

COMMITTEE ON SUBORDINATE LEGISLATION

(THIRTEENTH LOK SABHA)

(2003-2004)

ELEVENTH REPORT

LOK SABHA SECRETARIAT

NEW DELHI

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A P P E N D I C E S

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2003-2004)

1. Dr. B.B. Ramaiah - Chairman
2. Shri S.K. Bwiswmuthiary
3. Shri Ramdas Rupala Gavit
4. Shri Paban Singh Ghatowar
5. Shri Talib Hussain Chowdhary
6. Dr. M. Jagannath
7. Shri Ram Singh Kaswan
8. Shri Suresh Kurup
9. Shri Pravin Rashtrapal
10. Shri Anadicharan Sahu
11. Prof. I.G. Sanadi
12. Dr. Ram Lakhan Singh
13. Shri Ramjiwan Singh
14. Shri Tufani Saroj
15. Dr. N. Venkataswamy

SECRETARIAT

1. Shri S.K. Sharma - Joint Secretary
2. Shri A. Louis Martin - Deputy Secretary
3. Shri Ashok Balwani - 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 Eleventh Report.

The matters covered by this Report were considered by the Committee at their sitting held on 19 December, 2002.

The Committee considered and adopted this Report at their sitting held on 23.4.2003. The Minutes of the sittings relevant to this Report are appended to it.

For facility of reference and convenience, recommendations/observation 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 in the Report.

NEW DELHI;

DATED:

(B.B. RAMAIAH)

CHAIRMAN

COMMITTEE ON SUBORDINATE LEGISLATION

I

The Circle Postal Accounts Offices (Junior Accountant, Stenographer, Lower Division Clerk and Sorter) Recruitment Rules, 2001 (GSR 224 of 2001)

The Circle Postal Accounts Offices (Junior Accountant, Stenographer, Lower Division Clerk and Sorter) Recruitment Rules, 2001 were published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 21 April, 2001. It was observed therefrom that under Col. 7 read with Col. 8 of the Schedule appended thereto, for the post of Junior Accountant the lower age limit of 18 years prescribed for direct recruits appeared to be redundant as the educational qualification so prescribed, cannot be achieved at that age. The matter was, therefore, taken up with the concerned Ministry of Communication (Department of Posts) .

1.2. The Ministry of Communications vide their reply dated 22 August, 2001 inter-alia stated as under:-

“.....that as per Recruitment Rules, recruitment to the post of Junior Accountant under Direct Recruitment Quota is to be made through Staff Selection Commission and that the age limit has been prescribed based on the guidelines issued by DOP & T on this subject. The minimum age limit prescribed for entry into Government Service is 18 years and this will not have any impact or other complications on the Recruitment of Junior Accountants as the condition of educational qualification will have to be followed. Moreover, it is stated that the recruitment rules have been duly vetted by Ministry of Law & Justice before being published in the Gazette. Therefore, it is felt that no amendment is necessary.”

1.3 The Committee observe that for the post of Junior Accountant in the Circle Postal Accounts Offices (Junior Accountant, Stenographer, Lower Division Clerk and Sorter) Recruitment Rules, the prescribed educational qualification is

bachelor's degree and the prescribed lower age limit is 18. It is observed that it may not be possible to secure a bachelor's degree within the prescribed lower age limit of 18 years. The Committee feel that prescription of lower age limit should as far as possible be realistic and should correspond to the minimum age of actual realisation of the prescribed educational qualification.

II

The Central Civil Accounts Service (Junior Accounts Officer and Assistant Accounts Officer) Recruitment Rules, 2000 (GSR 11-E of 2000)

The Central Civil Accounts Service (Junior Accounts Officer and Assistant Accounts Officer) Recruitment Rules, 2000 were published in the Gazette of India, Part-II, Section 3 (i) dated 8 January, 2001. It was observed that in the note under col. 11 of the Schedule appended thereto regarding the method of Recruitment, it was prescribed that 'during the period of probation the direct recruits should qualify the Junior Accounts Officer (Civil) examination for substantive appointment failing which they are liable for discharge from service'. It was felt that the said provision did not comply with the principles of natural justice since the principles demand that such officers should be given sufficient opportunity for clearing the aforesaid examination.

2.2. The Ministry of Finance (Department of Expenditure, CGA), were, therefore, requested to state whether they had any objection in amending the aforesaid rules to the desired effect.

2.3. The Ministry vide their reply dated 20 August, 2001 inter-alia stated as under:-
'The post of Junior Accounts Officer in various Departmentalised Accounts Offices are the first level supervisory posts, which are to be filled by promotion from amongst candidates who have qualified in the Junior Accounts Officer (Civil) Examination. However, a small percentage (upto 10 % of posts) is being reserved for promotion from amongst Sr. Accountants on merit-cum-seniority basis, if they have not been able to qualify in Jr. Accounts Officer (C) Examination and have also crossed 53 years of age (i.e. maximum permissible age

for appearing in JAO (Civil) Examination). In the new Recruitment Rules referred to above (as also in the previous RRs), there is an enabling provision for direct recruitment of Jr.A.Os., if vacancies can not be filled by promotion from within the department or by deputation from other accounts services. However, it needs to be pointed out that no such direct recruitment has been effected since inception of Department in 1976 as there are a large number of candidates, who have qualified in Jr. A.O. (C) Exam and are awaiting promotions. A provision for probation period of two years has been prescribed in Column 11 of the Schedule of the Recruitment Rules. The two years probation period has been prescribed by Ministry of Home Affairs for all services vide para 1 (vi) of MHA (now DOPT)'s O.M. No. 44/1/59-Estt.(a) dated 15.4.1959. Further-more, sub-para (viii) of MHA's O.M. dated 15.4.1959 permits extension of probation period upto twice of normal probationary period under exceptional circumstances. Thus, if a directly recruited Jr. AO has been unable to qualify in the Jr.AO (Civil) Exam within the prescribed probation period, the probationary period could be extended upto a further period of two years by the Competent Authority to enable him to qualify in Jr. AO (Civil) Exam. It may also be pointed out that Recruitment Rules under reference have also been vetted by (i) DOPT, (ii) UPSC as well as (iii) Ministry of Law (Legislative Department).

2.4 The Committee observe from the Central Civil Accounts Service (Junior Accounts Officer and Assistant Accounts Officer) Recruitment Rules, 2000 that during the period of probation the direct recruits for the post of Junior Accounts Officer should qualify the Jr. Accounts Officer (Civil) Examination for substantive appointment failing which they are liable for discharge from the service. The Committee feel that the said provision does not comply with the principles of natural justice since the principles demand that such officers should be given sufficient opportunity for clearing the aforesaid examination. The Committee observe from the clarification furnished by the Ministry that if a directly recruited Jr. Accounts Officer is unable to qualify the aforesaid examination within

the prescribed probation period, the probationary period can be extended upto a further period of two years by the competent authority so as to give another opportunity to the probationer to qualify the said examination. The Committee appreciate the intention of the Ministry to provide sufficient opportunity to directly recruited probationers to clear the aforesaid examination and desire them to suitably amend the Recruitment Rules by incorporating the provisions regarding extension of the probation period in accordance with the clarification as furnished by them, so as to make the rules self-contained. This could be done by substituting the words ‘during the period of probation or any extension thereof’ in the relevant column of the schedule of the rules. The Committee hope that suitable action will be taken in this regard.

III

The Defence Research and Development Organisation Technical Cadre Recruitment Rules, 2000. (SRO 296 of 2000)

The Defence Research and Development Organisation Technical Cadre Recruitment Rules, 2002 were published in the Gazette of India, Part-II, Section 4 dated 16 December, 2000. Rule 6 of the above rules regarding “Flexible Complementing” stated as under:-

“(1) Promotions from one grade to another grade in the Cadre shall be made under the merit-based limited flexible complementing system. Employees in each grade who have rendered a minimum of 5 years regular service in the grade as on 1st September of the year of assessment shall become eligible for assessment for promotion to the next higher grade.

Provided that relaxation upto three months in the qualifying service for eligibility for assessment may be given to direct recruits or promotees who join after 1st September for reasons beyond their control.”

3.2 It was felt that the provisions were giving discretionary power to the competent authority in the matter of giving relaxation beyond 3 months in the qualifying service for reasons beyond their control and therefore it was desired that before granting such relaxation, reasons should be recorded in writing so as to avoid any misuse of the discretionary power. The Ministry of Defence were, therefore, requested to state whether they had any objection in amending the rules to the desired effect.

3.3 The Ministry of Defence vide their communication dated 8 August, 2002 forwarded a printed copy of Gazette Notification No. SRO 50 dated 12 February, 2002 by adding the following provision which stated as under:-

“ In rule 6, of the Defence Research and Development Organisation Technical Cadre Recruitment Rules, 2000 in sub-rule (1), the following shall be added, namely:-

“Before granting such relaxation, the competent authority shall record the reasons in writing. The competent authority for this purpose will be the Chairperson of the Local Assessment Board as mentioned in Schedule IV in respect of posts filled through it and Director, PEACE (Personnel Assessment Centre) in respect of posts filled through Central Assessment Board as mentioned in Schedule V.”

3.4 The Committee observe that as per proviso to rule 6 of the Defence Research and Development Organisation Technical Cadre Recruitment Rules regarding “Flexible Complementing”, a relaxation upto three months in the qualifying service for eligibility for assessment can be given to candidates who join after 1 September of the assessment year for reasons beyond their control. The Committee feel that the wordings “reasons beyond their control” appearing therein are likely to give discretionary powers to the competent authority and therefore, desire that there should be a provision to the effect that reasons for grant of relaxation should be recorded in writing. The Committee note with satisfaction that the Ministry of

Defence have since amended the rules by adding a provision after sub-rule (1) of rule 6 to state that before granting such relaxation, the competent authority shall record the reasons in writing. The Ministry have also mentioned that competent authority for this purpose will be the Chairperson of the Local Assessment Board as mentioned in Schedule IV in respect of posts filled through it and Director, PEACE (Personnel Assessment Centre) in respect of posts filled through Central Assessment Board as mentioned in Schedule V to the Gazette Notification No. SRO 50 dated February, 2002 issued in this regard.

IV

The Hazardous Wastes (Management and Handling) Amendment Rules, 2000 (SO 24-E of 2000)

The Hazardous Wastes (Management and Handling) Amendment Rules, 2000 were published in the Gazette of India, Extraordinary, Part-II Section 3 (i) dated 6 January, 2000. Under Rule 13 (which intended to amend Rule 18) a maximum period of twenty days was provided for filing an appeal, however no time-limit for the disposal of the said appeal by the concerned authority was prescribed in the Rule. The matter was, therefore, referred to the concerned Ministry of Environment and Forests.

4.2. The Ministry vide their reply dated 4 August, 2000 inter-alia submitted that the observation made by the Committee for a need to fix time limit for the disposal of an appeal by the concerned Authority under Rule 13 is acceptable and shall be incorporated along with other amendments that may become necessary based on the suggestions, if any made by the High Power Committee constituted by the Hon'ble Supreme Court in W.P. No. 657/95, due to submit its report in September, 2000.

4.3. The Ministry vide their reply dated 23 October, 2000 inter-alia stated that since the tenure of the High Power Committee has been extended till December, 2000, the work of amendments would be initiated in January, 2001 after the receipt of the

recommendation of the High Power Committee.

4.4. The Ministry vide their reply dated 20 March, 2001 stated that the High Power Committee had submitted its report and the amendment as suggested by the Committee on Subordinate Legislation along with the amendments recommended by the High Power Committee would be notified as per the procedure suggested by the High Power Committee.

4.5. The Ministry have since issued a Gazette Notification prescribing vide SO 553-E dated 22 May, 2002 that every appeal filed under the said rule shall be disposed of within a period of sixty days from the date of such filing.

4.6. Under Rule 13 of the Hazardous Wastes (Management and Handling) Amendment Rules, 2000, a maximum period of twenty days had been provided for filing an appeal. However, no time limit had been prescribed for the disposal of the said appeal by the concerned authority. The Committee feel that an outer time limit of disposal of appeals would be necessary in public interest. The Committee note with satisfaction that the Ministry have since prescribed that 'every appeal filed under the said rule shall be disposed of within a period of sixty days from the date of such filing' and have notified the above provision vide SO 553 (E) dated 22 May, 2002.

NEW DELHI;

DATED:

(B.B. RAMAIAH)

CHAIRMAN

COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

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

(THIRTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1.	1.3	<p>The Circle Postal Accounts Offices (Junior Accountant, Stenographer, Lower Division Clerk and Sorter) Recruitment Rules, 2001 (GSR 224 of 2001)</p> <p>The Committee observe that for the post of Junior Accountant in the Circle Postal Accounts Offices (Junior Accountant, Stenographer, Lower Division Clerk and Sorter) Recruitment Rules, the prescribed educational qualification is bachelor's degree and the prescribed lower age limit is 18. It is observed that it may not be possible to secure a bachelor's degree within the prescribed lower age limit of 18 years. The Committee feel that prescription of lower age limit should as far as possible be realistic and should correspond to the minimum age of actual realisation of the prescribed educational qualification.</p>
2.	2.4	<p>The Central Civil Accounts Service (Junior Accounts Officer and Assistant Accounts Officer) Recruitment Rules, 2000 (GSR 11-</p>

		<p>E of 2000)</p> <p>The Committee observe from the Central Civil Accounts Service (Junior Accounts Officer and Assistant Accounts Officer) Recruitment Rules, 2000 that during the period of probation the direct recruits for the post of Junior Accounts Officer should qualify the Jr. Accounts Officer (Civil) Examination for substantive appointment failing which they are liable for discharge from the service. The Committee feel that the said provision does not comply with the principles of natural justice since the principles demand that such officers should be given sufficient opportunity for clearing the aforesaid examination. The Committee observe from the clarification furnished by the Ministry that if a directly recruited Jr. Accounts Officer is unable to qualify the aforesaid examination within the prescribed probation period, the probationary period can be extended upto a further period of two years by the competent authority so as to give another opportunity to the probationer to qualify the said examination. The Committee appreciate the intention of the Ministry to provide sufficient opportunity to directly recruited probationers to clear the aforesaid examination and desire them to suitably amend the Recruitment Rules by incorporating the provisions regarding extension of the probation period in accordance with the clarification as furnished by them, so as to make the rules self-contained. This could be done by substituting the words <u>‘during the period of probation or any extension thereof’</u> in the relevant column of the schedule of the rules. The Committee hope that suitable action will be taken in this regard.</p> <p>The Defence Research and Development Organisation Technical Cadre Recruitment Rules, 2000 (SRD 206 of 2000)</p>
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3.	3.4	<p>Rules, 2000. (SRO 296 of 2000)</p> <p>The Committee observe that as per proviso to rule 6 of the Defence Research and Development Organisation Technical Cadre Recruitment Rules regarding “Flexible Complementing”, a relaxation upto three months in the qualifying service for eligibility for assessment can be given to candidates who join after 1 September of the assessment year for reasons beyond their control. The Committee feel that the wordings “reasons beyond their control” appearing therein are likely to give discretionary powers to the competent authority and therefore, desire that there should be a provision to the effect that reasons for grant of relaxation should be recorded in writing. The Committee note with satisfaction that the Ministry of Defence have since amended the rules by adding a provision after sub-rule (1) of rule 6 to state that before granting such relaxation, the competent authority shall record the reasons in writing. The Ministry have also mentioned that competent authority for this purpose will be the Chairperson of the Local Assessment Board as mentioned in Schedule IV in respect of posts filled through it and Director, PEACE (Personnel Assessment Centre) in respect of posts filled through Central Assessment Board as mentioned in Schedule V to the Gazette Notification No. SRO 50 dated February, 2002 issued in this regard.</p> <p>The Hazardous Wastes (Management and Handling) Amendment Rules, 2000 (SO 24-E of 2000)</p> <p>Under <u>Rule 13</u> of the Hazardous Wastes (Management and Handling) Amendment Rules, 2000, a maximum period of twenty days had been provided for filing an appeal. However, no time limit had been prescribed for the disposal of the said appeal by the concerned authority. The Committee feel that</p>
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4.	4.6	<p>concerned authority. The Committee feel that an outer time limit of disposal of appeals would be necessary in public interest. The Committee note with satisfaction that the Ministry have since prescribed that <u>‘every appeal filed under the said rule shall be disposed of within a period of sixty days from the date of such filing’</u> and have notified the above provision <u>vide</u> SO 553 (E) dated 22 May, 2002.</p>
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