

# COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

## EIGHTEENTH REPORT

*[Presented on 4 May, 1995]*



LOK SABHA SECRETARIAT  
NEW DELHI

LC  
328.25R  
NS.18.2  
Price: Rs. 20.00

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## COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (1995-96)

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- |                         |                               |
|-------------------------|-------------------------------|
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| 2. Smt. Roli Srivastava | — <i>Joint Secretary</i>      |
| 3. Shri P.D.T. Achary   | — <i>Director</i>             |
| 4. Shri Ram Autar Ram   | — <i>Deputy Secretary</i>     |

## INTRODUCTION

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

2. The matters covered by this Report were considered by the Committee at their sittings held on 25 January, 30 March, 31 March, 24 May, 23 June and 8 September, 1994. The Committee took evidence of the representatives of the (i) Ministry of Surface Transport; (ii) Ministry of Welfare; (iii) Ministry of Communications; and (iv) Ministry of Finance. The Committee wish to express their thanks to the officers for appearing before the Committee and furnishing the information desired by them.

3. The Committee considered and adopted this Report at their sitting held on 6 April, 1995. The Minutes of the sittings relevant to this Report are appended to it.

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 consolidated form in Appendix-I to the Report.

NEW DELHI;  
April, 1995

AMAL DATTA,  
Chairman,  
*Committee on Subordinate Legislation.*

## REPORT

### I

#### THE JAWAHARLAL NEHRU PORT TRUST PILOTAGE AND OTHER SERVICES (FEES) ORDER, 1992 (GSR — 483-E OF 1992)

1.1 The Jawaharlal Nehru Port Trust Pilotage and other Services (Fees), 1992 was published in the Gazette of India: Extraordinary, Part II, Section 3(i), dated 8 May, 1992. Sub-clause (ii) of clause (1) of the Order read as under:—

“Short Title and Commencement:

××

××

××

(ii) It shall come into force at once.”

1.2 It was noticed that in terms of sub-clause (ii) of clause (1) of the aforesaid Fees Order, it was to come into force at once. Normally, the clause regarding commencement of an order provides that the order shall come into force from the date of its publication in the official gazette leaving no scope to speculate about its actual date of coming into force. The Ministry of Surface Transport were accordingly asked to intimate (i) the precise date on which the said Order had come into force; (ii) when the copies of the official gazette containing the Order were actually made available to the Public for compliance etc., and (iii) whether there were any special reasons for departure from normal practice in this regard. In their reply dated 23 July, 1993, the Ministry stated as Under;

“..... the notification came into effect from the date of its publication i.e. 8.5.1992 and there are no special reasons for deviation. When the notification is sent to the press, simultaneously the Port Trust is also informed, who in turn intimate to the users/traders about the revised rates coming into force. In view of this, public trade is fully aware of the change in the tariff structure from the date of its implementation.”

1.3 The Committee considered the above reply of the Ministry at their sitting held on 25 January, 1994 and noted that according to the Ministry, the notification came into force on the date of its publication in the official gazette. The Ministry, however, did not indicate the date when the copies of the gazette notification were made available to the public and the reasons for departure from the normal practice in that regard. With a view to elicit further clarification in the matter, the Committee decided to hear oral evidence of the representatives of the Ministry of Surface Transport.

Accordingly, the representatives of the Ministry appeared before the Committee on 23 June, 1994 and tendered their evidence.

1.4 During evidence, the representative of the Ministry regretted the deviation from the recommendation of the Committee regarding the commencement of statutory rules and assured that it would comply with the recommendation of the Committee in future.

1.5 As regards the system adopted by the Ministry to ensure that the observations or directions of the Committee are followed, the representative stated that a compendium of the recommendations made by the Parliamentary Committee is maintained in the Ministry and is gone through for compliance during the formulation of statutory rules and orders.

1.6 With regard to the users/traders being given a reasonable time to adjust to the revised tariff structure, the authorities have been instructed to intimate the users/traders 30 days in advance prior to the date of notification about the revised rates. The Port authorities meet daily where such announcements regarding revised tariff structure are made and interested users can attend such meetings.

1.7 Regarding availability of the copies of notification to the public after their publication in the official gazette, the representative stated that it was the responsibility of the Government of India Press. In the instant case, the notification was published in the gazette on 8 May, 1992 but the copies were made available to the public on 30 June, 1992.

1.8 The Committee were of the opinion that in order to give reasonable time to such users/traders to adjust to the revised tariff structure, such notifications should be made effective 30 days after publication in the official gazette. The Committee therefore, desired the representative of the Ministry of Surface Transport to obtain the opinion of the Law Ministry in the matter.

1.9 In a subsequent reply dated 28 September, 1994, the Ministry of Surface Transport conveyed the opinion\* of the Law Ministry as obtained by them as under:—

“.....A proposal to amend the Indian Ports Act, 1908 and Major Port Trust Act, 1963 to stipulate a period of 30 days from the date of publication of the Notification in the official gazette, for bringing into effect such orders is contemplated. The proposed amendment along-with other amendments is under formulation.”

1.10 The Committee note that during evidence, the Ministry have assured that it would comply with the recommendation of the Committee contained in para 12 of their Second Report (Seventh Lok Sabha) to obviate any confusion in the public mind regarding the date of coming into

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\* Reproduced as Annexure.

force of the notification. The Committee desire that the Ministry may evolve procedural safeguards to ensure that the recommendations of the Committee are strictly adhered to during the formulation and notification of statutory orders.

1.11 The Committee further note that the Ministry have instructed the Port Authorities to intimate the users/traders 30 days in advance prior to notification of the rules about the revised tariff structure with a view to giving a reasonable time to such users/traders to adjust to that raised tariff structure. The Committee observe that rules can become applicable only after their publication in the official gazette and the copies thereof are made available to the public. In the instant case, the notification dated 8 May, 1992 were made available to the public only on 30 June, 1992.

1.12 The Committee, therefore, feel that it would be more appropriate if notification regarding revised tariff structure is brought into force 30 days after their publication in the official gazette or such longer period which would give reasonable notice to persons really affected taking into account the actual period of delay in publication of the official gazette as it would considerably reduce the time gap between coming into force of the rules and the availability of the gazette notification to the public. The Committee is unable to agree with the opinion of the Deputy Legal Adviser of the Ministry of Law and Justice to the effect that the alteration in the rate of scale cannot be given prospective effect on the ground that such a provision does not exist in the Major Port Trusts Act, 1963.

1.13 The Committee also note that the Ministry of Surface Transport have proposed to amend the Indian Ports Act, 1908 and Major Port Trusts Act, 1963 to stipulate a period of 30 days from the date of publication of the Notification in the official gazette for bringing into effect such orders regarding revised tariff. The Committee also note that the amendments are under formulation. Taking into account the recommendation of the Committee made in the previous paragraph incorporating the date of formulation of such amendments, the Committee desire the Ministry of Surface Transport to do the needful at the earliest.

## II

### NON-FRAMING OF RULES UNDER THE NATIONAL COMMISSION FOR BACKWARD CLASSES ACT, 1993

The National Commission for Backward Classes Act, 1993 was assented to by the President on 2 April, 1993 and was deemed to have come into force on 1 February, 1993. Section 17(1) thereof empowers the Central Government to make rules for carrying out the provisions of the Act.

2.2 As per the recommendations of the Committee on subordinate Legislation made in para 108 of their Eighteenth Report (Fifth Lok Sabha), the rules should be framed under an Act as soon as possible after the commencement of an Act and in no case this period should exceed six months. In case, however, a Ministry finds that for any unavoidable reasons it is not possible for them to adhere to the prescribed time limit, in an exceptional case, they should at the expiration of six months from the commencement of the relevant Act, explain the reasons to the Committee and seek a specific extension of time from them.

2.3 As per the above recommendation of the Committee, the Ministry of Welfare was required to frame the rules by 2 October, 1993 i.e. within six months of the enactment of the Act. However, in a communication dated 8 March, 1994, and subsequent communication dated 24 March, 1994, the Ministry of Welfare sought extension of time upto 31 August, 1994 for framing the rules under the National Commission for Backward Classes Act, 1993. The Ministry adduced the following reasons for seeking extension of time:—

“The National Commission for Backward Classes (NCBC) was constituted on 14th August, 1993 under the chairmanship of Justice (retd.) R.N. Prasad. In the same month, the Ministry of Welfare initiated action for framing of the draft rules. In the process of the preparation of the draft rules, the Ministry had to consult the concerned Ministries/Departments and also examine the rules framed for other high level Commissions. At that point of time, it was decided that the Chairman and the Members of the Commission may also be consulted informally with reference to the Rules prepared so that any differences of opinion which may emerge at a later stage and will required amendments of Rules, could be eliminated. The views of the Commission were taken into consideration while finalising the draft Rules. These consultation took some time and it was not until November, 1993 that the Ministry was able to circulate the draft rules



and regulations as per the procedure, to the \*DOPT, I.F. of the Ministry of Welfare and the Ministry of Urban Development.

While the Ministry of Urban Development has given its comments, comments are awaited from the DOPT and I.F. of the Ministry. The Ministry is closely monitoring and pursuing the matter so that the rules can be finalised and notified at the earliest. The concerned Departments have been reminded this month also to expedite their comments.

It is, however, expected that procedural formalities which will follow even after the concurrence of the concerned Ministries is received, is likely to take some more time. Therefore, the Committee on Subordinate Legislation, Lok Sabha is solicited to kindly allow extension of time till 31st August, 1994 for finalising the Rules under the NCBC Act."

2.4 The Committee were not satisfied with the reasons indicated by the Ministry of Welfare. The Committee therefore took oral evidence of the representatives of the Ministry on 30 March, 1994.

2.5 During the course of oral evidence, while explaining the delay in finalising the rules under NCBC Act, the Secretary (Welfare) submitted that the matter was being expedited by the Ministry, but there were some problems regarding terms and conditions of service of the Chairman and Members of the NCBC, and the matter was being sorted out.

2.6 The Committee, however, did not grant extension of time for framing the rules upto 31 August, 1994 as requested by the Ministry and desired them to expedite the matter. In order to curtail any further delay in finalising the rules, the Committee desired the Ministry to communicate with the other concerned Ministries and also to intimate the Committee of the action taken by the Ministry.

2.7 In their action taken note dated 3 May, 1994, the Ministry of Welfare submitted as under:—

(a) *Rules regarding terms and conditions of services of Chairman and Members of the NCBC*

The Ministry of Welfare circulated the draft rules *vide* letter dated 2.11.93 to DOPT, if Division of the Ministry of Welfare and the Ministry of Urban Development. A reminder was sent to them on 21.12.93.

The Director of Estates wrote to the Ministry on 17.1.94 stating that the Ministry of Urban Development would comment on the terms and

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\* DOPT stands for Department of Personnel & Training

conditions only after the question of eligibility of the Commission for allotment of accommodation in Delhi is decided. A note in this regard has already been submitted for consideration of the Cabinet Committee of Accommodation. Meanwhile, the Ministry of Urban Development was again requested on 14.4.94 to send its comments by 22.4.94 in anticipation of the approval of the proposal by the Cabinet Committee on Accommodation. The Ministry of Urban Development has written on 21.4.94 stating that they are pursuing the matter and shall get back to this Ministry soon.

The Department of Personnel & Training were reminded on 21.12.93, 22.3.94 and 5.4.94. Subsequently, on 18.4.94 they sent an alternate draft rules for the Commission which was not different in substance from the earlier draft prepared by the Ministry of Welfare but sought to clarify and elaborate certain provision relating to deputation, pension and clubbing of certain facilities (indicated in several provision) under a separate chapter entitled 'Residuary provision'.

The revised draft rules incorporating the views of the DOPT have been circulated to the Ministry of Finance and Ministry of Urban Development for their comments, if any, and have been requested to send their replies urgently. A copy has also been sent to the DOPT.

After the comments are received from the Ministry of Finance and Ministry of Urban Development, the draft rules will be sent to the Department of Legal Affairs for vetting.

*(b) Rules relating to the recruitment for officers and other employees of NCBC*

Since the NCBC would be the appointing authority for all posts other than the post of Joint Secretary and Deputy Secretary, the NCBC was requested on 4.2.94 to prepare draft rules. The Commission was reminded on 7.4.94 and 14.4.94 (The letter dated 7.4.94 was unfortunately received by the Commission with some delay, the reasons for which are being looked into).

Shri P.S. Krishnan, Member Secretary of NCBC has written on 18.4.94 that time is too short for framing recruitment rules for the staff. The urgency of framing the rules has again been impressed on them and they have been requested through a letter dated 3.5.94 to send their draft rules expeditiously and, in any case, to indicate the time frame within which they would be able to send the draft.

*(c) Rules regarding Statement of Accounts and Annual Report*

The draft rules of Statement of Accounts and Annual Report were sent to the NCBC on 8.4.94 for their comments. It was felt necessary to seek their comments because the rules had to be framed in accordance with the needs of the Commission as otherwise there could be problems in their implementation later.

The NCBC had been reminded on 14.4.94 with the request that their comments should be sent by 22.4.94.

As indicated above, the Member Secretary, NCBC has in a letter dated 18.4.94 stated that it would not be possible for the Commission to send their comments within a short duration. They have also not indicated any particular date for finalisation of their comments. In this Ministry's letter dated 3.5.94, the urgency of framing the rules has again been impressed upon the NCBC and they have been requested to send their comments immediately and in any case to indicate a firm date by which they would send their comments.

2.8 In a subsequent communication dated 19 August, 1994 the Ministry of Welfare have stated that since these rules are pending for comments in various Ministries, they are reminding the concerned Ministries for their comments so that the rules could be finalised and notified.

2.9 In yet another communication dated 14 November, 1994 the Ministry of Welfare have sent the progress made so far in the matter of finalisation of the rules under the NCBC Act. The progress made is as under:—

*(a) Rules regarding terms and conditions of services of Chairman and Members of the National Commission for Backward Classes*

The draft rules were circulated by the Ministry of Welfare to department of Personnel, IF Division of the Ministry of Welfare and the Ministry of Urban Development on 2 November, 1993. Although the Ministry of Welfare have not received any written comments from the Ministry of Urban Development, the latter have allotted accommodation to the Chairman and Members of the NCBC as well as an official accommodation to the Commission. However, comments of Department of Expenditure are awaited after which the rules would be sent to the Ministry of Law for final vetting.

*(b) Annual Statement of Accounts and Annual Report*

The draft rules were sent to NCBC on 8 April, 1994. As per the direction of the Controller General of Accounts, the rules were revised and after the approval of Finance Division of the Ministry of Welfare these were sent to the Ministry of Finance (Budget Division). Based on the comments of the Financial Adviser, CGA and Ministry of Finance, the rules were modified and sent to CABCGA for concurrence on 18 October, 1994.

*(c) Rules relating to recruitment of officers and other staff of NCBC*

The National Commission for Backward Classes is the appointing authority for all posts other than Joint Secretary and Deputy Secretary. The Commission were requested to frame the rules on 4 February, 1994 and reminded on 7 and 14 April, 1994, 9 and 16 May, 1994. However, even draft rules have not yet been received in the Ministry till November, 1994.

2.10 The Committee are unhappy to note that the National Commission for Backward Classes Act, 1993, which came into force on 1 February, 1993, empowered the Central Government to exercise their rule making power under Section 17(1) but the Ministry of Welfare which was administratively responsible for it failed to comply with it even after the expiry of two years. The Committee are not satisfied with the justification given by the Ministry that the consultation/correspondence with the various Ministries/Agencies took time and therefore it was not possible for them to finalise and notify the rules within the prescribed period of six months. The Committee take a serious view of the fact that the Ministry of Welfare discussed the matter of framing rules relating to the recruitment of staff and officers of NCBC with that Organisation only on 24.11.94 when it thought that the basic draft of the rules had to be provided by NCBC as they would know the organisational needs better. This should have been discussed with the NCBC much earlier, in which case draft rules regarding recruitment of staff and officers would have been ready long back. The Committee feel that granting of extension of time to comply with the provisions of the rules would not serve the purpose if due seriousness is not attached to the matter. The Committee also feel that the rules would have definitely been finalised much earlier had the Ministry made concerted efforts by taking up the matter with the concerned Ministries/Departments of Government of India which are centrally located at Delhi, at appropriate levels and also through personal contacts and meetings instead of entering into protracted correspondence resulting in undue delay of about two years.

2.11 The Committee hope that the Ministry would attach due importance to this important Parliamentary Legislation and finalise the rules in arranging meetings of all the concerned and notify them without any further delay. The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a 'note' in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill.

### III

#### THE DEPARTMENT OF TELECOMMUNICATIONS, ASSISTANT ACCOUNTS OFFICER RECRUITMENT RULES, 1991 (GSR 217 OF 1992)

The Department of Tele-communications, Assistant Accounts Officer Recruitment Rules, 1991 were published in the official gazette dated 9 May, 1992 but were deemed to have come into force on 1 April, 1987 retrospectively. However, the notification was not accompanied by the usual explanatory note giving reasons for such retrospective effect and certifying that interests of nobody would be adversely affected. In this connection, the attention of the Ministry of Communications was invited to following observations of the Committee on Subordinate Legislation made in para 10 of their Second Report (Fourth Lok Sabha) namely:—

“....normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries/Departments should take appropriate steps to ensure the publication of rules before they come into force. However, if in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a foot-note to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules.”

3.2 The Ministry were requested to state the reasons for not complying with the aforesaid recommendation of the Committee, and also to state if they had any objection to amending the rules to the necessary effect. In their reply dated 13 July, 1993 the Ministry stated as under:—

*“The RRs have been given retrospective effect but the explanatory memorandum has not been added*

It is stated that the cadre of Assistant Accounts Officer was introduced in the P&T Accounts and Finance service w.e.f. 1.4.87 and till finalisation of the RRs all the Junior Accounts Officers who had rendered three years service in the grade and who were otherwise found fit for promotion were promoted to the grade of Assistant Accounts Officer. Thus publication of these RRs will, therefore, not have any detrimental effect on any of the existing JAOs. The explanatory memorandum that interest of nobody would be adversely affected by the publication of the RRs has, therefore, not been added.

Lok Sabha Secretariat has also desired to know whether we have any objection to issue an amendment in the RRs so that the points raised by Lok Sabha Secretariat could be included. It is stated that though in view of the clarifications given above, we do not feel any necessity for incorporating the amendments as desired by the Lok Sabha Secretariat, however, if they feel that these amendments are really necessary this Department has no objection to incorporate the same."

3.3 The matter was considered by the Committee at their sitting held on 31 March, 1994. The Committee were not satisfied with the reply of the Ministry and decided to call the representatives of the Ministry of Communications for further elucidation of the facts and for ensuring proper compliance of their recommendations in that regard. Accordingly, the representatives of the Ministry appeared before the Committee on 23 June, 1994 to tender oral evidence.

3.4 During the course of oral evidence, the Chairman, Telecom Commission expressed regret for not complying with the recommendations of the Committee contained in para 10 of their Second Report (Fourth Lok Sabha) and submitted that action had already been initiated to implement the recommendation of the Committee.

3.5 Explaining the delay of more than 5 years in the publication of the rules, the Chairman, Telecom Commission stated that as per the Ministry of Finance O.M. dated 12 June, 1987 regarding reorganisation of staff, actions were initiated to identify the posts, conducting DPCs for immediate promotion, issuing promotional orders etc. which took nearly 11 months. However, the delay mainly occurred in UPSC and to some extent in the Department of Personnel.

3.6 It was pointed out that the cadre of Assistant Accounts Officer was a new cadre different from the cadre of Junior Accounts Officer. So, when asked how such a different cadre could be started with different pay scales, and how appointment of officers to that cadre or their transfer or promotion could be done without first having that cadre established by means of a rule, the Member (Finance) explained that orders which were issued by the Ministry of Finance and made applicable to all the financial and accounts services were made applicable to the Department of Telecommunications also. On being asked about the authority to act in the absence of rules, the Member (Finance) stated that in this case, the promotions etc. have been made on the basis of certain criteria which were laid down internally. The Committee however pointed out that the Department should have followed a certain procedure i.e. first rules should have been framed and only then the promotions should have been made. While appreciating the Committee's view, the Chairman, Telecom Commission defended his action by saying that promotions were made in the absence of rules keeping in view the need for taking a pragmatic and balanced approach

between administrative exigencies on one hand and legal necessities on the other.

3.7 The Committee further pointed out that a delay of five years in framing rules merely on the ground of consultations etc. did indicate that the matter was not being properly pursued, otherwise it could have been done in an year's time. The Committee also desired that the Department should give an undertaking to the Committee that it will not resort to this method in future. The Chairman, Telecom Commission, while appreciating the Committee's concern assured that in future such long delays would not occur.

3.8 The Committee further pointed out that to expedite such matters, and to curtail such delays, joint meetings of the concerned agencies might be held where informal consultations may lead to a formal solution of the problem. The Chairman, Telecom Commission agreed and stated that it was a very practical and pragmatic solution.

3.9 In a subsequent reply dated 25 June, 1994, the Department of Telecommunication stated as under:—

"It was brought out in the discussions on 23 June, 1994 that a period of nearly five years elapsed before the recruitment rules for the posts of AAOs were framed by the DOT. The delay took place among other organisations like the UPSC and Ministry of Law.

The Committee pointed out that it will not be proper to provide promotions in the absence of the proper recruitment rules. The existing instructions and procedures which also inter-alia take into account the need for speedy decision making are as follows:

The existing instructions contain prescription of following time schedule.

- |   |           |
|---|-----------|
| 1. Framing of proposal for Recruitment Rules in Department of Telecom.                | 4 weeks   |
| 2. Examination of proposal by DOP   | 4 weeks   |
| [If DOP&T does not give concurrence within 4 weeks, we can presume their concurrence. |           |
| Reference—Para 2.3.6. at page 6, DOP&T Handbook of Recruitment Rules]                 |           |
| 3. Examination by UPSC  | 5-6 weeks |
| [Otherwise to be cleared through personal discussions]                                |           |
| 4. Publication after clearance by UPSC  | 4 weeks   |

If the prescribed schedule is followed Recruitment Rules can be published within 4 months of creation of a post. DOP&T have

even suggested parallel action for framing Recruitment Rules when the proposal for creation of post is processed. These will be followed.

In order to avoid delay, I propose to have a system of informal consultations, even before formulating the rules, so that the comments when the reference made are not delayed. From my experience I find that this can be easily done with the Department of Personnel. So far as the Ministry of Law is concerned, as the legal implications may not be clear at the out-set, perhaps a reference could be made initially after a reasonable time, i.e. about fortnight or so, meetings held, so that the opinion of the Ministry of Law would be based on an appreciation of the issues involved.

So far as the UPSC is concerned, because it is a constitutional/autonomous body, the practice we have been following is to remind on phone and send written reminders only after a considerable time. This we will replace by a system of at least monthly reminders. We will also follow the practice of contacting them at the level of Joint Secretaries, so that decision making is expedited."

3.10 The Committee note that on being pointed out during oral evidence, the Ministry of Communications expressed regret for not complying with the recommendation of the Committee contained in para 10 of their Second Report (Fourth Lok Sabha) and informed that action has already been initiated to implement the recommendation of the Committee. The Committee reiterate their aforesaid recommendation that the rules should be published before their enforcement and if in any particular case, due to unavoidable circumstances, retrospective effect has to be given to the rules, a clarification by way of an explanatory memorandum should be given that no one would be adversely affected as a result of retrospective effect so given, to the rules. The Committee also desire that the Ministry should ensure suitable procedural safeguards to ensure that recommendations of the Committee on Subordinate Legislation are strictly adhered to during the framing of the rules and also during their notification.

3.11 The Committee further note that the cadre of Assistant Accounts Officer was altogether a different cadre with different pay scales. The Committee find it highly improper on the part of the Ministry to appoint, transfer or promote persons to this cadre without first establishing that cadre by way of rules. The proper procedure is to first frame the rules, then to start promoting people to that cadre. The Committee desire that the Ministry should give an undertaking to the Committee to this effect that the Ministry would not resort to this kind of method in future.

3.12 The Committee also deprecate the inordinate delay of five years in framing and finalising the recruitment rules. The Committee is not convinced that the delay occurred merely on the ground that a lot of consultations were involved with various other agencies to finalise the rules. The Committee observe that it is only an indication of the scant attention



being paid by the Ministry to such important legislative matters, otherwise, the delay could have been curtailed to the extent of even less than a year. The Committee are of the view that in such sort of situations where the framing of rules require consultation with other Ministries/Departments also, the effective way to curtail delays on this score could be that the Ministry should hold joint informal meetings of all the concerned agencies so that the opinion of all concerned can be taken into account at the same point of time and a solution could be arrived at expeditiously. The Committee note with satisfaction that the Ministry has assured the Committee that they would adopt this system during the formulation of statutory rules in future to avoid delays of this nature. The Committee expect that the Ministry should formulate the necessary rules expeditiously.

#### IV

### GIVING OF RETROSPECTIVE EFFECT TO CERTAIN SCHEMES/ RULES PERTAINING TO GENERAL INSURANCE CORPORATION OF INDIA/LIFE INSURANCE CORPORATION OF INDIA

The General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Officers) (Amendment) Scheme, 1992 (SO 200-E of 1992) was deemed to have come into force on 1 August, 1987 but was published in the Official Gazette on 10 March, 1992 after a gap of more than 4 years and 7 months and the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) (Amendment) Scheme, 1992 (SO 201-E of 1992) was deemed to have come into force on 1 April, 1989 but was published in the Official Gazette on 10 March, 1992 after a gap of more than 2 years and 11 months.

4.2 Similarly, (i) the Life Insurance Corporation of India (Special Area Allowance) (Amendment) Rules, 1992 (GSR 323-E of 1992) were deemed to have come into force on 1 January, 1990 but were published in the Official Gazette on 10 March, 1992 after a gap of more than 2 years and 2 months; (ii) the Life Insurance Corporation of India, Class I Officers (Revision of Terms and Conditions of Service) (Amendment) Rules, 1992 (GSR 324-E of 1992) were deemed to have come into force on 1 August, 1987 but were published in the Official Gazette on 10 March, 1992 after a gap of more than 55 months; (iii) the Life Insurance Corporation of India Development Officers (Revision of Terms and Conditions of Service) (Amendment) Rules, 1992 (GSR 325-E of 1992) were deemed to have come into force on 1 April, 1989 but were published in the Official Gazette of 10 March, 1992 after a gap of more than 2 years and 11 months.

4.3 The explanatory memoranda appended to the notifications were silent as to the reasons for publication of the amendments after so long a time. The concerned Ministry of Finance were requested to state the reasons for such inordinate delays and indicate as to how the matters sought to be regulated by the amendment scheme/rules were actually governed during the intervening periods in each case. In their reply dated 23 September, 1992, the Ministry stated as under:—

“....the Central Government may, by notification, add, amend or vary any scheme framed under section 17A of the General Insurance Business (Nationalisation) Act, 1972 (37 of 1972). The powers to frame a Scheme to add, to amend or vary any scheme framed shall

include the power to frame such scheme, or, as the case may be to make such addition, amendment or variation in any scheme framed under section 17A with retrospective effect from a date not earlier than the appointed day i.e. 17th day of September, 1984.

The notifications issued under S.O. 200 and 201 on 10-3-1992 are the amendments to the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Officers) Scheme 1975 and General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Scheme, 1976 respectively. The amendments are carried out only when their need arises, if necessary, with retrospective effect.

The attention of the Lok Sabha Secretariat is invited to the explanatory memorandum appended at the end of the each notifications stating the reasons for giving retrospective effect on the basis of the fact that no Officer/Development Officer of the General Insurance Corporation of India or its Subsidiary Companies is likely to be affected adversely by the notification being given retrospective effect. As such, the question of explanation of delay in the notification does not arise."

4.4 In a subsequent reply dated 28 September, 1992, the Ministry reiterated the position in respect of the notification pertaining to the Life Insurance Corporation of India to read as under:—

"....the Central Government may, by notification, add, amend or vary any Rule framed under section 48 of the Life Insurance Corporation of India Act, 1956 (31 of 1956). The powers to frame a rule to add, amend or vary any rule framed shall include the power to frame such rule, or, as the case may be to make such addition, amendment or variation in any rule framed under section 48 with retrospective effect from a date not earlier than the appointed day.

The notifications issued under GSR 323-E, 324-E and 325-E on 10-3-1992 are the amendments to the Life Insurance Corporation of India (Special Area Allowance) (Amendment) Rules, 1988, Life Insurance Corporation of India, Class I Officers (Revision of Terms and Conditions of Service) Rules, 1985 and Life Insurance Corporation of India Development Officers (Revision of Terms and Conditions of Service) Rules, 1986 respectively. The amendments are carried out only when their need arises, if necessary, with retrospective effect.

The attention of the Lok Sabha Secretariat is invited to the explanatory memorandum appended at the end of each notification

stating the reasons for giving retrospective effect on the basis of the fact that no officer/employee of the Life Insurance Corporation of India is likely to be affected adversely by the notification being given retrospective effect. As such, the question of explanation of delay in the notification does not arise."

4.5 As the Ministry of Finance did not furnish the reasons for the inordinate delays that had taken place in notifying the amendments in the official gazette, their attention was specifically drawn to the following observations of the Committee on Subordinate Legislation made in para 10 of their Second Report (Fourth Lok Sabha), namely—

"Even in cases where the Government has the power to give retrospective effect to subordinate legislation, such power should be exercised only in unavoidable circumstances."

4.6 In the light of the above observations, the Ministry were again requested to intimate as to when the need for carrying out the amendments in question had actually arisen and how much time was spent at each stage of the process before final notification was thereof issued in the official gazette. In their reply dated 9 October, 1992, the Ministry stated as under:—

".... the need of amendment to any of the rules/schemes arises whenever the demands are raised by the Associations of the Insurance Industry or on observation of any clause of any rules/schemes causing hardship to the employees. On receipt of proposal/request for amendment to any of the rules/schemes from the Corporations, the same are examined in this Ministry in consultation with the Ministry of Law, Banking Division/Department of Personnel & Training wherever necessary. If these are found reasonable and just, this Ministry issues notifications under the powers conferred on it."

A statement indicating the time-taken at various stages of the rules in the Ministry was shown as under:—

1. Name of the Scheme/ Rule	The General Insurance (Rationalisation of pay scales and other Conditions of Service of Officers) (Amendment) Scheme, 1992.	The General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) (Amendment) Scheme, 1992	The Life Insurance Corporation of India (Special Area Allowance) (Amendment) Rule, 1992	The Life Insurance Corporation of India Class I Officers (Revision of Terms and Conditions of Service) (Amendment) Rules, 1992	The Life Insurance Corporation of India Development Officers (Revision of Terms and Conditions of Service) (Amendment) Rules, 1992.
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2. Date of receipt of the request for amendment from the Corporation.	19-3.1991	19-3-191	14-3-1991	28-6-1989	28-6-1989
3. Date of sending the same to Deptt. of Legislative for vetting	24-10-1991	24-10-1991	11-10-1991	24-10-1991	24-10-1991
4. Date of receipt of vetted copy of the notification in the Ministry	24-12-1991	24-12-1991	3-2-1992	24-12-1991	24-12-1991
5. Date of sending for Hindi version to Official Language Deptt.	24.12.1991	26-12-1991	4-2-1992	26-12-1991	26-12-1991
6. Date of receipt of Hindi version	3-3-1992	3-3-1992	3-3-1992	3-3-1992	3-3-1992
7. Date of issue of the Notification.	10-3-1992	10-3-1992	10-3-1992	10-3-1992	10-3-1992

4.7 It was observed from the statement that the Ministry of Finance have ordinarily been taking more than 7 months in sending the request for an amendment to the Law Ministry for vetting. However, in two cases in respect of Class I Officers and Development Officers, the Ministry has taken as long as 28 months.

4.8 The Matter was considered by the Committee at their sitting held on 24 May, 1994. The Committee were not convinced with the reply of the Ministry of Finance and in order to find out the facts which lead to such delays, the Committee decided to call the representatives of the Ministry for oral evidence. Accordingly the representatives of the Ministry of Finance (Insurance Division) and the Life Insurance Corporation and General Insurance Corporation appeared before the Committee on 8 September, 1994.

4.9 During evidence the attention of the Ministry of Finance was invited to the delay of about 2 years in sending the requests for amendment in certain rules relating to Life Insurance Corporation and General Insurance Corporation to the Law Ministry for vetting.

4.10 In reply, the representative stated that the Parliamentary requests are cleared at the level not less than that of Secretary. He further stated

that the negotiations regarding any amendments in the service conditions of the employees are initiated by the Bankers Association and based on these negotiations the LIC and GIC send their proposals to the government for processing the case. The Corporations sent their proposals for all the four categories of officers to the government. Since negotiations on the banking side were going on, the government decided to give allowances in the first instance only to Class III & IV employees. Hence the government processed the proposal only for class III & IV employees and orders are issued accordingly for them after getting the proposals duly formulated by the LIC. Since the LIC proposed to revise the terms and conditions for class I & II officers also, the government had to examine the proposal again in consultation with the Banking Division and then re-formulated the proposal in consultation with LIC. It took another 10 months to issue the amendment orders in case of class I & II officers.

4.11 On being asked about the necessity to consult the banking sector while amending the service conditions of LIC and GIC, the representative stated that since the pay and allowance of the Insurance sector and the Banking Sector are at par with each other, the banking sectors are consulted.

4.12 The Committee note that though requests for amendments in the Service Conditions of all the four categories Viz. Class I, II, III and IV employees of the Corporations were received by the Government, the Government processed the amendment proposal for Class III and IV employees only in the first instance. Since the LIC proposed to revise the terms and conditions of service for Class I and II officers also, the Government had to examine the proposal again in consultation with the Banking Division which lead to delay in these proposals being sent to the Law Ministry for vetting.

4.13 The Committee further note that since the pay and allowance of the Insurance Sector and that of the banking sector are almost at par with each other traditionally proposals for revision of the same from each sector is considered in consultation with the other. The process of formulating proposals for revision by the insurance sector, then sending it to the Ministry and the Ministry waiting for the response from the banking sector, and then taking a decision, is very time consuming. The Committee feel that the Finance Ministry should set up a joint body in the nature of a Standing Committee of the Insurance Companies and of the Indian Banks Association and other bodies which can assess the proposals in regard to the revision which are commonly applicable to both the sectors.

**4.14 The Committee desire that the Ministry should seriously consider this proposal and take all possible steps to obviate delay in notifying rules in future.**

**NEW DELHI;  
April, 1995**

**AMAL DATTA,  
Chairman,  
*Committee on Subordinate Legislation.***

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## APPENDICES

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## APPENDIX I

(vide para 4 of the introduction of the Report)

### SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF THE COMMITTEE ON SUBORDINAE LEGISLATION

(TENTH LOK SABHA)

Sl. No.	Reference to para No. in the Report	Summary of Recommendations
1	2	3
1.	1.10 to 1.13	<p>The Committee note that during evidence, the Ministry have assured that it would comply with the recommendation of the Committee contained in para 12 of their Second Report (Seventh Lok Sabha) to obviate any confusion in the public mind regarding the date of coming into force of the notification. The Committee desire that the Ministry may evolve procedural safeguards to ensure that the recommendations of the Committee are strictly adhered to during the formulation and notification of statutory orders.</p> <p>The Committee further note that the Ministry have instructed the Port Authorities to intimate the users/traders 30 days in advance prior to notification of the rules about the revised tariff structure with a view to giving a reasonable time to such users/traders to adjust to that raised tariff structure. The Committee observe that rules can become applicable only after their publication in the official gazette and the copies thereof are made available to the public. In the instant case, the notification dated 8 May, 1992 were made available to the public only on 30 June, 1992.</p> <p>The Committee, therefore, feel that it would be more appropriate if notification regarding revised tariff structure is brought into force 30 days after their publication in the official gazette or such longer period which would give reasonable notice to persons really affected taking into account the actual period</p>

1	2	3
		<p>of delay in publication of the official gazette as it would considerably reduce the time gap between coming into force of the rules and the availability of the gazette notification to the public. The Committee is unable to agree with the opinion of the Deputy Legal Adviser of the Ministry of Law and Justice to the effect that the alteration in the rate of scale cannot be given prospective effect on the ground that such a provision does not exist in the Major Port Trusts Act, 1963.</p> <p>The Committee also note that the Ministry of Surface Transport have proposed to amend the Indian Ports Act, 1998 and Major Port Trusts Act, 1963 to stipulate a period of 30 days from the date of publication of the Notification in the official gazette for bringing into effect such orders regarding revised tariff. The Committee also note that the amendments are under formulation. Taking into account the recommendation of the Committee made in the previous paragraph incorporating the date of formulation of such amendments, the Committee desire the Ministry of Surface Transport to do the needful at the earliest.</p>
2.	2.10 and 2.11	<p>The Committee are unhappy to note that the National Commission for Backward Classes Act, 1993, which come into force on 1 February, 1993, empowered the Central Government to exercise their rule making power under Section 17(1) but the Ministry of Welfare which was administratively responsible for it failed to comply with it even after the expiry of two years. The Committee are not satisfied with the justification given by the Ministry that the consultation/correspondence with the various Ministries/Agencies took time and therefore it was not possible for them to finalise and notify the rules within the prescribed period of six months. The Committee take a serious view of the fact that the Ministry of Welfare discussed the matter of framing rules relating to the recruitment of staff and officers of NCBC with that Organisation only on 24.11.94 when it thought that the basic draft of the rules had</p>

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to be provided by NCBC as they would know the organisational needs better. This should have been discussed with the NCBC much earlier, in which case draft rules regarding recruitment of staff and officers would have been ready long back. The Committee feel that granting of extension of time to comply with the provisions of the rules would not serve the purpose if due seriousness is not attached to the matter. The Committee also feel that the rules would have definitely been finalised much earlier had the Ministry made concerted efforts by taking up the matter with the concerned Ministries/Departments of Government of India which are centrally located at Delhi, at appropriate levels and also through personal contacts and meetings instead of entering into protracted correspondence resulting in undue delay of about two years.

The Committee hope that the Ministry would attach due importance to this important Parliamentary Legislation and finalise the rules in arranging meeting of all the concerned and notify them without any further delay. The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal, there should be a 'note' in the Memorandum of Delegated Legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill.

3. 3.10 to  
3.12

The Committee note that on being pointed out during oral evidence, the Ministry of Communications expressed regret for not complying with the recommendation of the Committee contained in para 10 of their Second Report (Fourth Lok Sabha) and informed that action has already been initiated to implement the recommendation of the Committee. The Committee reiterate their aforesaid recommendation that the rules should be published before their enforcement and if in any particular case, due to unavoidable circumstances, retrospective effect has to be given to the rules, a clarification by way of an explanatory memorandum should be given that no

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one would be adversely affected as a result of retrospective effect so given to the rules. The Committee also desire that the Ministry should ensure suitable procedural safeguards to ensure that recommendations of the Committee on Subordinate Legislation are strictly adhered to during the framing of the rules and also during their notification.

The Committee further note that the cadre of Assistant Accounts Officer was altogether a different cadre with different pay scales. The Committee find it highly improper on the part of the Ministry to appoint, transfer or promote persons to this cadre without first establishing that cadre by way of rules. The proper procedure is to first frame the rules, then to start promoting people to that cadre. The Committee desire that the Ministry should give an undertaking to the Committee to this effect that the Ministry would not resort to this kind of method in future.

The Committee also deprecate the inordinate delay of five years in framing and finalising the recruitment rules. The Committee is not convinced that the delay occurred merely on the ground that a lot of consultations were involved with various other agencies to finalise the rules. The Committee observe that it is only an indication of the scant attention being paid by the Ministry to such important legislative matters, otherwise, the delay could have been curtailed to the extent of even less than a year. The Committee are of the view that in such sort of situations where the framing of rules require consultation with other Ministries/Departments also, the effective way to curtail delays on this score could be that the Ministry should hold joint informal meetings of all the concerned agencies so that the opinion of all concerned can be taken into account at the same point of time and a solution could be arrived at expeditiously. The Committee note with satisfaction that the Ministry has assured the Committee that they would adopt this system during the formulation of statutory rules in future to avoid delays of this nature. The Committee expect that the Ministry should formulate the neces

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4.	4.12 to 4.14	<p>sary rules expeditiously.</p> <p>The Committee note that though requests for amendments in the Service Conditions of all the four categories viz. Class I, II, III and IV employees of the Corporations were received by the Government, the Government processed the amendment proposal for Class III and IV employees only in the first instance. Since the LIC proposed to revise the terms and conditions of service for Class I and II officers also, the Government had to examine the proposal again in consultation with the Banking Division which led to delay in these proposals being sent to the Law Ministry for vetting.</p>

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**SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF  
THE COMMITTEE ON SUBORDINATE LEGISLATION  
(TENTH LOK SABHA)**

Sl. No.	Reference to para No. in the Report	Summary of Recommendations
		<p>The Committee further note that since the pay and allowance of the Insurance Sector and that of the banking sector are almost at par with each other traditionally proposals for revision of the same from each sector is considered in consultation with the other. The process of formulating proposals for revision by the insurance sector, then sending it to the Ministry and the Ministry waiting for the response from the banking sector, and then taking a decision, is very time consuming. The Committee feel that the Finance Ministry should set up a joint body in the nature of a Standing Committee of the Insurance Companies and of the Indian Banks Association and other bodies which can assess the proposals in regard to the revision which are commonly applicable to both the sectors.</p> <p>The Committee desire that the Ministry should seriously consider this proposal and take all possible steps to obviate delay in notifying rules in future.</p>

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## MINUTES

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**(Vide para 3 of the introduction of Report)**

**MINUTES OF THE THIRTY-THIRD SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)**

## PRESENT

## MEMBERS

2. Shri Prithviraj D. Chavan
3. Shri Guman Mal Lodha
4. Dr. A.K. Patel
5. Shri Rajendra Kumar Sharma
6. Shri K. G. Shivappa
7. Shri Mohan Singh (Deoria)
8. Prof. K. V. Thomas
9. Shri Umrao Singh

Shri S. C. Gupta	—	Joint Secretary
Shri R. K. Chatterjee	—	Deputy Secretary
Shri Ram Kumar	—	Under Secretary

2.                      ••                      ••                      ••

3. The Committee then considered Memoranda Nos. 83 to 86 as follows:—

**4. and 5                      \*\*                      \*\*                      \*\***

\* Omitted portions of the Minutes are not covered in this Report.



(iii) *The Jawaharlal Nehru Port Trust pilotage and other Services (Fees) Order, 1992 (GSR 485—E of 1992)—(Memorandum No. 85)*

6. The Committee considered the above memorandum and were not convinced with the reply furnished by the Ministry of Surface Transport regarding the date of commencement of the Order in terms of clause 1 (ii) of the Order which stated that the order shall come into force at once. The Committee, therefore, decided to call the representatives of the Ministry for oral evidence for further elucidation on the matter.

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*The Committee then adjourned.*

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\*Omitted portions of the Minutes are not covered in this Report.

# MINUTES OF THE THIRTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee met on Wednesday, 30 March, 1994 from 15.00 hours to 1615 hours.

## PRESENT

Shri Amal Datta — *Chairman*

## MEMBERS

2. Shri Guman Mal Lodha
3. Shri M.V.V.S. Murthy
4. Dr. A.K. Patel
5. Shri K. G. Shivappa
6. Shri Ratilal Kalidas Varma

## SECRETARIAT

1. Shri Ram Kumar—*Under Secretary*
2. Shri R. Kothandaraman—*Assistant Director*

## REPRESENTATIVES FROM THE MINISTRY OF WELFARE, NATIONAL COMMISSION FOR MINORITIES AND NATIONAL COMMISSION FOR BACKWARD CLASSES

1. Shri Mata Prasad, Secretary, Ministry of Welfare
2. Shri M.S. Pandit, Joint Secretary, Ministry of Welfare
3. Shri M.A.K. Tayab, Secretary, Minorities Commission

2. The Committee took oral evidence of the representatives of the Ministry of Welfare in regard to their request for extension of time for framing rules under the (i) National Commission for Minorities Act, 1992 and (ii) National Commission for Backward Classes Act, 1993.

3. The Ministry informed the Committee that the National Commission for Minorities Act was enacted in May, 1992 and the Commission was constituted in May, 1993. The Ministry explained that the delay in constitution of the Commission was on account of time spent on the exercise of choosing suitable persons as Chairperson and members of the Commission.

4. As regards the delay in framing rules under the National Minorities Commission Act, 1993, the Ministry informed that executive orders were in force for governing matters under the Act pending finalisation of the rules. The Ministry explained that the delay in framing the rules under the

Act was due to time-taken in the process of consulting the Commission and on the inter-departmental correspondence on the matter.

5. The Committee directed the Ministry to frame the rules under the National Minorities Commission Act, 1992 within six weeks.

6. The Ministry attributed the same reasons for the delay in framing the rules and constituting the Commission under the National Backward Classes Commission Act, 1993.

7. The Committee did not favour the grant of extension of time for framing rules under the National Backward Classes Commission Act, 1993 upto August, 1994 and directed the Ministry to expedite the process of framing rules thereunder.

8. The Committee also directed the Ministry to send the Committee the relevant notes and copies of inter-departmental correspondence on the matters.

9. The Committee further directed that the views of the Committee may be made known by the Ministry to all other agencies involved in the framing of rules under both statutes.

*The Committee then adjourned.*

**XXXVI**

**MINUTES OF THE THIRTY-SIXTH SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)**

**PRESENT**

**Shri Amal Datta** — *Chairman*

**MEMBERS**

- ## SECRETARIAT

2. The Committee considered Memoranda Nos. 87 to 97 as follows:—

3. to 11                               \*\*                               \*\*                               \*\*

(x) *The Department of Telecommunications, Assistant Accounts Officer Recruitment Rules, 1991 (GSR 217 of 1992) — (Memorandum No. 96)*

(A)

12. The Committee decided to reiterate their earlier observations made in paras 27-28 of Fifth Report (Fifth Lok Sabha) and hoped that the Ministry of Communications would streamline the procedure including monitoring by superior officers with a view to eliminate the errors and omissions of the like nature in future, in consultation with the Ministry of Law and Justice.

(B)

The Committee observed that the Department of Telecommunications, Assistant Accounts Officer Recruitment Rules, 1991 were published in the official Gazette on 9 May, 1992 but were deemed to have come into force on 1 April, 1987 retrospectively. However, the notification was not accompanied by the usual explanatory note giving reasons for such retrospective effect and certifying that interests of nobody would be

**\*\*Omitted portions of the Minutes are not covered by this Report.**

adversely affected thereby. The matter was referred to the Ministry. The reply of the Ministry was far from being satisfactory as they were of the view that since appointment had already been made, there could be no detrimental effect on any of the existing Junior Accounts Officers of the said rules. As interests of nobody would be adversely affected by the enforcement of the rules retrospectively, no explanatory memorandum need be added to the notification. The Committee noted, that, despite categorical findings, Ministry had displayed and utter disregard to the recommendations of the Committee in the instant case. The Committee, therefore, decided to call the representative of the Ministry for further elucidation of recommendations in that regard.

*The Committee then adjourned.*

## XLII

### MINUTES OF THE FORTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee met on Monday, 24 May, 1994 from 11.00 hours to 12.30 hours.

#### PRESENT

Shri Amal Datta — *Chairman*

#### MEMBERS

2. Shri A.K. Patel
3. Shri Rajendra Kumar Sharma
4. Shri K.G. Shivappa
5. Shri Mohan Singh (Deoria)
6. Shri Swarup Upadhyay
7. Shri Ratilal Kalidas Varma

#### SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R. K. Chatterjee — *Deputy Secretary*
3. Shri Ram Kumar — *Under Secretary*
4. Shri R. Kothandaraman — *Assistant Director*

2. The Committee considered the memoranda Nos. 98 to 104 as follows:

3. to 8.	**	**	**
	**	**	**

(vii) *Giving of retrospective effect to certain Schemes/Rules pertaining to General Insurance Corporation/Life Insurance Corporation — (Memorandum No. 104)*

9. The Committee noted that the Ministry of Finance had ordinarily been taking more than 7 months in sending the request for an amendment for vetting by the Legislative Department. However, in two cases in respect of Class I Officers and Development Officers, they had taken an inordinately long time of 28 months. In the Explanatory Memorandum, the Ministry did not also indicate the reasons for such inordinate delays. The Committee were not convinced with the reply of the Ministry and therefore, decided to hear oral evidence of the Ministry of Finance for further elucidation of the facts.

*The Committee then adjourned.*

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\*Omitted portion of the Minutes are not covered in this Report.

## XLV

### MINUTES OF THE FORTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee on Subordinate Legislation met on Thursday, 23 June, 1994 from 11.45 hours at 12.30 hours.

#### PRESENT

Shri Amal Datta — *Chairman*

#### MEMBERS

2. Shri Guman Mal Lodha
3. Shri D. Pandian
4. Dr. A.K. Patel
5. Shri Rajendra Kumar Sharma
6. Shri Mohan Singh (Deoria)
7. Shri Umrao Singh
8. Shri Swarup Upadhyay

#### SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri Ram Kumar — *Under Secretary*

#### REPRESENTATIVE OF THE MINISTRY OF SURFACE TRANSPORT

1. Shri Ashok Joshi — *Joint Secretary (Ports)*
2. Shri K. Nalivakshan — *Chairman, Jawahar Lal Nehru Port Trust*
3. Shri K.J. Dyva — *Under Secretary*<sup>†</sup>  
Prasad
4. Shri A.B. Gadgil — *Secretary, Jawaharlal Nehru Port Trust*

The Committee took oral evidence of the representatives of the Ministry of Surface Transport to discuss some points which arose out of the Jawaharlal Nehru Port Trust Pilotage and other Services (Fees) Order, 1992.

2. The orders were to come into force at once. The Committee pointed out that the words 'at once' had a tendency of causing confusion in the minds of the public dealing with or coming under the purview of these rules and were likely to cause immense harm in certain cases and involve litigation in others. The Committee also drew the attention of the

representatives to the directions of the Committee that only standard words "shall be" could be used which were circulated to all the Ministries and Departments and asked whether they were aware of the same.

3. Regretting the error Shri Ashok Joshi, Joint Secretary (Ports) stated that they were in receipt of the guidelines of the Committee and the instructions would be compiled with in future. He further stated that administrative orders have been issued by them prior to the gazette notification that a time gap of 30 days would be there between the date of application and the date of applicability of rates that they notify.

4. The Committee enquired about the system adopted by the Ministry in order to ensure that the observations or directions of the Committee were taken note of and complied with while issuing the statutory rules. In reply, the representative stated that these instructions in the nature of policy are put in a god file and the dealing persons were supposed to go through the god file before issuing Statutory Orders and the concerned Joint Secretary was the person ultimately responsible.

5. On being asked whether the information of thirty days time was given before or after the publication of the statutory rules, the representative stated that the rules become effective after thirty days so that the Ports could have time to intimate the users who may be affected and generally the date of publication is the date of the rules becoming effective.

6. On being asked whether it was ensured that the notifications were being made available to the public at once or on the date of publication, the representative stated that it was the Government of India Press responsible for making available the notifications to the public and in the instant case these gazette notifications were made available to the public as late as after a gap of one and half month, but the approval of the Government in this regard was intimated earlier.

7. The Committee further stressed that law is made only when the rules are published in the official gazette and instead of giving vague expressions like 'at once' a firm date should be indicated for the rules to become effective. A time limit of thirty days could be given after the date of publication so as to reduce the time gap between the fictional date and the actual date of publication.

8. On being asked whether the Ministry were in a position to ensure that the Port authorities intimate to the concerned public about the changes in rules, the representatives stated that they meet regularly where all such announcements are made and interested persons attend such meetings.

*The witnesses then withdrew.*

*The Committee then adjourned.*



## XLVI

### MINUTES OF THE FORTY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee met on Thursday, 23 June, 1994 from 16.00 to 17.00 hours.

#### PRESENT

Shri Amal Datta — *Chairman*

#### MEMBERS

2. Shri Ghuman Mal Lodha
3. Shri D. Pandian
4. Dr. A.K. Patel
5. Shri Umrao Singh

#### SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri Ram Kumar — *Under Secretary*

#### REPRESENTATIVES OF THE MINISTRY OF COMMUNICATIONS (DEPARTMENT OF TELECOMMUNICATIONS)

1. Shri N. Vittal, Chairman, Telecom Commission
2. Shri R.C. Rastogi, Member (Finance), Telecom Commission
3. Shri S.P. Purwar, Director General (Finance), Telecom Communi-  
cations

2. The Committee took oral evidence of the representatives of the Ministry of Communication (Department of Telecommunications) to discuss certain points arising out of the Scrutiny of the Department of Telecommunications, Assistant Accounts Officer Recruitment Rules, 1991.

3. At the outset, the Committee pointed out the discrepancies observed in the rules namely, wrong indication of the year in the short-title, delay in framing the rules and absence of a foot note certifying that interest of no person would be adversely affected by such retrospective effect.

4. The Chairman, Telecom Commission, while rendering unqualified apologies, admitted that there was already a specific provision in para 10 of the Second Report (Fourth Lok Sabha) of the Committee on Subordinate Legislation, *i.e.* when rules are framed and are given retrospective effect, there has to be an explanatory note thereto. He added that the action had

already been initiated to implement that directive of the Committee.

5. Regarding the wrong year printed in the short title, the Chairman, Telecom Commission stated that if the Committee direct, the Department would initiate the process to change the year in the short-title from 1991 to 1992 so that there was no deviation in the practice which was generally followed.

6. Coming to the question of delay of more than 5 years in publication of the rules, the Chairman, Telecom Commission explained that as per the Ministry of Finance O.M. dated 12 June, 1987 regarding reorganisation of staff, actions were initiated to identify posts, conducting DPCs for immediate promotion, issuing promotional orders, etc. which took nearly 11 months. However, the delay mainly occurred in UPSC and to some extent in the Department of Personnel.

7. It was pointed out that the cadre of Assistant Accounts Officer was a new cadre different from the cadre of Junior Accounts Officer. So, when asked how such a different cadre could be started with different pay scales, and how appointment of officers to that cadre or their transfer or promotion could be done without first having that cadre established by means of a rule, the Member (Finance) explained that orders which were issued by the Ministry of Finance and made applicable to all the financial and accounts services were made applicable to the Department of Telecommunications also. On being asked about the authority to act in the absence of rules, the Member (Finance) stated that in this case, the promotions etc. has been made on the basis of certain criteria which were laid down internally. The Committee however pointed out that the Department should have followed a certain procedure i.e. first rules should have been framed and only then the promotions should have been made. While appreciating the Committee's view, the Chairman, Telecom Commission defended his action by saying that promotions were made in the absence of rules keeping in view the need for taking a pragmatic and balanced approach between administrative exigencies on one hand and legal necessities on the other.

8. Committee further pointed out that a delay of five years in framing rules merely on the ground of consultations etc. did indicate that the matter was not being properly pursued, otherwise it could have been done in an year's time. The Committee also desired that the Department should give an undertaking to the Committee that it will not resort to this method in future. The Chairman, Telecom Commission, while appreciating the Committee's concern assured that in future such long delays would not occur.

9. The Committee further pointed out that to expedite such matters, and to curtail such delays, joint meetings of the concerned agencies might be held where informal consultations may lead to a formal solution of the

problem. The Chairman, Telcom Commission agreed and stated that it was a very practical and pragmatic solution.

*The Committee then adjourned.*

## XLIX

### MINUTES OF THE FORTY-NINTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee on Subordinate Legislation met on Thursday,  
8 September, 1994 from 11.00 to 13.00 hours.

#### PRESENT

Shri Amal Datta—*Chairman*

#### MEMBERS

2. Shri Prithviraj D. Chavan
3. Dr. A.K. Patel
4. Shri Rajendra Kumar Sharma
5. Prof. K.V. Thomas

#### SECRETARIAT

1. Shri P.D.T. Achary—*Director*
2. Shri Ram Autar Ram—*Under Secretary* .. .. .
- I. .. .. .

#### II. REPRESENTATIVES OF THE MINISTRY OF FINANCE/LIC/GENERAL INSURANCE CORPORATION

- |                         |     |   |
|-------------------------|-----|---|
| 1. Shri C.S. Rao        | —   | Joint Secretary (Insurance)             |
| 2. Shri J.S. Salunke    | —   | Chairman (L.I.C.)                       |
| 3. Shri U. Mahesh Rao   | —   | Managing Director (GIC)                 |
| 4. Shri F.R. Heredia    | —   | General Manager (GIC)                   |
| 5. Shri Y. Ramachandran | / — | Chief (Legal and HPF) (LIC)             |
| 6. Shri R.C. Sharma     | —   | General Manager (GIC)                   |
| 7. Shri T.C. Nanda      | —   | Under Secretary, Ministry of<br>Finance |
| 8. Shri P.T. Kini       | —   | Deputy Secretary (Insurance) LIC        |
| 2to5                    | ..  | .. .. .                                 |

6. The Committee then heard the views of the representatives of the  
Ministry of Finance with regard to giving retrospective effect

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\*Omitted portions of the Minutes are not covered in this Report.

to certain schemes/rules pertaining to General Insurance Corporation/ Life Insurance Corporation.

7. When referred to the reply given by the Ministry for delay in publication of the rules stating therein that since nobody was affected by implementing the rule with retrospective effect, there was no point in explaining the delay, the representative apologised for the improper explanation given by the Ministry.

8. The Committee then drew the attention of the representative to the delay of about 2 years in sending the requests for amendment in certain rules relating to Life Insurance Corporation and General Insurance Corporation to the Law Ministry for vetting. In reply, the representative stated that the Parliamentary requests are cleared at the level not less than that of Secretary. He further stated that the negotiations regarding any amendments in the service conditions of the employees are initiated by the Bankers Association and based on these negotiations the LIC and GIC send their proposals to the government for processing the case. The Corporations sent their proposals for all the four categories of officers to the government. Since negotiations on the banking side were going on, the government decided to give allowances in the first instance only to Class III & IV employees. Hence the government processed the proposal only for class III & IV employees and orders were issued accordingly for them after getting the proposals duly formulated by the LIC. Since the LIC proposed to revise the terms and conditions for class I & II officers also, the government had to examine the proposal again in consultation with the Banking Division and then reformulated the proposal in consultation with the LIC which took another 10 months to issue the amendment orders in case of class I & II officers.

9. On being asked for the necessity to consult the banking sector while amending the service conditions of LIC and GIC the representative stated that since the pay and allowances of the Insurance sector and the Banking Sector are at par with each other, the banking sectors are consulted.

10. The Chairman suggested that instead of sending their proposal individually to the government, the Corporations can have a joint body of the Insurance companies to formulate the amendments required and then send them to the government for processing the proposals. The Chairman of the Life Insurance Corporation (Shri J.S. Salunke) agreed to examine the suggestion. The common problems of the corporations could be referred to the joint body.

11. In the end the Committee asked the representatives to evolve an effective method to eliminate such types of delays in future. The witness agreed to it.

*The Committee then adjourned.*

**MINUTES OF THE FIFTY-FOURTH SITTING OF THE COMMITTEE  
ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1995-96)**

The Committee met on Thursday, 6 April, 1995 from 15.00 to 16.30 hours.

**PRESENT**

**Shri Amal Datta—Chairman**

**MEMBERS**

2. Shri Prithviraj D. Chavan
3. Shri V. Dhananjaya Kumar
4. Shri Dharampal Singh Malik
5. Shri Rajendra Kumar Sharma
6. Shri Pratap Singh
7. Prof. K.V. Thomas
8. Shri Umrao Singh

**SECRETARIAT**

1. Shri S.N. Mishra—*Additional Secretary*
2. Shrimati Roli Srivastava—*Joint Secretary*
3. Shri Ram Autar Ram—*Deputy Secretary*

2. The Committee considered their draft Seventeenth and Eighteenth Reports and adopted them with the following modifications:—

(i) to (iv)

..

..

..

**EIGHTEENTH REPORT**

(v) In page 5, para 1.12

(i) line 3 after the words "30 days" *add*

"or such longer period which would give reasonable notice to persons really affected taking into account the actual period of delay in publication of the official gazette."

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\*Omitted portions are not covered in this Report.

(ii) *after line 23 add—*

**"The Committee is unable to agree with the opinion of the Deputy Legal Adviser of the Ministry of Law and Justice to the effect that the alteration in the rate of scales cannot be given prospective effect on the ground that such a provision does not exist in the Major Port Trusts Act 1963."**

(vi) In page 6, Para 1.13 *after line 10, add*

**"Taking into account the recommendation of the Committee made in the previous paragraph incorporating the date of formulation of such amendment, the Committee desire the Ministry of Surface Transport to do the needful at the earliest."**

(vii) In page 14, para 2.10, line 12, *after the words "six months", add the following words:*

**"The Committee take a serious view of the fact that the Ministry of Welfare discussed the matter of framing rules relating to the recruitment of staff and officers of the NCBC with that Organisation only on 24.11.94 when it thought that the basic draft of the rules had to be provided by NCBC as they would know the organisational needs better. This should have been discussed with the NCBC much earlier, in which case draft rules regarding recruitment of staff and officers would have been ready long back."**

(viii) In page 14, para 2.11, *after line 27, add*

**"The Committee further recommend that whenever a Bill is introduced in Parliament and in particular those Bills which propose setting up of a Commission or Tribunal there should be a 'note' in the memorandum of Delegated legislation appended to the Bill to the effect that the draft rules have also been prepared under that Bill."**

(ix) In page 23, para 3.12 *for lines 5—8 substitute*

**"at the same point of time and a solution could be arrived at expeditiously. The Committee note with satisfaction that the Ministry has assured the Committee that they would adopt this system during the formulation of Statutory rules in future to avoid delays of this nature. The Committee expect that the Ministry should formulate the necessary rules expeditiously."**

**3. The Committee then decided to meet on 3 May, 1995.**

***The Committee then adjourned.***



### **APPENDIX III**

**[Vide para 1.9 of the Report]**

#### **MINISTRY OF LAW & JUSTICE**

**(Department of Legal Affairs)**

#### **Advice 'A' Section**

**Refer note at pre-page.**

2. In the scheme of Chapter VI of the Major Port Trust Act, 1963, provisions are made for the imposition and recovery of rates at ports. Section 48(1) of the Act provides that the Board shall frame a scale of rates under which any of the 'Services' specified in the said section shall be performed by the Board or by any other person under Section 42 (30) of the Act. The services specified in clauses (a) to clause (e) of Sub-Section (1) of Section 48 referred to various services like trans-shipment of passengers and goods, landing and shipment of passengers and goods, crangages, or portage of goods, wharfae, storage and demurrage of goods etc. It is these, services in respect of which section 48 authorises the Board to frame the scale of rates and the statement of conditions.

Section 52 of the Act provides that every scale of rates and every statement of conditions framed by a Board shall be submitted to the Central Government for sanction and shall have effect when so sanctioned and published by the Board in the official gazette. This section implies that the scale of rates and statement of conditions shall come into force after the sanction made by the Central Government is published by the Board in the official gazette and the scales of rates shall become operative as soon as these are notified in the official gazette.

The Administrative Ministry in their referring note have pointed out that a number of complaints are being received from the users and ship-owners regarding the increase in the port charges without any proper notice. With a view to give advance notice, the administrative Ministry desires to know whether the operation of the revised rates can be made effective from a prospective date under Section 52 of the Act. The administrative Ministry also placed a reliance of Section 33(5) of the Indian Port Act, 1908 which provides that an order increasing or imposing dues under this Section shall not take effect till the expiration of sixty days from the date on which order was published in the official gazette.

It may be seen that the Board, under Chapter VI of the Act, is under statutory obligation to render services of various kinds and those services have to be rendered not for the personal benefit of importers, but in the larger national interest. The scale of rates under Section 48 of the Act has

to be framed in a manner which act both as incentive and compulsion for expediting the removal of goods from the transit area. Further the scales of rates are imposed by the Board under the authority of law and therefore, it may not be necessary that prior Notice for imposition of rates be given to a third party. A reference may be made to the case of trustees of Port of Madras Vs. Aminchand (AIR 1975 s.c. 1935) wherein the Supreme Court have observed that the powers of the Board to frame the scale of rates and statement of condition is not a regulator power to order that something must be done or something may not be done. Those who desire to avail of the services of the Board are liable to pay for these services at prescribed rates and to perform the conditions framed in the behalf.

It may, however, be correct that under Section 33(5) of the Ports Act, 1908 a specific provision is made that an order increasing of imposing port dues shall not take effect before the expiration of sixty days from the day on which the order was published in the official gazette. But such a provision is not made under Major Port Act 1963. Section 52 of the Act specifically provides that every scale of rates and every statement of conditions shall be a effect when these are sanctioned by the Central Government and published by the Board in the official gazette. In the Major Port Act, 1963 it is not intended by the legislature that the prior notice imposition of port dues may be given to a third party or the realisation of the port dues may be made effective from prospective date as provided under the Indian Ports Act, 1908.

In view of the foregoing the scale of rates and the statement of conditions framed by a Board shall have effect soon the approval sanctioned by the Central Government is notified in the official gazette by the Board. Under Section of the Act which appears to be a mandatory provision no consideration of the scale of rates can be made from a prospective date.

(Ramji Lal)  
Deputy Legal Adviser.  
15.4.1991

Surface Transport: