

# COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)

**FIFTEENTH REPORT**

*(Presented on the 21st December, 1978)*



**LOK SABHA SECRETARIAT  
NEW DELHI**

*December, 1978/Agrahayana, 1900 (Saka)*

*Price : Rs. 2.40*

CORRIGENDA TO THE FIFTEENTH REPORT  
OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (SIXTH LOK SABHA)  
(PRESENTED ON THE 21ST DECEMBER, 1978)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (1978-79)

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1. Shri Somnath Chatterjee—*Chairman*
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13. Shri Ramji Lal Suman
14. Shri Krishnarao Thakur
15. Shri C. N. Visvanathan.

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer*

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# **REPORT**

## **I**

### **INTRODUCTION**

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

2. The matters covered by this Report were considered by the Committee at their sittings held on the 4th and 18th November, 1978.

3. The Committee considered and adopted this Report at their sitting held on the 20th December, 1978. The Minutes of the sittings, which form part of the Report, are appended to it.

4. A statement showing the summary of recommendations/observations of the Committee is also appended to the Report.

## II

### THE COCHIN PORT PILOTAGE AND OTHER ATTENDANT SERVICES (FEES) RULES, 1974 (G.S.R. 1278 OF 1974)

5. Note 3 under part I of the schedule to the Cochin Port Pilotage and other Attendant Services (Fees) Rules, 1974 (G.S.R. 1278 of 1974), provides that the Board of Trustees, Cochin Port Trust, may in special cases, remit the whole or any portion of the fees leviable in accordance with items (c), (d) and (e) of the schedule thereto.

6. The Ministry of Shipping and Transport (Transport Wing) were requested on the 6th April, 1976 to state (i) whether any guidelines had been laid down as to what might be the 'special cases' in which the whole or a part of the fee might be remitted, and (ii) whether they had any objection to amending the rules so as to provide for recording of reasons in writing for remission of fees in the above case.

The Ministry was reminded on the 4th June, 1976, 5th May and 10th August, 1977 to expedite their reply.

7. In their reply dated the 8th September, 1977, the Ministry have stated as under:—

"...provision in Note 3 under Part I of the schedule to above rules published *vide* G.S.R. 1278, and subsequently amended *vide* G.S.R. 382-E, dated the 1st July, 1975 that the Board of Trustees, Cochin Port Trust, may in special cases remit the whole or any portion of the fees leviable in accordance with items (c), (d) and (e) appears to be in conformity with sub-section (3) of section 35 of the Indian Ports Act, 1908 which reads as follows:—

'35(3). The Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).'

However, a doubt has been raised now by the Ministry of Law (Legislative Department) whether the power to remit, which is vested in the Government as quoted above, could be delegated to the Board of Trustees and how a provision as suggested by the Lok Sabha Secretariat in their O.M. under reference, could be made."

8. In their subsequent reply dated the 17th March, 1978, the Ministry have stated as under:—

“....a further notification bearing No. G.S.R. 630 (E) dated the 13th October, 1977 was issued and in that the power to remit the whole or any portion of the fees leviable in accordance with the rates prescribed under item 1(b) i.e. for pilotage either inward or outward between 6 p.m. and 6 a.m. has been vested in Government.”

9. Above reply of the Ministry of Shipping and Transport (Transport Wing) was not specific to the points raised. The Ministry was again asked on the 28th March, 1978 to furnish their reply to the above points. No further communication of the Ministry has been received so far.

10. The Committee note that the reply of the Ministry of Shipping and Transport (Transport Wing) was not specific to the points raised by the Committee. The authority to remit the fee which was clearly available in section 35(3) of the Indian Ports Act, 1908 was not objected to. Comments of the Ministry were invited specifically on the following points with a view to avoiding any discrimination in the grant of remission of fees leviable in accordance with items (c), (d) and (e) of the schedule to the Cochin Port Pilotage and other Attendant Services (Fees) Rules but no reply has been received from the Ministry on these points:—

- (i) whether any guidelines had been laid down by Government as to what may be construed as 'special cases' and
- (ii) whether Government had any objection to amend the rules so as to provide for recording of reasons in writing for remission of fee.

11. The Committee recommend that guidelines should be laid down in regard to the special cases in which fee may be remitted and the rules be amended to provide for recording of reasons in writing before grant of such remission.

12. The Committee note that a reply to their communication dated the 6th April, 1976 was received from the Ministry after a lapse of about two years in March, 1978. The Committee record their displeasure over the delay on the part of the Ministry in sending their reply to the points referred to them. The Committee need hardly emphasise that the reply furnished to the Committee should have been specific to the points raised and not evasive and vague. Vague and



rambling replies lead to unnecessary correspondence which apart from delaying the matter also affect the time schedule of the Committee. The Committee expect the Ministries/Departments of Government to be prompt in sending their replies to the issues raised by a Parliamentary Committee. The replies should be specific and germane to the matters referred to Ministries for their comments or clarification.

### III

#### THE INDIAN FOREIGN SERVICE, BRANCH 'B' (RECRUITMENT CADRE, SENIORITY AND PROMOTION) (SECOND AMENDMENT) RULES, 1974 (G. S. R. 1083 OF 1974)

13. Sub-rule (2) of Rule 2 of the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) (Second Amendment) Rules, 1974 provides that the seniority of persons appointed under sub-rule (1-A) of rule 16 shall be such as may be determined by Government.

14. The principles of determining seniority are the basic ingredients of the recruitment rules. It was, therefore, felt that these should be mentioned in the rules rather be left to be determined by Government.

15. The Ministry of External Affairs to whom the matter was referred have stated in their reply dated the 24th September, 1977, as under:

"The question of providing promotional avenues to the Telephone Operators holding ex-cadre Posts in the Ministries/Departments (other than the Posts and Telegraphs Department) was considered in the Departmental council (JCM) of the Department of Personnel and Administrative Reforms and it was decided that—

- (a) all posts of Telephone Operators shall, henceforth, be manned by the officers belonging to the Central Secretariat Clerical Service; and
- (b) the existing Telephone Operators shall be encadred into the CSCS after they qualify in an examination to be conducted by the Subordinate Service Commission. Two chances would be allowed within which they will have to qualify.

Accordingly, the Department of Personnel and Administrative Reforms amended the CSCS Rules, 1962 suitably under para 3 thereof seniority of Telephone Operators inducted into the CSCS shall be such as may be determined by the Central Government.

Since we are generally guided by the Department of Personnel and Administrative Reforms in these matters, the IFS'B' (RCSP) Rules, 1964 are suitably amended with the concurrence of that Department on the same lines as above, including the provision regarding seniority.

Incidentally, no Telephone Operator in this Ministry has so far qualified in the examination and therefore, none has been inducted into the IFS'B'. As and when anyone qualifies, the seniority shall be determined in consultation with the Department of Personnel and Administrative Reforms on the basis of the principles adopted by that Department for determining the seniority of Telephone Operators inducted into the CSCS.

However, in case the Committee on Subordinate Legislation feels that an amendment to the Rules is necessary, you would no doubt address the Department of Personnel and Administrative Reforms also in the matter. We would carry out the necessary amendment after the Department of Personnel and Administrative Reforms have carried out similar amendment in the C.S.C.S. Rules 1962. For the moment there does not appear to be any pressing need to amend the rules."

16. The Department of Personnel and Administrative Reforms to whom the matter was referred for their comments have replied on the 24th August, 1978 as under:

".....in so far as the Central Secretariat Clerical Service is concerned, it was decided in 1971 as a result of discussions in the Departmental Council of this Department that the Telephone Operators working in Ministries/Departments participating in CSCS should be given an opportunity of getting into the Lower Division Grade of the CSCS after their qualifying in a test of the same standard as that conducted by the Institute of Secretariat Training and Management (now Staff Selection Commission) for recruitment of Lower Division Clerks.

Accordingly, two tests were held in 1972 and 1973 for the Telephone Operators in the Central Secretariat and those who qualified in these tests were inducted into LDC's Grade of CSCS.

It may be mentioned that the posts of Telephone Operators in the Ministries/Departments participating in CSCS, are now manned by members of CSCS and the question of inducting any more Telephone Operators into the LDC's Grade of CSCS does not arise.

Instructions were also issued for the manner in which the seniority of these Telephone Operators on their induction into the LDC's grade of the CSCS, should be fixed *vide* O.M.\* No. 5/73-CS(II) dated the 30th August, 1973.... It would be seen that the instructions lay down clearly the principles relating to the fixation of seniority of Telephone Operators on their induction into the Central Secretariat Clerical Service and as such, there was no possibility of abuse of power in this regard, in so far as Central Secretariat Clerical Service is concerned. A copy of this O. M. is being endorsed to the Ministry of External Affairs for necessary action in so far as Indian Foreign Service (B) is concerned."

17. In the opinion of the Committee the principle of determining seniority is a basic feature of any service rules. The rules governing seniority should, therefore, more appropriately be included in the relevant service rules for the information of persons concerned as also to avoid any scope for discrimination. The Committee note that the Department of Personnel and administrative Reforms have issued administrative instructions to determine the manner in which the seniority of Telephone Operators on their induction into the L.D.C.'s grade of Central Secretariat Clerical Service may be fixed. The Committee, therefore, feel that the Ministry of External Affairs should have no difficulty in incorporating these instructions in the recruitment rules. Moreover, administrative instructions are no substitute for statutory rules because such instructions are not published in the Gazette and as such they do not come to the notice of the Committee to judge their fairness or otherwise.

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\*See Appendix II.

18. In a similar case regarding vacancies of stenographers in the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1974 (G.S.R. 819 of 1974), the Committee in para 95 of their Sixth Report (Sixth Lok Sabha) have observed that principles of determining seniority should be incorporated in the recruitment rules. The Committee, therefore, desire the Ministry to amend the rules suitably at an early date.

#### IV

#### THE INTEGRATED GRADES II AND III OF THE GENERAL CADRE OF THE INDIAN FOREIGN SERVICE, BRANCH 'B' (LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION) REGULATIONS, 1966

##### (A)

19. Regulation 8(1) of the Integrated Grades II and III of the General Cadre of the Indian Foreign Service Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 provides as under:—

“Success at the examination shall confer no right to selection unless the Central Government is satisfied, after such enquiry as may be considered necessary, that the candidate is eligible and suitable in all respects for selection:

Provided that the decision as to ineligibility for selection in the case of any candidate recommended for selection by the Commission shall be taken in consultation with the Commission.”

20. It was felt that the nature of enquiry to be held before the appointment should be made clear in the regulations in order to make it self-explicit.

21. The Ministry of External Affairs to whom the matter was referred have amended the regulation 8(1) as under *vide* Notification No. 90/CAD/78 dated the 22nd February, 1978:—

“(1) Success in the examination confers no right to selection unless the Central Government is satisfied, after such enquiry as may be considered necessary, that the candidate, having regard to his conduct in service, is suitable in all respects for selection:

Provided that the decision as to whether a particular candidate recommended for selection by the Commission is not suitable shall be taken in consultation with the Commission."

22. The Committee note with satisfaction that, on being pointed out, the Ministry of External Affairs, have amended the regulation 8(1) of the Integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966, specifying therein the nature of enquiry to be held before selection of the candidate, so as to render the regulation self-explicit, vide Notification No. 90/CAD/78 dated the 22nd February, 1978.

(B)

23. Regulation 4(4) of the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 provides for the examination fee to be specified by the Commission.

24. It was felt that the amount of fee to be paid by a candidate should be mentioned in the regulations so as to make them self-contained and for the information of all concerned.

25. The Ministry of External Affairs to whom the matter was referred have amended regulation 4(4) as under:—

"(4) Fees: He shall pay such fees as may be specified from time to time by the Commission:

Provided that candidates belonging to the categories indicated in column (1) of the Table below shall pay such fees as are indicated in the corresponding entry in column (2) of the said Table.

TABLE

(1)	(2)
(a) Candidates belonging to the Scheduled Castes and Scheduled Tribes.	One fourth of the fees specified by the Commission from time to time.
(b) Candidates belonging to the various classes or categories of persons notified from time to time by Government for exemption or concessions or both in fees.	Such proportion of the fees subject to such conditions as may be issued by the Central Government from time to time."

26. The Committee are not satisfied with the amendment made to regulation 4(4) of the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966. In para 35 of their Seventeenth Report (Fifth Lok Sabha), the Committee in the case of a similar amendment to regulation 4(2) of the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, have observed that the amendment did not indicate the precise amount of fee to be paid by a candidate and desired the Departmental of Personnel and Administrative Reforms to amend the regulations so as to mention therein the precise amount of the which a candidate has to pay. The Committee reiterate their above recommendation in the present case also and desire that action to amend the regulations accordingly should be initiated at an early date.

## V

### RULES FOR A LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION FOR INCLUSION IN THE SELECT LIST FOR THE INTEGRATED GRADES II AND III OF THE GENERAL CADRES OF THE INDIAN FOREIGN SERVICE, BRANCH 'B', TO BE HELD BY THE UNION PUBLIC SERVICE COMMISSION IN 1975 (G.S.R. 672 OF 1974).

27. Part II, below Appendix to the Limited Departmental Competitive Examination for inclusion in the Select List for the integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B', Rules, 1974 provides for the evaluation of record of service of such candidates as may be decided by the Commission in their discretion.

28. The above provision, as amended, gives an impression that a candidate could be ignored even if he had done well in his written test.

29. The Ministry of External Affairs to whom the matter was referred have stated in their reply as under:—

“The power of fixing qualifying marks for the evaluation of service records of prospective candidates vests in the U.P.S.C., in their discretion. This, however, does not imply that records of any candidate who secures the qualifying marks prescribed by the U.P.S.C. and is otherwise found eligible and suitable will not be evaluated.

In view of the above clarification, amendment of the rules in question is not considered necessary."

30. The Committee are not convinced with the reply of the Ministry of External Affairs. On a reference to para 29 of their Third Report (Fifth Lok Sabha), the Committee find that as per their recommendation in a similar case regarding the Central Engineering Services, the concerned Ministry of Works and Housing have amended the rules to provide that all candidates who obtain the minimum qualifying marks in the written examination, fixed by the Commission shall be called for an interview. The Committee desire that similar amendment may be made in the Rules for a limited Departmental Competitive Examination for inclusion in the Select List for the integrated Grades II and III of the General Cadre of the Indian Foreign Service Branch 'B', to be held by the Union Public Service Commission, in future.

## VI

### THE CENTRAL SILK BOARD CONTRIBUTORY PROVIDENT FUND (AMENDMENT) RULES, 1976 (G.S.R. 1529 OF 1976)

#### (A)

31. Rule 14-A(b) of the Central Silk Board Contributory Provident Fund Rules, 1955, as inserted by the Central Silk Board Contributory Provident Fund (Amendment) Rules, 1976 (G.S.R. 1529 of 1976), reads as under:—

"14-A. Withdrawals from the Fund:—Subject to the conditions specified herein, withdrawals may be sanctioned by the Chairman, at any time after the completion of twenty years of service (including broken periods of service, if any) of a subscriber or within ten years before the date of his retirement on superannuation, whichever is earlier, from the amount standing to his credit in the Fund for one or more of the following purposes, namely:—

\* \* \*

(b) meeting the expenses in connection with the marriage of a son or a daughter of the subscriber, and if he has no daughter, of any other female relation actually dependent on him;"

32. It has been noticed that under the General Provident Fund (Central Services) Rules, 1968, a subscriber can make a withdrawal.

from his Provident Fund for meeting the expenses in connection with the marriage of a female relation (other than a daughter) even if he has a daughter.

33. The Ministry of Commerce (Department of Textiles)\* to whom the matter was referred on the 19th April, 1977 have, in their reply dated the 15th October, 1977, proposed to substitute the existing sub-rule (b) of rule 14-A of the Central Silk Board Contributory Provident Fund Rules, so as to read as under:—

“(b) meeting the expenditure in connection with the marriage of the subscriber or his sons or daughters, and any other female relation actually dependent on him.”

34. The Committee note with satisfaction that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have agreed to amend rule 14-A(b) of the Central Silk Board Contributory Provident Fund Rules, so as to enable a subscriber to make a withdrawal from his Contributory Provident Fund for meeting the expenses in connection with the marriage of a female relation actually dependent on him even if he has a daughter. The Committee approve the amendment proposed by the Ministry and desire them to notify it expeditiously.

(B)

35. Sub-rule (2) of rule 14B of the Central Silk Board Contributory Provident Fund Rules, 1955, as inserted by the Central Silk Board Contributory Provident Fund (Amendment) Rules, 1976 (G.S.R. 1529 of 1976), reads as under:—

“A subscriber who has been permitted to withdraw money from the Fund under rule 14-A shall satisfy the Chairman within a reasonable period as may be specified by the Chairman that the money has been utilised for the purpose for which it was withdrawn, and if he fails to do so, the whole of the sum so withdrawn or so much thereof as has not been applied for the purpose for which it was withdrawn shall forthwith be repaid by the subscriber in one lump sum together with interest thereon at the rate determined under rule 11, and in default of such payment, it shall be ordered by the Chairman to be recovered from his emoluments either in a lump sum or in such number of monthly instalments, as may be determined by the Chairman.”

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\*The Department of Textiles has since been merged with the Department of Industrial Development under the Ministry of Industry.



36. The above rule provides that in case of default of payment in lump sum the amount which was not utilised for the purpose for which it was withdrawn, shall be recovered from the emoluments either in lump sum or in such number of monthly instalments as may be determined by the Chairman. In this connection, attention of the Ministry of Commerce (Department of Textiles)\* was invited on the 19th April, 1977 to rule 16(3)(c) of the General Provident Fund (Central Service) Rules, 1960, which require the sanctioning authority to give the subscriber a reasonable opportunity of making a representation before effecting recovery from him. In their reply dated the 3rd August, 1978, the Ministry of Industry (Department of Industrial Development) have stated as under:—

“.....the matter has since been taken up with the Central Silk Board and they are agreeable to amend rule 14-B(2) of the Central Silk Board Contributory Provident Fund Rules to provide therein for issue of a show-cause notice to the subscriber before ordering recovery of the amount withdrawn, on account of its not being utilised for the purpose for which it was withdrawn. Action has been initiated to amend the rule accordingly.”

37. In a subsequent communication dated the 15th November, 1978, the Ministry of Industry (Department of Industrial Development) have proposed to substitute the existing sub-rule (2) of rule 14-B of the Central Silk Board Contributory Provident Fund Rules, so as to read as under:—

“A subscriber who has been permitted to withdraw money from the Fund under Rule 14-A shall satisfy the Chairman within a reasonable period, as may be specified by the Chairman that the money has been utilised for the purpose for which it was withdrawn. If he fails to do so, a show-cause notice may be served on him asking him to explain the circumstances under which the said amount could not be utilised for the purpose for which it was withdrawn. After receipt of the explanation, the Chairman may order the repayment of the whole of the sum withdrawn or part thereof as has not been applied for the purpose for which it was withdrawn, in lump sum together with interest thereon at the rate determined under rule II. In default of such payment, it shall be

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\*The Department of Textiles has since been merged with the Department of Industrial Development under the Ministry of Industry.

ordered by the Chairman to be recovered from his emoluments either in lump sum or in such number of monthly instalments, as may be determined by the Chairman."

38. The Committee note with satisfaction that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have agreed to amend sub-rule (2) of rule 14-B of the Central Silk Board Contributory Provident Fund Rules, so as to provide therein for issue of a show-cause notice to a subscriber before ordering recovery of the amount withdrawn or such part thereof as has not been applied for the purpose for which it was withdrawn. The Committee approve the amendment proposed by the Ministry and desire them to notify it expeditiously.

## VII

### THE CENTRAL ACCOUNTS SERVICE (PAY AND ACCOUNTS OFFICERS) RECRUITMENT RULES, 1977 (G.S.R. 1016 OF 1977)

39. Rule 13 of the Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 reads as under:—

"13. *Removal of difficulties*:—The Central Government may, from time to time, issue such general or specific directions as may be necessary to remove difficulties in the operation of any of the provisions of these rules."

40. On the 2nd December, 1977, the Ministry of Finance were asked to state the considerations for including the above provision in the Rules, especially when Government have power to amend the rules at any time.

41. In their reply dated the 20th December, 1977, the Ministry of Finance (Department of Expenditure) stated as under:—

"...the rule is based on a similar provision obtaining in the Central Secretariat Service Recruitment Rules [Rule No. 25(1)]. Directions issued under this rule would be only to remove any difficulties in the operation of the provisions of the rules but this rule cannot be invoked for modification of the basic structure of the rules which can be done only by a regular amendment to the rules."

42. The matter was then referred to the Ministry of Home Affairs on the 23rd December, 1977 asking them to state the considerations for incorporating a like provision in Rule 25 of the Central Secretariat Service Recruitment Rules.

43. In their reply dated the 17th January, 1978, the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) stated as under:—

“In regard to Rule 25, the intention of the Government is made clear in the explanatory memorandum to the rule, reproduced below:

‘25.—Under this rule, the Department of Personnel and Administrative Reforms, Ministry of Home Affairs will issue special or general directions, as may be found necessary, to remove difficulties in the way of smooth operation of any of the provisions of the rules in relation to any cadre or cadres.’

This rule only enables the Department to issue general or special directions to remove difficulties in operation of any of the provisions of the main rule as it may not always be necessary or possible to make a rule or amend a rule for all matters. A copy each of the M.H.A. O.M.\* No. 2/21/64-E.O. II, dated 24-6-1965 and O.M.\*\* No. 5/52/67-CS(I) dated 7-2-1968, wherein rule 25 has been invoked is enclosed for information.”

44. On the 15th June, 1978, the attention of the Ministries of Finance and Law were invited to the judgement of the Supreme Court in the case of *Jalan Trading Co. Pvt. Ltd. vs. Mill Mazdoor Sabha* (AIR 1967 SC 691) wherein Section 37 of the Payment of Bonus Act, 1965 relating to the power to remove difficulty, was held invalid. The Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) in a note dated the 31st August, 1978 furnished their comments as under:—

“In *Jalan Trading Company's* case, Section 37 of the Payment of Bonus Act, 1965, authorised the Central Government to provide by Order for removal of doubts and difficulties in giving effect to the provisions of the Act, subject to the qualification that the Order should not be inconsistent with the purpose of the Act. By a majority of 3-2 it was held that the Section was void for impermissible delegation of legislative powers. Shah J. who delivered the majority judgement observed:—‘If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for

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\*Appendix III.

\*\*Appendix IV.

the Legislature to remove that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that cannot be delegated to an executive authority.'

Hidayatullah J. and Ramaswamy J. held that Section 37 was validly enacted.

The Supreme Court has not laid down a universal proposition of law in *Jalan Trading Company's* case. This is clear from the subsequent decision of the Supreme Court in *Kalawati Devi vs. ITC, West Bengal* (1968 SC 162). In that case the *Jalan Trading Co.* was distinguished and Section 298, Income-tax Act, 1961 which provides for removal of the difficulties was upheld by the Court. The Court distinguished *Jalan Trading Company's* case and followed earlier decisions where the Supreme Court has held that it is not unconstitutional for the Legislature to leave it to the Executive to determine details relating to the working of laws.

In view of the above, we cannot consider that *Jalan Trading Company's* case lays down a universal principle of law applicable to all cases. The provisions of Rule 13 are not to be held invalid merely on the basis of the decision in *Jalan Trading Company's* case."

45. The Committee note that in the case of *Jalan Trading Company vs. Mill Mazdoor Sabha*, the Supreme Court has held that power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that could not be delegated to an executive authority. Subsequently, in the case of *Kalawati Devi vs. I.T.C., West Bengal*, the Supreme Court has held that it was not unconstitutional for the Legislature to leave it to the Executive to determine details relating to the working of laws. In this connection, the Committee observe that the Supreme Court has made a distinction between taxation laws and other laws and has not disagreed with the decision in *Jalan Trading Company's* case, and that the language of the section of the rule will also have to be looked into to decide the question. The Committee, therefore, feel that the decision of the Supreme Court in *Jalan Trading Company's* case is more appropriate as the rules in question do not relate to matters of taxation.

46. The Committee further note that the provision regarding 'removal of difficulties' has always been considered to be an extra-

ordinary provision, in that the area in which it may operate is not delimited and a resort to it may result in circumvention of the rules. The two Conferences of Chairmen of the Committees on Subordinate Legislation of State Legislatures, held in 1960 and 1965, have considered the incorporation of such a provision in the Acts and felt strongly about it as it gave wide powers to the Executive. Even in certain Acts where it is incorporated, its operation is generally limited to one or two years after the commencement of the Act, e.g., it is one year in the case of the Delhi Sales Tax Act, 1975 (Section 74) and two years in the case of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (Section 19).

47. The Committees are of the view that while enacting a legislation, Parliament in their wisdom may permit such a provision in the Acts. However, so far as the delegated legislation is concerned, the Executive should not assume powers which are too wide especially when it has got the right to amend the rules themselves. The Committee observe that such orders are not being notified in the Gazette and thereby they escape the notice of the Committee and consequently there is no legislative scrutiny for ensuring that the delegated powers are being exercised within the limits of intended delegation. Besides, the validity of the 'Removal of difficulties' rules is also open to doubt in view of the decision of the Supreme Court in *Jalan Trading Company's case*.

48. Consequently, the Committee recommend the Ministries concerned to delete rule 13 of the Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 and similarly worded rule 25 of the Central Secretariat Service Recruitment Rules.

## VIII

### THE MAJOR PORT OF TUTICORIN (HARBOUR CRAFT) RULES, 1976 (G.S.R. 529 OF 1977)

#### (A)

49. Rule 19 of the Major Port of Tuticorin (Harbour Craft) Rules, 1976 (G.S.R. 529 of 1977) reads as under:

*"Power of Tindal to prevent overloading:—*

Whenever the number of passengers or the quantity of cargo in a licensed harbour craft exceeds the number or quantity entered in the licence, the tindal shall, before starting from the vessel or from the shore, require any passenger to leave the harbour craft or any consignor consignee, or shipping or landing agent concerned

to remove from the harbour craft the whole or any part of the cargo."

50. In order that the power vested in the Tindal to prevent over-loading is not arbitrarily used, it was felt that there should be some safeguard in the rules so that only those passengers are asked to leave the craft who enter it after the prescribed limit on the number of persons which the craft is licenced to carry has reached. Similarly, the cargo that is asked to be removed, should be that one which is brought into the craft after the licenced quantity has already been received.

51. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up on the 5th December, 1977, have, in their final reply dated the 17th April, 1978, proposed to add the following proviso to rule 19 of the Major Port of Tuticorin (Harbour Craft) Rules:—

"Provided that in the event of licenced harbour craft being found over-loaded by the Tindal, only those passengers who entered the craft or the quantity of Cargo that was loaded after the prescribed limit as specified in the licence, shall be asked to leave or that quantity of cargo to be removed, as the case may be, to conform with the condition of the assignment of the issue of licence."

52. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend rule 19 of the Major Port of Tuticorin (Harbour Craft) Rules so as to provide therein a suitable safeguard against arbitrary use of the power to prevent overloading vested in the Tindal. The Committee approve the proviso proposed to be added to rule 19 in this regard and desire the Ministry to incorporate it in the rules at an early date.

(B)

53. Rule 22(3) and (4) of the Major Port of Tuticorin (Harbour Craft) Rules, 1976 empowers the Deputy Conservator to:

- (i) cancel the licence issued in respect of the harbour craft in the event of its having contravened the provisions of sub-rule (1) or (2) of rule 22 *ibid*; and
- (ii) to remove the name of the tindal at fault from the register of tindals.

Similarly, Rule 26 empowers the Deputy Conservator to cancel a licence for contravention of any provisions of the Rules. Rule 16(a)

and (b) empowers the Registering Officer or Licencing Officer to cancel a licence for refusal to ply a craft without reasonable excuse.

54. The Ministry of Shipping and Transport (Transport Wing) were asked to state whether they had any objection to providing for issue of a show-cause notice before a licence was cancelled or the name of the tindal was removed from the register of tindals under the above rules.

55. In their reply dated the 24th February, 1978, the Ministry of Shipping and Transport (Transport Wing) have stated as under:—

“Rule 27 provides for an appeal to the Conservator of the Port from any decisions of the Deputy Conservator under the Harbour Craft Rules. This is a general provision. Again Rule 32 provides for giving an opportunity of being heard to a person before an order imposing a penalty under these rules is imposed on him. This also is a general provision. It may, therefore, be seen that already there is full scope provision in the rules for a show-cause notice and later an appeal against the decision of a lower authority. As such it may not be necessary to make any further provision as observed by the Committee in respect of Rules 16(a), (b), 22(3), 22(4) and 26.”

56. It was, however, not clear from the above reply whether the cancellation of a licence and removal of a tindal's name from the register of Tindals are regarded as penalties under Rule 32. The Ministry with whom the matter was further taken up have, in their reply dated the 26th May, 1978, stated as under:—

“The question whether revocation of or cancellation of licence under Rules 16(a) and (b) and 26 and the cancellation of licence by the Deputy Conservator or removal of the Tindal's name from the Register of Tindals under Rule 22(3) and (4) are regarded as penalties under Rule 32 has been examined. Law Ministry in this connection has advised that ‘Whether a particular action taken for violation of a rule is penal or not depends upon the nature of violation and the purpose of the action proposed. Courts of Law have taken the view that in general acceptance the term ‘Penal action’ may embrace penalties for any infraction of general law which need not necessarily constitute offences against the State. Therefore, panel would comprise not only prosecutions and sentences awarded by Courts but also actions taken resulting in consequences which would deter the delinquents and also prevent occurrences in future.

Removal or dismissal from service in no uncertain terms would become penal where such action is taken for violation of rules and regulations in force by a person. We are of the view that having regard to the provisions of the rules the actions proposed come within the scope of 'penalties' contemplated under the rules and, therefore, Rule 32 which provides for opportunity of being heard before penalty is proposed to be imposed applies.'

As regards the question of issuing show-cause notice to persons before taking action against them, it may be pointed out that in Rule 32 provision is available for giving an opportunity of being heard for the person on whom the penalty under these rules is imposed. However, Ministry agrees to amend the rules in such a way that opportunity of being heard is made available to persons even at the stage when a charge of offence is made on him, on the basis of which a penalty may be imposed later."

57. The Committee observe that in their reply, the Ministry of Shipping and Transport (Transport Wing) have admitted that cancellation of a licence under rule 16(a) and (b), and 26 and removal of a tindal's name from the register of tindals under rule 22(3) and (4) of the Major Port of Tuticorin (Harbour Craft) Rules, are such actions as come within the scope of penalties and, therefore, rule 32 applies to them. Under rule 32, provision already exists for giving an opportunity of being heard to the person on whom the penalty is imposed.

58. The Committee note with satisfaction that, on being pointed out, the Ministry have also agreed to amend the rules in such a way that opportunity of being heard is made available to the person concerned even at the stage when a charge of offence is made against him. The Committee desire the Ministry to amend the rules to the necessary effect at an early date.

(C)

59. In their comments dated the 24th February, 1978 (*Vide* para 55 of the Report), the Ministry of Shipping and Transport (Transport Wing) *inter alia* made a reference to Rule 32 of the Major Port of Tuticorin (Harbour Craft) Rules, 1976, which dealt with the procedure for imposing penalties. However, the Rules as published under G.S.R. 529 in the Gazette of India dated the 16th April, 1977, contained Rule Nos. 1 to 30 only. Since Rules 31 and 32 were found missing



in the set, the Ministry were requested to check up and clarify the position. In their reply dated the 18th March, 1978, the Ministry stated as under:—

“...the Major Port of Tuticorin (Harbour Craft) Rules, 1976 were originally published *vide* G.S.R. No. 196 [Gazette of India Part II Section 3(i)]. G.S.R. No. 529 which Committee is referring is a subsequent publication of the rules, apparently, an oversight of the press. However, in order to rectify this mistake, Ministry in consultation with Ministry of law has taken necessary steps and a notification to this respect is under issue. Rule No. 32 mentioned in this Ministry's O.M. dated the 24th February is available in the rules published in G.S.R. 196.”

60. In a further communication dated the 26th May, 1978, the Ministry forwarded a copy of the corrigendum issued on the 3rd May, 1978 rescinding the subsequent publication of the Rules. It was observed from the corrigendum that after publication of the Rules originally under G.S.R. 196 on the 12th February, 1977, these were subsequently published under G.S.R. 425 on the 26th March, 1977 and again under G.S.R. 529 on the 16th April, 1977. Thus the Rules were, in fact, published in the Gazette thrice and not twice as indicated by the Ministry in their earlier communication in this regard.

61. The Committee note that the Major Port of Tuticorin (Harbour Craft) Rules, 1976 were originally published under G.S.R. 196 in the Gazette of India, Part II, Section 3(i), dated the 12th February, 1977. Subsequently, the same rules were published under G.S.R. 425 on the 26th March, 1977 and again under G.S.R. 529 on the 16th April, 1977. Whereas the rules published under G.S.R. 196 and 425 contained Rules Nos. 1 to 32, the rules published under G.S.R. 529 did not contain Rules 31 and 32 at all. In their reply, the Ministry have attributed the mistake to an oversight on the part of the press authorities. The Committee observe that it is a clear case of negligence on the part of the press authorities as well as the Ministry. The Ministry should not rest content with the issue of corrigendum, but take up the matter with the press authorities to inquire into the circumstances leading to the publication of the rules as many as three times and omission of rules 31 and 32 in the case of last printing. The Committee desire that suitable corrective measures in consultation with the Press authorities may be devised to ensure against recurrence of such instances in future.

## IX

## GIVING OF SHORT TITLES TO RULES FRAMED UNDER CLAUSE (2) OF ARTICLE 77 OF THE CONSTITUTION (G.S.R. 2509 OF 1975)

62. The Rules specifying the officers who on behalf of the President are authorised to execute and authenticate all the applications, certificates or other documents required or permitted to be executed under the Development Credit Agreement No. 582-IN (Thirteenth Railway Project) dated the 26th August, 1975, between the Government of India and the International Development Association framed under Clause 2 of the Article 77 of the Constitution published in the Gazette of India, Part II Section 3(i) dated the 11th October, 1975 under G.S.R. 2509 of 1975, did not bear the short title.

63. The Committee have time and again emphasized upon the Ministries|Departments that for easy referencing and tracing, all Rules, Regulations, etc. published in the Gazette should bear short titles.

64. The matter was referred to the Ministry of Finance (Department of Economic Affairs) on the 4th May, 1976 to ascertain the reasons for not giving a short title to the Rule in question. In their reply dated the 16th September, 1978, the Ministry stated as under:—

“...The background to this Notification is that in regard to every Agreement entered into between the GOI and IDA, it becomes necessary to authenticate officers on behalf of the President. Such authentication is for purposes of sending applications, issuing certificates, or other documents required or permitted to be executed in exercise of the Executive Power of the Union under the relevant Credit Agreements. These are not of a substantive nature and are technical or legal requirements to facilitate signing of the document etc. on behalf of the Government. This practice has been in vogue for a very long time and we had not felt the need for giving any title to these Notifications. However, we have consulted the Ministry of Law and they have also advised us that in view of the requirement of the Lok Sabha Secretariat....., this would be complied with in regard to future Notification. In regard to past Notifications, we have been advised that legally it would not be permissible to add any title at this stage.”

65. Keeping in view the explanation furnished by the Ministry of Finance (Department of Economic Affairs), the Committee do not

insist at this stage on giving of short titles to such notifications already published. However, they expect the Ministry to keep their assurance to comply with the requirement of giving short titles to all such rules whenever issued in future.

66. The Committee note that a reply to their communication dated the 4th May, 1976 was received from the Ministry of Finance after a lapse of more than two years and four months in September, 1978. The Committee deprecate such inordinate delay on the part of the Ministry in furnishing their comments and expect them to be prompt in attending to the communications from the Committee in future.

## X

### THE HOMOEOPATHIC PHARMACOPOEIA LABORATORY, GHAZIABAD (GROUP 'C' AND GROUP 'D' POSTS) RECRUITMENT RULES, 1976 (G.S.R. 1438 OF 1976)

67. With regard to the method of recruitment to the post of Peon in the Homoeopathic Pharmacopoeia Laboratory, Ghaziabad, it was provided in column 10 of the Schedule to the Homoeopathic Pharmacopoeia Laboratory, Ghaziabad (Group 'C' and Group 'D' Posts) Recruitment Rules, 1976 (G.S.R 1438 of 1976) that 75 per cent posts would be filled up by direct recruitment and 25 per cent by transfer. As there was only one post of peon mentioned in column 4 of the Schedule, it seemed quite queer as to how one post could be filled up partly by direct recruitment and partly by transfer.

68. A reference in the matter was made to the then Ministry of Health and Family Planning (Department of Health) on the 13th April, 1977. In their reply dated the 24th May, 1977, the Ministry of Health and Family Welfare (Department of Health) stated as under:—

“.....the percentages of reservation in Group 'D' posts are prescribed on the basis of general principle and not on the basis of sanctioned posts in that Grade, the underlying idea being that the vacancies occurring from time to time will be filled up according to the roster maintained for this purpose. The roster is intended to reflect the percentages prescribed in the recruitment rules. However, in the present case where the post sanctioned so far is only one, it was not necessary to prescribe the percentage. Necessary action is, therefore, being taken to amend the recruitment rules to provide for direct recruitment to the only post of peon.

69. In a subsequent communication dated the 28th April, 1978, the Ministry intimated that the necessary amendment to the recruitment rules has since been issued *vide* notification No. A-12018/1/77-Homoeo dated the 30th June, 1978. With regard to the G.S.R. number and the date of its publication in the Gazette, the Ministry have promised to send the same shortly.

70. The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have amended the schedule to the Homoeopathic Pharmacopoeia Laboratory, Ghaziabad (Group 'C' and Group 'D' Posts) Recruitment Rules, 1976 to suit the instant case.

## XI

- (1) THE URBAN LAND (CEILING AND REGULATION) REMOVAL OF DIFFICULTIES ORDER NO. 1 (G.S.R. 674, 675 AND 717 OF 1976); AND
- (2) THE BETWA RIVER BOARD RULES, 1977 (G.S.R. 40 OF 1978).

### (A)

71. During the examination of 'Orders' it was noted that the Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 had been published thrice under G.S.R. No. 674 and 675 dated the 15th May, 1976 and G.S.R. No. 717 dated the 22nd May, 1976.

72. The Ministry of Works and Housing to whom the matter was referred have stated as under:—

“we had sent one copy of the Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 to the Government of India Press, Minto Road, New Delhi for its publication in the Gazette of India. As far as the publication of the Order thrice in the Gazette of India, Part-II, Section 3(i), dated the 15th and 22nd May, 1976 is concerned, it appears the Government of India Press has published it again on 15th May, 1976, and 22nd May, 1976 by mistake. Action to rescind the notification published on the 15th May, 1976 and 22nd May, 1976 has been taken. The mistake is regretted.”

### (B)

73. The Betwa River Board Rules, 1977 (G.S.R. 40 of 1978) were printed twice under G.S.R. No. 22 and 40 dated the 7th January, 1978.

74. The Ministry of Agriculture and Irrigation (Department of Irrigation) to whom the matter was referred for stating reasons for publishing it twice have stated as under:—

“the Notification for publication of the Betwa River Board Rules, 1977 were sent to the Press on 23-12-1977. In a subsequent letter dated 27-12-1977 the Press was requested to supply 200 copies of the Gazette in which the above Notification was published. This had caused misunderstanding in the Press and they had issued the Notification on two dates under G.S.R. No. 22 and 40.

Necessary action for deletion of G.S.R. 40 is being taken by this Department.”

75. The Committee note that the Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 was published thrice and the Betwa River Board Rules, 1977 were published twice in the Gazette. The Committee have time and again emphasized that the responsibility of a Ministry/Department does not cease with the sending of the notification to the Press. After the rules, regulations, etc. are published in the Gazette, the Ministry/Department concerned should take immediate steps to see whether they have been correctly printed and, if necessary, issue a corrigendum thereto at the earliest opportunity. In both the cases, the Ministries concerned took action to issue the corrigendum only after it was pointed out to them by the Committee. Had the Ministries been vigilant in this respect, they would have themselves detected the mistakes and issued the necessary corrigenda. The Committee take a serious view of such lapses as already pointed out by them in para 93 of their Twentieth Report (Fifth Lok Sabha) and brought to the notice of all concerned vide Department of Parliamentary Affairs O.M. No. F. 32(1)/R&C dated the 31st January, 1977.

76. The Committee desire that the matter may be taken up with the Press authorities also to inquire into the circumstances leading to the publication of the rules time and again and suitable corrective measures may be devised to ensure against recurrence of such instances in future.

NEW DELHI;

SOMNATH CHATTERJEE,

December 20, 1978.

Chairman,

Agrahayana 29, 1900 (Saka)

Committee on Subordinate  
Legislation.

## APPENDIX I

(See Para 4 of the Report)

### *Summary of main Recommendations/Observations made by the Committee*

S.No.	Para No.	Summary
(1)	(2)	(3)
1 (i)	10	<p>The Committee note that the reply of the Ministry of Shipping and Transport (Transport Wing) was not specific to the points raised by the Committee. The authority to remit the fee which was clearly available in section 35(3) of the Indian Ports Act, 1908 was not objected to. Comments of the Ministry were invited specifically on the following points with a view to avoiding any discrimination in the grant of remission of fees leviable in accordance with items (c), (d) and (e) of the schedule to the Cochin Port Pilotage and other Attendant Services (Fees) Rules but no reply has been received from the Ministry on these points:—</p> <ul style="list-style-type: none"><li>(i) whether any guidelines had been laid down by Government as to what may be construed as 'special cases' and</li><li>(ii) whether Government had any objection to amend the rules so as to provide for recording of reasons in writing for remission of fee.</li></ul>
1 (ii)	11	<p>The Committee recommend that guidelines should be laid down in regard to the special cases in which fee may be remitted and the Cochin Port Pilotage and other Attendant Services (Fees) Rules, 1974 be amended to provide for recording of reasons in writing before grant of such remission.</p>

(1)	(2)	(3)
1 (iii)	12	<p>The Committee note that a reply to their communication dated the 6th April, 1976 was received from the Ministry after a lapse of about two years in March, 1978. The Committee record their displeasure over the delay on the part of the Ministry in sending their reply to the points referred to them. The Committee need hardly emphasise that the reply furnished to the Committee should have been specific to the points raised and not evasive and vague. Vague and rambling replies lead to unnecessary correspondence which apart from delaying the matter also affect the time schedule of the Committee. The Committee expect the Ministries/Departments of Government to be prompt in sending their replies to the issues raised by a Parliamentary Committee. The replies should be specific and germane to the matters referred to Ministries for their comments or clarification.</p>
2 (i)	17	<p>In the opinion of the Committee, the principle of determining seniority is a basic feature of any service rules. The rules governing seniority should, therefore, more appropriately be included in the relevant service rules for the information of persons concerned as also to avoid any scope for discrimination. The Committee note that the Department of Personnel and Administrative Reforms have issued administrative instructions to determine the manner in which the seniority of Telephone Operators on their induction into the L.D.C.'s grade of Central Secretariat Clerical Service may be fixed. The Committee, therefore, feel that the Ministry of External Affairs should have no difficulty in incorporating these instructions in the recruitment rules. Moreover, administrative instructions are no substitute for statutory rules because such instructions are not published in the Gazette and as such they do not come to the</p>

(1)	(2)	(3)
		notice of the Committee to judge their fairness or otherwise.
2(ii)	18	In a similar case regarding vacancies of stenographers in the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1974 (G.S.R. 819 of 1974), the Committee in para 95 of their Sixth Report (Sixth Lok Sabha) have observed that principles of determining seniority should be incorporated in the recruitment rules. The Committee, therefore, desire the Ministry to amend the Indian Foreign Service, Branch 'B' (Recruitment, Seniority and Promotion) (Second Amendment) Rules, 1974 suitably at an early date.
3	22	The Committee note with satisfaction that, on being pointed out, the Ministry of External Affairs, have amended the regulation 8(1) of the Integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966, specifying therein the nature of enquiry to be held before selection of the candidate, so as to render the regulation self-explicit, <i>vide</i> Notification No. 90/CAD/78 dated the 22nd February, 1978.
4	26	The Committee are not satisfied with the amendment made to regulation 4(4) of the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966. In para 35 of their Seventeenth Report (Fifth Lok Sabha) the Committee in the case of a similar amendment to regulation 4(2) of the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, have observed that the amendment did not indicate the precise amount of fee to be paid by a candidate and desired the De-



(1)

(2)

(3)

partment of Personnel and Administrative Reforms to amend the regulations so as to mention therein the precise amount of fee which a candidate has to pay. The Committee reiterate their above recommendation in the present case also and desire that action to amend the regulations accordingly should be initiated at an early date.

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30

The Committee are not convinced with the reply of the Ministry of External Affairs. On a reference to para 29 of their Third Report (Fifth Lok Sabha), the Committee find that as per their recommendation in a similar case regarding the Central Engineering Services, the concerned Ministry of Works and Housing have amended the rules to provide that all candidates who obtain the minimum qualifying marks in the written examination, fixed by the Commission shall be called for an interview. The Committee desire that similar amendment may be made in the Rules for a limited Departmental Competitive Examination for inclusion in the Select List for the integrated Grades II and III of the General Cadre of the Indian Foreign Service Branch 'B' to be held by the Union Public Service Commission in future.

6

34

The Committee note with satisfaction that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have agreed to amend rule 14-A(b) of the Central Silk Board Contributory Provident Fund Rules, so as to enable a subscriber to make a withdrawal from his Contributory Provident Fund for meeting the expenses in connection with the marriage of a female relation actually dependent on him even if he has a daughter. The Committee approve the following amendment proposed by the Ministry and desire them to notify it expeditiously:—

“(b) meeting the expenditure in connection with the marriage of the subscriber or

(1)

(2)

(3)

his sons or daughters, and any other female relation actually dependent on him."

7

38

The Committee note with satisfaction that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have agreed to amend sub-rule (2) of rule 14-B of the Central Silk Board Contributory Provident Fund Rules, so as to provide therein for issue of a show-cause notice to a subscriber before ordering recovery of the amount withdrawn or such part thereof as has not been applied for the purpose for which it was withdrawn. The Committee approve the following amendment proposed by the Ministry and desire them to notify it expeditiously:—

"A subscriber who has been permitted to withdraw money from the Fund under Rule 14-A shall satisfy the Chairman within a reasonable period, as may be specified by the Chairman that the money has been utilised for the purpose for which it was withdrawn. If he fails to do so, a show-cause notice may be served on him asking him to explain the circumstances under which the said amount could not be utilised for the purpose for which it was withdrawn. After receipt of the explanation, the Chairman may order the repayment of the whole of the sum withdrawn or part thereof as has not been applied for the purpose for which it was withdrawn, in lump sum together with interest thereon at the rate determined under rule 11. In default of such payment, it shall be ordered by the Chairman to be recovered from his emoluments either in a lump sum or in such number of monthly instalments, as may be determined by the Chairman."

(1)	(2)	(3)
8(i)	45	<p>The Committee note that in the case of <i>Jalan Trading Company vs. Mill Mazdoor Sabha</i>, the Supreme Court has held that power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that could not be delegated to an executive authority. Subsequently, in the case of <i>Kalawati Devi vs. I.T.C., West Bengal</i>, the Supreme Court has held that it was not unconstitutional for the Legislature to leave it to the Executive to determine details relating to the working of laws. In this connection, the Committee observe that the Supreme Court had made a distinction between taxation laws and other laws and has not disagreed with the decision in <i>Jalan Trading Company's</i> case, and that the language of the section of the rule will also have to be looked into to decide the question. The Committee, therefore, feel that the decision of the Supreme Court in <i>Jalan Trading Company's</i> case is more appropriate as the rules in question do not relate to matters of taxation.</p>
8(ii)	46	<p>The Committee further note that the provision regarding 'removal of difficulties' has always been considered to be an extra-ordinary provision, in that the area in which it may operate is not delimited and a resort to it may result in circumvention of the rules. The two Conferences of Chairmen of the Committee on Subordinate Legislation of State Legislatures, held in 1960 and 1965, have considered the incorporation of such a provision in Acts and felt strongly about it as it gave wide powers to the Executive. Even in certain Acts where it is incorporated, its operation is generally limited to one or two years after the commencement of the Act e.g., it is one year in the case of the <i>Delhi Sales Tax Act, 1975</i> (Section 74) and two years in the case of the <i>Burmah Shell (Acquisition of Undertakings in India) Act, 1976</i> (Section 19).</p>

(1)	(2)	(3)
8(iii)	47	<p>The Committee are of the view that while enacting a legislation, Parliament in their wisdom may permit such a provision in the Acts. However, so far as the delegated legislation is concerned, the Executive should not assume powers which are too wide especially when it has got the right to amend the rules themselves. The Committee observe that such orders are not being notified in the Gazette and thereby they escape the notice of the Committee and consequently there is no legislative scrutiny for ensuring that the delegated powers are being exercised within the limits of intended delegation. Besides, the validity of the 'Removal of difficulties' rules is also open to doubt in view of the decision of the Supreme Court in Jalan Trading Company's case.</p>
8(iv)	48	<p>The Committee recommend to the Ministries of Finance (Department of Expenditure) and Home Affairs (Department of Personnel and Administrative Reforms) to delete rule 13 of the Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 and similarly worded rule 25 of the Central Secretariat Service Recruitment Rules.</p>
9	52	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend rule 19 of the Major Port of Tuticorin (Harbour Craft) Rules so as to provide therein a suitable safeguard against arbitrary use of the power to prevent overloading vested in the Tindal. The Committee approve the following proviso proposed to be added to rule 19 in this regard and desire the Ministry to incorporate it in the rules at an early date:—</p> <p style="text-align: center;">“Provided that in the event of licenced harbour craft being found over-loaded by the Tindal, only those passengers who en-</p>

(1)	(2)	(3)
		tered the craft or the quantity of cargo that was loaded after the prescribed limit as specified in the licence, shall be asked to leave or that quantity of cargo to be removed, as the case may be, to conform with the condition of the assignment of the issue of licence."
10(i)	57	The Committee observe that in their reply, the Ministry of Shipping and Transport (Transport Wing) have admitted that cancellation of a licence under rule 16(a) and (b), and 26 and removal of a tindal's name from the register of tindals under rule 22(3) and (4) of the Major Port of Tuticorin (Harbour Craft) Rules, are such actions as come within the scope of penalties and, therefore, rule 32 applies to them. Under rule 32, provision already exists for giving an opportunity of being heard to the person on whom the penalty is imposed.
10(ii)	58	The Committee note with satisfaction that, on being pointed out, the Ministry have also agreed to amend the rules in such a way that opportunity of being heard is made available to the person concerned even at the stage when a charge of offence is made against him. The Committee desire the Ministry to amend the rules to the necessary effect at an early date.
11	61	The Committee note that the Major Port of Tuticorin (Harbour Craft) Rules, 1976 were originally published under G.S.R. 196 in the Gazette of India, Part II, Section 3(i), dated the 12th February, 1977. Subsequently, the same rules were published under G.S.R. 425 on the 26th March, 1977 and again under G.S.R. 529 on the 16th April, 1977. Whereas the rules published under G.S.R. 196 and 425 contained Rules Nos. 1 to 32, the rules published under G.S.R. 529 did not contain Rules 31 and 32 at all. In their reply, the Ministry have attributed the mis-

(1)

(2)

(3)

take to an over-sight on the part of the press authorities. The Committee observe that it is a clear case of negligence on the part of the press authorities as well as the Ministry. The Ministry should not rest content with the issue of corrigendum, but take up the matter with the press authorities to inquire into the circumstances leading to the publication of the rules as many as three times and omission of rules 31 and 32 in the case of last printing. The Committee desire that suitable corrective measures in consultation with the Press authorities may be devised to ensure against recurrence of such instances in future.

12 65

Keeping in view the explanation furnished by the Ministry of Finance (Department of Economic Affairs) in respect of the notification (G.S.R. 2509 of 1975) containing Rules framed under Clause (2) of Article 77 of the Constitution, the Committee do not insist at this stage on giving of short titles to such notifications already published. However, they expect the Ministry to keep their assurance to comply with the requirement of giving short titles to all such rules whenever issued in future.

13 66

The Committee note that a reply to their communication dated the 4th May, 1976 was received from the Ministry of Finance after a lapse of more than two years and four months in September, 1978. The Committee deprecate such inordinate delay on the part of the Ministry in furnishing their comments and expect them to be prompt in attending to the communications from the Committee in future.

14 70

The Committee note with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have amended the schedule to the Homoeopathic Pharmacopoeia Laboratory, Ghaziabad (Group 'C' and Group 'D' Posts) Recruitment Rules, 1976 to suit the instant case.

(1)	(2)	(3)
15 (i)	75	<p>The Committee note that the Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 was published thrice and the Betwa River Board Rules, 1977 were published twice in the Gazette. The Committee have time and again emphasized that the responsibility of a Ministry/Department does not cease with the sending of the notification to the Press. After the rules, regulations, etc. are published in the Gazette, the Ministry/Department concerned should take immediate steps to see whether they have been correctly printed and, if necessary, issue a corrigendum thereto at the earliest opportunity. In both the cases, the Ministries concerned took action to issue the corrigendum only after it was pointed out to them by the Committee. Had the Ministries of Works and Housing and Agriculture and Irrigation (Department of Irrigation) been vigilant in this respect, they would have themselves detected the mistakes and issued the necessary corrigendum. The Committee take a serious view of such lapses as already pointed out by them in para 93 of their Twentieth Report (Fifth Lok Sabha) and brought to the notice of all concerned <i>vide</i> Department of Parliamentary Affairs O.M. No. F. 32(1)/76-R&amp;C, dated the 31st January, 1977.</p>
15 (ii)	76	<p>The Committee desire that the matter may be taken up with the Press authorities also to inquire into the circumstances leading to the publication of the rules time and again and suitable corrective measures may be devised to ensure against recurrence of such instance in future</p>

## APPENDIX II

(Vide Para 16 of the Report)

No. 5/7/73-C.S.II

GOVERNMENT OF INDIA

CABINET SECRETARIAT

(Department of Personnel and Administrative Reforms)

New Delhi-1, dated the 30th August, 1973

### OFFICE MEMORANDUM

**SUBJECT:**—*Fixation of seniority etc. of Telephone Operators working in the Ministries/Departments participating in the Central Secretariat Clerical Service on their induction into the Lower Division Grade of the Central Secretariat Clerical Service.*

Reference this Department's Office Memoranda Nos. 8/58/-CS.II-(iii), dated the 13th December, 1971 and 8/58/7-C.S.II/Vol.II; dated the 1st November, 1972.

2. According to provision contained in clause (aa) in item (ii) of sub-rule (3) of rule 17 of the Central Secretariat Clerical Service Rules, 1962, under the heading "II-Lower Division Grade"; the seniority of the Telephone Operators after induction into the L.D. Grade of the C.S.C.S. has to be determined by this Department. This question has been examined carefully and it has been decided that the seniority of Telephone Operators after induction into the LD Grade of the C.S.C.S. shall be fixed in the following manner:—

- (i) the Telephone Operators, who qualify in the *qualifying* examination of a particular year shall be ranked en-bloc junior to the regular open market candidates of the *competitive* examination conducted by the Institute of Secretariat Training and Management in that particular year;
- (ii) the qualified Telephone Operators of an earlier examination shall be ranked senior to those Telephone Operators who qualify in a subsequent examination; and
- (iii) the *inter-se* seniority of Telephone Operators, who qualify in one qualifying examination for induction into. C.S.C.S shall be determined with reference to the date of their



continuous appointment on a regular basis as Telephone Operator in their respective Cadres. However, when two or more Telephone Operators belonging to the same cadre qualify in the same examination, their *inter-se* seniority as it existed in that Cadre shall be maintained after their induction into C.S.C.S.

3. In the O.M. dated 13th December, 1971, it has been laid down that the posts of Telephone Operators in the participating offices are to be filled only by regular Lower Division Clerks belonging to the Central Secretariat Clerical Service and the existing Telephone Operators are to be inducted into the L.D. Grade of the Central Secretariat Clerical Service after they qualify in the examination. A question has been raised whether for the absorption of the Telephone Operators who qualify in the examination and are inducted into the L.D. Grade an equal number of temporary posts have to be created in the L.D. Grade. It has been decided that temporary Telephone Operators on induction into the L.D. Grade can be absorbed by converting the temporary posts of Telephone Operators into temporary posts of L.D.Cs. of the C.S.C.S. Since the pay scales of the LD Grade and of the post of the Telephone Operator are identical, there would be no difficulty in following the above procedure. But in the case of permanent Telephone Operators who are to be inducted into L.D. Grade of the C.S.C.S., the permanent posts of Telephone Operators may be held in abeyance, so as to enable the persons concerned to retain their liens in the permanent posts of Telephone Operators even after induction into LD. Grade, till such time as they are confirmed in the L.D. Grade after they pass the qualifying test in typewriting and complete the period of probation. However, an equal number of temporary posts of L.D.Cs. may be created and since the permanent posts of Telephone Operators are to be held in abeyance, no extra financial expenditure would be involved.

Sd/-

(M. K. Vasudevan)

*Under Secretary to the Govt. of India.*

## **APPENDIX III**

(Vide Para 43 of the Report)

**No. 2/21/64-E.O.II**

**GOVERNMENT OF INDIA**

**MINISTRY OF HOME AFFAIRS**

*New Delhi, the 24th June, 1965*

### **OFFICE MEMORANDUM**

**SUBJECT:—***Deputation of Officers belonging to Central Secretariat Service/Central Secretariat Stenographers' Service/Central Secretariat Clerical Service to ex-cadre posts.*

The following instructions issue in pursuance of rule 25 of the Central Secretariat Service Rules, 1962, and rule 24 of the Central Secretariat Stenographers' Service Rules/Central Secretariat Clerical Service Rules, 1962:

2. It is reiterated that:

- (a) Deputations to ex-cadre post carrying a scale of pay the maximum of which exceeds Rs. 1000/- will be on all-Secretariat basis and such cases shall be referred to E.O.
- (b) Deputations from Grade I CSSS will be on all-Secretariat basis and shall be referred to Ministry of Home Affairs (Central Services Section).
- (c) In all other cases of deputations from the decentralised grades, the number of CSS/CSSS/CSCS Officers on deputation should not exceed 10 per cent of the duty posts in the relevant grade of the cadre and if any deputation is to result in the proportion being exceeded, this Ministry (Central Services Section) should be approached.

3. The idea behind (c) above is that if deputations from each cadre are restricted to 10 per cent, the benefit of such deputations would be shared by all cadres and the opportunities for offg. promo-

tions in different cadres would remain fairly even. In order to ensure that the percentage is adhered to, it has been decided that whenever officers of the decentralised grades of the CSS etc. are sent on deputation, the orders sanctioning the deputations should contain a certificate that the deputation is within the 10 per cent limit, or has been made with the approval of Ministry of Home Affairs. A copy of such orders should be endorsed to Ministry of Home Affairs.

4. In this connection, it is pointed out that for purposes of calculating the 10 per cent limit on deputation, Officers who have gone over to ex-cadre appointments on the basis of selection through open advertisements or through competitive examinations conducted by the Union Public Service Commission etc., are not to be taken into account (*vide* Ministry of Home Affairs' Office Memorandum No. 2/21/64-E.O.II dated the 29th August 1964). Surplus officers transferred to other cadres on temporary loan basis need not also be taken into account for this purpose.

5. For deputing Officers from the decentralised grades within the quota of 10 per cent, the following procedure should be followed by the cadre authorities. Once a decision is taken that a cadre should send an officer on deputation, the cadre authority may circulate the post among eligible officers in the cadre. The job description and the qualification/experience should not unduly restrict the field of choice. From amongst those who show willingness, a panel can be drawn up of the most suitable persons possessing the requisite qualifications, experience, merit and sufficient seniority. Final choice can then be made from amongst this panel in consultation with the authority to which the officer is to be deputed. Where a cadre requires the services of an Officer of another cadre for deputation to an ex-cadre post under them the lending cadre may follow a similar procedure provided they have not exceeded the ceiling on deputation.

6. The Ministry of Home Affairs examined the case of deputation allowance to officers of Central Secretariat Services under their control in December, 1961 and did not find sufficient justification in permitting deputation allowance in posts which are in the identical pay scale and at the same station. It has followed the policy that deputation of an Officer of CSS/CSSS/CSCS to posts in identical scale of pay in the same station should not be agreed to unless the Officer agrees to opt for the scale of the post. Only in cases where it is quite clear that the duties to be performed in the ex-cadre post are so unpleasant and unpopular that nobody is willing to go there

without some advantage would such an allowance be justified. These principles should be strictly adhered to.

Sd/-

(K. Thyagarajan)

*Under Secretary to the Govt. of India.*

To

All Ministries/Departments participating in the CSS.

No. 2/2164-E.O.

*Dated the 24th June, 1965.*

Copy with a copy each of the O.M. referred to above, forwarded to All Accountants-General.

It is requested that while sanctioning pay, etc. to a deputationist from the decentralised grades of CSS/CSSS/CSCS, the propriety of the deputation may be considered with reference to the instructions contained above and deviations if any, reported to this Ministry for taking necessary action.

Sd/-

(K. Thyagarajan)

*Under Secretary to the Govt. of India.*

CS(I) | Ad. I(A) | Ad. I(B) | E.O I. | Fin. Sections.

## APPENDIX IV

(Vide para 43 of the Report)

No. 5/52/67-CS(I)

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

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New Delhi, the 7th February, 1968.

### OFFICE MEMORANDUM

SUBJECT:—C.S.S.—Section Officers' grade—Revision of Seniority—  
Saving of action taken prior to the revision of seniority.

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The undersigned is directed to refer to this Ministry's Office Memorandum No. 5/52/67-CS(I), dated the 25th August, 1967, revising the seniority of certain officers in the grade of Section Officers as on the "appointed day" for purposes of rule 18(1) of the C.S.S. Rules, 1962, and to say that difficulty having arisen in the operation of the aforesaid rule inasmuch as at this distance of time it is not administratively feasible to disturb the promotions etc., made during the intervening period on the basis of the then existing relative seniority the Central Government in the Ministry of Home Affairs do hereby, in exercise of the powers conferred on them under rule 25 of the C.S.S. Rules, 1962 direct that the promotions, on the basis of the then existing relative seniority, of Section Officers to Grade I of the C.S.S. made in pursuance of the four Select Lists issued in 1965, 1966 and 1967 (vide Ministry of Home Affairs Office Memoranda:

No. 4/25/64-CS(A), dated 27-5-1965

No. 4/25/65-CS(A), dated 22-1-1966

No. 4/24/66-CS(I), dated 12-9-1966

No. 4/16/67-CS(I), dated 20-12-1967

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will not be disturbed but these will not give these officers any claim regarding seniority in the higher grade which will be determined

with reference to their position in the revised panels prepared on the basis of revised seniority.

**Sd/ MANGLI PRASAD**

*Deputy Secretary to the Govt. of India*

To

All C.S.S. Cadre authorities including Ad. I(B), Section of Home Ministry.

No. 5/52/67-CS(I)

New Delhi, the 7th February, 1968

Copy forwarded to U.P.S.C. with reference to their letter No. F. 1/3/(3)/67-A. III, dated 31-10-1967.

**Sd/ MANGLI PRASAD**

*Deputy Secretary to the Govt. of India.*

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# MINUTES

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## APPENDIX V

### MINUTES OF THE TWENTY-SEVENTH SITTING THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Saturday, the 4th November, 1978 from 11.00 to 11.45 hours.

#### PRESENT

Shri Somnath Chatterjee—*Chairman*

#### MEMBERS

2. Chaudhary Hari Ram Makkasar Godara
3. Shri Ram Sewak Hazari
4. Shri T. S. Negi
5. Kumari Maniben Vallabhnbhai Patel
6. Shri Saeed Murtaza
7. Shri P. A. Sangma
8. Shri Sachindralal Singha
9. Shri Ramji Lal Suman
10. Shri Krishnarao Thakur
11. Shri C. N. Visvanathan

#### SECRETARIAT

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

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



4. The Committee then considered Memoranda Nos. 175 to 180 on the following subjects:—

S.No.	Memorandum No.	Subject
(i)	175	The Cochin Port Pilotage and other Attendant Services (Fees) Rules, 1974 (G.S.R. 1278 of 1974).
(ii)	176	The Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) (Second Amendment) Rules, 1974 (G.S.R. 1083 of 1974).
(iii)	177	Rules for a limited departmental competitive examination for inclusion in the Select List for the integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B', to be held by the Union, Public Service Commission in 1975 (G.S.R. 672 of 1974).
(iv)	178	The Central Silk Board Contributory Provident Fund (Amendment) Rules, 1976 (G.S.R. 1520 of 1976).
	*	* * * *
(vi)	180	The Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 (G.S.R. 1016 of 1977).

(i) The Cochin Port Pilotage and Other Attendant Services (Fees)

Rules, 1974 (G.S.R. 1278 of 1974)—(Memorandum No. 175).

5. The Committee considered the above Memorandum and felt that the reply of the Ministry of Shipping and Transport (Transport Wing) was not specific to the points raised by the Committee. The authority to remit the fee which was clearly available in Section 35(3) of the Indian Ports Act, 1908, was not objected to. Reference to the Ministry was made specifically to seek their comments on the following points, with a view to avoiding any discrimination in the grant of remission of fees leviable in accordance with items (c), (d) and (e) of the Rules:—

“(i) whether any guidelines have been laid down by Government as to what may be ‘special cases’; and

(ii) whether Government have any objection to amend the rules so as to provide for recording of reasons in writing for remission of fee.”

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

6. The Committee decided that guidelines should be laid down in regard to the special cases in which fee could be remitted and the rules be amended to provide for recording of reasons in writing before grant of remission.

7. The Committee noted that the matter was referred to the Ministry on the 6th April, 1976. It was only after three reminders dated the 4th June, 1976, 5th May and 10th August, 1977, that the Ministry had sent their final reply on the 17th March, 1978, i.e. after a lapse of about two years. The Committee recorded their displeasure for the delay on the part of the Ministry in sending their reply to the points referred to by the Committee. The Committee decided to impress upon the Ministry that the reply furnished to the Committee should be specific to the points raised and not evasive and vague. Vague and rambling replies led to unnecessary correspondence which apart from delaying the matter also affected the time schedule of the Committee.

(ii) The Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) (Second Amendment) Rules, 1974 (G.S.R. 1083 of 1974)—(Memorandum No. 176).

8. The Committee considered the above Memorandum and were of the view that the principle of determining seniority was a basic feature of any service rules. Such rules should, therefore, more appropriately be included in the recruitment rules for the information of persons concerned as also to avoid any scope for discrimination. The Committee noted that in the case under reference, the Department of Personnel and Administrative Reforms had issued administrative instructions to determine the manner in which the seniority of Telephone Operators on their induction into the L.D.C's grade of Central Secretariat Clerical Service might be fixed. The Ministry of External Affairs, therefore, should have no difficulty in incorporating these instructions in the recruitment rules. Moreover, the Committee held that administrative instructions were no substitute for statutory rules as such instructions were not published in the Gazette and, therefore, did not come to the notice of the Committee on Subordinate Legislation to judge their fairness or otherwise.

9. The Committee also referred to para 95 of their Sixth Report (Sixth Lok Sabha), where in a similar case regarding vacancies of stenographers in the I.F.S. Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 1974, they desired that

principles of determining seniority should be incorporated in the recruitment rules.

- (i i) (a) The Integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966; and
- (b) Rules for a limited departmental competitive examination for inclusion in the Select List for the integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B', to be held by the Union Public Service Commission in 1975 (G.S.R. 672 of 1974)—(Memorandum No. 177).

(A)

10. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of External Affairs had amended regulation 8(1) of the Integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966 specifying therein the nature of enquiry to be held before selection of the candidate, so as to render the regulation self-explicit, vide Notification No. 90/CAD/78 dated the 22nd February, 1978.

(B)

11. The Committee were not satisfied with the amendment made to regulation 4(4) of the integrated Grade II and III of the Indian Foreign Service, Branch 'B' (Limited Departmental Competitive Examination) Regulations, 1966. The Committee in this connection referred to para 35 of their Seventeenth Report (Fifth Lok Sabha) where in the case of a similar amendment to regulation 4(2) of the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974, they had observed that the amendment did not indicate the precise amount of fee to be paid by a candidate and desire the Department of Personnel and Administrative Reforms to amend the regulations so as to mention therein the precise amount of fee which a candidate has to pay. The Committee decided to reiterate their above recommendation in the present case also.

## (C)

12. In regard to Rules for a limited departmental competitive examination for inclusion in the Select List for the integrated Grades II and III of the General Cadre of the Indian Foreign Service, Branch 'B', to be held by the Union Public Service Commission in 1975 (G.S.R. 672 of 1974), the Committee were not satisfied with the reply of the Ministry. In this connection, the Committee referred to para 29 of their Third Report (Fifth Lok Sabha) where in a similar case regarding the Central Engineering Services, the Ministry of Works and Housing had amended the rules to provide that all candidates who obtained the minimum qualifying marks in the written examination, fixed by the Commission, would be summoned for an interview. The Committee desired that similar amendment might be made in the present case also.

- (iv) The Central Silk Board Contributory Provident Fund (Amendment) Rules, 1976 (G.S.R. 1529 of 1976)—(Memorandum No. 178).

## (A)

13. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Industry. (Department of Industrial Development) had agreed to amend rule 14-A(b) of the Central Silk Board Contributory Provident Fund Rules, so as to enable a subscriber to make a withdrawal from his Contributory Provident Fund for meeting the expenses in connection with the marriage of a female relation actually dependent on him even if he had a daughter. The Committee decided that the proposed amendment might be notified expeditiously.

## (B)

14. The Committee noted with satisfaction that, on being pointed out, the Ministry had agreed to amend rule 14-B(2) *ibid*, so as to provide therein for issue of a show-cause notice to a subscriber before ordering recovery of the amount withdrawn, on account of its not being utilised for the purpose for which it was withdrawn. The Committee decided that the proposed amendment might be made expeditiously.

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

- (vi) The Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 (G.S.R. 1016 of 1977)—(Memorandum No. 180).

16. The Committee considered the above Memorandum and noted that the Supreme Court, in the case of *Jalan Trading Company V. Mill Mazdoor Sabha*, held that power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that could not be delegated to an executive authority. Subsequently, in the case of *Kalawati Devi V. I.T.C., West Bengal*, the Supreme Court held that it was not unconstitutional for the Legislature to leave it to the Executive to determine details relating to working of laws. In this connection, the Committee noted that the Supreme Court had made a distinction between taxation laws and other laws and had not disagreed with the decision in *Jalan Trading Company's* case. Besides the language of the section of the rule would also have to be looked into to decide the question. The Committee, therefore, were of the view that the decision of the Supreme Court in *Jalan Trading Company's* case was more appropriate as the rules in question did not relate to matters of taxation.

17. The Committee further noted that provision regarding 'removal of difficulty' had always been considered to be an extraordinary provision, in that the area in which it might operate was not delimited and a resort to it might result in circumvention of the rules. The two Conferences of Chairmen of the Committees on Subordinate Legislation of State Legislatures, held in 1960 and 1965, had also considered the incorporation of such a provision in the Acts and felt strongly about it as it gave wide powers to the executive. Even in certain Acts where it was incorporated, its operation was generally limited to one or two years after the commencement of that Act e.g. it was one year in the case of *Delhi Sales Tax Act, 1975* (Section 74) and 2 years in the case of the *Burmah Shell (Acquisition of Undertakings in India) Act, 1976* (Section 19).

18. The Committee felt that while enacting a legislation, Parliament in their wisdom might permit such a provision in the Acts. However, so far as the delegated legislation was concerned, the Executive should not assume powers which were too wide especially when it had got the right to amend the rules themselves. The Committee observed in this connection that such orders were not being notified in the Gazette and thereby they could escape the notice of the Committee and consequently there was no legislative scrutiny.

for ensuring that the delegated powers were being exercised within such delegation. Further, the validity of the Rules was also open to doubt in view of the decision of the Supreme Court in Jalan Trading Company's case.

19. The Committee desired the Ministry to delete rule 13 of the Central Accounts Service (Pay and Accounts Officers) Recruitment Rules, 1977 and similarly worded rule 25 of the Central Secretariat Service Recruitment Rules.

*The Committee then adjourned.*

**MINUTES OF THE TWENTY-EIGHTH SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(SIXTH LOK SABHA)  
(1978-79)**

The Committee met on Saturday, the 18th November, 1978 from 15.00 to 15.45 hours.

**PRESENT**

Shri Somnath Chatterjee—*Chairman*

**MEMBERS**

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri T. S. Negi
5. Kumari Maniben Vallabhbhai Patel
6. Shri G. S. Reddi
7. Shri Saeed Murtaza
8. Shri Sachindralal Singha

**SECRETARIAT**

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

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4. The Committee then considered Memoranda Nos. 181 to 185 on the following subjects:—

S.No.	Memorandum No.	Subject
(i)	181	The Major Port of Tuticorin (Harbour Craft) Rules, 1976 (G.S.R. 529 of 1977).
(ii)	182	Rules framed under clause (2) of Article 77 of the Constitution (G.S.R. 2509 of 1975).
	*	* * * *
(iv)	184	(i) Homoeopathic Pharmacopoeia Laboratory Ghaziabad (Group 'C' and Group 'D' Posts) Recruitment Rules, 1976 (G.S.R. 1438 of 1976).
	*	* * * *
(v)	185	(i) The Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 (G.S.R. 674, 675 and 717 of 1976).
		(ii) The Betwa River Board Rules, 1977 (G.S.R. 40 of 1978).

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

- (i) The Major Port of Tuticorin (Harbour Craft) Rules, 1976 (G.S.R. 529 of 1977)—(Memorandum No. 181).

(A)

5. The Committee considered the above Memorandum and approved the following proviso proposed to be added to Rule 19 of the Major Port of Tuticorin (Harbour Craft) Rules by the Ministry at the instance of the Committee:—

“Provided that in the event of licenced harbour craft being found over-loaded by the Tindal, only those passengers who entered the craft or the quantity of Cargo that was loaded after the prescribed limit as specified in the licence, shall be asked to leave or that quantity of cargo to be removed, as the case may be, to conform with the condition of the assignment of the issue of licence.”

6. The Committee desired the Ministry to issue the amendment at an early date.

(B)

7. The Committee noted that cancellation of a licence or removal of a tindal's name from the register of tindals under rules 16(a) (b), 22(3) (4) and 26 were such actions which came within the scope of penalties and therefore, Rule 32 applied. Under Rule 32, provision had already been made for giving an opportunity of being heard to the person on whom the penalty was imposed. The Committee further noted that the Ministry, however, had agreed to amend the Rules themselves in such a way that opportunity of being heard was made available to a person even at the stage when a charge was made against him. The Committee desired the Ministry to issue the amendments at an early date.

(C)

8. The Committee noted that the Major Port of Tuticorin (Harbour Craft) Rules, 1976 were published under G.S.R. No. 196 in the Gazette of India, Part II, Section 3, sub-section (i) dated 12th February, 1977. The rules were again published under G.S.R. No. 425 in the Gazette dated 26th March, 1977 and again in the Gazette under G.S.R. No. 529 on the 16th April, 1977. Whereas G.S.R. Nos. 196 and 425 *ibid.* contained Rule No. 32 relating to imposition of penalties, the rules published under G.S.R. No. 529 did not contain that rule. In their reply to part 'B' of the memorandum



the Ministry brought this mistake in the Gazette to the notice of the Committee. The Committee felt that it was a clear case of gross negligence on the part of the Ministry and the Press. The Committee decided to emphasise that the Ministry should not rest content with the issue of the corrigendum in this case but should also inquire into the circumstances under which the mistake had occurred. The Committee also desired the Ministry to devise suitable corrective measures so that such mistakes did not recur.

- (ii) Rules framed under clause (2) of Article 77 of the Constitution (G.S.R. 2509 of 1975)—(Memorandum No. 182).

9. The Committee considered the above Memorandum and in view of the explanation furnished by the Ministry they decided not to insist on giving short titles to such Notifications already published. The Committee further noted that the Ministry had, however, agreed to comply with the requirement of giving short titles to all Rules and Regulations in future.

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- (iv) (a) Homoeopathic Pharmacopoeia Laboratory, Ghaziabad (Group 'C' and Group 'D' Posts) Recruitment Rules, 1976 (G.S.R. 1438 of 1976)—

\* \* \*

#### (A)

12. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare had amended column 10 of the Schedule to the Homoeopathic Pharmacopoeia Laboratory, Ghaziabad (Group 'C' and Group 'D' Posts) Recruitment Rules, 1976 by indicating therein that the post would be filled by direct recruitment.

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- (v) (a) The Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 (G.S.R. 674, 675 and 717 of 1976).  
(b) The Betwa River Board Rules, 1977 (G.S.R. 40 of 1978). (Memorandum No. 185).

#### (A) & (B)

14. The Committee considered the above Memorandum and noted that the Urban Land (Ceiling and Regulation) Removal of Difficulties Order No. 1 had been published in the Gazette thrice and

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

the Betwa River Board Rules, 1977 had been published in the Gazette twice. The Committee decided to emphasise that the responsibility of Ministry/Department did not cease with the sending of the Notification to the Press. After the rules, regulations, etc. were published in the Gazette the Ministries/Departments concerned should take immediate steps to examine them to see whether they had been correctly printed and, if necessary, issue a corrigendum thereto at the earliest. In fact the Committee noted that in both the above cases Ministries issued corrigenda only after the Committee brought the lapses to their notice. Had the Ministries been vigilant they could have themselves detected the mistakes earlier. The Committee take serious view of such lapses as already observed by them in para 93 of their 20th Report (Fifth Lok Sabha) and brought to the notice of all the Ministries and Departments by the Department of Parliamentary Affairs *vide* their O.M. No. F.32(1)/76-R&C dated 31-1-77. The Committee desired the Ministries to be careful in such matters in future.

*The Committee then adjourned.*

**MINUTES OF THE THIRTIETH SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(SIXTH LOK SABHA)**

**(1978-79)**

*The Committee met on Wednesday, the 20th December, 1978  
from 15.30 to 16.00 hours.*

**PRESENT**

**Shri Somnath Chatterjee—Chairman**

**MEMBERS**

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri Ram Sewak Hazari
5. Shri B. K. Nair
6. Shri T. S. Negi
7. Kumari Maniben Vallabhbhai Patel
8. Shri G. S. Reddi
9. Shri Sachindralal Singha
10. Shri Krishnarao Thakur

**SECRETARIAT**

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

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

3. The Committee authorised the Chairman and, in his absence Shri Durga Chand to present the Fifteenth Report to the House on their behalf on the 21st December, 1978.

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*The Committee then adjourned.*

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