by us virtually very reluctantly (p. 25|N). This has been strongly objected to by the Committee on Subordinate Legislation (Lok Sabha) and the Staff Side also. It smacked of benefiting an individual and the Min. of Law also have felt that it would be appropriate to accept the recommendation of the Committee on Subordinate Legislation to delete the clause.

We may agree to the deletion.

Sd| -
(J. K. SHARMA)
Director (I)
It'd. Sd| - illegible
18-3-82

Dir. (I) Sd| -
18-3-82

Min. of External Affairs, S. L. Bhaskar Mishra U.S.

DP&AR U.O. No. 1941|82 Dir. (I).

APPENDIX IV

(Vide paragraph 31 of the Report)

No. F. 3|6(3)|81-RR
UNION PUBLIC SERVICE COMMISSION
DHOULPUR HOUSE
SHAJAHAN ROAD

New Delhi, the 2nd Sept., 82

To

The Secretary to the Govt. of India,
Ministry of External Affairs,
New Delhi. (Atten: Shri J. R. Hiremath, Addl. Secy. (AD).)

SUBJECT: *Amendment to IFS (RCS&P) Rules, 1961 and IFS(B) (RCS&P) Rules, 1962.*

Sir,

I am directed to refer to your letter Nos. (i) No. 0|CAD|791|1|81, dated 14-12-1981 and (ii) Q|GA|792|2|72-CAD, dated 23-12-1981 on the above subject. The Ministry of External Affairs have made the following two proposals in the above letters:—

- (i) To amend sub-rule (2) of Rule 13 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 in order to increase the promotion quota from 15 per cent to 22½ per cent for officer of Grade I of the General Cadre of the IFS (B) for promotion to the Senior-scale of the IFS(A).
- (ii) To delete sub-rule (6) of Rule 12 of Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 which lays down that a vacancy in Grade I of the General Cadre may, in exceptional cases and in public interest, be filled by the Controlling authority in consultation with commission by the transfer of an officer holding a permanent Group 'A' ex-cadre post in the Ministry of External Affairs.

2. Regarding the proposal at (i), the Commission would have, no objection to the increase in the promotion quota from 15 per cent to 22½ per cent as proposed by the Ministry but in keeping with the provision in the service rules for All-India Services, the leave reserve posts need to be excluded for computing the promotion quota. Accordingly, the amendments contained in Annexure III forwarded with the above mentioned letter dated 14-12-1981 have been approved with the change that the words, "leave reserve and" may be deleted from the proposed sub-rule (2) of Rule 13.

3. With regard to (ii), it may be stated that a proposal was received from the Ministry to add a sub-rule under Rule 12 of IFS (B) (RCSP) Rules, 1964 on the following lines:—

"Notwithstanding anything said in this rule, in exceptional cases, recruitment to Grade I of the General Cadre can be made by the transfer of holders of permanent Class I ex-cadre posts in the Ministry of External Affairs, to be decided by Govt. in public interest, in consultation with the Union Public Service Commission. Seniority of such officers in Grade I of the IFS (B) will be determined by Government.

4. While forwarding the above proposal, it was also mentioned that the post of Deputy Director (Purchase) originally designated as Purchases Officer created in 1962 as Class I (Gazetted) was recruited through the Commission. The duties assigned to the post were more or less in the nature of executive and administrative functions connected with the selection, purchase and despatch of a variety of stores from India to Indian Missions/Post abroad. It was further stated that in conformity with the directions issued by the Central Vigilance Commission, the officer dealing with the public should not hold the post for more than three year. It was accordingly suggested that the post of Deputy Director (Purchase) might be included in the regular case of IFS (B) to ensure rotation in the incumbency of the post.

5. The proposal of the Ministry was examined and was considered that it would not be in order to confine amendment to include ex-cadre posts in the Ministry of External Affairs in Grade I of IFS (B) only. It, therefore, suggested that the provision might be kept the general lines covering all categories of posts included in the Service on the lines of provision rules in other organised services. The Ministry, however, stated that the Department of Personnel and Administrative Reforms had approved the proposed amend-

ment for the limited purpose and extending the scope was likely have wider implications. Finally, the provision approved by the Commission as under:—

“(6) Notwithstanding anything said in, exceptional cases and in public interest, Govt. may make, in consultation with the Union Public Service Commission, recruitment to Grade I of the General Cadre by transfer of holders of permanent Class I ex-cadre posts in the Ministry of External Affairs. Seniority of such office in Grade I of IFS (B) will be determined in consultation with the Union Public Service Commission.”

6. Under the above provision, the suitability of the regular holder of the post of Deputy Director (Purchase) was also assessed by the Commission and Shri G. S. Bhatia, the permanent Deputy Director (Purchase) was found suitable for appointment to Grade I of IFS (B). However, while conveying advice of the Commission, on 17-3-1978, it was suggested to the Ministry that the appointment of Shri Bhatia might be notified only after the approved amendment has been notified in the gazette of India. It is noted that the Ministry notified the amendment on 8-3-1978 but no formal orders appointing Shri Bhatia to Grade I of the General Cadre of ISB (B) have been issued.

7. In their above letter dated 23-12-1981, the Ministry have now sought deletion of the above amendment notified on 8-3-1978. A copy of the O.M. No. 38|1|CII|78, dated 12-4-78 from the Committee on Subordinate Legislation (Lok Sabha) has also been sent which has raised the following points:—

- (i) Whether any guidelines have been laid down as to what may be regarded as “exceptional cases” which would qualify inclusion of posts in Grade I of the General Cadre of IFS ‘B’.
- (ii) Whether there is any objection to laying down the principles for fixing seniority the rules rather than leaving them to be determined by the Controlling Authority.
- (iii) To state the reasons for incorporating the new amendment and whether keeping in view the earlier recommendation of the Committee which is reproduced below, there is any objection to delete the provision:—

"...the Committee feels that amendments to Rules which are likely to have the effect of denying or curtailing the existing opportunities available to employees should not be brought forward save for compelling reasons".

8. It may be stated in this connection that while considering proposal from the Ministry of External Affairs, it was suggested to them that the provision for inclusion of isolated posts in the Services might be kept on the general lines as in the case of other organised Services. It was, however, only at the instance of that Ministry that the amendment was confined to Grade I of the General Cadre of IFS (B). The term "exceptional cases" was kept primarily in the context of isolated and ex-cadre posts which do not have any regular cadre nor any avenue of promotion. Regarding laying down principles for fixing seniority, it is generally being laid down in the rules for the organised Services that in such cases seniority in the grade shall be fixed after taking into account continuous regular service in the analogous grade. However, the position in the present case is somewhat different. The revised and pre-revised scales of pay of grade I of IFS (B) (Rs. 900—1250 pre-revised and Rs. 1200—1600 revised) and isolated Group 'A' posts (Rs. 700—1250 pre-revised and Rs. 1100—1600 revised) in the Ministry of External Affairs differ. Therefore, as is generally done to meet such a situation, it was laid down that the seniority shall be determined by the Controlling Authority in consultation with the Commission. Regarding the observation at (iii) reasons furnished by the Ministry of External Affairs in support of the amendment are mentioned in para 4 above. Further, it has also been laid down in the guidelines circulated by the Department of Personnel and Administrative Reforms *vide* O.M. No. 14017/24/76-Estt. (RR), dated 22-5-1979 that it is worthwhile to bring isolated posts into an organised cadre/service so that officers appointed by direct recruitment have enough prospects for advancement. In pursuance of this, the isolated posts in various organisations have been included in the organised Services. It is, therefore, considered that the existing provision may be retained.

9. The Ministry have also stated in their letter dated 23-12-1981 that invoking the provisions of sub-rule (6) approved and notified on 8-3-1978, as has already been done in the case of Shri G. S. Bhatia, will result in demand and pressure from 78 other officers who are similarly placed for appointment to Grade I of the General cadre of IFS (B) thus curtailing opportunities for promotion of officers as pointed out by the Committee on Subordinate Legislation. It has been further stated that there has also been stiff protest from the JCM against the inclusion of sub-rule (6) which permits lateral

entry of ex-cadre officers into Grade I of the General Cadre of IFS (B). It may be stated that as already mentioned in para 8 above, the inclusion of posts in IFS (B) is confined only to those posts which are isolated and do not have any avenue of promotion. It is true that there are various categories of posts in the Legal, Research and Historical Divisions of the Ministry which are outside the IFS (B) or IFS (A) but all these posts have their own regular cadres and as such cannot be equated with the isolated posts. It is unlikely that the isolated posts without any avenue of promotion would be more than 3 or 4. Thus, the inclusion of 3 or 4 posts is not likely to affect the promotion prospects of the existing officers in Grade I of the General Cadre. In fact, the inclusion may benefit the cadre because while the officers will vacate the posts, the strength of the cadre increases.

10. In the light of foregoing, the Commission do not consider it advisable that the amendment notified on 8-3-1978 which was made by the Ministry themselves should be deleted. Further, they had, after assessing suitability, approved as far back as 17-3-1978 appointment of Shri G. S. Bhatia, Deputy Director (Purchase) to grade I of the General Cadre of IFS (B). It may not, therefore, be fair at this late stage to delete the provision and to nullify the action already approved. It is also not clear whether the Ministry have taken specific approval of the Department of Personnel and A. R. or have consulted the Ministry of Law in the matter. It is suggested that the Ministry of External Affairs may please consider the desirability of inclusion of the other few isolated posts as well in Grade I of the General Cadre of the IFS (B) who do not have any avenue of promotion and can appropriately be included in the Service in accordance with guidelines circulated by the Department of Personnel and A. R. on 22-5-1979. Alternatively that Ministry may consider keeping such isolated posts in the field of promotion to Senior-scale posts in IFS (A) alongwith Grade I officers of the IFS (B) in the context of increased promotion quota.

Yours faithfully,

Sd/-

(B. S. JAGOPOTA)

Under Secretary

Union Public Service Commission

Tele: 383604

APPENDIX V

(Vide paragraph 31 of the Report)

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

UNION PUBLIC SERVICE COMMISSION

(SANGH LOK SEVA AYOGE)

DHOLPUR HOUSE

SHAHJAHAN ROAD

New Delhi, 21-10-1983

To

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

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

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

Sir,

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

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

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

17-3-1978 after assessing the suitability. It may not, therefore, be fair at this late stage to delete this provision and to nullify the action already taken thereunder.

- (ii) Ministry of External Affairs may consider the desirability of inclusion of the few isolated posts as well in Grade I of the General Cadre of the IFS (B) who do not have any avenue of promotion and can appropriately be included in the Service in accordance with the guidelines circulated by the Department of Personnel and A. R. on 22-5-1979.
- (iii) Alternatively the Ministry may consider keeping such isolated posts in the field of promotion to senior-scale of posts in IFS (A) alongwith Grade I officers of the IFS (B) in the context of increased promotion quota from 15½ per cent to 22½ per cent.

3. With regard to (i) and (ii), the Ministry have stated in their above D.O. letter dated 15-12-1982 that invoking the provision of sub-rule (6) for Shri G. S. Bhatia will result in demand and pressure from 78 other officers who are similarly placed for appointment to Grade I of General Cadre of IFS (B), thus curtailing opportunities for promotion of officers as pointed out by the Committee on Subordinate Legislation. In addition the JCM has been continuously demanding deletion of sub-rule (6). Regarding (iii), it has been merely intimated that the approved provision increasing the promotion quota from IFS (B) to IFS (A) from 15 per cent to 22½ per cent was published in the Gazette of India on 30-12-1982 and action has already been initiated to promote more IFS (B) officers into the IFS (A).

4. It appears that the Ministry have not communicated the views/ observations contained in this office letter of even number dated 2-9-1982 to the Lok Sabha Secretariat, nor to the Ministry of Law and Department of Personnel and Administrative Reforms. They have forwarded extracts of notings between them and the Ministry of Law and Department of Personnel and AR on the subject exchanged in February-March 1982, i.e., prior to this office letter of even number, dated 2-9-1982. It is observed that the Ministry of Law had initially agreed that there could be no legal objection to the proposed appointment of Shri Bhatia and that sub-rule (6) could be repealed after his induction into IFS (B). However, subsequently the

Ministry brought out the argument which was also there earlier that there were 78 other officers similarly placed as Shri Bhatia and if sub-rule (6) is invoked even once, there will be opposition to its repeal from these officers and even there may be a court case. It was only after this that the Ministry of Law reversed their earlier advice and consented to the deletion of sub-rule (6) without utilising it even in a single isolated case stating that the nexus of exceptional cases had not been elaborated.

5. It may be stated in this connection that it was clearly brought out in paras 8 and 9 of this office letter of even number dated 2-9-82 that the inclusion of posts will be confined only to those posts which are isolated and do not have any avenue of promotion. It is true that there are various categories of posts in the Legal, Research and Historical Divisions of the Ministry which are outside the IFS(B) or IFS(A), but all these posts have their own regular cadres with avenues of promotion provided and as such cannot be equated with the isolated posts without promotional avenues. Further as already indicated in this office letter dated 2-9-82, it is unlikely that the isolated posts without any avenue of promotion would be more than 3 or 4. Thus the inclusion of 3 or 4 posts is not likely to affect the promotion prospects of the existing officers in Grade I of the General Cadre of IFS(B). In fact the inclusion may benefit the cadre because while the officers will vacate the posts the strength of the cadre would increase.

6. In the light of the foregoing, it is requested that the position mentioned in paras 8 and 9 of this office letter of even number dated 2-9-82 may kindly be explained to the Lok Sabha Secretariat. In case the Committee on Subordinate Legislation (Lok Sabha) still consider that sub-rule (6) needs to be deleted, the Commission agree to its repeal with the observation that the action already approved by them under the notified provision, on specific proposals from the

Ministry themselves, may be taken first and their advice regarding appointment of Shri G. S. Bhatia to Grade I of the General Cadre of IFS(B) implemented which will be in accord with the advice of the Ministry of Law originally tendered.

Yours faithfully,

Sd/-

(D. S. JAGOPOTA)

Under Secretary

Union Public Service Commission

Tele: 383604

MINUTES

APPENDIX VI

(Vide para 3 of the Report)

MINUTES OF THE SEVENTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1983-84)

The Committee met on Monday, 27 June, 1983 from 11.00 to 12.30 hours.

PRESENT

Shri Xavier Arakal—*In the Chair.*

MEMBERS

2. Shri Mohammad Asrar Ahmad.
3. Shri Arsal Datta.
4. Shri T. Damodar Reddy.
5. Shri Satish Prasad Singh
6. Shri Vijay Kumar Yadav.

SECRETARIAT

Shri T. E. Jagannathan—*Senior Legislative Committee
Officer.*

2. In the absence of the Chairman, Shri Xavier Arakal, M.P. was chosen by the Committee to act as Chairman for the sitting in terms of the provision of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

* * * * *

4. The Committee then took up for consideration the following Memoranda:-

- (i) *The Ministry of Foreign Trade, Import and Export Trade Control Organisation (Class I and class II Posts) Recruitment (Amendment) Rules, 1980—(Memorandum No. 172)*

5. The Committee considered the above Memorandum and desired to know from the Ministry the number of persons likely to be affected adversely by giving retrospective effect to the Amendment Rules in question.

* * * * *

The Committee then adjourned.

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

MINUTES OF THE NINETY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1983-84)

The Committee met on Monday, 30 January, 1984 from 11.00 to 12.15 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*.

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Dalbir Singh (Madhya Pradesh)
4. Shri Amal Datta
5. Shri B. Devarajan
6. Shri Brajamohan Mohanty
7. Shri Satish Prasad Singh.

SECRETARIAT

Shri T. E. Jagannathan—*Senior Legislative Committee Officer*.

2. At the outset, on hearing the sound of the gun fired at 11 A.M. the Members stood in silence for two minutes in memory of the martyres who laid their lives in the struggle for freedom of India.

3. The Committee then considered Memoranda Nos. 242 to 246 as follows:-

* * * * *

- (iii) *The Ministry of Foreign Trade, Import and Export Trade Control Organisation (Class I and Class II Posts) Recruitment (Amendment) Rules, 1980 (G.S.R. 1081 of 1980)—(Memorandum No. 244).*

6. The Committee noted from the reply of the Ministry of Commerce that interests of no one had affected adversely by the retrospective operation of the amendment made to the Recruitment Rules of Class I and Class II Posts in the Import and Export Trade Control Organisation.

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

This was, however, contrary to their earlier reply which stated that some persons in the Import and Export Trade Control Organisation had suffered hardship after merger in matters like seniority, etc. The Committee directed that the Ministry might be asked to reconcile the position. The Committee deplored the delay in finalisation of the amendment and emphasized that such prolonged delays should be cut short by arranging high level meetings between the concerned Ministries to expedite the matters.

* * * * *

The Committee then adjourned to meet again on 31st January, 1984.

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MINUTES OF THE HUNDRED AND SEVENTH SITTING OF
THE COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (1984-85)

The Committee met on Monday, 10 September, 1984 from 11.30 to 12.30 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri A. E. T. Barrow
6. Shri Amal Datta
7. Shri B. Devarajan
8. Shri Braja Mohan Mohanty
9. Shri A. T. Patil
10. Shri Darur Pullaiah
11. Shri Nagina Rai
12. Shri Prabhunarain Tandon
13. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri N. N. Mehra—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*
3. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee took up for consideration Memoranda Nos. 275 to 277 as follows:—

(i) * * * * *

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

- (ii) *The Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1977 (G.S.R. 437 of 1978)—(Memorandum No. 276).*

The Committee considered the above Memorandum and noted that, on being pointed out by them, the Ministry of External Affairs, after protracted correspondence lasting for almost six years, had ultimately agreed, in consultation with the Department of Personnel and Administrative Reforms and the Ministry of Law and with the approval of the Foreign Minister, to rescind the amendment made in 1978 incorporating sub-rule (6) in rule 12 of the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964. In that connection, the Committee noted that the Union Public Service Commission had pointed out that an ex-cadre official (Shri G. S. Bhatia, Deputy Director in the pay-scale of Rs. 1100—1600), in whose case the process of induction into the Indian Foreign Service (B) in terms of the said amendment had already been finalised as far back as on 17 March, 1978, and as such, a right had been created, which could not be denied to him, might be absorbed before the amendment was actually repealed by the administrative Ministry.

Keeping in view the position as stated by the Commission as also the fact that it was the question of absorption of only one single ex-cadre official into the Indian Foreign Service (B), whose case had been decided long back, the Committee reluctantly agreed with the proposal of the Commission as a special case and not to be quoted as precedent for future. The Committee, however, emphasized that the rules should not be circumvented to give benefit to any individuals. In the present case, the Government had taken an unduly long time of six years in deciding to rescind the amendment made in 1978 and, as a consequence, an exception had to be made. The Committee recommended that the Ministry of External Affairs should take necessary action in that regard without further loss of time.

- (iii) *Implementation of recommendations of the Committee on Subordinate Legislation made in paragraph 41 of their Twenty-third Report (Seventh Lok Sabha) regarding the Central Secretariat Official Language Service (Group 'C' Posts) Rules, 1981 (G.S.R. 842 of 1981)—(Memorandum No. 277).*

The Committee considered the above Memorandum and noted with satisfaction that in compliance with their recommendation made in paragraph 41 of their Twenty-third Report (Seventh Lok Sabha), the Ministry of Home Affairs (Department of Official

Language) were taking necessary action to amend sub-rule (1) of rule 10 of the Central Secretariat Official Language Service (Group 'C' Posts) Rules, 1981 so as to provide for communicating the reasons for extension of the period of probation to the probationers. The Committee desired the Ministry to expedite the process of amendment and notify the same without further loss of time.

However, with regard to communicating the reasons for discharging or reverting a probationer to his substantive post, the Committee noted the revised reply of the Ministry that it would not be desirable to make such a provision in Rule 10(3) of the rules *ibid*, because a candidate was placed on probation to enable the Government to judge his suitability for the post with the specific stipulation to terminate his services without any notice at any time during the course of or at the end of such probation. The Ministry also subscribed to the view that communication of the reasons in such cases would tantamount to giving an opportunity to the probationers to appeal against the administrative decision resulting in continuation in service of unsuitable candidates for longer period than necessary. In view of the above position stated by the Ministry, the Committee decided not to press for an amendment in that regard. The Committee, however, decided to recommend, in the interest of justice and fair play, that such decisions should have the approval of a Departmental Board or Committee, consisting of atleast three senior officers, as a safeguard against probable misuse of the given powers.

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| 3. | * | * | * | * | * |
| 4. | * | * | * | * | * |

5. *The Committee then adjourned.*

**MINUTES OF THE HUNDRED AND NINTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH
LOK SABHA) (1984-85)**

The Committee met on Thursday, 20 September, 1984 from 11.00 to 13.00 hours.

PRESENT

Shri R. S. Sparrow—Chairman.

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri A. E. T. Barrow
4. Shri Amal Datta
5. Shri B. Devarajan
6. Shri Braja Mohan Mohanty
7. Shri A. T. Patil
8. Shri Darur Pullaiah
9. Shri S. B. Sidal

* * * * *

SECRETARIAT

1. Shri S. P. Gupta—*Joint Secretary.*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
3. Shri R. S. Mani—*Senior Legislative Committee Officer.*

12. The Committee then considered Memoranda Nos. 278 to 283 as follows:

- (i) *Implementation of recommendation made in paragraph 63 of Twenty-third Report (Seventh Lok Sabha) of Committee on Subordinate Legislation regarding the Scientific and Technical Officers Grade I, Assistant Director and Deputy Directors (Telecommunication Research Centre of the Posts and Telegraphs Department) Recruitment Rules, 1978 (G.S.R. 348 of 1979)—(Memorandum No. 278).*

13. The Committee considered the above Memorandum and noted that the question of merger of directly recruited officers with the main stream i.e., the Indian Telecommunication Service Grade 'A'

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

had already been taken up by the Posts and Telegraphs Department. As no useful purpose was likely to be served by insertion of the number of posts in the Recruitment Rules at that stage, the Committee decided not to insist upon the implementation of their recommendation in the context of the changed circumstances.

- (ii) *Implementation of recommendations made in paragraphs 93-94 of Twenty-third Report (Seventh Lok Sabha) of the Committee on Subordinate Legislation regarding the Bhakra Beas Management Board Rules, 1974 (GSR 1330 of 1974)—(Memorandum No. 279).*

14. The Committee considered the above Memorandum and keeping in view the administrative inconvenience pointed out by the Ministry of Energy (Department of Power) in giving effect to Committee's recommendation, decided not to press for an amendment in that behalf. The Committee also noted that action was being taken by the Ministry for issuing an amendment in pursuance to their recommendation made in paragraph 94 of their Twenty-third Report (Seventh Lok Sabha).

- (iii) *Implementation of recommendation made in paragraph 100 of Twenty-third Report (Seventh Lok Sabha) of the Committee on Subordinate Legislation regarding the Dandakaranya Project (Class I Posts) Recruitment Rules, 1973—(Memorandum No. 280)*

15. The Committee considered the above Memorandum and agreed, with reluctance, to accept the explanation of the Ministry of Labour and Rehabilitation (Department of Rehabilitation) in not being able to fix the responsibility for the gross neglect in locating the original gazette notification containing the principal rules on the subject. The Committee, however, noted the assurance of the Ministry for keeping a watch over publication of every notification in the official Gazette and maintaining proper records in the Ministry in order to avoid recurrence of such lapses in future.

* * * * *

- (v) *The Cement Control (Fourth Amendment) Order, 1982 (S.O. 851-E of 1982)—(Memorandum No. 282).*

17. The Committee considered the above Memorandum and noted that, on being pointed out by them, the Ministry of Industry (Department of Industrial Development) had since amended the Cement Control Order, 1967 deleting the provision of penal interest in the above order.

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

(vi) *Implementation of recommendations made in paragraphs 22-23 of Eleventh Report (Seventh Lok Sabha) of the Committee on Subordinate Legislation regarding the All India Services (Leave Travel Concession) Rules, 1975 [Paragraph 62 of Sixth Report (Sixth Lok Sabha)]—(Memorandum No. 283).*

18. The Committee considered the above Memorandum and were not convinced with the reply of the Department of Personnel and Administrative Reforms in not framing the statutory rules in place of the executive instructions regulating the Leave Travel Concession applicable to Group 'A' Officers of the Central Civil Services. The Committee felt that once the statutory rules were framed it did not involve much additional work if any modification was contemplated. What the Government was expected to do was to issue a notification in the official Gazette. Even with the executive instructions, Government had to circulate any modification amongst all concerned. The Committee, therefore, decided to reiterate again their recommendation made in paragraphs 22-23 of their Eleventh Report (Seventh Lok Sabha) for implementation without further loss of time.

The Committee then adjourned.

**MINUTES OF THE HUNDRED AND ELEVENTH SITTING OF
THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH
LOK SABHA) (1984-85)**

The Committee met on Friday, 19 October, 1984 from 11.00 to 11.55 hours.

PRESENT

Shri A. T. Patil—*In the Chair*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri A. E. T. Barrow
4. Shri B. Devarajan
5. Shri Darul Pullaiah

SECRETARIAT

1. Shri S. P. Gupta—*Joint Secretary*
2. Shri C. K. Jain—*Chief Examiner of Questions*
3. Shri R. S. Mani—*Senior Legislative Committee Officer.*

2. In the absence of the Chairman, Shri A. T. Patil, M.P., was chosen by the Committee to act as Chairman for the sitting in terms of the provision of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered Memoranda Nos. 284 to 290 as under:—

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- (ii) *The Ministry of Foreign Trade, Import and Export Trade Control Organisation (Class I and Class II posts) Recruitment (Amendment) Rules, 1980 (G.S.R. 1081 of 1980) -- (Memorandum No. 285)*

5. The Committee considered Memorandum No. 285 on the above subject and suggested that in future whenever retrospective effect

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

was required to be given to any rule, the Ministry would make a pre-exercise to see that it was done in good faith and in the interest of the public and also certify in the Explanatory Memorandum appended to the Rule that no one would be adversely affected by the retrospective effect so given.

As regards the delay of about 3 years in the publication of the Amendment Rules of 1980 (G.S.R. 1081 of 1980), the Committee while regretting the delay on the part of the Ministry desired that such delays should be avoided in future by taking decision on such issues at meetings of senior officers of the Ministries/Departments concerned with the matter.

(iii) *The Ministry of Law (Department of Legal Affairs—Central Agency Section) General Central Service—Class I posts Recruitment (Amendment) Rules, 1983 (G.S.R. 454 of 1983)—(Memorandum No. 286)*

7. The Committee considered the above Memorandum and noted the reasons given by the Ministry for giving retrospective effect to the Ministry of Law (Department of Legal Affairs—Central Agency Section) General Central Service—Class I posts Recruitment (Amendment) Rules, 1983 w.e.f. 1 January, 1977.

The Committee felt that since the matter pertained to the Ministry of Law, the oversight for a period of 6 years in issuing the Amendment Rules was conspicuous and all the more regrettable. The Committee hoped that the Ministry of Law would be more careful and vigilant in future toward recurrence of such lapses.

The Committee also directed that the Ministry should invariably explain the circumstances and the need for giving retrospective effect to the rules, in the Explanatory Memorandum appended thereto.

(iv) *The Calcutta Port (Amendment) Rules, 1982 (G.S.R. 281 of 1983)—(Memorandum No. 287).*

The Committee expressed their dissatisfaction over the delay of nine months in the publication of the above rules by the Ministry of Transport (Ports Wing) in the final form after these were published in the Gazette in draft form. The Committee felt that the suggestion in this regard made in paragraph 68 of their Twenty-fourth Report (Seventh Lok Sabha) presented to the House on 21 December, 1983 to the effect that in cases where no objections/suggestions on the draft rules were forthcoming, the rules in the

final form be notified within a period of three months, has not been taken note of and emphasised that this should be kept in view in future.

The Committee trust that the assurance given by the Ministry for improving the system to ensure that such delays would not recur would be kept and that the entire machinery dealing with such cases would be overhauled to ensure elimination of such delays.

- (v) *Implementation of recommendations of the Committee on Subordinate Legislation made in paragraphs 202 and 203 of Eighteenth Report (Seventh Lok Sabha) regarding the Explosives (Amendment) Rules, 1971 (G.S.R. 1077 of 1971)—(Memorandum No. 288).*

The Committee noted the reply given by the Ministry of Industry (Department of Industrial Development) stating that the delay in submitting their first action taken reply was not deliberate but owing to non-availability of relevant papers and their efforts to trace them.

(vi) * * * * *

- (vii) *Implementation of recommendations of the Committee on Subordinate Legislation contained in paragraphs 218 to 220 of their Eighteenth Report (Seventh Lok Sabha) regarding High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1984—(Memorandum No. 290).*

The Committee noted the explanation given by the Ministry about their inability to fix responsibility on any particular individual for the delay in implementing the Committee's recommendation and the assurance for an expeditious action on such matters in future. However, the Committee were unhappy over the manner in which important matters like this were conducted.

The Committee then adjourned.

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

MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA) (1985-86)

The Committee met on Monday, 12 August, 1985 from 15.30 to 16.15 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri G. M. Banatwalla
3. Shrimati Usha Choudhari
4. Shri Dharam Pal Singh Malik
5. Shri K. S. Rao
6. Shri Saleem I. Shervani

SECRETARIAT

1. Shri S. Balasubramanian—*Chief Legislative Committee Officer.*
2. Shri R. S. Mani—*Senior Legislative Committee Officer.*

2. At the outset, the Committee adopted the following condolence resolution on the sad demise of Shri Lalit Makan, M.P. a member of the Committee and his wife Shrimati Geetanjali Makan:

“The Committee on Subordinate Legislation of Lok Sabha express their profound shock and deep sense of sorrow at the gruesome assassination of Shri Lalit Makan, M.P.—a Member of the Committee—and his wife Shrimati Geetanjali Makan on 31 July, 1985. The Committee deeply mourn the tragic loss of life of this young rising Parliamentarian who would be remembered for his services to the cause of trade unionism and his continuous valiant struggle for uplifting the down-trodden. He was an inspiration not just to the thousands of workers for whose rights he fought but virtually to every body who knew him and respected him for his dynamism and commitment to the cause which he undertook.

The Members of the Committee convey their heartfelt condolence to the bereaved members of his family."

The members then stood in silence for two minutes.

3. The Committee then considered and adopted their draft First Report.

4. The Committee authorised the Chairman and, in his absence, Shri Dharam Pal Singh Malik to present the Report to the House on their behalf on 14 August, 1985.

5. The Committee considered their future programme of work including their study tours to Bombay, Cochin and Trivandrum in connection with examination of certain rules relating to Central Silk Board, LIC, Cinematograph Rules, 1984 and Air India (Bombay); Cochin Port Trust, Coconut Development Board, Cashewnut Board (Cochin) and Coir Board (Trivandrum), during the first week of October, 1985.

The Committee then adjourned to meet again on 20 August, 1985.