

COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

(2012-2013)

THIRTY THIRD REPORT

(PRESENTED ON 8.5.2013)

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LOK SABHA SECRETARIAT

NEW DELHI

May 2013 / Vaisakha , 1935 (Saka)

COSL No. 42

PRICE: Rs. 25.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(2012-2013)

1. **Shri P. Karunakaran** **Chairman**

Members

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 Third Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 26.7.2012 and 9.11.2012.

3. The Committee considered and adopted this Report at their sitting held on 2.5.2013.

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 from the Minutes of the Seventh Sitting of the Committee (2011-12) held on 26.7.2012 and Second & Seventh Sitting of the Committee (2012-13) held on 9.11.2012 and 2.5.2013 respectively, relevant to this Report are included in Appendix.

New Delhi;
07 May 2013
17 Vaisakha, 1935 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

REPORT

I

The Department of Space (Principal Private Secretary) Recruitment Rules, 2009 (GSR 180-E of 2009).

The Department of Space (Principal Private Secretary) Recruitment Rules, 2009 (GSR 180 E) were published in the Gazette of India, Extraordinary Part – II Section 3(i) dated 19.3.2009. On scrutiny of the above rules, it was noticed that the date of notification of the aforesaid rules was 23 February, 2009, whereas, the same were published on 19 March, 2009 i.e. after a delay of 24 days. Since the rules were published in the Extraordinary Gazette, as such they should have been published on the same day. The Department of Space were requested to furnish their comments in this regard.

1.2 The Department of Space vide their O.M. dated 4th February, 2010 furnished the following reply:-

“..... As regards delay in publishing the Department of Space(Principal Private Secretary) Recruitment Rules, 2009, it is to inform that the Amendment to the Recruitment Rules dated 23.2.2009 addressed to the General Manager, Govt. of India Press, Faridabad was sent to our Officer on Special Duty, Department of Space, Branch Secretariat (BS), New Delhi on 09.3.2009 for publication.

GOI Press, Faridabad vide their communication dated 10.3.2009 (received in the department on 13.3.2009) returned the RR with an advise for onward transmission to the Manager, Govt. of India Press, Ring Road, New Delhi. Accordingly the Recruitment Rules was sent to them through OSD, DOS Branch Secretariat on 16.3.2009 by post for arranging publication. The same was received by DOS, BS,

New Delhi on 18.3.2009 and was published in the Gazette of India on the next day. Hence there was no delay in publishing the notification”.

1.3 The Committee note that the Department of Space (Principal Private Secretary) Recruitment Rules, 2009 dated 23 February, 2009 were published in the Gazette of India, Extraordinary on 19 March, 2009 after a delay of 24 days. Strangely, the Department of Space has held the view that there was no delay in publishing the notification and has cited the date(s) of transmission of the notification to its Branch Secretariat, GOI Press, Faridabad and GOI Press, Ring Road, New Delhi. Matters of urgent importance only need to be published in the Extraordinary Gazette and should be published on the same day of the date of the notification. In the case under reference, the matter does not appear to be of extraordinary character and it is not clear why the Deptt. of Space treated the notification of recruitment rules as ‘extraordinary’. Having treated the matter as ‘extraordinary’, what one would have expected of the Deptt. of Space is to get the notification published on the same day. Instead, the notification was handled very casually and was sent to the Branch Secretariat first and then to Faridabad Press instead of Ring Road Press. In the process, there was a delay of 24 days which is on account of lapses on the part of the Deptt. of Space. The Committee urge the Deptt. of Space to have a fresh look at the procedures of handling of notifications and streamline the same, if necessary, to ensure that there is no recurrence of the mishandling of notifications.

II

Infirmities in the Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion appointed by Government) Amendment Rules, 2007 (GSR 443-E of 2009).

The Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion appointed by Government) Amendment Rules, 2007 (GSR 443-E of 2009) were published in Gazette of India, Extraordinary, Part-II, Section 3(i) dated 23.6.2009. On scrutiny of the rules, certain infirmities were noticed and the same were referred to the Ministry of Commerce and Industry (Department of Commerce) to furnish their comments. The point wise reply of the Ministry has been summed up in the following paragraphs:-

A DELAY IN PUBLICATION OF THE FINAL RULES

2.2 The draft Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion appointed by Government) Amendment Rules, 2007 (GSR 443-E of 2009) notified on 27th December, 2007 to invite objections and suggestions within forty five days were published on 23.6.2009 i.e. after a gap of 18 months in final form, Since the rules as per procedure are required to be notified in the final form within three months after publication of draft Rules in cases where no objections and suggestions on the draft rules are forthcoming and six months in cases where a large number of objections/suggestions were received, the Ministry were requested to furnish their comments on the delay in publication of final Rules and also to inform as to how many objections/suggestions were received. The Ministry of Commerce & Industry (Department of Commerce) vide their OM dated 26.2.2010 stated as under:-

“Draft Amendment Rules were notified in the Gazette of India on 27.12.2007 for inviting objections or suggestions, if any, within a period of forty-five days from 27.12.2007. Consequent upon the publication of the said notification, this Department had received a representation from Ms. Rupali Dutta, DTP (Grade II), Tea Board,

Kolkata. As per the scheme of things, the representation was to be disposed off before notification of the final rules. After disposal of the representation with the approval of the competent authority, the final rules were notified on 23.6.2009. The delay was due to time taken to dispose off the representation in consultation with the Integrated Finance Division and IWSU of this Department.”

2.3 The Committee note that the Ministry of Commerce & Industry (Deptt. of Commerce) has taken as long as one and half years to publish the Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion appointed by Government) Amendment Rules, 2007 in final form after publishing draft rules inviting objections and suggestions. The rules in final form in such cases should have been published within three months after publication of the draft rules, if there are no large number of objections/suggestions. In this case, there was only one representation which should have been processed within the stipulated time and the rules in final form ought to have been published in time. The Deptt. of Commerce have clearly failed in this respect. The explanation of the Deptt. of Commerce that the delay was due to time taken to dispose off the representation in consultation with the Integrated Finance Division and Integrated Work Study Unit of the Department of Commerce is not convincing. The Committee caution the Deptt. of Commerce to exercise due care in future and strictly adhere to the prescribed time limit. The Committee also expect the Deptt. of Commerce to ensure that there is no recurrence of such inordinate delays in publication of final rules in future.

B. DISCREPANCY IN THE SHORT-TITLE

2.4 The ‘year’ in the short-title did not conform to the ‘year’ of publication of the Rules. The Committee have time and again emphasised that for easy referencing, the ‘year’ in the short-title also conform to the ‘year’ of publication of the Gazette notification. The Ministry of

Commerce & Industry (Department of Commerce) vide their OM dated 26.2.2010 stated as under:-

“The discrepancy is being rectified”

2.5 The Committee note that there was a discrepancy in the short-title of the Rules. On being pointed out, the Ministry of Commerce and Industry (Department of Commerce) have issued corrigenda rectifying the discrepancy. The Committee would like the Ministry to be vigilant and ensure that error of this nature does not recur in future.

III

Delay in laying of the Madras High Court (Establishment of a Permanent Bench at Madurai) Amendment Order, 2009 (GSR 786-E of 2009).

The Madras High Court (Establishment of a Permanent Bench at Madurai) Amendment Order, 2009 (GSR 786-E of 2009) which was published in the Gazette of India, Extraordinary, Part-II, Section 3(i) on 28.10.2009 was laid on the Table of the House only on 2nd December, 2010 after over one year, that too only after the Committee took up the matter with the Ministry of Law and Justice (Department of Justice) on 9 September, 2010. The notification should have been laid on the Table of the House within 15 days after the commencement of the following Session, i.e. in the Winter Session of 2009. The aforesaid order was laid on the Table of the House on 2 December, 2010.

3.2 According to the recommendation of the Committee on Subordinate Legislation (para 38 of 6th Report - 3rd Lok Sabha), whenever Orders are laid on the Table after inordinate delay, an explanatory note giving reasons for such delay should be appended to the Orders when so laid. No such explanatory note was appended to when the Order was laid on the Table of the House.

3.3 The Committee note that the Madras High Court (Establishment of a Permanent Bench at Madurai) Amendment Order, 2009 (GSR 786-E) dated 26 October, 2009 was published in the Gazette on 28 October, 2009. The order was not laid on the Table of the House as per procedures. Only after the Committee took up the matter with the Ministry of Law and Justice (Department of Justice), the order was laid on the Table of the Lok Sabha on 2 December, 2010. In the process, there was a delay of over one year in laying the order on the Table of the House.

3.4 There is a procedural requirement that when there is delay in laying a notification on the Table of the House, an explanatory note giving reasons for such delay should be appended to the order. Even this requirement was not fulfilled by the Ministry of Law and Justice (Department of Justice). The Committee take a serious note of the casual attitude of the Department of Justice in this regard. The Committee demand an explanation from the Ministry of Law and Justice (Department of Justice) regarding reasons for inordinate delay in laying the notification on the Table of the House which has deprived the House of the information regarding establishment of a permanent Bench of the Madras High Court in Madurai, for over one year. The Committee also require the Department of Justice to explain as to why the requirement of appending an Explanatory Note regarding delay was not adhered to while laying the notification on the Table of the House.

New Delhi;
May, 2013
Vaisakha, 1935 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

APPENDIX

(Vide Para 5 of the Introduction of the 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 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 XX

4. The Committee also considered the following memoranda:

(i) XX XX XX XX

(ii) **Memorandum No. 43** – regarding the Department of Space (Principal Private Secretary) Recruitment Rules, 2009 (GSR 180-E of 2009).

(iii) **Memorandum No. 44** – regarding Infirmities in the Tea Board (Recruitment and Conditions of Service of Directors of Tea Promotion appointed by Government) Amendment Rules, 2007 (GSR 443-E of 2009).

(iv) XX XX XX XX

5. XX XX XX XX

6. Regarding Memoranda No. 42 to 44, the Committee decided to incorporate the points raised therein the Report to be presented to the House.

The Committee then adjourned.

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

EXTRACTS FROM THE MINUTES OF THE SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2012-2013)

The Second sitting of the Committee was held on Friday, the 9th November, 2012 from 1400 to 1430 hours in Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Dr. Mahesh Joshi
3. Shri Virender Kashyap
4. Dr. Ajay Kumar
5. Shri Narahari Mahto
6. Dr. Thokchom Meinya
7. Shri R. Thamaraiselvan

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 (2012-13).

3. The Committee, then, considered the following memoranda:

(i) XX XX XX XX

(ii) **Memorandum No. 47** – regarding the Madras High Court (Establishment of a Permanent Bench at Madurai) Amendment Order, 2009 (GSR 786-E).

(iii) XX XX XX XX

4. Regarding Memoranda No. 46 and 47, the Committee decided to incorporate the points raised therein in the Report slated to be prepared in this regard. However, regarding the case dealt with in Memorandum No. 46, the Committee emphasized that the instant case should be treated as an exception and not to be quoted as a precedent by the Ministry.

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

EXTRACTS FROM THE MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2012-2013)

The Seventh sitting of the Committee was held on Thursday, the 2nd May, 2013 from 1500 to 1530 hours in Chairman's Room No. 143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Praveen Singh Aron
3. Shri Ramen Deka
4. Dr. Mahesh Joshi
5. Shri Virender Kashyap
6. Dr. Ajay Kumar
7. Shri Narahari Mahto
8. Dr. Thokchom Meinya
9. Dr. Bholu 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 (2012-13).

3. The Committee, thereafter, considered and adopted the draft 33rd Report without any modification. The Committee also authorized the Chairman to present the same to the House.

4. XX XX XX

The Committee then adjourned.

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