

COMMITTEE ON SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)
(2011-2012)

TWENTY SIXTH REPORT

(PRESENTED ON 27.08.2012)

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LOK SABHA SECRETARIAT

NEW DELHI

August , 2012/Sravana, 1934 (Saka)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2011-2012)

- | | | |
|-----|-------------------------------|------------------------|
| 1. | Shri P. Karunakaran | <u>Chairman</u> |
| 2. | Shri Ghanshyam Anuragi | |
| 3. | Shri Praveen Singh Aron | |
| 4. | Shri Kalyan Banerjee | |
| 5. | Shri E.T. Mohammed Basheer | |
| 6. | Shri Ramen Deka | |
| 7. | Shri Mahesh Joshi | |
| 8. | Shri Virender Kashyap | |
| 9. | Shri Jitender Singh Malik | |
| 10. | Dr. Thokchom Meinya | |
| 11. | Ms. Mausam Noor | |
| 12. | Shri Gajendra Singh Rajukhedi | |
| 13. | Dr. Bhola Singh | |
| 14. | Shri Vijay Bahadur Singh | |
| 15. | Shri A.K.S. Vijayan | |

SECRETARIAT

- | | | | |
|----|-------------------------|---|-----------------|
| 1. | Shri A. Louis Martin | - | Joint Secretary |
| 2. | Shri S.C. Chaudhary | - | Director |
| 3. | Shri Sirinivasulu Gunda | - | Addl. Director |
| 4. | Shri Krishendra Kumar | - | Under Secretary |

INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 21.02.2012.

3. The Committee considered and adopted this Report at their sitting held on 26.07.2012.

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 Appendix-I of the Report.

5. Extracts of the Minutes of the Third sitting of the Committee (2011-12) held on 21.02.2012 and Minutes of the Seventh sitting of the Committee (2011-12) held on 26.07.2012 relevant to this Report are included in Appendix-II.

New Delhi;
August, 2012
Sravana, 1934 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

REPORT

I

Infirmity in the notifications issued by the Ministry of Home Affairs pertaining to the Sashastra Seema Bal Combatised Non-Gazetted Posts Recruitment Rules.

.....

The Ministry of Home Affairs published the following Recruitment Rules for various posts in Section 3(i), Part-II of the Gazette of India, Extraordinary:-

- (i) The Sashastra Seema Bal Combatised (General Duty) Group 'C' Posts Recruitment Rules, 2009 (GSR 844-E of 2009) on 25 November, 2009;
- (ii) The Sashastra Seema Bal Combatised, Sub-Inspector (General Duty) Group 'B' Non-Gazetted Posts Recruitment Rules, 2009 (GSR 845-E of 2009) on 25 November, 2009;
- (iii) The Sashastra Seema Bal Combatised, Inspector (General Duty) Group 'B' Non-Gazetted Posts, Recruitment Rules, 2009 (GSR 935-E of 2009) on 31 December, 2009; and
- (iv) The Sashastra Seema Bal Group 'B' Combatised (Non-Gazetted) Motor Transport and Mechanic Cadre Posts Recruitment Rules, 2010 (GSR 748-E of 2010) on 10 September, 2010.

1.2 These rules were scrutinized in pursuance of the guidelines laid down in this regard by the Department of Personnel & Training and frequent recommendations made by the Committee on Subordinate Legislation and it was found that the provision pertaining to 'ineligibility of aliens' stipulates that "No person who is not a citizen of India, shall except with the prior permission of the Central Government in writing shall be appointed under these rules".

1.3 The scrutiny of the Recruitment Rules of various Central Para Military Forces reveals that there is no uniformity in the provisions relating to eligibility or otherwise of the aliens for employment in these forces as shown below:

Rule 10 of **Central Reserve Police Force (CRPF)** Rules, 1955

Recruitment- A candidate for enlistment in the force mustbe (a) citizen of India, or (b) a person who has migrated from Pakistan with the intention of permanently settling in India, or (c) subject of a Nepal or of a Portuguese Possession in India and if he comes under a category (b) or (c) must be a person in whose favour a certificate of eligibility has been given by the Government of India.....”

Rule 8 of **Border Security Force (BSF)** Rules, 1969 and Rule 11 of **Indo Tibetan Border Police (ITBP)** Rules, 1994

“Ineligibility of aliens- No person who is not citizen of India shall, except with the consent of the Central Government signified in writing, be appointed, enrolled or employed in the Force:

Provided that nothing contained in this shall bar the appointment or employment of a subject of Nepal or Bhutan in the Force “

Rule 12 of **Sashastra Seema Bal (SSB)** Rules, 2009

“Ineligibility of aliens- No person who is not citizen of India shall, except with the consent of the Central Government signified in writing, be appointed, enrolled or employed in the Force.”

1.4 The Ministry of Home Affairs, in reply to a query as to the circumstances and conditions where a person who is not a citizen of India could be considered for appointment to the said posts with the prior approval of Central Government, while acknowledging the lack of uniformity in the recruitment rules of paramilitary forces with regard to employment of aliens in these forces, vide

their Office Memoranda Nos. A-12011/1/2010/Pers.III, dated 21.2.2011 and No. 4/3/SSB/CSC/07/SFS/1268/Pers.III dated 11.3.2011 *inter-alia* submitted as under:

“.... Rule 12 of the Sashastra Seema Bal Rules, 2009 notified in the Official Gazette vide GSR 560 (E) provides that ‘no person who is not a citizen of India shall, except with the consent of the Central Government signified in writing, be appointed, enrolled or employed in the Force’. Accordingly, a provision has been incorporated in the aforesaid Recruitment Rules.

As regards, the circumstances and conditions where a person who is not a citizen of India can be appointed to these posts, it is intimated that the matter was examined in consultation with Ministry of Law and it came to notice that the rules namely, Rule-8 of the Border Security Force Rules, 1969 and Rule-11 of the Indo-Tibetan Border Police Rules, 1994 had a proviso - Provided that nothing contained in this rule shall bar the appointment or employment of a subject of Nepal or Bhutan in the Force.

This proviso is missing in the SSB Rules, 2009. Further, Rule 10 of the Central Reserve Police Force Rules, 1955 provides that ‘a candidate for enlistment in the Force must conform to and must be (a) citizen of India or (b) a person who has migrated from Pakistan with the intention of permanently settling in India, or (c) a subject of Nepal or of a Portuguese possession in India, and if he comes under category (b) or (c) must be a person in whose favour a certificate of eligibility has been given by the Government of India.

Therefore, it has been decided to bring about uniformity in the policy on employment of persons other than citizen of India in the Central Police Forces, in consultation with Department of Personnel and Training, so that the above mentioned Recruitment Rules could be amended accordingly”.

1.5 It could be seen from above that Central Reserve Police Force Rules, 1955 *inter-alia* have a provision to recruit a person who has migrated from Pakistan with the intention of permanently settling in India and a subject of Nepal or of a Portuguese possession in India in whose favour a certificate of eligibility has been given by the Government of India. Similarly, Recruitment rules of other Para Military Forces such as Border Security Force and Indo Tibetan Border Police also have a provision for recruitment of persons who are not citizens of India. However, such provisions were found missing in the Sashastra Seema Bal Rules, 2009. As there was no uniformity in the

policy of employment of persons other than citizens of India in the Central Paramilitary Forces, the Ministry stated that the Rules would be amended in consultation with Department of Personnel and Training so as to bring about uniformity in the policy of employment of persons in the Central Police Forces.

1.6 The Ministry of Home Affairs in their subsequent OM No. A-12011/1/2010/Pers.III dated 10 February, 2012 stated *inter - alia* that the Rule 12 of Sashastra Seema Bal Rules, 2009 has been reviewed in this Ministry in consultation with DoPT and Ministry of Law and it has been decided to have a uniform policy for appointments in Central Paramilitary Forces by barring aliens except those from Nepal and Bhutan; and to amend rule 9 of the aforesaid RRs as under:-

“9 ineligibility of aliens – No person who is not a citizen of India shall, except with the prior permission of the Central Government in writing, be appointed under these rules;

Provided that nothing contained in this rule bar the appointment or employment of a subject of Nepal or Bhutan in the Force.

1.7 The Committee observe that Sashastra Seema Bal non-gazetted posts recruitment rules pertaining to ‘ineligibility of aliens’ do not define the term ‘aliens’. The rules also do not specify the circumstances and conditions under which a person who is not a citizen of India could be considered for appointment to the said post. Different yardsticks are being used regarding eligibility of ‘aliens’ for employment in different Central Paramilitary Forces. With the result an alien who is eligible for employment in one Central Paramilitary Force is not eligible for employment in another. For instance, a subject of Bhutan is not eligible for employment in CRPF but is eligible for employment in BSF and ITBP. Similarly, a subject of a Portuguese Possession in India is eligible for employment in CRPF but is not eligible for employment in BSF and ITBP. Since these Central Paramilitary Forces have been in existence for decades, the Ministry of Home

Affairs should have suo-moto looked into such inconsistencies and taken corrective action, if found necessary. The Committee regret to note that only after the Committee took up the matter, the Ministry of Home Affairs decided to have uniform policy on employment of persons other than citizens of India in the Central Paramilitary Forces in consultation with DoPT. The Committee desire that the issue should be looked into from all angles and the decision taken thereon be intimated to the Committee.

(Recommendation No. 1)

II

Infirmity in the National Civil Defence College, Nagpur, Group 'C' (Non-Gazetted) Recruitment Rules, 2010 (GSR 138 of 2010).

The National Civil Defence College, Nagpur, Group 'C' (Non-Gazetted) Recruitment Rules, 2010 (GSR 138 of 2010) were published in the Gazette of India, Part-II, Section 3(i) on 28 August, 2010. On scrutiny of the rules, it was found that in Column 13 of the schedule, the composition of the DPC has not been indicated and is simply mentioned as 'As per the rules' which is in deviation of Department of Personnel and Training's guidelines which prescribe that the composition should be well defined. The Ministry of Home Affairs were, therefore, requested to furnish their comments on the above infirmity.

2.2 The Ministry of Home Affairs *vide* their OM dated 2, 2011 furnished as under :

"The entry in the column 13 of the schedule of Group 'C' (Non-Gazetted) Recruitment Rules, 2010 (GSR 138 of 2010) was made "As per rules" with the understanding that the existing rules would be followed. The Ministry accepts the contention of the Committee on Subordinate Legislation that there was a deviation from the Department of Personnel & Training guidelines and have no objection to amend the said Recruitment Rules for incorporating following composition of Departmental Promotion Committee :-

- | | | | |
|-------|----------|---|---|
| (i) | Chairman | - | Deputy Director/Head of Office |
| (ii) | Member | - | Assistant Director |
| (iii) | Member | - | Administrative Officer |
| (iv) | Member | - | Officer of equivalent rank to Assistant Director of NCDC from any local Central Govt. Department" |

2.3 The Committee note that the Recruitment Rules (GSR 138 of 2010) for various Group 'C' posts in the National Civil Defence College, Nagpur, published by the Ministry of Home Affairs on 28.8.2010 do not contain the composition of the Departmental Promotion Committee (DPC) in Column 13 of the schedule. This is in disregard to the guidelines issued by the Department of Personnel and Training which has prescribed that the composition of DPC should be well defined. When the matter was brought to their notice, the Ministry of

Home Affairs have agreed to issue a corrigendum incorporating the composition of DPC in the relevant column. The committee are of the view that omission of such details shows casual approach of the Ministry in framing notifications. The Committee, therefore, recommend that the Ministry of Home Affairs should bring out the corrigendum as soon as possible and ensure that the officials entrusted with the task of rule making are fully conversant with DoPT guidelines and strictly follow them.

(Recommendation No. 2)

III

Infirmities in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009, (GSR 2-E of 2010).

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009, (GSR 2-E of 2010) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 1.1.2010. On the scrutiny of the above rules it was found that Rule 4(2) and Rule 5(4) provides that:-

Issue of disability certificate

X

X

X

Rule 4(2) - The certificate shall be issued as far as possible, within a week from the date of receipt of the application by the medical authority, but in any case not later than one month from such date.

Review of a decision regarding issue of, or refusal to issue a disability certificate

X

X

X

Rule 5(4) – An application for review shall, as far as possible, be disposed of within a fortnight from the date of its receipt, but in any case, not later than one month from such date.

3.2 The provision of the time limit of 7 days to one month from receipt of application for issue of disability certificate in Rule 4(2) and of a fortnight to one month from the date of application for review of a decision pertaining to issue of disability certificate in Rule 5(4) give a leeway to the Executive to delay the process to the maximum limit.

3.3 The Ministry of Social Justice and Empowerment were requested to give their comments as these Rules are not only prone to abuse but are also likely to make, over a period of time, the

provision of the minimum time limit redundant. The Ministry vide their OM dated 18.11.2010, submitted the following :-

“Rule 4(2) & Rule 5(4) – The provision of this Sub-Rule cannot be said to be vague. Its intention is that disability certificates should be issued in seven days as far as possible. However, there could be situation in which this may not be feasible due to bonafide reasons, e.g. in cases which involve detailed assessment and evaluation in hospitals situated at a place other than the place of the applicant’s residence. It is always incumbent on superior officers to minimize cases of harassment and undue delay and to take corrective and positive action, as appropriate”.

3.4 The Committee learn that the aforesaid rules were framed in pursuance of the Persons with Disabilities (Equal opportunities) Act, 1996 which seeks to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region by way of proactive Government Affirmative Action and provision of specific reliefs thereof to disabled persons. In this backdrop, the importance and significance of the ‘Disability Certificate’ which would be the *sine qua non* for any relief due to such disabled persons be appreciated. Accordingly, there should not be any scope for abuse of the provisions in the rules particularly for the time limit fixed for issue of such an important document, which have the effect of defeating the intention of the Act. The Ministry’s justification for a longer time limit for bonafide cases be sustained in exceptional cases, therefore, this reason does not appear to be sufficient to leave such a large scope for delay in the general provision of time limit in the rules itself. This would not be in consonance with the pious intention which the Parent Act seeks to achieve.

3.5 The Ministry should remove such lacunae in the general provision of time limit by way of specific provision in the rules to cover such bonafide cases, if found, absolutely necessary, so as to obviate scope of undue delay and harassment to the disabled persons. The provision in the rules should strengthen and complement the intention of the Act of giving equal opportunities, Protection of Rights and Full Participation of Disabled persons and as such no scope should be left in the provisions of rules for any abuse thereof which result in harassment of the Disabled persons.

3.6 The Committee observe that Rule 4(2) and Rule 5(4) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009 (GSR 2-E of 2010) provide for a flexible time limit ranging from a minimum of seven days to a maximum period of one month for issue of disability certificate by medical authority and from a fortnight to one month for review of decision by a medical authority specified for the purpose. The Committee are afraid that a tendency could develop to brush aside adherence to minimum prescribed time limit. The Committee observe that disability certificate is a pre-requisite which renders a person eligible to apply for benefits. Prolonged time taken by medical authority for issue of disability certificate is liable to deprive a disabled person of opportunities of applying for Education, Employment and various Schemes etc. reserved for them and especially provided for in the Act.

(Recommendation No. 3)

3.7 The Committee are of the view that reasons advanced by the Ministry of Social Justice & Empowerment for provision of the maximum time limit to cover bonafide cases may be sustained in exceptional cases. However, the logic can not be extended to all cases. The Committee, therefore, recommend that the Ministry should address this issue by stipulating in the rule that the reasons should be conveyed to the applicant in writing in such cases where longer time than the minimum prescribed time has been taken by the medical authority in issue of disability certificate.

(Recommendation No. 4)

New Delhi;
August, 2012
Sravana, 1934 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE TWENTY SIXTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1	1.7	<p>Infirmity in the notifications issued by the Ministry of Home Affairs pertaining to the Sashastra Seema Bal Combatised Non-Gazetted Posts Recruitment Rules.</p> <p>The Committee observe that Sashastra Seema Bal non-gazetted posts recruitment rules pertaining to 'ineligibility of aliens' do not define the term 'aliens'. The rules also do not specify the circumstances and conditions under which a person who is not a citizen of India could be considered for appointment to the said post. Different yardsticks are being used regarding eligibility of 'aliens' for employment in different Central Paramilitary Forces. With the result an alien who is eligible for employment in one Central Paramilitary Force is not eligible for employment in another. For instance, a subject of Bhutan is not eligible for employment in CRPF but is eligible for employment in BSF and ITBP. Similarly, a subject of a Portuguese Possession in India is eligible for employment in CRPF but is not eligible for employment in BSF and ITBP. Since these Central Paramilitary Forces have been in existence for decades, the Ministry of Home Affairs should have suo-moto looked into such inconsistencies and taken corrective action, if found necessary. The Committee regret to note that only after the Committee took up the matter, the Ministry of Home Affairs decided to have uniform policy on employment of persons other than citizens of India in the Central Paramilitary Forces in consultation with DoPT. The Committee desire that the issue should be looked into from all</p>

		angles and the decision taken thereon be intimated to the Committee.
	2.3	<p>Infirmity in the National Civil Defence College, Nagpur, Group (Non-Gazetted) Recruitment Rules, 2010 (GSR 138 of 2010).</p> <p>The Committee note that the Recruitment Rules (GSR 138 of 2010) for various Group 'C' posts in the National Civil Defence College, Nagpur, published by the Ministry of Home Affairs on 28.8.2010 do not contain the composition of the Departmental Promotion Committee (DPC) in Column 13 of the schedule. This is in disregard to the guidelines issued by the Department of Personnel and Training which has prescribed that the composition of DPC should be well defined. When the matter was brought to their notice, the Ministry of Home Affairs have agreed to issue a corrigendum incorporating the composition of DPC in the relevant column. The committee are of the view that omission of such details shows casual approach of the Ministry in framing notifications. The Committee, therefore, recommend that the Ministry of Home Affairs should bring out the corrigendum as soon as possible and ensure that the officials entrusted with the task of rule making are fully conversant with DoPT guidelines and strictly follow them</p>
3	3.6	<p>Infirmities in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009, (GSR 2-E of 2010).</p> <p>The Committee observe that Rule 4(2) and Rule 5(4) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009 (GSR 2-E of 2010) provide for a flexible time limit ranging from a minimum of seven days to a maximum period of one month for issue of disability certificate by medical authority and from a fortnight to one month for review of decision by a medical authority specified for the purpose. The Committee are afraid that a tendency could develop to brush aside adherence to minimum prescribed time limit. The Committee observe that disability certificate is a pre-requisite which renders a person eligible to apply for benefits. Prolonged time taken by medical</p>

	<p>3.7</p>	<p>authority for issue of disability certificate is liable to deprive a disabled person of opportunities of applying for Education, Employment and various Schemes etc. reserved for them and especially provided for in the Act.</p> <p>The Committee are of the view that reasons advanced by the Ministry of Social Justice & Empowerment for provision of the maximum time limit to cover bonafide cases may be sustained in exceptional cases. However, the logic can not be extended to all cases . The Committee , therefore, recommend that the Ministry should address this issue by stipulating in the rule that the reasons should be conveyed to the applicant in writing in such cases where longer time than the minimum prescribed time has been taken by the medical authority in issue of disability certificate.</p>
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APPENDIX -II

(Vide Para 5 of the Introduction of the Report)

EXTRACTS FROM MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)

The Committee sat on Tuesday, the 21st February, 2012 from 1430 to 1515 hours in Chairman's Room No. '143', Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Ramen Deka
3. Shri Mahesh Joshi
4. Dr. Bhola Singh
5. Shri Vijay Bahadur Singh

SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Shri Srinivasulu Gunda - Additional Director
4. Shri Krishendra Kumar - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2011-12).

3 XX XX XX

4. The Committee, thereafter, considered the following memoranda:

- (i) **Memorandum No. 33** – regarding Infirmary in notifications made by the Ministry of Home Affairs pertaining to the Sashastra Seema Bal Combatised Non-Gazetted Posts Recruitment Rules, 2009 and 2010.
- (ii) **Memorandum No. 34** – regarding Infirmary in the Naitonal Civil Defence College, Nagpur, Group 'C' (Non-Gazetted) Recruitment Rules, 2010.
- (iii) **Memorandum No. 35** – regarding Infirmities in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009.

5. After deliberations, the Committee decided to incorporate the points raised in Memoranda Nos. 33 to 35 in their Report slated to be prepared in this regard.

The Committee then adjourned.

****Omitted portion of the Minutes are not relevant to this Report**

EXTRACTS FROM MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)

The Seventh sitting of the Committee held on Thursday, 26 July, 2012 from 1500 to 1540 hours in Chairman's Chamber, Room No. 143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Ghanshyam Anuragi
3. Shri E.T. Mohammed Basheer
4. Shri Mahesh Joshi
5. Shri Virender Kashyap
6. Dr. Thokchom Meinya
7. Shri Vijay Bahadur Singh

SECRETARIAT

- | | | | |
|----|------------------------|---|---------------------|
| 1. | Shri A. Louis Martin | - | Joint Secretary |
| 2. | Shri S.C. Chaudhary | - | Director |
| 3. | Shri Srinivasulu Gunda | - | Additional Director |
| 4. | Shri Krishendra Kumar | - | Under Secretary |

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2011-12).

3. The Committee, considered the draft 'Twenty Sixth Report' and adopted the same without any modification. The Committee authorized the Chairman to present the same to the House.

4. XX XX XX XX

5. XX XX XX XX

6. XX XX XX XX

The Committee then adjourned.

**Omitted portion of the Minutes are not relevant to this Report

