

COMMITTEE ON SUBORDINATE LEGISLATION

(ELEVENTH LOK SABHA)

FOURTH REPORT

[Presented on 11.3.97]



LOK SABHA SECRETARIAT
NEW DELHI

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LOK SABHA SECRETARIAT

CORRIGENDA

TO

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

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION
(1996-97)**

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- 4. Shri Ram Autar Ram — *Director***
- 5. Shri B.D. Swan — *Under Secretary***

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 4 and 18 December, 1996 and 5 March, 1997.

3. The Committee considered and adopted this Report at their sitting held on 5 March, 1997. The Minutes of the sittings relevant to this Report are appended to it.

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

NEW DELHI;
March, 1997

Phalguna, 1918 (S)

KRISHAN LAL SHARMA,
Chairman,
Committee on Subordinate Legislation.

REPORT

I

THE MOTOR VEHICLES (ALL INDIA PERMIT FOR TOURIST TRANSPORT OPERATORS) AMENDMENT RULES, 1995 (GSR 286-E OF 1995)

The Motor Vehicles (All India Permit for Tourist Transport Operators) Amendment Rules, 1995 were published in the Gazette of India: Extraordinary, Part II, section 3 (i), dated 22 March, 1995. Condition 6 of the Eligibility Condition for Recognition as Approved Tourist Transport Operator under the Fourth Schedule of the aforesaid Rules read as under:—

**

**

6. The decision of the Government of India in the matter of recognition shall be final. The Government of India may in their discretion refuse to recognize any firm or withdraw/withhold at any time recognition already granted without assigning any reason."

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1.2 It was felt that the aforesaid Condition conferred *wide discretionary power* upon the Central Government in the matter of recognizing any firm or withdrawing/withholding at any time the recognition already granted without assigning any reasons. The Ministry of Surface Transport were, therefore, requested to state whether some appropriate norms/safeguards had been laid down to prevent any arbitrary use of the aforesaid wide discretionary power so conferred upon the Central Government.

1.3 The Ministry of Surface Transport in their reply dated 23 January, 1996 stated as under:—

".....and to say that the matter has been considered in consultation with the Ministry of Tourism. Their comments are reproduced as under:

'It is to be pointed out that in case of any complaint of serious nature when prestige of the country is involved, such action can be taken with the approval of the competent authority i.e. Director General of Tourism who is the head of the Department. Even, in such cases, the reasons of withdrawal/withholding etc. of the recognition are always intimated. However, recognition so granted can be withdrawn in public interest without assigning any reason

and this will be done with the approval of the competent authority as detailed above."

1.4 The Committee note that Condition 6 of the Eligibility Conditions for Recognition as Approved Tourist Transport Operator laid down under the Motor Vehicles (All India Permit for Tourist Transport Operators) Amendment Rules, 1995, confer wide discretionary power on the Central Government in the matter of recognizing any Firm or withdrawing/withholding at any time the recognition already granted without assigning any reasons. According to the Ministry, such action can be taken in case of a complaint of serious nature where prestige of the country is involved or in the public interest.

1.5 The Committee find the reply of the Ministry unsatisfactory. The Ministry have used vague terminology like 'prestige of the country is involved' or 'in the public interest' to justify the withdrawal/withholding of recognition without assigning any reasons. The Ministry have not elaborated the situations which are covered within the parameters of such terminology. The Committee feel that in order to put certain checks on the arbitrary use of the wide discretionary power so conferred on the competent authority, it would be in the fitness of things if some safeguards are evolved in that regard while exercising such power. It should be obligatory for the Central Government to record the reasons in writing in the case of refusing or withdrawing/withholding the recognition already granted to any firm, under Condition 6 of the Eligibility Conditions and should not in any manner cause prejudice to the interest of any person or firm. The Committee further desire that to have an element of transparency, the reasons for taking such action by the Central Government against any person or firm may also be communicated to them. The Committee, therefore, recommend that the Ministry of Surface Transport should amend the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules accordingly.

II

THE CENTRAL WATER ENGINEERING GROUP 'A' SERVICE RULES, 1995 (GSR 486 OF 1995)

The Central Water Engineering Group 'A' Service Rules, 1995 were published in the Gazette of India, Part II, section 3(i) dated 18 November, 1995. Rules 9(3) therein read as under:—

"If, during the period of probation, or any extension thereof, as the case may be, the controlling authority is of the opinion that an officer is not fit for permanent appointment, the controlling authority may discharge the officer or revert the officer to the post held by him prior to his appointment in the Service, as the case may be."

2.2 It was observed that the rules did not provide for recording of reasons in writing before the appointing authority discharge or revert an officer to the post held by him prior to his appointment in the service, in case an officer was not found fit for permanent appointment. It was felt that reversion of an officer on probation to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor in writing to the person concerned is against natural justice. The matter was, therefore, taken up with the Ministry of Water Resources to know whether they have any objection in amending the rules to the desired effect. In their reply dated 23 May, 1996 the Ministry stated as under:—

"...the contents of clause 9(3) as incorporated in the Recruitment Rules of Central Water Engineering (Group A) Service and referred to by the Lok Sabha Secretariat are also finding place in other similar Recruitment Rules and the same has been suggested as a model clause prescribed under Government of India's relevant instructions, as available in Swamy's Compilation, in respect of probation are reproduced below:

The decision whether an employee should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, that is ordinarily within six to eight weeks, and communicated to the employee together with the reasons in case of extension. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the

service in any way should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement."

and

"On the expiry of the period of probation steps should be taken to obtain the assessment reports on the probationer and to

- (i) Confirm the probationer/issue orders regarding satisfactory termination of probation, as the case may, if the probation has been completed to the satisfaction of the competent authority, or
- (ii) Extend the period of probation [in terms of para-1 (viii)] of the O.M. dated the 15th April, 1990 or discharge the probationer, or terminate the services of the probationer, as the case may be, in accordance with the relevant rules and orders if the probationer has not completed the period of probation satisfactorily."

2.3 The Committee observe that rule 9(3) of the Central Water Engineering Group 'A' Service Rules does not provide for recording of reasons in writing before the appointing authority discharge or revert an officer to the post held by him prior to his appointment in the service, in case an officer is not found fit for permanent appointment and feel that before such discharge or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority and the reasons for such reversion or discharge from the service should be recorded in writing.

2.4 The Committee feel that reversion of an officer on probation to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desire that the Ministry of Water Resources should take up the matter with the Ministries concerned for issuing of instructions/guidelines for framing of recruitment rules, so as to provide for recording of reasons for such reversion or termination, as the case may be, and also to communicate the reasons to the person concerned. The Committee also desire that while communicating the reasons care should be taken to see that the reasons so communicated do not in any way adversely affect his career.

III

THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION) ASSISTANT EDUCATION OFFICER (STATISTICS), ASSISTANT DIRECTOR (PLANNING) AND DEPUTY DIRECTOR (PLANNING) RECRUITMENT RULES, 1995 (GSR 6 of 1996)

The Ministry of Human Resource Development (Department of Education) Assistant Education Officer (Statistics), Assistant Director (Planning) and Deputy Director (Planning) Recruitment Rules, 1996 were published in the Gazette of India, Part II, Section 3(i) dated 6 January, 1996. It was observed therefrom that as per scheme of Col. 10 of the schedule appended to the recruitment rules, in case of Assistant Director (Planning) the probation period for direct recruits was one year whereas it was two years for promotees. The Ministry of Human Resource Development (Department of Education) were, therefore, requested to state the rationale behind prescribing a longer probation period for promotees as compared with that of the direct recruits and for treating the candidates at two different footings in the matter of probation for consideration of the Committee. The attention of the Ministry was also invited to the Department of Personnel and Training OM No. 21011/1/94 Estt. (C) dated 20 April, 1995 regarding prescribing a uniform period of probation for both promotees as well as direct recruits.

3.2 The Ministry of Human Resource Development (Department of Education) *vide* their O.M. dated 19 June, 1996 stated as under:—

“...Although, the amended Recruitment Rules for the post of Assistant Education Officer (Statistics), Assistant Director (Planning) and Deputy Director (Planning) were notified in October, 1995, provisions of Department of Personnel & Training's O.M. No. 21011/1/94 Estt. (C) dated 10.4.95 could not be incorporated inadvertently. We are therefore, proposing to incorporate uniform probation period both for the direct recruits and the promotees in the Recruitment Rules for the post of Assistant Director (Planning). The matter is being taken up with DOPT & UPSC.”

3.3 The Committee note that according to the Ministry of Human Resource Development, the Department of Personnel & Training's instructions regarding prescribing a uniform probation period for both promotees and direct recruits could not be incorporated in the extent recruitment rules inadvertently. However, on being pointed out, the Ministry have since taken up the matter with the Department of Personnel

and Training and UPSC to amend the rules to the desired effect. The Committee desire that the Ministry may notify the amended rules at the earliest.

IV

THE ESSENTIAL OILS GRADING AND MARKING RULES, 1993 (GSR 259 of 1995)

(A)

The Essential Oils Grading and Marking Rules, 1993 were published in the Gazette of India: Part II, Section 3(i) dated 27 May, 1995. It was observed therefrom that the short title of the Rules bore the year as 1993 whereas the rules were published in the year 1995. Normally the year in the short title corresponds to the year of its publication in the Official Gazette. The matter was taken up with the concerned Ministry of Rural Areas and Employment (Department of Rural Development) for ascertaining their comments. In their reply dated 8 April, 1996, the Ministry stated as under:—

“The draft preliminary notification of the Essential Oils Grading and Marking Rules, 1993 was prepared in December, 1993 and it was sent to the Government of India Press on 13.12.1993 for publication in the Official Gazette of India. Once it is preliminarily notified, no change can be made in the year in the ‘Short Title’ of the rules in final gazette notifications. Hence, the year 1993 was not changed in the final notification though the final Rules were notified in the Official Gazette on 27.5.1995 *vide* GSR 259. No corrigendum has been issued to rectify the error till date.”

4.2 The Committee are not convinced with the reply of the Ministry that since the draft rules were sent to the Press in the year 1993, the rules carry the year 1993 instead of 1995. In this connection, the Committee observe that as per their oft-repeated recommendations, the year in the publication in the short title of rules should conform to the year of their publication in the Official Gazette. The Committee are constrained to note that the Ministry have not issued any corrigendum to rectify the error. The Committee desire that the Ministry should issue the necessary corrigendum to reflect the correct year in the short title to the rules.

(B)

4.3 The draft of the Essential Oils Grading and Marking Rules, 1993 were published in the Gazette of India, Part II, Section 3(i) dated 15 January, 1994 for inviting objections and suggestions from the concerned public before the expiry of 45 days after the availability of gazette notification and the gazette notifications were made available to the public on 19 February, 1994. The final rules were notified in the gazette dated 27 May, 1995 i.e. after a spell of more than 12 months since

the availability of the draft rules to the public. The matter was taken up with the concerned Ministry of Rural Development for ascertaining the reasons for the inordinate delay in publication of the final rules. In their reply dated 8 April, 1996, the Ministry stated as under:—

“....Ministry agree that there was a delay of 12 months in the publication of the Final Rules in the Official Gazette after availability of draft Rules to the public. The delay was not intentional but mainly due to compliance with procedural formalities like vetting the notification by the Ministry of Law (Legislative Department), preparing the Hindi version of the notification by the Official Languages Wing etc. In order to avoid recurrence of such abnormal delays involved in the publication of final Rules in the official gazette, we have issued specific directions to the Directorate of Marketing and Inspection, Faridabad *vide* this Ministry's Office Memorandum of even no. dated 13th March, 1996 (copy enclosed for perusal). It is assured that all possible steps will be taken in future by this Ministry and the Directorate of Marketing and Inspection to avoid recurrence of such delays in future.”

4.4 The Committee note that there is a delay of more than 12 months in the notification of final rules after the copies of the draft rules were made available to the public for inviting their comments/suggestions. The Committee are not satisfied with the reasons furnished by the Ministry. The Committee, however, note that on being pointed out, the Ministry have issued specific directions to the Directorate of Marketing and Inspections to streamline their procedure and have assured to take all possible steps to avoid recurrence of such delays in future. The Committee trust that such delays would not occur in future.

THE NATIONAL SERVICE SCHEME, DEPARTMENT OF YOUTH AFFAIRS AND SPORTS, MINISTRY OF HUMAN RESOURCE DEVELOPMENT (GROUP A AND B POSTS) RECRUITMENT RULES, 1995 (GSR 407 of 1995)

The National Service Scheme, Department of Youth Affairs and Sports, Ministry of Human Resource Development (Group A and B Posts) Recruitment Rules, 1995 were published in the Gazette of India, Part II, Section 3(i), dated 2nd September, 1995. It was observed therefrom that as per scheme of Column 10 of the Schedule appended to the rules, in case of Assistant Programme Adviser, the probation period for direct recruits was one year whereas it was two years for promotees. The matter was referred to the Ministry of Human Resource Development (Department of Youth Affairs and Sports) for ascertaining the rationale behind prescribing a longer probation period for promotees as compared with the direct recruits and for treating the candidates at two different footings in the matter of probation.

5.2 In their reply dated 18 June, 1996, the Ministry stated as under:—

“.....that the Recruitment Rules for the post of Assistant Programme Advisers have since been revised in consultation with the Union Public Service Commission wherein the probationary period for the post of Assistant Programme Adviser has been amended from two years to one year for promotees.”

5.3 The Committee note with satisfaction that on being pointed out, the Ministry of Human Resource Development (Department of Youth Affairs and Sports) have revised the National Service Scheme, Department of Youth Affairs and Sports, Ministry of Human Resource Development (Group A and B Posts) Recruitment rules, 1995 in consultation with the Union Public Service Commission in respect of the probationary period for the post of Assistant Programme Adviser from two years to one year for promotees in column 10 of the Schedule appended to the rules. The Committee desire that the Ministry should notify the rules as amended at the earliest.

THE INDIAN FOREST SERVICE (PAY) SEVENTH AMENDMENT RULES, 1995 (GSR 505 of 1995)

The Indian Forest Service (Pay) Seventh Amendment Rules, 1995 were published in the Gazette of India Part II, section 3(i), dated 2 December, 1995. It was observed therefrom that the said amendment Rules were given effect retrospectively *w.e.f.* 1.1.1986. As per the Explanatory memorandum appended thereto, the retrospective effect was given to the rules in order to give the same benefit to the members of the Indian Forest Service as to the members of the Indian Administrative Service and the Indian Police Service. However, the Explanatory Memorandum appended thereto was silent about the reasons for the delay in notifying the said amendment rules which has resulted in their retrospective commencement for a period of about 10 years. The Ministry of Personnel, Public Grievances and Pension, who were concerned with the said Rules were, therefore, requested to furnish the following information for consideration of the Lok Sabha Committee on Subordinate Legislation:—

- (i) on what dates the Indian Administrative Service (Pay) Rules, 1954 and the Indian Police Service (Pay) Rules, 1954 were amended to remove the financial loss suffered by the members of these services as mentioned in the Explanatory Memorandum.
- (ii) when was the decision taken to extend the aforesaid benefit to the members of the Indian Forest Service also.
- (iii) the reasons for the delay in notifying the rules after taking of the said decision.

6.2. In their reply dated 25 April, 1996, the Ministry stated as under:—

“the required information for consideration of the Lok Sabha Committee on Subordinate Legislation, ad-seriatim:—

The Indian Administrative Service (Pay) Rules, 1954 and the Indian Police Service (Pay) Rules, 1954 were amended on 10.11.1989 and 28.12.1989 respectively;

The decision to extend the said benefits to the members of the Indian Forest Service was taken together with the decision taken in respect of the members of the Indian Administrative Service and the Indian Police Service in October, 1989;

As per the practice in such cases, the Ministry of Environment and Forest—the Cadre Controlling Authority in respect of Indian Forests Service, were requested to send their proposals for amendments in the

IFS (Pay) Rules, 1968 after obtaining approval from their Minister-in-charge. That Ministry, however, did not send the required papers despite several reminders from this Department. The needful was ultimately done by them in March, 1995 and after getting the draft notification vetted from the Legislative Department of Ministry of Law, a notification amending the IFS (Pay) Rules, 1968 was issued on 10th November, 1995. Though this notification has been issued much later than the notifications issued in respect of the IAS and IPS, this has not adversely affected the IFS Officers in view of the fact that the said amendment has been given effect to retrospectively from 1.1.1986, as was done while amending the IAS (Pay) Rules, 1954 and the IPS (Pay) Rules, 1954. In other words, after these amendments, the members of all the three All Indian Services viz. IAS, IPS and the IFS are entitled to uniformly have the said benefit of pay fixation from 1.1.86."

6.3 The Committee note from the reply of the Ministry of Personnel, Public Grievances and Pensions that the Indian Administrative Service (Pay) Rules and the Indian Police Service (Pay) Rules were amended on 10.11.1989 and 28.12.1989 respectively and the decision to extend the same benefit to the members of the Indian Forest Service was also taken in 1989. The Committee are not satisfied with the reasons for the delay. The reasons advanced by the Ministry regarding the delay in notifying the amendment to the Indian Forest Service (Pay Rules) does not reflect any urgency on the part of that Ministry in the matter of finalisation of such important piece of subordinate legislation keeping at stake the interest of the intended beneficiaries for long. Instead, the Ministry has placed the blame on the Ministry of Environment and Forests for not furnishing the required papers. The Committee feel that it is indicative of the lack of proper coordination amongst the Ministries which has resulted in an avoidable delay in the extension of benefit to the members of the Indian Forest Service. Had the Ministry taken up the matter with the urgency it deserved, the delay could have been avoided as the matter was not a complicated one.

6.4. The Committee, therefore, recommend that the Ministry of Personnel, Public Grievances and Pensions may evolve suitable procedural safeguards so as to curtail such enormous delays to the minimum in future. The Committee further desire that the Ministry should convene joint meetings with other Ministries concerned with the finalisation of any rules in cases where they are not able to sort out the matters in the due course of time.

VII

THE DELHI, ANDAMAN & NICOBAR ISLANDS, LAKSHADWEEP, DAMAN & DIU AND DADAR & NAGAR HAVELI CIVIL SERVICES RULES, 1996 (GSR 81 of 1996)

The Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadar & Nagar Haveli Civil Services Rules, 1996 were published in the Gazette of India, Part II, Section 3(i), dated 17 February, 1996. Rule 10(3) of the rules read as under:—

“10(3). If, during the period of probation or any extension thereof, as the case may be, Government is of the opinion that an officer is not fit for permanent appointment, Government may discharge the officer or revert him to the post held by him prior to his appointment in the Service as the case may be.”

7.2. It was observed therefrom that the rule did not provide for recording of reasons in writing before the appointing authority discharged or reverted an officer to the post held by him prior to his appointment in the service, in case an officer was not found fit for permanent appointment. It was felt that before such discharge or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority. Further the reasons for such reversion or discharge from the service should be recorded in writing. The matter was, therefore, taken up with the concerned Ministry of Home affairs for obtaining their comments on the matter so that the reasons for discharge or reversion, as the case may be, be recorded in writing and the same may be communicated to the person concerned before such reversion or termination, in order to obviate any arbitrary use of the given discretion to the appointing authority.

7.3. The matter was referred to the Ministry requesting them to state whether they had any objection in amending the said rule to the desired effect.

7.4. The Ministry in their reply dated 22 July, 1996 stated as under:—

“...The Department of Personnel & Training has held that Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 empowers the appointing authority to discharge a temporary employee on account of his unsuitability without assigning any reason. It has been further pointed out that during the period of probation, it is necessary to assess the character and aptitude of the

probationer before he is confirmed in the post. The Ministry of Home Affairs have accordingly been advised that it would not be desirable to amend the (DANIPS) Rules on the lines suggested by the Lok Sabha Secretariat.

It is observed that in respect of Rule 10(3) of the Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Service Rules, 1996, it has been proposed that the appointing authority should not only record reasons for discharge/reversion in writing in each case but also to communicate these reasons to the probationer concerned before the termination of his services. This proposal is unlikely to be agreed to by the Department of Personnel and Training for the same reasons as indicated by them in respect of the National Capital Territory of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Service Police Rules, 1995.

It is felt that the above holds good particularly in view of the following grounds:—

- (a) A probationer is a temporary Government servant to whom the provisions contained in CCS(TS) Rules, 1965 apply. Rule 5 of the said Rules specifically provides that the services of a temporary Government servant, who is not in quasi permanent service, shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;
- (b) The Explanation below Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 specifically provides that termination of the services of a Government servant appointed on probation, during or at the end of the period of is probation, in accordance with the terms of his appointment or the rules and orders governing such provision, shall not amount to a penalty within the meaning of the said Rule 11;
- (c) The terms and conditions under which Members of the two Services in question are appointed on probation also provide that failure to complete the period of probation to the satisfaction of the Competent Authority shall render them liable to be discharged from service; and
- (d) It has been clearly held by the courts that discharge simpliciter of a temporary Government servant is not bad in law unless this administrative device is used as a cloak to punitive action.

You will kindly agree that in view of facts mentioned above, it may not be desirable to carry out the proposed amendment either in the

National Capital Territory of Delhi, Andaman and Nicobar Islands and Lakshadweep Police Service Rules, 1995 or the Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Service Rules, 1996.....”

7.5 The Committee observe that Rule 10(3) of the Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Services Rules, 1996, provides that if, during the period of probation or any extension thereof, as the case may be, Government is of the opinion that an officer is not fit for permanent appointment, Government may discharge the officer or revert him to the post held by him prior to his appointment in the Service, as the case may be

7.6 The Committee are not satisfied with the reply of the Ministry of Home Affairs that the temporary Government Servants are covered by the provisions contained in rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 which provides that the services of a temporary government servant shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant.

7.7. The Committee feel that reversion of probationer to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desire that the Ministry of Home Affairs should amend rule 10(3) of the above rules so as to provide for recording of reasons for such reversion or termination as the case may be and also communicating the reasons to the person concerned. The Committee further desire that while communicating the reasons care should be taken that it does not in any way adversely affect his career.

VIII

THE ANDAMAN LAKSHADWEEP HARBOUR WORKS GROUP 'A' & 'B' POSTS (SENIOR SCIENTIST AND JUNIOR SCIENTIST) RECRUITMENT RULES, 1995 (GSR 462 OF 1995)

The Andaman Lakshadweep Harbour Works Group 'A' and 'B' Posts (Senior Scientist and Junior Scientist) Recruitment Rules, 1995 were published in the Gazette of India, Part II, Section 3(i), dated 28 October, 1995. It was observed therefrom that as per scheme of Column 10 of the Schedule appended to the rules, in case of Senior Scientist, the probation period for direct recruits was one year whereas it was two years for promotees. The matter was referred to the Ministry of Surface Transport on 23 February, 1996 for ascertaining the rationale behind prescribing a longer probation period for promotees as compared with the direct recruits and for treating the candidates at two different footings in the matter of probation.

8.2. In their reply dated 3 June, 1996, the Ministry stated as under:—

“.....that Andaman Lakshadweep Harbour Works Group 'A' & 'B' (Senior Scientist and Junior Scientist) Recruitment Rules 1995 were approved by the DOP&T and the UPSC in March, 1995, before the issue of DOP&T O.M.No. 21011/94-Estt. (C) dated 20.4.95 regarding uniform period of probation for both promotees as well as direct recruits.

The process for amending the Recruitment Rules has been initiated. As soon as the matter is finalised, the Lok Sabha Secretariat will be informed in the matter.

8.3. In a subsequent communication dated 15 July, 1996, the Ministry stated as under:—

“.....that necessary amendments in the said recruitment rules are being carried out in consultation with the Department of Personnel & Training.”

8.4. The Committee observe that according to the Ministry of Surface Transport, the Andaman Lakshadweep Harbour Works Group 'A' & 'B' Posts (Senior Scientist and Junior Scientist) Recruitment Rules, 1995 were approved by the DOP&T and the UPSC in March, 1995 i.e. before the instructions were issued by DOP&T regarding prescribing a uniform period

of probation for both promotees as well as direct recruits. The Ministry have since initiated the action to carry out the necessary amendments in the rules in consultation with the Department of Personnel and Training. The Committee desire that the Ministry should notify the amendment rules at the earliest.

IX

THE TEA BOARD (RECRUITMENT AND CONDITIONS OF SERVICE OF DIRECTORS OF TEA PROMOTION APPOINTED BY GOVERNMENT) AMENDMENT RULES, 1995 (GSR 23-E OF 1995)

The Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion appointed by Government) Amendment Rules, 1995 (GSR 23-E of 1995) were published in the gazette of India, Extraordinary, Part II, Section 3(i) dated 12 January, 1995. Rule 12(1), as amended, read as under:—

“12(i) The appointing authority, after having consulted the senior level Committee may terminate the services of any officer appointed to a post by direct recruitment or revert without assigning any reasons any officer appointed to a post by promotion to the post held by him before such promotion during or at the end of the period of probation or the extended period of probation, if his work or conduct to that post is found to be unsatisfactory.”

9.2 It was observed that the Rule 12(i), as amended, did not provide for recording of reasons in writing by the appointing authority before terminating or reverting an officer to the post held by him before such promotion, in case an officer was not found fit for permanent appointment. It was therefore, felt that before such termination or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority. Further the reasons for such reversion or termination from the service should be recorded in writing to obviate any arbitrary use of the conferred discretionary power. The matter was, therefore, taken up with the concerned Ministry of Commerce for obtaining their comments on 23.3.95. In their reply dated 17 August, 1995, the Ministry stated as under:—

“Rule 12(i) of the Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion Appointed by Government) Rules as notified *vide* Notification dated 12 January, 1995, *inter alia* provides that the appointing authority may terminate the services of an Officer appointed to the post by direct recruitment or revert the officer appointed by promotion, to the post held by him before such promotion during or at the end of the period of probation/extended period of probation, if the work or conduct to the post is found to be unsatisfactory. The rule provides for consultation by the appointing authority with the senior level Committee as provided in the Recruitment Rules. This Committee is headed by Secretary/

Additional Secretary in the Ministry of Commerce. The appointing authority is required to bring before the Committee circumstances which may warrant action as the part of appointing authority in terminating the services of the probationer in case of direct recruitment or reverting him to the lower post in case of promotees. Therefore, the reasons for such an action on the post of appointing authority will no doubt be recorded in writing in the official records.

It is, however, not considered necessary to convey such reasons to the concerned. It may be pointed out here that according to the existing instructions on probation issued by Department of Personnel & Training, a probationer who is not making satisfactory progress or who is inadequate for the service is to be informed of his shortcomings well before the expiry of original probationary period to enable him to make special efforts at such improvement. These instructions will certainly be followed by the Tea Board in respect of the probationers to the post of Director, Tea Promotion. It is considered that this would give a reasonable opportunity to the probationers to improve in cases progress is not satisfactory.

In view of the foregoing, it is considered that there are adequate safeguards in the basic rules governing probation and confirmation to ensure that administrative powers are not exercised arbitrarily. It is, therefore, not considered necessary to amend Rule 12(i) of the Tea Board (Recruitment & Conditions of Service of Directors of Tea Promotion appointed by Government) Rules."

9.3. The Committee note from the clarifications given by the Ministry that the reasons for discharging or reverting an officer under rule 12(i) of the Tea Board (Recruitment and Conditions of Services of Directors of Tea Promotion Appointed by Government) Rules, are recorded in writing in the official records. The Committee are, however, not convinced by the justification given by the Ministry for not conveying such reasons to the concerned person. The Committee feel that the termination of the services of an officer appointed to the post by direct recruitment or reverting the Officer appointed by promotion to the post held by him before such promotion is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desire that the Ministry of Commerce should amend rule 12(i) of the above rules so as to provide for recording of reasons for such reversion or termination as the case may be and also communicating the reasons to the person concerned. The Committee further desire that while communicating the reasons care should be taken to see that the reasons so communicated do not in any way adversely affect his career.

THE LADY HARDINGE MEDICAL COLLEGE AND SHRIMATI SUCHETA KRIPALANI HOSPITAL AND KALAWATI SARAN CHILDREN HOSPITAL, NEW DELHI (NURSING SUPERINTENDENT) RECRUITMENT RULES, 1995 (GSR 301 OF 1995)

The Lady Hardinge Medical College and Shrimati Sucheta Kripalani Hospital and Kalawati Saran Children Hospital, New Delhi (Nursing Superintendent) Recruitment Rules, 1995, were published in the Gazette of India, Part II, Section 3(i) dated 24 June, 1995. It was observed therefrom that as per scheme of column 10 of the Schedule appended to the Recruitment Rules, for the post of Nursing Superintendent, the probation period for direct recruits was only one year whereas it was two years for promotees. The Ministry of Health and Family Welfare were, therefore requested to state the rationale behind prescribing a longer probation period for promotees as compared with that of the direct recruits and for treating the candidates at two different footings in the matter of probation. The attention of the Ministry was also invited to the Department of Personnel and Training OM No. 21011/94 Estt. (C) dated 20 April, 1995 regarding prescribing a uniform period of probation for both promotees as well as direct recruits.

10.2. The Ministry of Health and Family Welfare *vide* their O.M. dated 27 March, 1996 stated as under:—

“.....issue of notification of Recruitment Rules for the post of Nursing Superintendent in LHMC & Smt. S.K. Hospital and Kalawati Saran Children Hospital, New Delhi was processed much earlier to the issue of the O.M. dated 10.4.95 of Deptt. of Personnel & Training. Therefore, the period of probation was prescribed in accordance with the then prevailing instructions. It is however, stated that this Ministry has no objection to the issue of necessary amendment in this regard, which is under consideration.”

10.3. The Ministry were thereafter requested to carry out the necessary amendment in the aforesaid recruitment rules at the earliest so as to prescribe a uniform probation period for promotees and the direct recruits in accordance with the guidelines issued by the Department of Personnel and Training in that regard. The Ministry were further requested to furnish a copy of the gazette notification so notified containing the desired amendment in the recruitment rules, for information of the Committee on Subordinate Legislation.

10.4. In their subsequent reply dated 26 April, 1996, the Ministry stated as under:—

“.... the notification for amending Recruitment Rules for the post of Nursing Superintendent in LHMC & Smt. S.K. Hospital, New Delhi are now being referred to Ministry of Law and Justice and O.L. Wing for vetting. As and when the vetting is done, a copy of the same will be furnished to Lok Sabha Secretariat.”

10.5. The Committee note that, on being pointed out, the Ministry of Health and Family Welfare have agreed to issue the necessary amendment to the Lady Hardinge Medical College and Smt. Sucheta Kriplani Hospital and Kalawati Saran Children Hospital, New Delhi (Nursing Superintendent) Recruitment Rules, 1995 so as to prescribe a uniform Period of probation for both promotees as well direct recruits and the notification in that regard is being forwarded to the Ministry of Law and Justice for vetting. The Committee desire that the Ministry should notify the desired amendment rules at the earliest.

NEW DELHI;
March, 1997

Phalguna, 1918 (S)

KRISHAN LAL SHARMA,
Chairman,
Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(Vide para 4 of Introduction)

Summary of Recommendations made in the Fourth Report of the Committee on Subordinate Legislation (Eleventh Lok Sabha)

S. No.	Reference to para no. in the Report	Summary of Recommendations
1	2	3
1.	1.4 to 1.5	<p><i>The Motor Vehicles (All India Permit for Tourist Transport Operators) Amendment Rules, 1995 (GSR 286-E of 1995)</i></p> <p>1.4 The Committee note that Condition 6 of the Eligibility Conditions for Recognition as Approved Tourist Transport Operator laid down under the Motor Vehicles (All India Permit for Tourist Transport Operators) Amendment Rules, 1995, confer wide discretionary power on the Central Government in the matter of recognizing any Firm or withdrawing/withholding at any time the recognition-already granted without assigning any reasons. According to the Ministry, such action can be taken in case of a complaint of serious nature where prestige of the country is involved or in the public interest.</p> <p>1.5 The Committee find the reply of the Ministry unsatisfactory. The Ministry have used vague terminology like 'prestige of the country is involved' or 'in the public interest' to justify the withdrawal/withholding of recognition without assigning any reasons. The Ministry have not elaborated the situations which are covered within the parameters of such terminology. The Committee feel that in order to put certain checks on the arbitrary use of the wide discretionary power so conferred on the competent authority, it would be in the fitness of things if some</p>

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safeguards are evolved in that regard while exercising such power. It should be obligatory for the Central Government to record the reasons in writing in the case of refusing or withdrawing/withholding the recognition already granted to any firm, under Condition 6 of the Eligibility Conditions and should not in any manner cause prejudice to the interest of any person or firm. The Committee further desire that to have an element of transparency, the reasons for taking such action by the Central Government against any person or firm may also be communicated to them. The Committee, therefore, recommend that the Ministry of Surface Transport should amend the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules accordingly.

2. 2.3 to 2.4

The Central Water Engineering Group 'A' Service Rules, 1995 (GSR 486 of 1995)

2.3 The Committee observe that rule 9(3) of the Central Water Engineering Group 'A' Service Rules does not provide for recording of reasons in writing before the appointing authority discharge or revert an officer to the post held by him prior to his appointment in the service, in case an officer is not found fit for permanent appointment and feel that before such discharge or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority and the reasons for such reversion or discharge from the service should be recorded in writing.

2.4 The Committee feel that reversion of an officer on probation to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desire that the Ministry of Water Resources should take up the matter with the Ministries concerned for issuing of instructions/

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		<p>guidelines for framing of recruitment rules, so as to provide for recording of reasons for such reversion or termination, as the case may be, and also to communicate the reasons to the person concerned. The Committee also desire that while communicating the reasons care should be taken to see that the reasons so communicated do not in any way adversely affect his career.</p>
3.	3.3	<p><i>The Ministry of Human Resource Development (Department of Education) Assistant Education Officer (Statistics), Assistant Director (Planning) and Deputy Director (Planning) Recruitment Rules, 1995 (GSR 6 of 1996)</i></p> <p>3.3 The Committee note that according to the Ministry of Human Resource Development, the Department of Personnel & Training's instructions regarding prescribing a uniform probation period for both promotees and direct recruits could not be incorporated in the extant recruitment rules inadvertently. However, on being pointed out, the Ministry have since taken up the matter with the Department of Personnel and Training and UPSC to amend the rules to the desired effect. The Committee desire that the Ministry may notify the amended rules at the earliest.</p>
4.	4.2 & 4.4	<p><i>The Essential Oils Grading and Marking Rules, 1993 (GSR 259 of 1995)</i></p> <p>(A)</p> <p>4.2 The Committee are not convinced with the reply of the Ministry that since the draft rules were sent to the Press in the year 1993, the rules carry the year 1993 instead of 1995. In this connection, the Committee observe that as per their oft-repeated recommendations, the year in the publication in the short-title of rules should conform to the year of their publication in the official gazette. The Committee are constrained to note that the Ministry have not issued any corrigendum to rectify the error. The Committee desire that the Ministry should issue the necessary corrigendum to reflect the correct year in the short-title to the rules.</p>

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(B)

4.4 The Committee note that there is a delay of more than 12 months in the notification of final rules after the copies of the draft rules were made available to the public for inviting their comments/suggestions. The Committee are not satisfied with the reasons furnished by the Ministry. The Committee, however, note that on being pointed out, the Ministry have issued specific directions to the Directorate of Marketing and Inspections to streamline their procedure and have assured to take all possible steps to avoid recurrence of such delays in future. The Committee trust that such delays would not occur in future.

5. 5.3

The National Service Scheme, Department of Youth Affairs and Sports, Ministry of Human Resource Development (Group A and B Posts) Recruitment Rules, 1995 (GSR 407 of 1995)

5.3 The Committee note with satisfaction that on being pointed out, the Ministry of Human Resource Development (Department of Youth Affairs and Sports) have revised the National Service Scheme, Department of Youth Affairs & Sports, Ministry of Human Resource Development (Group A and B Posts) Recruitment Rules, 1995 in consultation with the Union Public Service Commission in respect of the probationary period for the post of Assistant Programme Adviser from two years to one year for promotees in column 10 of the Schedule appended to the rules. The Committee desire that the Ministry should notify the rules as amended at the earliest.

6. 6.3 to 6.4

The Indian Forest Service (Pay) Seventh Amendment Rules, 1995 (GSR 505 of 1995)

6.3 The Committee note from the reply of the Ministry of Personnel, Public Grievances and Pensions that the Indian Administrative Service (Pay) Rules and the Indian Police Service (Pay) Rules were amended on 10.11.1989 and 28.12.1989 respectively

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and the decision to extend the same benefit to the members of the Indian Forest Service was also taken in 1989. The Committee are not satisfied with the reasons for the delay. The reasons advanced by the Ministry regarding the delay in notifying the amendment to the Indian Forest Service (Pay Rules) does not reflect any urgency on the part of that Ministry in the matter of finalisation of such important piece of subordinate legislation keeping at stake the interest of the intended beneficiaries for long. Instead, the Ministry has placed the blame on the Ministry of Environment and Forests for not furnishing the required papers. The Committee feel that it is indicative of the lack of proper coordination amongst the Ministries which has resulted in an avoidable delay in the extension of benefit to the members of the Indian Forest Service. Had the Ministry taken up the matter with the urgency it deserved, the delay could have been avoided as the matter was not a complicated one.

6.4 The Committee, therefore, recommend that the Ministry of Personnel, Public Grievances and Pensions may evolve suitable procedural safeguards so as to curtail such enormous delays to the minimum in future. The Committee further desire that the Ministry should convene joint meetings with other Ministries concerned with the finalisation of any rules in cases where they are not able to sort out the matters in the due course of time.

7. 7.5 to 7.7

The Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Services Rules, 1996 (GSR 81 of 1996)

7.5 The Committee observe that Rule 10(3) of the Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Services Rules, 1996, provides that if, during the period of probation or any extension thereof, as the case maybe. Government is of the opinion that an officer is not fit for permanent appointment, Government may discharge the officer or revert him to the post held by him prior to his appointment in

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the Service, as the case may be.

7.6 The Committee are not satisfied with the reply of the Ministry of Home Affairs that the temporary Government Servants are covered by the provisions contained in rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 which provides that the services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.

7.7. The Committee feel that reversion of probationer to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee, therefore, desire that the Ministry of Home Affairs should amend rule 10(3) of the above rules so as to provide for recording of reasons for such reversion or termination as the case may be and also communicating the reasons to the persons concerned. The Committee further desire that while communicating the reasons care should be taken that it does not in any way adversely affect his career.

8. 8.4

The Andaman Lakshadweep Harbour Works Group 'A' & 'B' Posts (Senior Scientist and Junior Scientist) Recruitment Rules, 1995 (GSR 462 of 1995)

8.4 The Committee observe that according to the Ministry of Surface Transport, the Andaman Lakshadweep Harbour Works Group 'A' & 'B' Posts (Senior Scientist and Junior Scientist) Recruitment Rules, 1995 were approved by the DOP&T and the UPSC in March, 1995 i.e. before the instructions were issued by DOP&T regarding prescribing a uniform period of probation for both promotees as well as direct recruits. The Ministry have since initiated the action to carry out the necessary amendments in the rules in consultation with the Department of Personnel and Training. The Committee desire that the Ministry should notify the

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		amendment rules at the earliest.
9. 9.3		<p><i>The Tea Board (Recruitment and Conditions of Services of Directors of Tea Promotion appointed by Government) Amendment Rules, 1995 (GSR 23-E of 1995)</i></p> <p>9.3 The Committee note from the clarifications given by the Ministry that the reasons for discharging or reverting an officer under rule 12(i) of the Tea Board (Recruitment and Conditions of Services of Directors of Tea Promotion Appointed by Government) Rules, are recorded in writing in the official records. The Committee are, however, not convinced by the justification given by the Ministry for not conveying such reasons to the concerned person. The Committee feel that the termination of the services of an officer appointed to the post by direct recruitment or reverting the officer appointed by promotion to the post held by him before such promotion is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice. The Committee therefore desire that the Ministry of Commerce should amend rule 12(i) of the above rules so as to provide for recording of reasons for such reversion or termination as the case may be and also communicating the reasons to the person concerned. The Committee further desire that while communicating the reasons care should be taken to see that the reasons so communicated do not in any way adversely affect his career.</p>
10. 10.5		<p><i>The Lady Hardinge Medical College and Smt. Sucheta Kriplani Hospital & Kalawati Saran Children Hospital New Delhi (Nursing Suprintendent) Recruitment Rules, 1995 (GSR 301 of 1995)</i></p> <p>10.5 The Committee note that, on being pointed out, the Ministry of Health and Family Welfare have agreed to issue the necessary amendment to the Lady Hardinge Medical College and Smt. Sucheta Kriplani Hospital and Kalawati Saran Children Hospital, New Delhi (Nursing Superintendent) Recruitment Rules, 1995 so as to prescribe a uniform period of probation</p>

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		<p>for both promotees as well direct recruits and the notification in that regard is being forwarded to the Ministry of Law and Justice for vetting. The Committee desire that the Ministry should notify the desired amendment rules at the earliest.</p>

MINUTES

APPENDIX II

(Vide Para 3 of the Introduction)

MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (ELEVENTH LOK SABHA) (1996-97)

The Committee met on Wednesday, 4 December, 1996 from 15.00 hours to 15.45 hours.

PRESENT

Shri Krishan Lal Sharma— *Chairman*

MEMBERS

2. Shri N. Dennis
3. Shri Vijay Kumar Khandelwal [Bwa]
4. Shri K.H. Muniyappa
5. Shri Balai Roy
6. Shri P.C. Thomas

SECRETARIAT

1. Shri P.D.T. Achary — *Director*
2. Shri Ram Autar Ram — *Deputy Secretary*
3. Shri B.D. Swan — *Assistant Director*

2. The Committee considered Memoranda nos. 10 to 14 as follows:

The Motor Vehicles (All India Permit for Tourist Transport Operators) Amendment Rules, 1995 (GSR 286-E of 1995) (Memorandum No. 10)

The Committee observed that in the Motor Vehicles (All India Permit for Tourist Transport Operators) Amendment Rules, 1995, Condition 6 of the Eligibility Condition for Recognition as Approved Tourist Transport Operator Conferred wide discretionary power upon the Central Government in the matter of recognizing any firm or withdrawing/withholding at any time, the recognition already granted without assigning any reasons and according to the Ministry such action can be taken in case of a complaint of serious nature where prestige of the country is involved or in the public interest.

3. The Committee felt that in order to put certain checks on the arbitrary use of the wide discretionary power so conferred on the competent authority, it should be made obligatory for the Central Government to record the reasons in writing in the case of refusing or withdrawing/withholding the recognition already granted to any Firm and

should not in any manner cause prejudice to the interest of any person or Firm and further to have an element of transparency, the reasons for taking such action by the Central Government against any such Firm may also be communicated to them. The Committee desired that the Ministry of Surface Transport should amend the rules accordingly.

The Central Water Engineering Group 'A' Service Rules, 1995 (GSR 486 of 1995) (Memorandum No.11)

4. In the aforesaid rules under rule 9(3), if during the period of probation or any extension thereof, as the case may be, the controlling authority is of the opinion that an officer is not fit for permanent appointment the controlling authority may discharge the officer or revert the officer to the post held by him prior to his appointment in the Service as the case may be. The rules did not provide for recording of reasons before such reversion or discharge.

5. The members expressed different views with regard to recording of reasons in writing and communicating thereof to the person concerned. They felt that recording of reasons and communicating thereof should not disable the probationer for future employment. Some members were of the opinion that if the Probationer due to his long illness could not complete probation period, his discharge or termination from service should also not in any way adversely affect the probationer.

6. The Committee were of the view that the rules should be more clear and specific on the subject and decided to recast the memorandum and bring before the Committee for its consideration at a later date.

The Ministry of Human Resource Development (Department of Education) Assistant Education Officer (Statistics), Assistant Director (Planning) and Deputy Director (Planning) Recruitment Rules, 1995. (GSR 6 of 1996) (Memorandum No. 12)

7. The Committee observed that in the above rules in the case of Assistant Director (Planning) the probation period for direct recruits was one year whereas it was two years for promotees. The Committee noted that on being pointed out, the Ministry of Human Resource Development have stated that the Department of Personnel & Training's instructions regarding uniform probation period for both promotees and direct recruits could not be incorporated inadvertently at the time of notifying the aforesaid recruitment rules and have taken up the matter with the Department of Personnel and Training and UPSC. The Committee desired that the Ministry should speed up the process and notify the amended rules at the earliest.

The Essential Oils Grading and Marking Rules, 1993 (GSR 259 of 1995) (Memorandum No. 13)

(A)

8. The Committee observed that the short title to the above rules bore the year as 1993 whereas the rules were published in the year 1995. As per the requirements of the Committee on Subordinate Legislation the year in the short title should conform to the year of publication. The Committee were not satisfied with the reply of the Ministry that since draft rule were sent to the press in the year 1993 the rules carry the year 1993 and that the Ministry have not issued any corrigendum to rectify the year. The Committee desired that the Ministry should issue the necessary corrigendum to reflect the correct year in the rules.

9. The Committee noted that in the aforesaid rules there was delay of 12 months in the notification of the final rules after availability of the draft rules to the public and obtaining the comments and suggestions thereof. The Committee did not find the reasons as stated by the Ministry justified. However, the Committee noted with satisfaction that the Ministry have issued specific directions to the Directorate of Marketing and Inspections to streamline their procedure and have assured to take all possible steps to avoid recurrence of such delays in future.

The National Service Scheme, Department of Youth Affairs and Sports, Ministry of Human Resource Development (Group A and B Posts) Recruitment Rules, 1995 (GSR 407 of 1995) (Memorandum No.14)

10. The Committee observed that in the above rules, for the post of Assistant Programme Adviser, the probation period for direct recruits was one year whereas it was two years for promotees and desired to know the rationale behind prescribing a longer probation period for promotees as compared with the direct recruits and for treating the candidates at two different footings in the matter of probation. However, the Committee noted that on being pointed out by them, the Ministry of Human Resource Development had stated that the aforesaid rules have been revised in consultation with the Union Public Service Commission and the rules amended accordingly. The Committee desired that the amended rules be notified in the Gazette of India at the earliest.

The Committee then decided to undertake study tour to Calcutta, Port Blair and Chennai from 6 to 11 Januray, 1997.

The Committee then adjourned.

**MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (ELEVENTH LOK SABHA)
(1996-97)**

The Committee met on Wednesday, 18 December, 1996 from 15.00 hours to 15.45 hours.

PRESENT

Shri Krishan Lal Sharma—Chairman

MEMBERS

2. Shri N. Dennis
3. Shri Bhupinder Singh Hooda
4. Shri Vijay Kumar Khandelwal
5. Shri V. Dhananjay Kumar
6. Shri K.H. Muniyappa

SECRETARIAT

- | | |
|-----------------------|-----------------------------|
| 1. Shri P.D.T. Achary | — <i>Director</i> |
| 2. Shri Ram Autar Ram | — <i>Deputy Secretary</i> |
| 3. Shri B.D. Swan | — <i>Assistant Director</i> |

2. The Committee then considered the following memoranda as under:—

The Indian Forest Service (pay) seventh amendment rules, 1995 (GSR 505 of 1995) (Memorandum No. 15)

3. The Committee observed that The Indian Forest Service (Pay) Seventh Amendment Rules, 1995 were given effect retrospectively w.e.f. 1.1.1996. As per the Explanatory Memorandum appended thereto, the retrospective effect was given to the rules in order to give the same benefit to the members of the Indian Forest Service as to the members of the Indian Administrative Service and the Indian Police Service whose pay rules were amended on 10.11.1989 and 28.12.1989 respectively and noted that the decision to extend the same benefit to the members of the Indian Forest Service was also taken in 1989. According to the Ministry the delay in sending their proposals for amendment in the aforesaid rules was on the part of the Ministry of Environment and Forests which is the Cadre Controlling Authority in respect of the Indian Forest Service.

4. The Committee were not convinced by the reply of the Ministry in the matter and felt that had the Ministry taken up the matter with the urgency it deserved, the delay could have been avoided as the matter was not a

complicated one. The Committee further desired that the Ministry of Personnel, Public Grievances and Pensions should evolve suitable procedural safeguards so as to curtail such enormous delays to the minimum in future by convening joint meetings with other Ministries concerned for the finalisation of any rules in cases where they are not able to sort out the matters in the due course of time.

The Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Services Rules, 1996 (GSR 81 of 1996) (Memorandum No.16)

5. The Committee observed that Rule 10(3) of the above rules provides that if, during the period of probation or any extension thereof, as the case may be, Government is of the opinion that an officer is not fit for permanent appointment, Government may discharge the officer or revert him to the post held by him prior to his appointment in the Service, as the case may be.

6. The Committee were not satisfied with the reply of the Ministry of Home Affairs that the temporary Government Servants are covered by the provisions contained in rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 which provides that the services of a temporary Government Servant shall be liable to termination at any time by a notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the Government Servant.

7. The Committee felt that reversion of probationer to a substantive post or discharge from service is a serious act and doing so without communicating the reasons therefor to the person concerned is against natural justice and therefor desired that the Ministry of Home Affairs should amend rule 10(3) of the above rules so as to provide for recording of reasons for such reversion or termination as the case may be and also communicate the reasons to the person concerned. The Committee further desired that while communicating the reasons, care should be taken to see that the reasons communicated do not in any way adversely affect his career.

The Andaman Lakshadweep Harbour Works Group "A" & "B" Posts (Senior Scientist and Junior Scientist (Recruitment Rules 1995 (GSR 462 of 1995) (Memorandum No. 17)

8. The Committee observed that in the above rules in case of Senior Scientist, the probation period for direct recruits was one year whereas it was two years for promotees. The Committee noted from the reply of the Ministry of Surface Transport that the Recruitment Rules, 1995 were approved by the DOP&T and the UPSC in March, 1995 before the

instructions issued by DOP&T regarding uniform period of probation for both promotees as well as direct recruits and the process for amending the recruitment rules has been initiated in consultation with the Department of Personnel & Training.

9. The Committee desired that the Ministry should amend the aforesaid recruitment rules prescribing the uniform period of probation for both promotees as well as direct recruits and notify the same in the Gazette of India.

The Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion appointed by Government) Amendment Rules, 1995 (GSR 23-E of 1995) (Memorandum No. 18)

10. The Committee observed that the Rules 12(1), as amended, did not provide for recording of reasons in writing by the appointing authority before terminating or reverting an officer to the post held by him before such promotion, in case an officer was not found fit for permanent appointment. It was, therefore, felt that before such termination or reversion, the officer concerned should be given an opportunity to explain/present his case before the appointing authority and the reasons for such reversion or termination from the service should be recorded in writing to obviate any arbitrary use of the conferred discretionary power.

11. The Committee got from the reply of the Ministry that they do not consider it necessary because if a probationer is not making satisfactory progress or is inadequate for the service is informed of his shortcomings well before the expiry of original probationary period so as to enable him to make special efforts to improve his performance. According to the Ministry this would give reasonable opportunity to the probationer to improve his performance and as such there are adequate safeguards against the arbitrary use of discretionary power.

12. The Committee were not convinced with the reply of the Ministry and desired that the Ministry of Commerce should amend rule 12(i) of the aforesaid rule so as to provide for recording of reasons in writing and communicating the same to the person concerned before discharge or reversion of an officer to his substantive post as the case may be. The Committee also desired that while communicating the reasons to the person concerned, care should be taken to see that the reasons communicated do not in any way adversely affect his career.

The Lady Hardinge Medical College and Shrimati Sucheta Kripalani Hospital and Kalawati Saran Children Hospital, New Delhi (Nursing Superintendent) Recruitment Rules, 1995 (GSR 301 of 1995) (Memorandum No. 19)

The Committee observed that in the aforesaid recruitments rules for the post of Nursing Superintendent, the probation period for direct recruits was only one year whereas it was two years for promotees. However, the

Committee noted that on being pointed out by them the Ministry of Health & Family Welfare have stated that they have no objection to issue the necessary amendment to the Lady Hardinge Medical College and Smt. Sucheta Kripalani Hospital and Kalawati Saran Children Hospital, New Delhi (Nursing Superintendent) Recruitment Rules, 1995 so as to prescribe a uniform period of probation for both promotees as well direct recruits and the notification in that regard is being forwarded to the Ministry of Law and Justice for vetting, and desired that the Ministry should notify the requisite amendment at the earliest.

The Committee then adjourned.

**MINUTES OF THE NINTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION
(ELEVENTH LOK SABHA)**

The Committee met on Wednesday, 5 March, 1997 from 15.00 to 15.30 hours.

PRESENT

Shri Krishan Lal Sharma — *Chairman*

MEMBERS

2. Shri V. Alagirisamy
3. Shri N. Dennis
4. Shri Bhupinder Singh Hooda
5. Shri Vijay Kumar Khandelwal
6. Shri V. Dhananjaya Kumar
7. Shri M. Baga Reddy
8. Shri Ram Kirpal Yadav

SECRETARIAT

1. Shri P.D.T. Achary — *Director*
2. Shri Ram Autar Ram — *Director*
3. Shri B.D. Swan — *Under Secretary*

2. The Committee considered and adopted their draft Third to Seventh Reports and decided to present them to the House on the 11th March, 1997.

3. The Committee thereafter decided to hold deliberations on the rules/regulations framed under the Citizenship Act, 1955, at their next sitting scheduled to be held on 13 March, 1997.

The Committee then adjourned.