

COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

(2012-2013)

THIRTY SIXTH REPORT

(PRESENTED ON 29.8.2013)

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LOK SABHA SECRETARIAT

NEW DELHI

August, 2013 /Sravana, 1935 (Saka)

COSL No. 45

PRICE: Rs

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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 General Manager, Government of India Press, Minto Road, New Delhi-110002.

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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 Sixth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 22.5.2013.

3. The Committee considered and adopted this Report at their sitting held on 25.7.2013.

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. Minutes of the Eighth Sitting of the Committee (2012-13) held on 22.5.2013 and Eleventh Sitting of the Committee (2012-13) held on 25.7.2013, relevant to this Report are included in Appendix.

**New Delhi;
25 July, 2013
3 Sravana, 1935 (Saka)**

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

REPORT

I

The Indian Economic Service (Amendment) Rules, 2011 (GSR 103-E of 2011).

The Indian Economic Service (Amendment) Rules, 2011 (GSR 103-E of 2011) were published in the Gazette of India, Part-II, Section 3(i) dated 18.2.2011. On scrutiny it was found that the rules were given retrospective effect from 6 January, 2011 but no explanatory note was appended clarifying whether anyone would be adversely affected as a result of the retrospective effect given to these rules. The matter was taken up with the Ministry of Finance (Department of Economic Affairs).

1.2 The Ministry of Finance (Department of Economic Affairs) in their response dated 28th December, 2011 stated as follows:-

“It is mentioned that post cadre review of the IES, the total sanctioned strength of duty posts of the IES has increased from 461 to 471, which was notified *vide* IES (Amendment) Rules, 2011, dated 18.2.2011. The following may be noted in this regard:

- (i) The additional ten posts are because of encadrement of existing posts.
- (ii) There have been an increase in the number of posts at the SAG and above grades (from 64 to 109), primarily by upgradation of existing posts and reallocating them across Ministries/Departments.
- (iii) There has been an increase in the number of posts at the JTS level, i.e. by encadrement of existing posts.
- (iv) There has been reduction of posts at the JAG level and at the STS level. The reduction of posts at the JAG level is because those posts have been upgraded to the SAG level. The reduction in posts at the STS level have been primarily those posts which have been vacant for a long time (mainly a fall out of the optimisation scheme of the DOPT whereby recruitments were restricted).
- (v) The sanctioned posts were created with effect from 6.1.2011, i.e. the creation of posts were given a retrospective effect, however, all the promotions, post the cadre review, will take effect from the date of issue of promotion orders.

- (vi) Before issue of the notification, the draft notification had been sent to the Ministry of Law for vetting. Ministry of Law had not advised for an explanatory note stating that no person would be adversely affected.

In view of the above, vested rights of any IES officers were not adversely affected and hence an explanatory note has not been appended with the amended Rules.”

1.3 The Ministry of Finance (Department of Economic Affairs) *inter-alia* stated that the cadre review was undertaken for the Indian Economic Service which increased the sanctioned posts from 461 to 471 due to endcadrement of the existing posts. Consequently, there has been an increase in the number of posts at SAG and JTS levels and also reduction at JAG and STS levels. The sanctioned posts were created with effect from 6 January, 2011 therefore, rules have been given retrospective effect from this date. However, all the promotions, post cadre review, will take effect from the date of issue of promotion orders. The Ministry further submitted that since vested rights of any IES Officers will not be adversely affected as such an explanatory note was not appended with the amended Rules. The Ministry have also indicated that the draft notification was sent to the Ministry of Law for vetting before issue of the notification.

1.4 Though the Indian Economic Service (Amendment) Rules, 2011 were published in the Gazette of India on 18.2.2011, they were given retrospective effect from 6 January, 2011. The Committee have time and again emphasized that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. However, if in any particular case, the rules have to be given retrospective effect, a clarification should be given, either by way of an explanation in the rules or as a footnote to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect. In the rules under reference no explanation or foot note has been given although the rules have retrospective effect.

1.5 The Ministry of Finance (Department of Economic Affairs) have pleaded that vested rights of IES officers have not been adversely affected as a result of retrospective effect of these rules. Irrespective of whether or not, the rules have adverse consequences as a result of retrospective effect, the rules ought to bring out the factual position by way of an explanation. In the absence of such an explanation in the rules, the matter is left to anybody's guess. Such deficiencies in the rules should be avoided. The Committee desire that the Ministry of Finance (Department of Economic Affairs) must incorporate the clarification by way of explanatory note through an amendment in the Rules.

1.6 Had the Ministry of Law and Justice (Legislative Department) been alert while vetting the Rules, this lacuna in the rules could have been avoided. The Committee, therefore, recommend that the Ministry of Law and Justice (Legislative Department) should exercise care while vetting rules and see that the rules vetted by them are complete in all respects.

II

Infirmity in the Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2010 (GSR 987 (E) of 2010)

The Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2010 (GSR 987 (E) of 2010) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 20 December, 2010. On scrutiny of the regulations, it was observed that in Rule 6 under the head 'Miscellaneous', the wording "decision of the Board shall be final" was mentioned which gives an impression that the jurisdiction of the law courts is being ousted. The matter was referred to the Ministry of Petroleum and Natural Gas for their comments.

2.2 The Ministry of Petroleum and Natural Gas *vide* OM dated 8 November, 2011 have submitted that the regulations have been framed and notified by the Petroleum and Natural Gas Regulatory Board (PNGRB) as per Section 61 of the Petroleum and Natural Gas Regulatory Board Act, 2006. The Ministry have further submitted that the matter has been examined in consultation with the PNGRB and this has to be seen in respect of any matter pertaining to the interpretation of any provision of the regulations that may be brought before the Board by an entity or a person, for decision. The Ministry have also stated that under no circumstances it is intended to oust the jurisdiction of the Court of Law. All legal remedies under the law of land are available to any person aggrieved by a decision of the Board.

2.3 It may be pertinent to mention that the Committee in para 18 of the Fourth Report (Third Lok Sabha) had observed as under:-

"The Committee are of the view that although it is true that the interpretation of the rules given by the Executive is not binding on the Courts, yet the rules should not be so worded

in a manner which may give an impression on the mind of the persons concerned that the jurisdiction of courts of law is being ousted. The Committee desire that if it is considered necessary to retain an interpretation clause in the rules, the clause should be worded on the lines of regulation 24 of the Kandla Port Employees' (Allotment of Residence) Regulations, 1964 which reads as under:

24. Interpretation of regulations: - If any question arises as to the interpretation of these regulations, the same shall be decided by the Board”.

2.4 The Committee note from the reply furnished by the Ministry of Petroleum and Natural Gas that the intention of the Regulations is not to oust the jurisdiction of the courts of law but the words used in the Regulations convey such an impression. The Ministry of Petroleum and Natural Gas ought to be more circumspect while drafting Regulations. The Committee stress that the rules should not be so worded as to give an impression of ousting the jurisdiction of courts. The Committee hope that the Ministry of Petroleum and Natural Gas will bring out an amendment in this regard expeditiously.

2.5 It is not clear how the Ministry of Law (Legislative Department) which vet Rules/Regulations overlooked this aspect. The Committee would like the Ministry of Law (Legislative Department) to explain their position in this regard.

III

Infirmities in the Ministry of Water Resources, the Central Ground Water Board, Slotting Machine Operator, Group 'C' Post Recruitment Rules, 2009 (GSR 42 of 2010).

The Ministry of Water Resources, the Central Ground Water Board, Slotting Machine Operator, Group 'C' Post Recruitment Rules, 2009 (GSR 42 of 2010) were published in the Gazette of India, Part-II, Section 3 (i) on 20.2.2010. Scrutiny of these rules revealed certain infirmities which were referred to the Ministry of Water Resources for their comments. The point wise reply of the Ministry is brought out in the following paragraphs:-

A. DISCREPANCY IN THE SHORT-TITLE

3.2 The year mentioned in the short title to the Rules did not tally with the year of publication of the Gazette notification. The short title to the rules denoted the year as 2009 whereas the rules were published in the year of 2010. Normally, for facilitating easy referencing, the year in the short title should tally with the year of its publication.

3.3 In response, the Ministry *vide* their O.M. dated 7.3.2011 forwarded a printed copy of the corrigendum wherein the aforesaid error in the short title has been rectified *vide* GSR 242 dated 18.12.2010.

3.4 **The Committee note that there was a discrepancy in the short-title of the Rules. On being pointed out, the Ministry of Water Resources have issued corrigendum rectifying the discrepancy. Had the Committee not pointed out the discrepancy, it might have gone unnoticed by the Ministry of Water Resources. The Committee, therefore, urge the Ministry to evolve suitable procedural safeguards against recurrence of such lapses and be more vigilant in future in such procedural and routine matters.**

B. NON-SPECIFICATION OF THE ORGANISATION

3.5 The Rules provided for “three years experience in operation of Slotting Machine or as Turner or Mechanic” in Col. 8 (iii) of the Schedule. Nothing was mentioned in the Rules whether experience from Government/Public Sector Organisations only would be considered or experience from Private Organisations licenced under the Factories Act would also be considered. On being pointed out, the Ministry of Water Resources *vide* their reply dated 7 March, 2011 forwarded a printed copy of the corrigendum by substituting the entry in column 8 (iii) by the following:

“Three years experience in operation of Slotting Machine or as Turner or Mechanic in Government/Semi Government/reputed Private Organisation”.

3.6 **The Committee note that the entry under Column 8 (iii) of the schedule of the Ministry of Water Recourses, Central Ground Water Board Slotting Machine Operator, Group ‘C’ Post Recruitment Rules, 2009 (GSR 42 of 2010) prescribing experience required for direct recruits had not specified the nature and type of organisation from where such experience would be considered relevant. The Committee observe that such non-specific and vague entry pertaining to experience, a pre-requisite for recruitment, leaves scope for different interpretations of the rules and result in arbitrariness. On being pointed out, the Ministry of Water Resources have issued a corrigendum by substituting the entry with “Three years experience in operation of Slotting Machine or as Turner or Mechanic in Government/Semi Government/reputed Private Organisation” *vide* GSR No. 242 dated 18.12.2010. The Committee feel that the amendment has not fully removed the ambiguity. The words ‘reputed Private Organisation’ is open to different interpretations unless it is amended to make it specific as “Private**

Organisations licenced under the Factories Act". The Committee hope suitable corrigendum would be issued to make the rules specific.

New Delhi;
25 July, 2013
3 Ashadha, 1935 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

APPENDIX

(Vide Para 5 of the Introduction of the Report)

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

The Eighth sitting of the Committee was held on Wednesday, the 22nd May, 2013 from 1200 to 1230 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 Narahari Mahto
6. Dr. Thokchom Meinya
7. Shri Manohar Tirkey

SECRETARIAT

1. Shri S.C. Chaudhary - Director
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 the following memoranda:

- (i) **Memorandum No. 49** – regarding the Indian Economic Service (Amendment) Rules, 2011 (GSR 103-E of 2011).
- (ii) **Memorandum No. 50** – regarding infirmity in the Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2010 (GSR 987-E of 2010).
- (iii) **Memorandum No. 51** – regarding the Ministry of Water Resources, the Central Ground Water Board, Slotting Machine Operator, Group 'C' Post Recruitment Rules, 2009 (GSR 42 of 2010).

4. After deliberations, the Committee decided to incorporate the points raised in the Memoranda Nos. 49 to 51 in their Report slated to be prepared in this regard

The Committee then adjourned.

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

The Eleventh sitting of the Committee was held on Thursday, the 25th July, 2013 from 1200 to 1230 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. Shri Virender Kashyap
5. Shri Narahari Mahto
6. Dr. Thokchom Meinya
7. Shri Gajendra Singh Rajukhedi
8. Dr. Bhola 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.

3. The Committee, thereafter, considered and adopted the draft 36th Report without any modification.

The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.

