

**COMMITTEE ON SUBORDINATE LEGISLATION**  
**(FIFTEENTH LOK SABHA)**  
**(2012-2013)**

**THIRTY SECOND REPORT**

**(PRESENTED ON 2.5.2013)**

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**LOK SABHA SECRETARIAT**

**NEW DELHI**

**22 April, 2013 / 02 Vaisakha, 1935 (Saka)**

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**  
**(2012-2013)**

1. Shri P. Karunakaran Chairman
2. Shri Praveen Singh Aron
3. Shri Ramen Deka
4. Shri K. Jayaprakash Hegde
5. Dr. Mahesh Joshi
6. Shri Virender Kashyap
7. Dr. Ajay Kumar
8. Shri Narahari Mahto
9. Dr. Thokchom Meinya
10. Shri Gajendra Singh Rajukhedi
11. Dr. Bhola Singh
12. Shri R. Thamaraiselvan
13. Shri Manohar Tirkey
14. Shri Dharmendra Yadav
15. Vacant

**SECRETARIAT**

1. Shri A. Louis Martin - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. 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 Thirty Second Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 30.5.2012.

3. The Committee considered and adopted this Report at their sitting held on 9.4.2013.

4. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report.

5. Extracts of the Minutes of the Sixth sitting of the Committee (2011-12) held on 30.05.2012 and Minutes of the Sixth sitting of the Committee (2012-13) held on 9.4.2013 relevant to this Report are included in Appendix-I.

**New Delhi;  
22 April, 2013**  
**02 Vaisakha, 1935 (Saka)**

**P. KARUNAKARAN**  
**Chairman,**  
***Committee on Subordinate Legislation***

## REPORT

I

**Infirmities in the National Savings Institute [Director, Joint Director, Regional Director (Senior) Regional Director (Junior), Deputy Director and Asstt. Director] Recruitment Rules, 2010 (GSR 851- E of 2010).**

.....

The National Savings Institute [(Director, Joint Director, Regional Director (Senior) Regional Director (Junior), Deputy Director and Asstt. Director] Recruitment Rules, 2010 (GSR 851- E of 2010) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 21.10.2010. On the scrutiny of the aforesaid Recruitment Rules, the infirmities observed as under were forwarded to the Ministry of Finance (Department of Economic Affairs) to furnish their clarification:-

- (i) The Recruitment Rules (RRs) were delayed in printing by 20 days. The Extraordinary Gazette has to be published on the same day on which it is sent for publication.
- (ii) Against Post No. 6, relating to Asstt. Director, under Col.10, the probation period indicates 'Two years' for direct recruits and one year for promotees. It should also be 'two years' for promotees so as to make it non-discriminatory.
- (iii) In the saving clause, the provision for 'Ex-Servicemen' is missing which is in deviation of the provision in the DOPT format.

1.2 The Ministry of Finance (Department of Economic Affairs) vide their OM dated 28 April, 2011 stated as under:-

- “(i) The RRs were sent to GOI Press for publication on 29.9.2010. GOI Press was requested to supply 50 copies of printed version. However, GOI Press, vide their letter dated 6.10.2010 (received in the Ministry on 15.10.2010) requested to send the requisition for 100 copies as the Press does not supply less than 100 copies. Accordingly requisition for 100 copies of printed version was sent to the press vide letter dated 19.10.2010 and therefore publication of RRs was delayed by 20 days.

- (ii) Necessary amendment of Recruitment in respect of the post of Assistant Director is being processed to revise. Uniform two years probation period will be mentioned for direct recruits as well as promotees for making it non-discriminatory.
- (iii) In the Savings clause, the provision for Ex-servicemen will be inserted as per DOPT's revised format."

1.3 The lacunae observed at para 1.1. above in the aforesaid recruitment rules are in deviation of not only the extant Department of Personnel and Training's Format on framing of Recruitment Rules but also the Committee's recommendation, which appeared to indicate negligence in framing Recruitment Rules by the Ministry of Finance. For instance, the omission of the provision for Ex-Servicemen in the Savings Clause of the Rules and non-inclusion of uniform period of probation for direct recruits and promotees could have been avoided in order to make them non-discriminatory.

**1.4 The Committee note that there are lacunae in the National Savings Institute [(Director, Joint Director, Regional Director (Senior) Regional Director (Junior), Deputy Director and Asstt. Director] Recruitment Rules, 2010 (GSR 851- E of 2010). These include omission of the category of 'Ex-Servicemen' in the Saving Clause and disparity in probation period for direct recruits and promotees. The Committee, however, observe that on being pointed out, the Ministry of Finance have proposed to take steps to rectify these infirmities in the said Recruitment Rules. The Committee hope that the Ministry will be more vigilant to prevent recurrence of such avoidable errors in future. The Committee desire that the requisite amendments to the Rules be carried out at the earliest, as assured by the Ministry and they be apprised of the action taken in this regard.**

**1.5 The extraordinary gazette is meant for publication of urgent orders such as sensitive notifications or statutory orders of utmost importance and those involving**

financial implication and as such, should be printed on the same day on which it is sent for publication. In the instant case, the matter published relates to Recruitment Rules which do not appear to be so 'urgent' or 'sensitive' in nature as to warrant their publication in the Extraordinary Gazette. It is not clear as to why such routine matter has been certified as 'urgent' for publication in the extraordinary gazette. If matters which are not of urgent nature are certified by the Department as 'urgent' and sent for publication in the Extraordinary Gazette, the matters which actually deserve urgency may not only be delayed but the importance with which Extraordinary Gazettes are treated may also get diluted. The Committee expect the Ministry of Finance to keep this in mind before sending any thing for publication in the extraordinary Gazette, in future.

1.6 The Committee also note that the aforesaid rules were sent for publication in the Extraordinary Gazette on 29 September, 2010 but were finally published on 21 October, 2010 after a gap of 20 days. The delay in publication is due to the time taken in settling the number of copies to be printed, as the Ministry of Finance were not aware of the Govt. of India Press's requirement regarding the minimum number of copies to be printed. This reflects very poorly on the Ministry of Finance. The Committee urge the Ministry of Finance to sensitise their staff to exercise care and urgency in handling such matters and ensure that no delay occurs in future.



## II

### **Infirmities in the notifications issued by the Ministry of Shipping pertaining to the Merchant Shipping Rules (GSR 13-E, 14-E & 15-E of 2010).**

2.1 The Ministry of Shipping published the following Rules in Gazette of India, Extraordinary, Part-II, Section 3(i) dated 7.1.2010:-

- (i) The Merchant Shipping (Prevention of Pollution by Sewage from Ships) Rules, 2010 (GSR 13-E of 2010).
- (ii) The Merchant Shipping (Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Rules, 2010 (GSR 14-E of 2010).
- (iii) The Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Rules, 2010 (GSR 15-E of 2010).

2.2 On scrutiny of the aforesaid Rules, the infirmities noticed as under were referred to the Ministry of Shipping for clarification:-

- (a) The rule 4(5) and rule 4(9) of Merchant Shipping (Prevention of Pollution by Sewage from Ships) Rules, 2010 read as under :-

“4(5)When the surveyor or, as the case may be, the authorised person determines that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate or is such that, the ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment, such surveyor or authorised person shall immediately ensure that corrective action is taken and shall also, in due course, report the same to the Central Government :

Provided that where such corrective action is not taken, the certificate shall be withdrawn and the Central Government shall be reported of it immediately :

Provided further that if the ship is in a port of another State Party, the appropriate authorities of that Port State shall be reported immediately :

Provided also that where the surveyor or the authorised person has reported to the appropriate authorities of the Port State, the Government of that

Port State shall give such surveyor or authorised person necessary assistance to carry out their obligations under these rules and shall ensure that such ship shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the nearest appropriate repair yard available, without presenting any unreasonable threat of harm to the marine environment.

4(9) Whenever an accident occurs to a ship or a defect is discovered which substantially affects the integrity of the ship or the efficiency or completeness of its equipment as required by these rules, the master or owner of the ship shall report at the earliest opportunity to the Central Government, who shall cause investigations to be initiated by the surveyor or the authorised person to determine whether a survey as required by sub-rule (1) is necessary:

Provided that if the ship is in the port of another State Party, the master or owner shall also report immediately to the appropriate authorities of that Port State and the surveyor or the authorised person shall also ascertain that such report has been made”.

The words ‘unreasonable threat’ used in rule 4(5) and in the third proviso to Rule 4(5) are not specific. Similarly the words ‘earliest opportunity’ in rule 4(9) are not specific.

- (b) The rule 5(4) of the Merchant Shipping (Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Rules, 2010 read as under :-

“Packages containing small quantities of harmful substances which are exempted under the IMDG Code shall also be exempted from marking and labelling under the provisions of sub-rules (1) to (3)”

In Rule 5(4), exemption from marking and labelling has been provided to the packages containing small quantity of harmful substance under the heading “Marking and Labelling”. However, the criteria adopted for exempting the packages from marking and labelling has not been specified.

- (c) The rule 8(4) & 8(6) of Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Rules, 2010 read as under :-

“8(4) When the surveyor or the authorised person determines that the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate or is such that, the ship is not fit to proceed to sea

without presenting an unreasonable threat of harm to the marine environment, such surveyor or authorised person shall immediately ensure that corrective action is taken and shall also, in due course, notify the Central Government:

Provided that if such corrective action is not taken, the Certificate shall be withdrawn and the Central Government shall be notified immediately:

Provided further that if the ship is in a port of another State Party, the appropriate authorities of that Port State shall also be notified immediately:

Provided also that when any officer of the Central Government or surveyor or the authorised person has notified the appropriate authorities of the port State, the Government of that port State shall give such officer, surveyor or authorised person necessary assistance to carry out their obligations under these rules and shall take such steps as to ensure that such ship shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the nearest appropriate repair yard available, without presenting any unreasonable threat of harm to the marine environment.

8(6) The condition of the ship and its equipment shall be maintained to conform to the provisions of the Convention to ensure that the ship shall remain, in all respects, fit to proceed to sea without presenting any unreasonable threat of harm to the marine environment”.

The words ‘unreasonable threat’ used in rule 8(4) & 8(6) are not specific.

2.3 The Ministry of Shipping vide their OM dated 10 February, 2010 have furnished the following reply:

- “(a) (i) With respect to the words ‘unreasonable threat’ in rule 4(5), it may be noted that in order to comply with the rules, a ship is required to be provided with a sewage treatment plant or comminuted and disinfected plant and or a sewage holding tank. A surveyor undertakes verification of the system and its arrangement provided for and ascertains the compliance with the rule requirements before issuance of sewage pollution prevention certificate. ‘Unreasonable threat’ in rule 4(5) pertains to non-compliance with respect to the prescribed equipment and arrangement for treatment of sewage which in the event of release, may cause harm to the environment that is irreversible in nature.

- (ii) With respect to “unreasonable threat” under the third proviso of rule 4(5), it may be noted that “when a surveyor or the authorized person observes any deficiencies with respect to the operational requirements under this rule, he uses his professional judgment and guidelines specified by Port State Control (PSC) memorandum to prevent such ships from sailing from the port that may cause substantial damage to the environment that is irreversible in nature.
- (iii) Provision in the Merchant Shipping Act, 1958: The Section 350 of Merchant shipping Act prescribes reporting of accidents. The ship-owner or Master of a ship has obligation to report any accident to ship including alteration to machineries affecting the efficiency to the Central Government or the nearest Principal Officer within 24 hours after the happening of the accident or damage or as soon thereafter as possible. In view of this provision under section 350 of the Merchant Shipping Act an “earliest opportunity” is inserted in rule 4(9).

(b). Sub-rule (4) of rule 5 with respect to (small quantity of harmful substances) the “Exemption to packages from “Marking and Labelling” containing small quantities of harmful substances are granted under the relevant provision of Merchant Shipping Act and M.S (carriage of Cargo) Rules 1995. This exemption is granted based on demonstration of measures by the shipper that are effective and safe and as required by the International Maritime Dangerous Goods Code (IMDG). These measures are size, construction and equipment of the ship as well as packing and inherent nature of the substances specified in rule-8 of these rules.

(c). With respect to ‘unreasonable threat’ in rule 8(4), it may be noted that “in order to comply with the rules, a ship is required to be in compliance with International Bulk Chemical Code or the Bulk Chemical code, as applicable. A surveyor undertakes verification of the equipment to verify compliance of the rules. ‘Unreasonable threat’ in rule 8(4) pertains to non-compliance with respect to the prescribed equipment and arrangement as provided in International Bulk Chemical Code or the Bulk Chemical Code, as applicable, which may cause harm to the environment that is irreversible in nature.”

2.4 The foregoing reply of the Ministry of Shipping reveals that the word ‘Unreasonable threat’ has been used in the rules to prevent ships from sailing from the port that may cause

harm to the environment that is irreversible in nature in case surveyor on undertaking verification of the equipment/system finds that the ship:

- (i) does not comply with respect to the prescribed equipment and arrangement for treatment of sewage;
- (ii) has deficiencies with respect to the operational requirement; and
- (iii) does not comply with respect to the prescribed equipment and arrangement as provided in International Bulk Chemical Code

2.5 Since the rule clearly specifies the circumstances under which ships should not be permitted to sail in the sea to prevent damage/harm to the environment that is irreversible in nature, the use of word 'unreasonable' appears to be redundant and may give discretion to interpret the rule differently by different persons.

2.6 In their explanation to the use of words 'earliest opportunity' the Ministry have informed that ship owner or Master of ship in accordance with Section 350 of the Merchant Shipping Act, 1958 have obligation to report any accident to ship including alteration to machineries affecting the efficiency to the Central Government or the nearest Principal Officer within 24 hours after the happening of the accident or damage or as soon thereafter as possible. The use of words 'earliest opportunity' in the Rules seems to disregard the time limit given in the Act.

2.7 The Ministry of Shipping have submitted with reference to exemption granted for packages from marking and labelling in Rule 5(4) of the Merchant Shipping (Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Rules, 2010 that the exemption granted is based on the International Maritime Dangerous Goods Code which is internationally accepted.

**2.8 The Committee find that the word 'unreasonable' has been used at different places in the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Rules,**

2010 and in the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Rules, 2010. The word 'unreasonable' is vague and ambiguous and could be interpreted differently by different persons. The Ministry of Shipping have clarified that 'unreasonable threat' pertains to non-compliance with respect to the prescribed equipment and arrangement for treatment of sewage and arrangement as provided in International Bulk Chemical Code. The Ministry of Shipping have also stated that when the surveyor or the authorised person observes any deficiencies with respect to operational requirements under the rules, he uses his professional judgment and specified guidelines. The Committee feel that the clarification could mean that only cases of 'unreasonable threat' is covered by the rules and not the cases of 'reasonable threat'. This perhaps is not the intent. The Committee, therefore, are of the view that if the word 'unreasonable' is removed from the rules under reference, there will be clarity and no room for interpretation, which will pave way for certainty in taking action. The Committee hope that necessary action will be taken in this regard to make rules specific and unambiguous.

2.9 The Committee note that under Section 350 of the Merchant Shipping Act, 1958, ship owners or master of ship has obligation to report any accident to ship including alteration to machineries affecting the efficiency to the Central Government or the nearest Principal Officer within 24 hrs after the happening of the accident or damage or as soon as thereafter possible. However, Rule 4(9) of Merchant Shipping (Prevention of Pollution by Sewage from Ships) Rules, 2010 made under the aforesaid Act merely mentions about reporting the accident 'at the earliest opportunity' disregarding the time limit of 24 hrs expressly prescribed in the Merchant Shipping Act. The Committee would like to point out that the rule has the effect of undermining the substantial provision of the main Act. The Committee, therefore, urge the Ministry of Shipping to suitably amend the relevant rule to incorporate the time limit prescribed in the Act.

### III

#### **Infirmities in the Employees' Provident Funds (Amendment) Scheme, 2010 (GSR 148 of 2010).**

The Employees' Provident Funds (Amendment) Scheme, 2010 (GSR 148 of 2010) was published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 11.9.2010. Para 26 B of the Scheme read as follows :-

“26 B. Resolution of doubts - If any question arises as to whether an International Worker is entitled or required to become or continue as member, or as to the date from which he is entitled or required to become a member, the decision thereon of the Regional Commissioner shall be final :

Provided that no decision shall be given unless both the employer and the International Worker have been given as opportunity of being heard”.

3.2 On scrutiny it was observed that the words “shall be final” used by the Ministry of Labour and Employment in Para 26 B gives an impression that jurisdiction of courts of law is being ousted. The Committee have repeatedly recommended that the language used in the rules should not give an impression that the jurisdiction of courts of law is being ousted. The Ministry of Labour and Employment were requested to furnish their comments in this regard.

3.3 The Ministry of Labour and Employment vide their OM dated 2 May, 2011 in their reply stated as under:-

“(i) vide GSR 148 dated 3.9.2010 special provisions for International Workers were formulated in consultation, with Legislative Department, Ministry of Law and Justice in the Employees' Provident Funds Scheme, 1952 under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 on the basis of existing legislation of the Scheme. Para 26-B of the Employees' Provident Fund Scheme, 1952 is reproduced below:-

'26-B: Resolution of doubts- if any question arises as whether an employee is entitled or required to become or continue as member or as regards the date from which he is so entitled or required to become a member, the decision thereon of the Regional Commissioner shall be final:

Provided that no decision shall be given unless both the employer and the employee have been heard'

(ii) In this connection, it is submitted that the relevant provision was made within the frame-work of the existing legislation to confer power on the Regional Commissioner to resolve any doubt regarding the membership of an employee and the same provision has been extended in respect of an International Worker by the amendment notified vide GSR 148 dated 3 September, 2010 in the Scheme. This is merely with the intention of defining the decision making authority for this purpose, and does not purport to oust the jurisdiction of Courts of Law."

3.4 As per the reply of the Ministry, special provisions for international workers have been formulated in consultation with the Legislative Department, Ministry of Law and Justice on the basis of the Employees' Provident Fund Scheme. The Ministry in justification for the usage of words have also stated that the amendment is merely with the intention of defining the decision making authority for this purpose, and do not purport to oust the jurisdiction of Courts of Law.

**3.5 The Committee note that the words 'shall be final' used in para 26B of the Employees' Provident Funds (Amendment) Scheme, 2010 gives an impression that the jurisdiction of courts of law is being ousted. The Ministry of Labour and Employment have contended that the amendment has been notified with the intention of defining the jurisdiction of the decision making authority. The Committee have no objection in defining the jurisdiction of the decision making authority. But the use of words 'shall be final' in this regard does seem to oust the jurisdiction of the courts in the matter. The Committee have been repeatedly emphasising that the use of words which appears to oust the jurisdiction of courts should be avoided. The Committee, therefore, urge the Ministry of Labour and Employment to make suitable amendment in this regard.**



3.6 The Committee note that the special provisions for international workers in which the aforesaid words have been used were formulated in consultation with the Legislative Department of Ministry of Law and Justice. It is regrettable that inspite of the Committee deprecating usage of such words in their various reports, the Ministry of Law and Justice continue to overlook this aspect while vetting the rules/orders. The Committee stress that Ministry of Law and Justice should ensure that use of such words is stopped forthwith. The Committee would also recommend the Ministry of Law and Justice to issue necessary instructions to all concerned in this regard.

New Delhi;  
22 April, 2013  
02 Vaisakha, 1935 (Saka)

P. KARUNAKARAN  
Chairman,  
*Committee on Subordinate Legislation*

## **APPENDIX - I**

**(Vide Para 5 of the Introduction of the Report)**

### **MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2011-2012)**

—

The Sixth sitting of the Committee held on Wednesday, 30 May, 2012 from 1430 to 1530 hours in Committee Room 'C', Parliament House Annexe, New Delhi.

#### **PRESENT**

1. Shri P. Karunakaran Chairman

#### **MEMBERS**

2. Shri Kalyan Banerjee
3. Shri Ramen Deka
4. Shri Mahesh Joshi
5. Shri Virender Kashyap
6. Dr. Thokchom Meinya
7. Dr. Bhola Singh
8. Shri Vijay Bahadur Singh

#### **SECRETARIAT**

1. Shri A. Louis Martin - Joint Secretary
2. 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, then, considered the following memoranda:

- (i) Memorandum No. 39 – regarding Infirmities in the National Savings Institute [Director, Joint Director, Regional Director (Senior) Regional Director (Junior), Deputy Director and Assistant Director] Recruitment Rules, 2010 (GSR 851-E of 2010).
- (ii) Memorandum No. 40 – regarding the Merchant Shipping Rules notified by Ministry of Shipping (GSR 13-E to GSR 15-E of 2010).
- (iii) Memorandum No. 41 – regarding the Employees' Provident Funds (Amendment) Scheme, 2010 (GSR 148 of 2010).

4. During the consideration of Memorandum No. 39, a point was raised as to whether it is appropriate to examine the recruitment rules with reference to executive guidelines. It was felt that it was not inappropriate to display the inclusion of a member from SC/ST category in the composition of the Departmental Promotion Committee. The Committee desired that the matter may be looked into afresh.

5. xx xx xx

6. The Committee considered the Memorandum Nos. 40 and 41 and decided to suitably incorporate the points raised therein in the Report to be presented to the House.

The Committee then adjourned.

## MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2012-2013)

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The Sixth sitting of the Committee was held on Tuesday, the 9 April, 2013 from 1400 to 1430 hours in Chairman's Room No. 143, Parliament House, New Delhi.

### PRESENT

1. Shri P. Karunakaran Chairman

### MEMBERS

2. Shri Ramen Deka
3. Shri K. Jayaprakash Hegde
4. Dr. Mahesh Joshi
5. Shri Virender Kashyap
6. Dr. Ajay Kumar
7. Shri Narahari Mahto
8. Dr. Thokchom Meinya
9. Shri Gajendra Singh Rajukhedi
10. Shri Dharmendra Yadav

### SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Shri Krishendra Kumar - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2012-13).

3. The Committee, thereafter, considered and adopted the draft 32<sup>nd</sup> Report without any modification. The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.

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