

# **COMMITTEE ON SUBORDINATE LEGISLATION**

**(SIXTH LOK SABHA)**

**SIXTEENTH REPORT**

**(Presented on the 28th February, 1979)**



**LOK SABHA SECRETARIAT  
NEW DELHI**

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# COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(1978-79)

1. Shri Somnath Chatterjee—*Chairman*
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4. Shri Ram Sewak Hazari
5. Shri B. K. Nair
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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.*

# **REPORT**

## **I**

### **INTRODUCTION**

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

2. The matters covered by this Report were considered by the Committee at their sittings held on the 23rd February, 1976, 5th and 25th January, 1979.

3. The Committee considered and adopted this report at their sitting held on the 27th February, 1979. 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.

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## **II**

### **THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION (RECRUITMENT AND CONDITIONS OF SERVICE OF DIRECTOR OF INVESTIGATION) RULES, 1975 (G.S.R. No. 2785 of 1975)**

5. At their sitting held on the 23rd February, 1976, the Committee on Subordinate Legislation (1975-76) while examining the Monopolies and Restrictive Trade Practices Commission (Recruitment and Conditions of Service of Director of Investigation) Rules, 1975, which had been published in the Gazette of India on the 31st December, 1975, and laid on the Table of Lok Sabha on the 20th January, 1976, noticed that provisions for concession to persons belonging to Scheduled Castes and Scheduled Tribes in the matter of recruitment to the post of Director of Investigation in the Monopolies and Restrictive Trade Practices Commission and the disqualification clause on account of plural marriages had not been included in the said rules.

6. The Ministry of Law, Justice and Company Affairs (Department of Company Affairs) were asked to state the reasons for not

including the above provisions in the rules. The Ministry in their reply dated the 2nd April, 1976, clarified the position as under:—

“.....as per the recruitment rules relating to the post of Director of Investigation, appointment to the said post is required to be made by transfer on deputation. According to the Ministry of Home Affairs O.M. No. 16/2/67-Est. (c) dated the 27th September, 1967, no reservation is required to be made for Scheduled Castes/Scheduled Tribes in respect of the vacancies filled by deputation or transfer method. It was, therefore, not necessary to make any provision to this effect in the recruitment rules relating to the post of Director of Investigation.

As regards the provision relating to disqualification on account of plural marriages, the position is that in terms of the recruitment rules, only those officers who are already in Government service would be taken on deputation to the post of Director of Investigation. Apparently, they would be satisfying the condition relating to plural marriages because otherwise they would not have been appointed to Government service. It is because of this that it was not considered necessary to insert a specific provision regarding this matter in the recruitment rules.”

7. As no uniform practice in regard to the inclusion of the provisions for concessions to persons belonging to Scheduled Castes and Scheduled Tribes in various recruitment rules framed for different posts by different Ministries was followed, the matter was taken up with the Department of Personnel and Administrative Reforms asking them to furnish information on the following points:—

- (i) what were the instructions issued by them to the Ministries/Departments in regard to incorporation of saving clause in recruitment rules which related to posts filled up by transfer or deputation only;
- (ii) whether the Department saw at the vetting stage that these instructions were being followed uniformly; and
- (iii) if so, the circumstances under which the saving clause had been incorporated in some rules and not in others.

8. The Department of Personnel and Administrative Reforms in their reply dated the 28th August, 1978, drew attention to an earlier communication of theirs dated the 1st March, 1977, relevant extracts from which read as under:—

“.....in this Department's O.M. No. 8/12/71-Est. (SCT) dated 21st September, 1971.....it has been provided

that the recruitment rules in respect of all services/posts within the purview of the reservation orders should contain a Saving clause. Since the orders regarding reservation for Scheduled Castes and Scheduled Tribes do not apply to posts filled by transfer or deputation, it is not strictly necessary according to the orders dated 21-9-71 to incorporate the Saving Clause in the Recruitment Rules in respect of posts filled by transfer or deputation as a caution. It is also likely that in some cases, the Saving Clause might have been included because although the post is required to be filled by transfer or deputation, direct recruitment might have to be resorted to if the method of transfer or deputation fails. In some cases, Recruitment Rules may have been notified together for various posts, some of which may have an element of direct recruitment/promotion while some might be required to be filled only by deputation/transfer.

Further, it appears that there has been some omission on the part of the Ministries concerned in not showing to this Department the draft Notifications in question. Whenever such draft Notifications are referred to this Department, these are duly scrutinised. It is, therefore, proposed to issue general instructions that all such draft notifications should invariably be shown to this Department at the vetting stage."

9. The Committee are surprised to note that the Ministries/Departments are not showing all draft Recruitment Rules and Amendment Rules to the Department of Personnel and Administrative Reforms before their publication in the Gazette. The Committee feel that the Department of Personnel and Administrative Reforms in such matter should be consulted or their approval be taken in order to maintain uniformity in the Recruitment Rules.

10. The Committee note with satisfaction that the Department of Personnel and Administrative Reforms have issued instructions to all Ministries/Departments vide their O.M.\* No. 14017/48/77-Est(D) cell dated the 29th June, 1977 that all notifications relating to the Recruitment Rules should invariably be shown to that Department before they are finalised so that these are duly scrutinised before

their publication in the Gazette. The Committee desire all Ministries| Departments to follow the instructions of the Department of Personnel and Administrative Reforms in letter and spirit.

### III

#### THE ASSAM WILD LIFE (TRANSACTIONS AND TAXIDERMY) RULES, 1977 (G.S. 35-E of 1977).

11. Sub-rule(1) of rule 4 of the Assam Wild Life (Transactions and Taxidermy) Rules, 1977, reads as under:—

*“Submission of report of stocks.—* (1) Every licensee to whom permission has been granted under sub-rule (3) of rule 3 shall submit, to the Officer who had granted the said permission a report regarding the stocks of specified animal or animal article, trophy, uncured trophy or meat, referred to in sub-rule (1) of rule 3, in Form III within a period of seven days of the acquisition, receipt or keeping of the same in his control, custody or possession.”

12. It was noticed that there was no provision in the rules for condoning the delay in submission of the report if it was due to reasons beyond the control of the licensee.

13. The matter was taken up with the Ministry of Agriculture and Irrigation (Department of Agriculture) on the 26th August, 1977. In their reply dated the 16th May, 1978, the Ministry stated as under:—

“.....Section 51 of the Wild Life (Protection) Act, 1972 provides that any person who contravenes any provisions of this Act or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act shall be guilty of an offence against this Act and shall on conviction be punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 2000/- or with both. From this provision it is clear that either the contravention of the provisions of the Act or the rules or orders made thereunder is made punishable. This being the position it would appear not necessary to make a separate provision providing penalty for contravention of rule 4 (1). Although there is no specific provision to condone the delay in submission of reports,



but discretion lies with the officer authorised by the State Government under Section 54 of Wild Life (Protection) Act, 1972 (Powers to compound Offences)".

14. The contention of the Ministry of Agriculture and Irrigation (Department of Agriculture) that there is no specific provision in the Assam Wild Life (Transactions and Taxidermy) Rules, 1977, to condone the delay in submission of Report by the Licencee yet discretion lies with the officer authorised by the State Government under Section 54 of the Wild Life (Protection) Act, 1972, is not convincing. The Committee are of the view that Section 54 of the Act is not germane to the point raised. It relates to the power to compound offences. The question of compounding arises after an offence has been committed. The provision in the rules of the extenuating circumstances is an altogether different proposition. The Committee, therefore, desire the Ministry to make a provision in the Wild Life (Transactions and Taxidermy) Rules, 1977, setting out the circumstances in which delay in the submission of Report by the licensee may be condoned by the officer concerned in order to eliminate any scope of discrimination.

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#### IV

(i) THE RURAL HEALTH TRAINING CENTRE NAJAFGARH (PUBLIC HEALTH NURSING SUPERVISOR) (SENIOR) (GROUP 'B' POST) RULES, 1976 (G.S.R. 740 OF 1976).

(ii) THE CENTRAL HEALTH EDUCATION BUREAU (LIBRARY ASSISTANT GROUP 'C') RECRUITMENT RULES, 1976 (G.S.R. 962 OF 1976).

15. Rule 6 regarding relaxation clause of the Rural Health Training Centre Najafgarh (Public Health Nursing Supervisor) (Senior) (Group 'B' post) Rules, 1976, and the Central Health Education Bureau (Library Assistant Group 'C') Recruitment Rules, 1976, reads as under:—

**"Power to Relax.** Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules."

16. Normally the recruitment rules contain the relaxation clause on the following lines:—

**"Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons**

to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons”.

17. It was observed that in terms of rule 6, as worded, the benefit of exemption could be given to the individuals as contradistinguished from ‘categories or Classes of persons’ as envisaged by the usual relaxation provisions.

18. The Ministry of Health and Family Welfare (Department of Health) to whom the matter was referred have amended the rules to the desired effect *vide* G.S.R. No. 375 dated the 18th March, 1978, and G.S.R. No. 1265 dated the 24th September, 1977, respectively.

19. The Committee note with satisfaction that on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have amended the Rural Health Training Centre, Najafgarh (Public Health Nursing Supervisor) (Senior) (Group ‘B’ Post) Rules, 1976, and the Central Health Education Bureau (Library Assistant Group ‘C’) Recruitment Rules, 1976, by inserting the words ‘with respect to any class or category of persons’ in the relaxation clause.

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## V

### THE GIFT-TAX (SECOND AMENDMENT) RULES, 1976 (S.O. 722-E OF 1976).

20. The Gift-tax (Second Amendment) Rules, 1976, provides that the valuation of a partner's right to share the profits of the firm without a right to share the assets shall be determined in accordance with such guidelines or principles as may be laid down by the Central Board of Direct Taxes by general or special order.

21. The guidelines issued by the Central Board of Direct Taxes under above provision were likely to effect the public in general. It was, therefore, felt that these should be published in the Gazette of India for the information of all concerned.

22. The Ministry of Finance (Department of Revenue) to whom the matter was referred have published these guidelines in the Gazette *vide* S.O. No. 301 dated the 4th February, 1978.

23. The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Revenue) have pub-

lished in the Gazette, for the information of all concerned, the guidelines regarding valuation of a partner's right to share the profits of a firm without a right to share its assets under the Gift-tax (Second Amendment) Rules, 1976.

## VI

### THE CENTRAL RESEARCH INSTITUTE, KASAUJI (FOREMAN) RECRUITMENT RULES, 1977 (G.S.R. 1211 OF 1977).

24. The Central Research Institute, Kasauli (Foreman) Recruitment Rules, 1977, regulating the method of recruitment to the post of Foreman in the Central Research Institute, Kasauli, were published under G.S.R. 1211 in the Gazette of India, Part II, Section 3(i), dated the 17th September, 1977. It was observed that the rules did not contain the usual saving clause regarding concessions to persons belonging to Scheduled Castes/Tribes and other special categories.

25. Attention of the Ministry of Health and Family Welfare (Department of Health) was drawn on the 7th December, 1977, to the above lacuna in the rules and they were requested to state the reasons for not including the saving clause in the present case. In their reply dated the 5th January, 1978, the Ministry have stated that the saving clause was not incorporated in the notification through oversight and that necessary amendment to the said recruitment rules was being issued.

26. On the 5th May, 1978, the Ministry were requested to furnish a copy of the notification containing the requisite amendment if it had already been issued. A reply in the matter is still awaited.

27. The Committee are unhappy to note that the usual saving clause regarding concessions to persons belonging to Scheduled Castes/Tribes and other special categories has not been included in the Central Research Institute, Kasauli (Foreman) Recruitment Rules, 1977, due to oversight. In this connection the Committee have repeatedly emphasised that after the rules, regulations, etc. are published in the Gazette, the Ministry/Department concerned should take immediate steps to examine them and if necessary, issue a corrigendum or an amendment thereto suo moto without waiting for the Committee to point out.

28. In the present case the Ministry of Health and Family Welfare (Department of Health) have failed to take the necessary steps

to amend the Rules till it was brought to their notice by the Committee. The Committee desire the Ministry to be careful in such matters in future and to expedite the notification of the amendment to the Rules in the Gazette, if it has not already been issued so far.

29. The Committee take serious note of the fact that the communications addressed to the Ministry are not paid due attention and the replies are not sent promptly. Almost nine months have passed but so far there has been no response from the Ministry to a simple enquiry whether the said notification has been issued or not. This lackadaisical attitude of the Ministry is deplorable and should be looked into.

## VII

### THE DIRECTORATE GENERAL ORDNANCE FACTORIES HEAD- QUARTERS CLERICAL SERVICE RULES, 1977 (S.R.O. 44 OF 1977)

30. Rule 20 of the Directorate General Ordnance Factories Headquarters Clerical Service Rules, 1977, reads as under:—

*"Regulations for the competitive examination—The rules for the competitive examinations referred to in the Third Schedule shall be as determined by regulations made by the Director General, Ordnance Factories."*

31. The Ministry of Defence were asked to state whether they had any objection to the publication of regulations framed under the above rule for the competitive examinations in the Official Gazette for the information of the general public.

32. In their reply dated the 21st September, 1978, the Ministry have stated as follows:—

*".....framing of regulations for competitive examination under rule 20 of the Directorate General Ordnance Factories Headquarters Clerical Service Rules, 1977 is still under examination. However, there will be no objection to the publication of the regulations in the gazette as and when these are finalised."*

33. The Committee note that the framing of Regulations for the competitive examination under rule 20 of the Directorate General Ordnance Factories Headquarters Clerical Service Rules, 1977, is under examination of the Ministry of Defence. The Committee desire the Ministry to finalise these regulations at an early date and publish them in the Gazette for the information of all concerned.

## VIII

**THE JUDGES OF THE GAUHATI HIGH COURT (ALLOCATION  
OF SALARIES AND ALLOWANCES) ORDER, 1975  
(S.O. 4932 CF 1975)**

34. Sub-clause (2) of Clause 1 of the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975, published in the Gazette of India, Part II—Section 3(ii) dated the 22nd November, 1975, gave retrospective effect to the Order with effect from the 21st January, 1972.

35. The North Eastern Areas (Reorganisation) Act, 1971, under which the Order has been issued does not provide for giving retrospective effect to Orders issued thereunder.

36. The Ministry of Law, Justice and Company Affairs (Department of Justice) were requested to state (i) reasons for giving retrospective effect to the above Order without any authority to do so under the enabling Act and (ii) the reasons for not publishing an explanatory note alongwith the Order as required under the recommendation of the Committee on Subordinate Legislation made in para 10 of their Second Report (Fourth Lok Sabha) which reads as follows:

“The Committee are not satisfied with the explanations of the Ministries concerned and are of the view that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries/Departments should take appropriate steps to ensure the publication of rules before they come into force. However, if, in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a foot-note to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.”

37. In this connection attention of the Ministry of Law (Department of Justice) was also invited to an observation of the Attorney General that no subordinate legislation could have any retrospective effect unless the Act under which it was framed itself empowered such legislation to be operative retrospectively.

38. In their reply dated the 16th September, 1978, the Ministry of Law, Justice and Company Affairs (Department of Justice) have stated as follows:

“.....the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 (S.O. 4932 of 1975)

was made in exercise of the powers conferred by Section 33 of the North Eastern Areas (Reorganisation) Act, 1971 for allocating the expenditure in respect of the salaries and allowances of the Judges of the Gauhati High Court amongst the States of Assam, Nagaland, Meghalaya, Manipur, Tripura and the Union Territories of Arunachal Pradesh and Mizoram for which a common High Court was provided under the Act. Since the expenditure had to be apportioned with effect from the date the common High Court had come into existence i.e. 21st January, 1972, the Order was made effective from that date. Since apportionment from the date the common High Court was established is inherent in the Act itself, the Order necessarily had been given effect to from that date.

As regard the delay in issuing the above Order, it may be stated that protracted correspondence took place between the Government of India and the North Eastern States to decide the basis of allocation of expenditure in respect of Gauhati High Court. A meeting was convened at Shillong on 27th July, 1974 to discuss the question. A formula for allocation of expenditure was evolved at the meeting. Since the matter involved financial implications, the same was referred to the Ministry of Finance for their concurrence/comments on 7th August, 1974. After examining the case, the Ministry of Finance referred back the case to this Department on 30th April, 1975 making certain suggestions and advising consultation with the Ministry of Law on the constitutional position. After further examination the draft of the Order was referred to the Ministry of Finance on 17th June, 1975. The file was received back in the Department on 23rd July, 1975 whereafter the draft Order was sent to the Legislative Department (on 30-7-1975). Certain clarifications sought by the Legislative Department were given on 16th August, 1975. The draft Order was concurred in by the Legislative Department on 29th September, 1975 and the same was issued on 27th October, 1975.

Since the matter was important, complicated and involved five States and two Union Territories, the delay in the issue of the Order could not be avoided. An explanatory note stating the reasons for giving retrospective effect to the Order could not be published alongwith the Order through oversight which is regretted. It may, however,

be stated that by giving the Order retrospective effect, nobody is adversely affected."

39. Although the reasons explained by the Ministry of Law, Justice and Company Affairs (Department of Justice) for giving retrospective effect to the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975, appear to be plausible yet no Subordinate Legislation can have retrospective effect unless the Act under which it has been framed empowers such Legislation to be operative retrospectively. The reply of the Ministry that Explanatory Note that nobody would be adversely affected by the retrospective effect given to the Order could not be published alongwith the order through oversight is not convincing and relevant to the point at issue.

40. The Committee are of the view that giving of Explanatory Note stating the reasons for giving retrospective effect to the Order does not validate the retrospective effect unless it is authorised by the parent statute. The Committee, therefore, desire the Ministry of Law (Department of Justice) to bring an amending Legislation at an early date so that the power to give retrospective effect to the Order flows from the North Eastern Areas (Reorganisation) Act, 1971.

## IX

### THE SEAMEN'S PROVIDENT FUND (AMENDMENT) SCHEME, 1976 (G.S.R. 1233 OF 1976).

41. Sub-paragraph (5) of paragraph 59 of the Seamen's Provident Fund Scheme, 1966, as inserted by the Seamen's Provident Fund (Amendment) Scheme, 1976, reads as under:—

"Notwithstanding anything contained in Sub-paragraph (3), a member may withdraw the full amount standing to his credit in the Fund, on termination of his service in the case of retrenchment, redundancy and without any prospect of further scope of employment duly certified by the employer, Seamen's Employment Officer and the Shipping Master:

Provided that at least a period of six months has elapsed since his last employment, preceding the date on which the members makes the application for final withdrawal with the appropriate supporting documents to the Commissioner."

42. Attention of the Ministry of Shipping and Transport (Transport Wing) was drawn on the 9th November, 1976, to the proviso to

the above sub-paragraph and they were asked to state the considerations for fixing a period of six months which should elapse before an application is made for final withdrawal from the Fund.

43. In their reply dated the 7th February, 1977, the Ministry stated as under:—

“.....the proviso to sub-paragraph (5) of paragraph 59 of the Seamen's Provident Fund Scheme, 1966 was inserted on the lines of proviso to paragraph 69(1) (d) of the Employees Provident Fund Scheme, 1952 which reads as under:—

‘Provided that in the case of mass retrenchment the payment shall be made immediately and in the case of individual retrenchment payment shall be made if the member has not been employed in any factory or other establishment to which the Act applies for a continuous period of not less than six months immediately preceding the date on which the member makes the application for withdrawal.’

The Seamen's Provident Fund Act, and Scheme, 1966 has from the beginning been modelled after the Employees Provident Fund Act and Scheme, 1952 to the extent agreed to. Moreover, the period of six months will be sufficient to avoid misuse and will be reasonable for the seaman to locate other suitable jobs, if any as a seaman.

The above provision was also felt necessary to justify the claim of the individual member of retrenchment having been declared surplus with no chance for future employment. Also, the proviso as above will to a reasonable extent, preclude the possibility of intentional avoidance of the provisions under para 59(3) of the Scheme.”

44. It was, however, observed that the proviso to paragraph 69(1)(d) of the Employees Provident Fund Scheme, 1952, which was referred to by the Ministry as the model for making similar proviso in the Seamen's Provident Fund Scheme, had already been omitted vide G.S.R. 1184 of 1974. This was again brought to the notice of the Ministry of Shipping and Transport (Transport Wing) on the 3th August, 1978, and they were requested to state if they had any



objection to delete the proviso from the Seamen's Provident Fund Scheme on the analogy of the Employees Provident Fund Scheme, 1952. In their reply dated the 10th November, 1978, the Ministry have stated as under:—

“.....the subject matter was placed before the Board of Trustees, Seamen's Provident Fund Organisation at their last meeting held on the 10th October, 1978 by the Commissioner, Seamen's Provident Fund, Bombay. The Board after re-consideration have re-affirmed their earlier decision and concluded as follows as per the draft minutes:—

‘The Board after deliberations concluded that there is no necessity if any deletion of the existing ‘proviso’ given in para 59(5) of the scheme. The provision is necessary as a seaman works on the statutory contracts called ‘Articles of Agreement’ and has to remain unemployed after each Article till he is called again in his turn for employment. As such the minimum period of six months is desired to elapse after his last discharge from the Article of Agreement before he is considered to come under para 59(5) of the Seamen's Provident Fund Scheme for retrenchment|redundancy etc. as otherwise object will be defeated.’

The Ministry is in agreement with the decision of the Board of Trustees of the Seamen's Provident Fund as mentioned above.”

45. The Committee are not convinced by the arguments advanced by the Ministry of Shipping and Transport (Transport Wing) that a period of six months must elapse before a retrenched seaman could make an application for final withdrawal from the Seamen's Provident Fund. The Committee are of the view that when proviso to paragraph 69(1)(d) of the Employees' Provident Fund Scheme, 1952, on the lines of which such a provision has been made in the Seamen's Provident Fund Scheme, had since been deleted, the Ministry of Shipping and Transport (Transport Wing) should have no objection to delete proviso to paragraph 59(5) of the Seamen's Scheme for the sake of uniformity in the pattern of Provident Fund Schemes for the workers in different establishments of Government. The Committee desire the Ministry to issue the necessary amendment to the Seamen's Provident Fund Scheme at an early date.

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## X

## IMPLEMENTATION OF RECOMMENDATIONS

- (i) IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 85 OF THE SEVENTEENTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION REG. THE CENTRAL SECRETARIAT SERVICE ASSISTANT'S GRADE (LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION) REGULATIONS, 1974 (G.S.R. 657 OF 1974).

46. Regulation 4(2) of the Central Secretariat Service Assistant's Grade (Limited Department Competitive Examination) Regulations, 1974, provides as under:

**"Fees.**—Subject to such exemption or concessions or both, as may be notified in this behalf by the Department of Personnel and Administrative Reforms in the Cabinet Secretariat, from time to time, he shall pay the fees prescribed by the Institute."

47. It was felt that the amount of fee which a candidate has to pay should be mentioned in the regulations in order to make them self-contained and for the information of all concerned.

48. The Department of Personnel and Administrative Reforms to whom the matter was referred proposed to substitute the said regulation as under:

**"4(2) Fees.**—He shall pay such fees as may be prescribed from time to time by the Institute provided that candidates belonging to the categories indicated below shall be required to pay such fees as indicated against each:—

(i) candidates belonging to Scheduled Castes and Scheduled Tribes.

One-fourth of the fees prescribed by the Institute from time to time.

(ii) Candidates belonging to various classes or category of persons notified from time to time by the Government for exemption or concessions or both in fees.

Such proportion of the fees subject to such conditions etc. as may be prescribed in the orders by the Government from time to time."

49. The Committee on subordinate Legislation (1976-77) were not satisfied with above reply of the Department of Personnel and

**Administrative Reforms.** In para 35 of their Seventeenth Report (Fifth Lok Sabha), the Committee observed as under:

“The Committee are not satisfied with the amendment to Regulation 4(2) as proposed by the Cabinet Secretariat (Department of personnel and Administrative Reforms). They observe that the proposed amendment does not indicate the precise amount of fee to be paid by a candidate under Regulation 4(2). The Committee, therefore, desire that the Department of Personnel and Administrative Reforms should amend the regulations so as to mention therein the precise amount of fee which a candidate has to pay.”

50. In their action taken note on the above recommendation, the Department of Personnel and Administrative Reforms have stated as under:—

“It is requested that the Committee on Subordinate Legislation may be requested to reconsider their suggestion in para 35 of their Report for the following reasons:—

- (i) The examination fee may vary from year to year and varies for different categories of candidates.
- (ii) These categories may also change from time to time. While a concession to the extent of three-fourth of the prescribed fee is usually allowed to candidates belonging to Scheduled Castes|Scheduled Tribes, in the case of displaced persons from the erstwhile East Pakistan and repatriates from Burma, Shri Lanka, etc. the fee is remitted in full in deserving cases.
- (iii) In case the amount of fee is mentioned in the Regulations, these may have to be amended from time to time with every variation in the rate of fee and inclusion or exclusion of any categories of candidates that may be allowed concession in the rate of fee.
- (iv) The normal fee as well as the concessions are mentioned in the notice of the examination issued by the UPSC|Institute of Secretariat Training & Management for the information of all concerned and thus the candidates will know what fee is payable when they apply for taking the examination.

It is felt that the objection of the Committee on Subordinate Legislation is partly met by the amended regulation and no further amendment may be necessary.”

51. The Committee are not inclined to agree with the reply of the Department of Personnel and Administrative Reforms that in case the amount of fee is mentioned in the Central Secretariat Service Assistant's Grade (Limited Departmental Competitive Examination) Regulations, these may have to be amended from time to time with every variation in the rate of fee and inclusion or exclusion of any category of candidates that may be allowed concession in the rate of fee. The Committee are of the view that normally the amount of fee to be paid by the candidates is not changed frequently and in such matters the Department of Personnel and Administrative Reforms should keep in mind the convenience of the candidates who are to appear in the examination and for whose use and information the regulations are published. The Committee therefore, reiterate their earlier recommendation made in para 35 of their Seventeenth Report (Fifth Lok Sabha) and desire the Department of Personnel and Administrative Reforms to amend the Central Secretariat Service Assistant's Grade (Limited Departmental Competitive Examination) Regulations so as to indicate therein the precise amount of fee which a candidate has to pay.

- (ii) IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 65 OF THE TWENTIETH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING GIVING OF RETROSPECTIVE EFFECT TO THE 'ORDERS' FRAMED UNDER VARIOUS ACTS OF PARLIAMENT [THE COST ACCOUNTING RECORDS (TRACTORS) RULES, 1971 (G.S.R. 1700 OF 1971).]

52. The Cost Accounting Records (Tractors) Rules, 1971, were published in the Gazette of India, Part II, Section 3(i) dated the 13th November, 1971, but were made effective from the 1st July, 1971. The Companies Act, 1956, under which above rules were framed does not authorise the Government for giving retrospective effect to such rules.

53. The matter was taken up with the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) and their attention was invited to a paragraph 49 of the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) where the Committee had noted the following observation of the Attorney-General in this regard.

"The Legislature may make a law with retrospective effect. A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by neces-

sary intendment so enacts. A law made by the Legislature may itself further empower subordinate legislation to be operative retrospectively. Without such a law, no subordinate legislation can have any retrospective effect.....”

54. After considering the reply of the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) the Committee in para 65 of their Twentieth Report (Fifth Lok Sabha) observed as under:

“The Committee note with concern that retrospective effect to the eight ‘Orders’ mentioned in Appendix II has been given without an authorisation to this effect in the parent statutes. As without such an authorisation, no subordinate legislation can operate retrospectively, the Committee feel that the retrospective effect given to the ‘Orders’ in question was without due legal authority. The Committee, therefore, desire the Ministries|Departments concerned either to give effect to the ‘Orders’ in question from the dates of their publication in the Gazette, or, alternatively, to take steps to incorporate a provision in the relevant Acts empowering Government to give retrospective effect to these ‘Orders’.”

55. In their action taken note on the above recommendation, the Department of Company Affairs have stated as under:

“....the Department had decided that no adverse notice would be taken of the companies which had failed to maintain the records during the period 1-7-1971 to 13-11-1971 and this decision has been adhered to. There was no intention to give retrospective effect to these rules and it may not serve any purpose to alter the effective date of the notification after 5 years.

This department, however, takes note of the recommendation of the Committee for strict compliance in future and would assure the Committee it will take all possible steps to ensure that the date of publication of the rules in the Gazette precedes the date from which the rules are to be brought into force.”

56. The Committee note that the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have conceded that no adverse notice has been taken of the companies which failed to comply with the rules during the period of retrospective effect given to the Cost Accounting Records (Tractors) Rules, 1971. The

Committee feel that even though no adverse notice has been taken of the companies which failed to comply with the rules during their retrospective effect yet the fact remain on record that retrospective effect had been given to the rules. The Committee desire the Ministry either to give effect to the rules from date of their publication in the Gazette of steps should be taken to amend the Companies Act to empower the Government for giving retrospective effect to the rules.

- (iii) IMPLEMENTATION OF RECOMMENDATION CONTAINED IN PARA 65 OF THE TWENTIETH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FIFTH LOK SABHA) REGARDING GIVING OF RETROSPECTIVE EFFECT TO THE 'ORDERS' FRAMED UNDER VARIOUS ACTS OF PARLIAMENT [THE U.G.C. (DISQUALIFICATION, RETIREMENT AND CONDITIONS OF SERVICE OF MEMBERS) (SECOND AMENDMENT) RULES, 1973 (G.S.R. 1006 OF 1973)].

57. The University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) (Second Amendment) Rules, 1973, were published in the Gazette of India, Part II, Section 3(i), dated the 15th September, 1973, but were made effective from the 15th January, 1973. The University Grants Commission Act, 1956, does not confer any power for giving of retrospective effect to rules framed thereunder.

58. The matter was taken up with the Ministry of Education & Social Welfare (Department of Education and their attention was invited to paragraph 49 of the Seventh Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) where the Committee had noted the following observation of the Attorney-General in this regard:—

"The Legislature may make a law with retrospective effect. A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may itself further empower subordinate legislation to be operative retrospectively. Without such a law, no subordinate legislation can have any retrospective effect...."

59. After considering the reply of the Ministry of Education and Social Welfare (Department of Education) the Committee in para 65 of their Twentieth Report (Fifth Lok Sabha) observed as under:—

"The Committee note with concern that retrospective effect to the eight 'Orders' mentioned in Appendix II has been given

without an authorisation to this effect in the parent statutes. As without such an authorisation, no subordinate legislation can operate retrospectively, the Committee feel that the retrospective effect given to the 'Orders' in question was without due legal authority. The Committee, therefore, desire the Ministries/Departments concerned either to give effect to the 'Orders' in question from the dates of their publication in the Gazette, or, alternatively, to take steps to incorporate a provision in the relevant Acts empowering Government to give retrospective effect to these 'Orders'."

60. In their action taken note on the above recommendation, the Ministry have stated as under:—

".....on reconsideration, the Ministry of Law have advised this Ministry that in view of the fact that the Central Government had no power to make rules with retrospective effect and that any retrospective operation of the amending rules was void, the rules notified by us on August 16, 1973 will be deemed to have come into force on the date of publication thereof in the official Gazette and that in view of this, the proposed deletion of rule 2 of the rules will not serve any purpose."

61. The Committee note that according to the advice given by the Ministry of Law, the Ministry of Education and Social Welfare (Department of Education) have no power to give retrospective effect to the University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) (Second Amendment) Rules, 1973. The reply of the Ministry of Education and Social Welfare (Department of Education) that the retrospective effect given to the rules was void and consequently the rules would automatically be deemed to have come into force from the date of their publication in the Gazette is not convincing. The Committee feel that in order to remove any legal ambiguity it is necessary for the Ministry to take steps either to notify in the Gazette that the rules would have effect only from the date of their publication or to amend the University Grants Commission Act to empower Government to give retrospective effect to Orders framed thereunder.

SOMNATH CHATTERJEE,

*Chairman,*

*Committee on Subordinate Legislation.*

NEW DELHI;

The 27th February, 1979.

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## **APPENDICES**

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## APPENDIX I

(Vide para 4 of the Report)

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

S. No.	Para	Summary
(1)	(2)	(3)
1(i)	9	The Committee are surprised to note that the Ministries/Departments are not showing all Draft Recruitment Rules and Amendment Rules to the Department of Personnel and Administrative Reforms before their publication in the Gazette. The Committee feel that the Department of Personnel and Administrative Reforms in such matter should be consulted or their approval be taken in order to maintain uniformity in the Recruitment Rules.
1(ii)	10	The Committee note with satisfaction that the Department of Personnel and Administrative Reforms have issued instructions to all Ministries/Departments vide their O.M. No. 14017/48/77-Est(D) Cell dated the 29th June, 1977, that all notifications relating to the Recruitment Rules should invariably be shown to that Department before they are finalised so that these are duly scrutinised before their publication in the Gazette. The Committee desire all Ministries/Departments to follow the instructions of the Department of Personnel and Administrative Reforms in letter and spirit.
2(iii)	14	The contention of the Ministry of Agriculture and Irrigation (Department of Agriculture) that there is no specific provision in the Assam Wild Life (Transactions and Taxidermy) Rules, 1977, to condone the delay in submission of Report by

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(2)

(3)

the licensee yet discretion lies with the officer authorised by the State Government under Section 54 of the Wild Life (Protection) Act, 1972, is not convincing. The Committee are of the view that Section 54 of the Act is not germane to the point raised. It relates to the power to compound offences. The question of compounding arises after an offence has been committed. The provision in the rules of the extenuating circumstances is an altogether different proposition. The Committee, therefore, desire the Ministry to make a provision in the Wild Life (Transactions and Taxidermy) Rules, 1977, setting out the circumstances in which delay in the submission of Report by the licensee may be condoned by the officer concerned in order to eliminate any scope of discrimination.

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The Committee note with satisfaction that on being pointed out, the Ministry of Health and Family Welfare (Department of Health) have amended the Rural Health Training Centre Najafgarh (Public Health Nursing Supervisor) (Senior) (Group 'B' Post) Rules, 1976, and the Central Health Education Bureau (Library Assistant Group 'C') Recruitment Rules, 1976, by inserting the words 'with respect to any class or category of persons' in the relaxation clause.

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The Committee note with satisfaction that on being pointed out, the Ministry of Finance (Department of Revenue) have published in the Gazette, for the information of all concerned, the guidelines regarding valuation of a partner's right to share the profits of a firm without a right to share its assets under the Gift-tax (Second Amendment) Rules, 1976.

6(1)

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The Committee are unhappy to note that the usual saving clause regarding concessions to persons belonging to Scheduled Castes/Tribes

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and other special categories has not been included in the Central Research Institute, Kasauli (Foreman) Recruitment Rules, 1977, due to oversight. In this connection the Committee have repeatedly emphasised that after the rules, regulations, etc. are published in the Gazette, the Ministry/Department concerned should take immediate steps to examine them and if necessary, issue a corrigendum or an amendment thereto *suo moto* without waiting for the Committee to point out.

5 (ii)

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In the present case the Ministry of Health and Family Welfare (Department of Health) have failed to take the necessary steps to amend the Central Research Institute, Kasauli (Foreman) Recruitment Rules till it was brought to their notice by the Committee. The Committee desire the Ministry to be careful in such matters in future and to expedite the notification of the amendment to the Rules in the Gazette, if it has not already been issued so far.

5 (iii)

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The Committee take serious note of the fact that the communications addressed to the Ministry of Health and Family Welfare (Department of Health) are not paid due attention and the replies are not sent promptly. Almost nine months have passed but so far there has been no response from the Ministry to a simple enquiry whether the said notification has been issued or not. This lackadaisical attitude of the Ministry is deplorable and should be looked into.

The Committee note that the framing of Regulations for the competitive examination under rule 20 of the Directorate General Ordnance Factories Headquarters Clerical Service Rules, 1977, is under examination of the Ministry of Defence. The Committee desire the Ministry to finalise these regulations at an early date and

(1)	(2)	(3)
		publish them in the Gazette for the information of all concerned.
7(i)	39	Although the reasons explained by the Ministry of Law, Justice and Company Affairs (Department of Justice) for giving retrospective effect to the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975, appear to be plausible yet no Subordinate Legislation can have retrospective effect unless the Act under which it has been framed empowers such Legislation to be operative retrospectively. The reply of the Ministry that Explanatory Note that nobody would be adversely affected by the retrospective effect given to the Order could not be published alongwith the order through oversight is not convincing and relevant to the point at issue.
7(ii)	40	The Committee are of the view that giving of Explanatory Note stating the reasons for giving retrospective effect to the Order does not validate the retrospective effect unless it is authorised by the parent statute. The Committee, therefore, desire the Ministry of Law (Department of Justice) to bring an amending Legislation at an early date so that the power to give retrospective effect to the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order flows from the North Eastern Areas (Reorganisation) Act, 1971.
8	45	The Committee are not convinced by the arguments advanced by the Ministry of Shipping and Transport (Transport Wing) that a period of six months must elapse before a retrenched seaman could make an application for final withdrawal from the Seamen's Provident Fund. The Committee are of the view that when proviso to paragraph 69(1) (d) of the Employees' Provident Fund Scheme, 1952, on the lines of which such a provision has been made in the Seamen's Provident Fund Scheme, had since

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been deleted, the Ministry of Shipping and Transport (Transport Wing) should have no objection to delete proviso to paragraph 59(5) of the Seaman's Provident Fund Scheme for the sake of uniformity in the pattern of Provident Fund Schemes for the workers in different establishments of Government. The Committee desire the Ministry to issue the necessary amendment to the Seamen's Provident Fund Scheme at an early date.

9 (i)

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The Committee are not inclined to agree with the reply of the Department of Personnel and Administrative Reforms that in case the amount of fee is mentioned in the Central Secretariat Service Assistant's Grade (Limited Departmental Competitive Examination) Regulations, these may have to be amended from time to time with every variation in the rate of fee and inclusion or exclusion of any category of candidates that may be allowed concession in the rate of fee. The Committee are of the view that normally the amount of fee to be paid by the candidates is not changed frequently and in such matters the Department of Personnel and Administrative Reforms should keep in mind the convenience of the candidates who are to appear in the examination and for whose use and information the regulations are published. The Committee, therefore, reiterate their earlier recommendation made in para 35 of their Seventeenth Report (Fifth Lok Sabha) and desire the Department of Personnel and Administrative Reforms to amend the Central Secretariat Service Assistant's Grade (Limited Departmental Competitive Examination) Regulations so as to indicate therein the precise amount of fee which a candidate has to pay.

9 (ii)

56

The Committee note that the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have conceded that no ad-

(1)

(2)

(3)

verse notice has been taken of the companies which failed to comply with the rules during the period of retrospective effect given to the Cost Accounting Records (Tractors) Rules, 1971. The Committee feel that even though no adverse notice has been taken of the companies which failed to comply with the rules during their retrospective effect yet the part remains on record that retrospective effect had been given to the rules. The Committee desire the Ministry either to give effect to the rules from date of their publication in the Gazette or steps should be taken to amend the Companies Act to empower the Government for giving retrospective effect to the rules.

9(iii)

61

The Committee note that according to the advice given by the Ministry of Law, the Ministry of Education and Social Welfare (Department of Education) have no power to give retrospective effect to the University Grants Commission (Disqualification, Retirement and Condition of Service of Members) (Section Amendment) Rules, 1973. The reply of the Ministry of Education and Social Welfare (Department of education) that the retrospective effect given to the rules was void and consequently the rules would automatically be deemed to have come into force from the date of their publication in the Gazette is not convincing. The Committee feel that in order to remove any legal ambiguity it is necessary for the Ministry to take steps either to notify in the Gazette that the rules would have effect only from the date of their publication or to amend the University Grants Commission Act to empower Government to give retrospective effect to Orders framed thereunder.

## APPENDIX II

(Vide para 10 of the Report)

No. 14017|48|77-Estt. (D) Cell

GOVERNMENT OF INDIA|BHARAT SARKAR

MINISTRY OF HOME AFFAIRS|GRIH MANTRALAYA

(Department of Personnel and Administrative Reforms)

Karmik aur Prashasanik Sudhar Vibhag)

New Delhi, the 29th June, 1977.

### OFFICE MEMORANDUM

**SUBJECT :** *Inclusion of a Saving Clause in regard to reservation and other concessions for the Scheduled Castes and Scheduled Tribes and other special categories of persons, in the Recruitment Rules.*

In this Department's O.M. No. 8|12|71-Estt. (SCT) dated the 21st September, 1971, it has been provided that the recruitment rules in respect of all services/posts within the purview of the reservation orders should contain a Saving Clause relating to the reservations for Scheduled Castes and Scheduled Tribes and other special categories of persons. Instances have come to notice of this Department where the Saving Clause was not included in the Recruitment Rules in respect of posts within the purview of the reservation orders. This might have been in some cases due to the draft Recruitment Rules|draft amendment not having been shown to the Department of Personnel & A. R. before issue of such rules/Amendments. Attention of the Ministry of Finance etc. is specifically drawn to the instructions contained in the Ministry of Home Affairs O.M. No. 30|3|67-Estt. (D), dated 11-8-67, No. 2|58|68|Estt. (D) dated 22|5|68 and No. 2|62|69-Estt. (D) dated 13-8-69 regarding the procedure for framing and amendment of Recruitment Rules according to which the Department of Personnel and A.R. [Estt. (D) Cell] is required to be consulted in regard to framing of or amendment of the Recruitment Rules. The Ministry of Finance etc. are requested to keep the above requirement in view whenever they

propose to frame or amend the Recruitment Rules in respect of posts| services under them.

2. The Min. of Finance etc. are requested to bring the above decision to the notice of all authorities concerned.

Sd|- (T. G. GOTH),  
*Under Secy. to the Govt. of India.*

To

All Ministries|Departments of the Government of India etc.



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# MINUTES

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## APPENDIX III

(vide para 3 to the Report)

XC

### MINUTES OF THE NINETIETH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTH LOK SABHA) (1975-76)

The Committee met on Monday, the 23rd February, 1976 from 15.30 to 16.00 hours.

#### PRESENT

Dr. Kailas—*Chairman*

#### MEMBERS

2. Shri R. N. Barman
3. Shri K. Chikkalingaiah
4. Shrimati Marjorie Godfrey
5. Shri Md. Jamilurrahman
6. Shri D. K. Panda
7. Shri Ram Singh Bhai
8. Shri M. S. Sanjeevi Rao
9. Shri M. Satyanarayan Rao
10. Shri Shiv Shankar Prasad Yadav.

#### SECRETARIAT

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

2. The Committee examined in detail certain 'Orders' (*vide* Annexure) laid on the Table of Lok Sabha during the Fifteenth Session (Fifth Lok Sabha).

3. The Committee desired that comments of the Ministry/Department concerned might be obtained in respect of the following 'Orders' on points shown against them.

S. No.	Short title and No. of 'Order'	Points on which comments to be invited.
(1)	(2)	(3)
1&2 **	**	**
3. The Monopolies and Restrictive Trade Practices Commission (Recruitment and Conditions of Service of Director of Investigation)		Provisions for concession for persons belonging to Scheduled Castes, Scheduled Tribes and disqualification on account of

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

(1)	(2)	(3)
Rules, 1975 (G.S.R. 2785 of 31-12-75).	plural marriage have not been included in the Rules. Reasons may be enquired from the Ministry.	
4 to 8 **	**	**
4.	**	**
		**

5. The Committee then adjourned.

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

(1978-79)

The Committee met on Friday, the 5th January, 1979 from 15.30 to 16.15 hours.

**PRESENT**

Shri Somnath Chatterjee—*Chairman*

**MEMBERS**

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri Ram Sewak Hazari
5. Shri T. S. Negi
6. Kumari Maniben Vallabhbhai Patel
7. Shri G. S. Reddi
8. Shri Saeed Murtaza
9. Shri Madan Lal Shukla
10. Shri Sachindralal Singha
11. Shri Krishnarao Thakur
12. Shri C. N. Visvanathan

**SECRETARIAT**

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

2. The Committee considered Memoranda Nos. 186 to 195 on the following subjects:—

S. No.	Memorandum No.	Subject
(1)	(2)	(3)
(i)	186	The Monopolies and Restrictive Trade Practices Commission (Recruitment and Conditions of Service of Director of Investigation) Rules, 1975 (G.S.R. 2785 of 1975).

(1)	(2)	(3)
(ii)	187	The Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975 (S.O. 4932 of 1975).
(iii)	188	**                      **
(iv)	189	The Assam Wild Life (Transaction and Taxidermy) Rules, 1977 (G.S.R. 35-E of 1977).
(v)	190	Implementation of recommendation contained in para 35 of the Seventeenth Report of the Committee on Subordinate Legislation regarding the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974 (G.S.R. 657 of 1974).
(vi)	191	(i) The Rural Health Training Centre Najafgarh (Public Health Nursing Supervisor) (Senior) (Group 'B' Post) Rules, 1976 (G.S.R. 740 of 1976); and  (ii) The Central Health Education Bureau (Library Assistant Group 'C') Recruitment Rules, 1976 (G.S.R. 962 of 1976).
(vii)	192	Implementation of recommendation contained in para 65 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding giving of retrospective effect to the 'Orders' framed under various Acts of Parliament [The U.G.C. (Disqualification, Retirement and Conditions of Service of Members) (Second Amendment) Rules, 1973 (G.S.R. 1006 of 1973)].
(viii)	193	Implementation of recommendation contained in para 65 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding giving of retrospective effect to the 'Orders' framed under various Acts of Parliament [The Cost Accounting Records (Tractors) Rules, 1971 (G.S.R. 1700 of 1971)].

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

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(1)	(2)	(3)
(ix)	194	The Gift-tax (Second Amendment) Rules, 1976 (S.O. 722—E of 1976).
(x)	195	The Central Research Institute, Kasauli (Foreman) Recruitment Rules, 1977 (G.S.R. 1211 of 1977).

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- (i) *The Monopolies and Restrictive Trade Practices Commission (Recruitment and Conditions of Service of Director of Investigation) Rules, 1975 (G.S.R. 2785 of 1975)—(Memorandum No. 186).*

3. The Committee considered above memorandum and noted with satisfaction that the Department of Personnel and Administrative Reforms had issued general instructions to all Ministries/Departments *vide* their O.M. No. 14017/48/77-Est (D) Cell dated 29th June, 1977 that all notifications relating to recruitment Rules should invariably be shown to that Department at the vetting stage so that these were duly scrutinised before publication.

- (ii) *The Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 195 (S.O. 4932 of 1975)—(Memorandum No. 187).*

4. The Committee considered above memorandum and were of the opinion that no Subordinate Legislation could have retrospective effect unless the Act under which it was framed itself empowered such legislation to be operative retrospectively. The Committee desired the Ministry of Law, Justice and Company Affairs (Department of Justice) to bring an amending legislation so that the power to give retrospective effect to the Judges of the Gauhati High Court (Allocation of Salaries and Allowances) Order, 1975, flowed from an express provision of the North Eastern Areas (Re-organisation) Act, 1971. The reply of the Ministry for not publishing the explanatory note alongwith the order was not considered to be satisfactory in view of Committee's earlier recommendation made in para 10 of their Second Report (Fourth Lok Sabha). The Committee reiterated their earlier recommendation and desired the Ministry to publish the Explanatory Note at an early date in the Gazette to clarify that by giving the order retrospective effect, nobody was adversely affected.

(iii) \* \* \* \* \*

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- (iv) *The Assam Wild Life (Transaction and Texidermy) Rules, 1977, (G.S.R. 35-E of 1977)—(Memorandum No. 189).*

(A)

6. The Committee noted that if the applicant felt that his application for permission to acquire, receive or keep specified animal etc. had been improperly or arbitrarily rejected, he could prefer an appeal from such order of refusal under rule 9 of the Assam Wild Life (Transaction and Texidermy) Rules, 1977.

(B)

7. The Committee were not satisfied with the reply of the Ministry of Agriculture and Irrigation (Department of Agriculture) that although there was no specific provision in the Assam Wild Life (Transaction and Texidermy) Rules for condoning the delay in submission of the report yet if it was due to reasons beyond the control of the licensee, the discretion lay with the officer authorised by the State Government under Section 54 of the Wild Life (Protection) Act, 1972 to compound such offences. Section 54 of the Act was not germane to the point raised. The question of compounding an offence arose only after a crime had been committed. The Committee desired the Ministry of Agriculture and Irrigation (Department of Agriculture) to make provision at an early date in the rules setting out the circumstances in which delay in the submission of report might be condoned by the Officer concerned to eliminate any scope of discrimination.

- (v) *Implementation of recommendation contained in para 35 of the Seventeenth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 1974 (G.S.R. 657 of 1974)—(Memorandum No. 190).*

8. The Committee considered above memorandum and were not convinced by the contention of the Department of Personnel and Administrative Reforms that in case the amount of fee was mentioned in the regulations, they might have to be amended from time to time with every variation in the rate of fee and inclusion or exclusion of any category of candidates that might be allowed concession in the rate of fee. The Committee were of the view that normally the amount of fee to be paid by the candidates was not changed frequently and in such matters the Department of Personnel and Administrative Reforms should keep in mind the convenience of the candidates who were to appear in the examination and for whose use and information the regulations were published. The

Committee reiterated their earlier recommendation made in para 35 of their Seventeenth Report (Fifth Lok Sabha) that the Department of Personnel and Administrative Reforms should amend the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulation, 1974 (G.S.R. 657 of 1974), so as to mention therein the precise amount of fee which a candidate has to pay.

(vi) (a) *The Rural Health Training Centre Najafgarh (Public Health Nursing Supervisor) (Senior), (Group 'B' Post) Rules, 1976 (G.S.R. 740 of 1976); and*

(b) *The Central Health Education Bureau (Library Assistant Group 'C') Recruitment Rules, 1976 (G.S.R. 962 of 1976)—(Memorandum No. 191).*

9. The Committee considered above memorandum and noted with satisfaction that on being pointed out the Ministry of Health and Family Welfare (Department of Health) had amended the rules by adding the words "with respect to any class or category of persons" in the relaxation clause *vide* G.S.R. No. 375, dated 18th March, 1977 and G.S.R. 1265 dated 24th September, 1977.

(vii) *Implementation of recommendation contained in para 65 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding giving of retrospective effect to the 'Orders' framed under various Acts of Parliament [The U.G.C. (Disqualification, Retirement and Conditions of Service of Members) (Second Amendment) Rules, 1973 (G.S.R. 1006 of 1973)]—(Memorandum No. 192).*

10. The Committee considered above memorandum and noted that according to the advice given by the Ministry of Law, the Ministry of Education and Social Welfare (Department of Education) had no power to give retrospective effect to the U.G.C. (Disqualification, Retirement and Conditions of Service of Members) (Second Amendment) Rules, 1973. The Committee were not satisfied with the reply of the Ministry of Education and Social Welfare (Department of Education) that as the retrospective effect to the rules was void, therefore, those would be deemed to have come into force from the date of their publication in the Gazette. The Committee were of the view that in order to remove ambiguity in the rules, the Ministry of Education and Social Welfare (Department of Education) should delete therefrom provisions regarding giving of retrospective effect to them.



- (viii) *Implementation of recommendation contained in para 65 of the Twentieth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) regarding giving of retrospective effect to the 'Orders' framed under various Acts of Parliament [The Cost Accounting Records (Tractors) Rules, 1971 (G.S.R. 1700 of 1971)]—(Memorandum No. 193).*

11. The Committee considered above memorandum and noted that the Ministry of Law (Department of Company Affairs) had conceded that no adverse notice had been taken of the companies which failed to comply with the rules during the period of retrospective effect to the Cost Accounting Records (Tractors) Rules, 1971. The Committee were of the opinion that even though no adverse notice had been taken of the companies which failed to comply with the rules during their retrospective effect yet the fact remains on record that retrospective effect had been given to the rules. The Committee desired the Ministry to delete provision of retrospective effect from the rules to set the position legally right.

- (ix) *The Gift-tax (Second Amendment) Rules, 1976 (S.O. 722-E of 1976)—(Memorandum No. 194).*

12. The Committee noted with satisfaction that on being pointed out, the Ministry of Finance (Department of Revenue) have published in the Gazette for information of all concerned the guidelines regarding valuation of a partner's right to share the profits of a firm without a right to share its assets under the Gift-tax (Second Amendment) Rules, 1976.

- (x) *The Central Research Institute, Kasauli (Foreman) Recruitment Rules, 1977 (G.S.R. 1211 of 1977)—(Memorandum No. 95).*

13. The Committee considered above memorandum and noted with satisfaction that, on being pointed out, the Ministry of Health and Family Welfare (Department of Health) had agreed to provide saving clause regarding concession to persons belonging to Scheduled Castes/Tribes and other special categories in the above rules. The Committee desired the Ministry to expedite the notification of the amendment to the Rules in the Gazette.

*The Committee then adjourned.*

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

The Committee met on Thursday, the 25th January, 1979 from 15.30 to 17.00 hours.

**PRESENT**

Shri Somnath Chatterjee—*Chairman.*

**MEMBERS**

2. Shri Durga Chand.
3. Chaudhary Hari Ram Makkasar Godara.
4. Shri T. S. Negi.
5. Shri G. S. Reddi.
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. Viswanathan.

**SECRETARIAT**

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

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3. The Committee then considered Memoranda Nos. 196 to 200 on the following subjects:

S. No.	Memo No.	Subject
(1)	(2)	(3)
1.	196	The Directorate General Ordinance Factories Headquarters Clerical Service Rules, 1977 (S.R.O. 44 of 1977).

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

(1)	(2)	(3)
2.	197	The Seamen's Provident Fund (Amendment) Scheme, 1976 (G.S.R. 1233 of 1976).
3.	198	* * *
4.	199	* * *
5.	200	* * *

(i) *Directorate General Ordnance Factories Headquarters Clerical Service Rules, 1977* (S.R.O. 44 of 1977)—(Memorandum No. 196).

4. The Committee considered the above Memorandum and noted that the framing of regulations for the competitive examination under rule 20 of the Directorate General Ordnance Factories Headquarters Clerical Service Rules, 1977 was under examination of the Ministry of Defence and that there would be no objection to their publication in the Gazette when finalised. The Committee desired the Ministry to finalise the regulations at an early date and publish them in the Gazette for the information of all concerned.

(i) *Directorate General Ordnance Factories Headquarters Clerical Service Rules, 1976* (G.S.R. 1233 of 1976)—(Memorandum No. 197).

5. The Committee considered the above Memorandum and noted that paragraph 59(5) of the Seamen's Provident Fund Scheme was drafted on the lines of paragraph 69(1) (d) of the Employees Provident Fund Scheme, 1952. The Committee were not convinced by the explanation furnished by the Ministry of Shipping and Transport that a Seaman was employed under a Statutory contract known as 'Articles of Agreement' and he was likely to remain unemployed after each Article till he was called again in his turn for employment. It was only when he was without employment for more than six months after the completion of his earlier agreement, that a Seaman was regarded as having been retrenched without any prospect of further employment. There were sufficient checks in the Scheme in as much as the withdrawal was permitted only in the case of retrenchment or redundancy and without any prospect of re-employment for which a certificate had to be given by the employer,

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

Seamen's Employment Officer and the Shipping Master. If the Certificate was duly issued, there should not be any scope for misuse of the facility of withdrawal by the Seamen. The Committee were of the view, that when proviso to paragraph 69(1) (d) of the Employee's Provident Fund Scheme, 1952 on the lines of which the above provision had been made, had since been deleted, the Ministry of Shipping and Transport (Transport Wing) should delete proviso to para 59(5) of the Seamen's Provident Fund Scheme also for the sake of uniformity in the pattern of Provident Fund Schemes for the workers in different establishments of the Government. The Committee desired the Ministry to issue the necessary amendment at an early date.

(iii) to (v)

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*The Committee then adjourned.*

MINUTES OF THE THIRTY-THIRD SITTING OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION  
(SIXTH LOK SABHA)  
(1978-79)

The Committee met on Tuesday the 27th February, 1979 from 15.30 to 16.00 hours.

PRESENT

Shri Somnath Chatterjee—*Chairman*.

MEMBERS

2. Kumari Maniben Vallabhbhai Patel.
3. Shri G. S. Reddi.
4. Shri P. A. Sangma.
5. Shri Sachindralal Singha.

SECRETARIAT

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

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

3. The Committee authorised the Chairman and, in his absence, Shri P. A. Sangma to present the Sixteenth Report to the House on their behalf on the 28th February, 1979.

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*The Committee then adjourned.*

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