

COMMITTEE ON SUBORDINATE LEGISLATION
(2018-2019)

(SIXTEENTH LOK SABHA)

FORTY - FOURTH REPORT

**[ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/ OBSERVATIONS
CONTAINED IN THE TWENTY-EIGHTH REPORT OF THE COMMITTEE ON THE INDIAN
FOREIGN SERVICE (RECRUITMENT, CADRE, SENIORITY & PROMOTION) RULES, 1961
FRAMED UNDER ARTICLE 309 OF THE CONSTITUTION]**



**LOK SABHA SECRETARIAT
NEW DELHI
February, 2019/Magha, 1940 (Saka)**

COMMITTEE ON SUBORDINATE LEGISLATION
(2018-2019)

(SIXTEENTH LOK SABHA)

FORTY - FOURTH REPORT

**[ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/ OBSERVATIONS
CONTAINED IN THE TWENTY-EIGHTH REPORT OF THE COMMITTEE ON THE INDIAN
FOREIGN SERVICE (RECRUITMENT, CADRE, SENIORITY & PROMOTION) RULES, 1961
FRAMED UNDER ARTICLE 309 OF THE CONSTITUTION]**

(PRESENTED TO LOK SABHA ON 11.2.2019)



**LOK SABHA SECRETARIAT
NEW DELHI
February, 2019/Magha, 1940 (Saka)**

COSL No.

PRICE: Rs

(C) 2019 BY LOK SABHA SECRETARIAT

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

CONTENTS

PAGE No.

COMPOSITION OF THE COMMITTEE	(iii)
INTRODUCTION.....	(v)
CHAPTER I Report	1
CHAPTER II Observations/Recommendations which have been accepted by the Government	4
CHAPTER III Observations/Recommendations which the Committee do not desire to pursue in view of the Government's replies.	11
CHAPTER IV O Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee.	12
CHAPTER V Observations/Recommendations in respect of which final replies of the Government are still awaited	13

APPENDICES

I. Extracts from Minutes of Fourth Sitting of the Committee (2018-19) held on 7.2.2019 relevant to this Report.	14
2.. An Analysis of the Action Taken by Government on the recommendations/ observations contained in the Twenty-eight Report of the Committee on Subordinate Legislation (Sixteenth Lok Sabha)	16

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION (16th LOK SABHA)

(2018-2019)

Shri Dilipkumar Mansukhlal Gandhi Chairperson

Members

2. Shri Idris Ali
3. Shri Birendra Kumar Chaudhary
4. Shri S. P. Muddahanume Gowda
5. Shri Shyama Charan Gupta
6. Shri Jhina Hikaka
7. Shri Janardan Mishra
8. Shri Prem Das Rai
9. Shri Chandu Lal Sahu
10. Shri Alok Sanjar
11. Shri Ram Prasad Sarmah
12. Adv. Narendra Keshav Sawaikar
13. Shri V. Panneer Selvam
14. Shri Ram Kumar Sharma
15. Shri Nandi Yellaiah

SECRETARIAT

1. Shri Ravindra Garimella - Joint Secretary
2. Shri Ajay Kumar Garg - Director
3. Smt Jagriti Tewatia - Additional Director

(iii)

INTRODUCTION

I, the Chairperson, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Forty-fourth Action Taken Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Twenty-eight Report (2017-2018) (Sixteenth Lok Sabha) which was presented to Lok Sabha on 24.7.2018.

3. The Committee considered and adopted this Report at their sitting held on 7.2.2019.

4. Minutes of Fourth Sitting of the Committee (2018-19) held on 7.2.2019 relevant to this Report are included in Appendix-I of the Report.

5. An Analysis of the Action Taken by Government on the recommendations/ observations contained in the Twenty-eight Report of the Committee on Subordinate Legislation (Sixteenth Lok Sabha) is given in Appendix II.

New Delhi;

February, 2019
Magha, 1940 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI

Chairperson,
Committee on Subordinate Legislation

REPORT

This Report of the Committee on Subordinate Legislation (2018-19) deals with the action taken by the Government on the observations/recommendations contained in the Twenty-eighth Report (Sixteenth Lok Sabha) of the Committee which was presented to Lok Sabha on 24.7.2018.

2. The Twenty-eighth Report contained recommendations on the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 framed under Article 309 of the Constitution.

3. Action taken replies in respect of all the eight observations/recommendations contained in Paras 1 to 8 of Part II of the Twenty-eighth report have been received from the Ministry of External Affairs on 11.9.2018. For observations/recommendations at Paras 5 and 7 replies from Ministry of Personnel and Public Grievances and Pensions (Department of Personnel and Training) have also been received on 19.12.2018.

4. Replies to the observations/recommendations contained in the Report have broadly been categorized as follows:-

(i) Observations/Recommendations which have been accepted by the Government

Sl. Nos. 1 to 8

Total 8

Chapter II

(ii) Observation/Recommendation which the Committee do not desire to pursue in view of the Government's reply.

Sl.Nos. Nil

Total Nil

Chapter III

- (iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee

Sl. No. Nil

Total Nil

Chapter IV

- (iv) Observation/Recommendation in respect of which final reply of the Government is still awaited

Sl. No. Nil

Total Nil

Chapter V

5. The Committee in their original report had observed that the promotion rules and eligibility conditions for promotion of Indian Foreign Service Officers are guided by provisions under Rule 12 of Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 which prescribes minimum eligibility conditions for promotion to various grades of IFS in terms of total length of service and service at the grade from which officer is promoted. However, in the year 2008, the then Foreign Secretary vide his DO No. 6923/FS/08 dated 24 July 2008 issued executive instructions imposing additional 'essential requirements' over and above the eligibility requirements prescribed under Rule 12 of the above mentioned Rules, to be mandatorily met by the IFS officers concerned for consideration of their promotions from Grade IV, III and II of IFS to Grade III, II and I respectively.

The Committee after examination did not accept the contention of the Ministry of External Affairs that the instructions issued on 24 July, 2008 are to supplement rather than amend or contradict the existing criteria for promotion as per Rule 12(5) of IFS (RCSP) Rules, 1961 and if the rules are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. The Committee were of the view that administrative instructions/executive orders are no substitute to well framed and notified statutory rules/ regulations. Thus, while not being averse to revision of benchmarks for

promotion of IFS officers, the Committee had strongly recommended that the revised benchmark for promotion of Grade IV, III, and II to Grade III, II and I respectively of IFS officers issued vide DO dated 24th July 2008 may be incorporated in the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, by bringing in necessary amendments.

From the action taken replies the Committee note with satisfaction that the Ministry of External Affairs have accepted the recommendation made by the Committee in their report and has submitted that, the observations and instructions of the Hon'ble Committee have been noted and the Ministry is working to bring suitable amendments in the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961. The Committee do hope and trust that utmost importance would be given for expeditious implementation of the Committee's recommendation and suitable amendments will be notified in a time bound manner. The Committee would like to be apprised about the conclusive action taken by the Government in this regard.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Observations/Recommendations of the Committee

1. The Indian Foreign Service (IFS) was constituted in 1946 through a Cabinet decision to create a dedicated diplomatic service responsible for India's Foreign Policy engagements. In 1948 the first batch of Foreign Service Officers were recruited through the Civil Service Examination of the Union Public Service Commission and this mode of recruitment is prevailing since then. The IFS is an organized Group A service and the Ministry of External Affairs is the Cadre Controlling Authority.
2. The Committee note that the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 [IFS (RCSP)Rules] were framed under Article 309 of the Constitution and notified by Ministry of External Affairs in 1961 and come into force w.e.f 1 April, 1962. The promotion rules and eligibility conditions for promotion of Indian Foreign Service Officers are guided by provisions under Rule 12 of Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 which prescribes minimum eligibility conditions for promotion to various grades of IFS in terms of total length of service and service at the grade from which officer is promoted.
3. The Committee observe that in the year 2008, the then Foreign Secretary vide his DO No. 6923/FS/08 dated 24 July 2008 issued executive instructions imposing additional 'essential requirements' over and above the eligibility requirements prescribed under Rule 12 of the above mentioned Recruitment Rules, to be mandatorily met by the IFS officers concerned for consideration of their promotions from Grade IV, III and II of IFS to Grade III, II and I of IFS. More particularly, in the case of promotion of officers from Grade IV (i.e. Director) to Grade III (i.e. Joint Secretary) regarding which a representation was received by the Committee, the additional 'essential requirements' so imposed includes a requirement for serving for two years abroad in a mission / post at the level of First Secretary/Counsellor and serving for two years at the Head Quarter of the Ministry of External Affairs in New Delhi at the level of Under Secretary /Deputy Secretary /Director. Some other significant changes so brought in included taking into consideration last 10 ACRs instead of 5 ACRs by the Departmental Promotion Committee (DPC) so that the impact of deviation from normal levels of performance of an officer gets minimized.

4. In this regard, the Committee note from the justification given by the Ministry of External Affairs that the additional 'essential requirements' were imposed for ensuring more transparent and objective appraisal system leading to higher morale, greater efficiency and optimum performance, and in line with the directive of ACC given in the year 2005 for upward revision of benchmark of officers of IFS. According to the Ministry, these guidelines were formulated in extensive consultations with Department of Personnel and Training (DoPT) and Cabinet Secretariat over a period of three years to ensure that the promotion criteria are objective and transparent. The exercise also took into account reports of various committees of the Government of India, practices followed in other countries and widespread consultations conducted by the Ministry and these guidelines have been followed meticulously in the Ministry for all promotions to Grade III and above since 2008-09. The Ministry have also submitted that the revised criteria have brought in quality improvement in the service delivery, incentivize the officers to perform with utmost dedication, gain diverse experience that the service has to offer and take up challenging assignments in difficult stations overseas.

(Paras no. 1 to 4 of Part-II of the 28th Report)

Reply of the Government

The above is a factual observation of the esteemed Committee.

**(Ministry of External Affairs OM No. Q/PA-1/125/01/2016
dated 10th September, 2018)**

Observations/Recommendations of the Committee

As regards resorting to executive instructions instead of bringing appropriate amendments in the Recruitment Rules for prescribing additional essential requirements, the Committee do not accept the contention of the Ministry of External Affairs that the instructions issued on 24 July, 2008 are to supplement rather than amend or contradict the existing criteria for promotion as per Rule 12(5) of IFS (RCSP) Rules, 1961 and if the rules are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. The Committee do not agree with the ostensible justification given by the Ministry as it is nowhere mentioned in the Act /Rules that the Ministry can revise benchmark for promotions by way of executive order. A plain reading of the additional essential requirements imposed under the revised procedure reveals that the same titled as 'Essential requirements' are of highly substantive nature as their non-fulfillment render an officer ineligible for promotion even after fulfilling the laid down eligibility criteria in the Recruitment Rules. Moreover the DoPT in response to a specific query of the

Committee seeking details of the Ministries /Departments of the Government of India who have issued such kind of executive instructions over and above the prescribed Recruitment Rules to revise the norms for promotion at senior levels, have not been able to furnish any such kind of instance. It can, therefore, be concluded that the approach of the Ministry of External Affairs in imposing essential requirements by executive instructions over and above those prescribed in the Rules for promotion to Grade III of IFS has been an isolated instance. It also appears to the Committee that the Ministry of Law was also not consulted in the matter. In the opinion of the Committee these executive instructions cannot be construed as merely a gap filling measure in the Rules and such kind of substantive provisions can be prescribed only as part and parcel of the statutory rules. Otherwise, there will be no sanctity of framing Rules if the same are overridden by executive instructions in such manner. That is the precise reason that the Committee have time and again stressed that the administrative instructions/executive orders are no substitute to well framed and notified statutory rules/regulations. Moreover, as such kind of executive instructions are not laid in the Parliament, they escape the legislative scrutiny and also escape the notice of the Committee. Also keeping in view the various judicial pronouncements, it has been a settled law that over and above the eligibility conditions prescribed in the recruitment rules framed under Article 309 of the Constitution, no new or additional conditions for promotion could be added by way of executive instructions. The Committee, therefore, reaffirm that the Ministry cannot override the statutory rules framed in pursuance of Article 309 of the Constitution by way of executive instructions under the disguise of filling up of the gaps.

(Para no. 5 of Part-II of the 28th Report)

Reply of the Government

The esteemed Committee have observed in the context of instructions issued on 24.07.2008 vide Foreign Secretary's letter, that the Ministry cannot override the statutory rules framed in pursuance of Article 309 of the Constitution by way of executive instructions. It is submitted that the additional requirements were put in place to ensure more transparent and objective appraisal system in line with the directive of ACC in the year 2005 for upward revision of benchmark of IFS officers. The process involved extensive consultation with DOP&T and Cabinet Secretariat. These guidelines have been meticulously followed for all promotions to Grade III and above since 2008-2009 and have resulted in quality improvement in service delivery performance with utmost dedication, enthusiasm to take up challenging assignments, etc. Ministry, however, agrees with the observation of the Hon'ble Committee and is working on making these guidelines part of the Recruitment Rules of the Indian Foreign Service.

**(Ministry of External Affairs OM No. Q/PA-1/125/01/2016
dated 10th September, 2018)**

Reply of the Government

Article 309 of the Constitution empowers the Parliament and the State legislature to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of the concerned, State respectively. It also provides that the President or such person as he may direct shall be competent to make, in the case of services and posts in connection with the affairs of the Union, rules regulating the recruitment and prescribing the conditions of service of persons appointed to Services and posts under the Union until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act. Apart from the statutory rules made under the proviso, there can be rules designed purely for the purpose of administrative guidance. While the Government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up those gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. In the absence of statutory rules regulating the promotion to selection grade post, the Government is competent to issue administrative instructions as long as those instructions are not inconsistent with the rules already, framed.

In Central Services criteria for promotion such as APARs benchmark, vigilance clearance, crucial date for determining eligibility for promotion etc are required to be fulfilled for promotion at higher level are issued by executive instructions. These criteria are generally not part of the Service Rules/Recruitment Rules. However, the observations of the Committee have been noted.

[Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) OM. No.AB- 14017/20/2018—Estt.(RR) dated 19th December, 2018)]

Observations/Recommendations of the Committee

Now coming to the reasonableness of additional essential requirement, the Committee note that for considering promotion of IFS Officers from Grade IV (Director) to Grade III (Joint Secretary), a requirement of serving for two years abroad in a Mission/Posts at the level First Secretary/Counsellor and serving for two years at the Headquarter of the Ministry of External Affairs at the level of Under Secretary/Deputy Secretary/Director has been imposed. In this regard the Committee fail to understand the rationality and reasonableness of such kind of requirement as it is not in the hand of the officer concerned to decide whether he would serve at the Headquarter of the Ministry in Delhi or in an Embassy/Mission abroad at that particular level required for promotion. In the opinion of the Committee, the issues like posting/deployment of IFS officers come within the administrative domain of the Ministry of External Affairs and it is beyond the control of an officer to decide his place of posting. Under such

circumstances, making posting at a particular level and at a particular place as an essential requirement on the part of the individual officer, there is every likelihood of abuse and misuse of such kind of unbridled executive discretion. The Committee, therefore, feel that instead of making it an essential requirement on the part of the official concerned, such kind of obligation should have been made a part of the administrative requirement on the part of the Ministry who are the competent authority for deciding the postings and deployment of IFS Officers in such particular manner.

(Para no. 6 of Part-I of the 28th Report)

Reply of the Government

The Ministry has taken note of the observation of the esteemed Committee. An essential component of serving in the Indian Foreign Service is to serve abroad, often in challenging assignments. As directed by the Hon'ble Committee, Ministry is working on making the guidelines issued in 2008 part of the Recruitment Rules thereby giving the requirement of serving abroad statutory legitimacy.

(Ministry of External Affairs OM No. Q/PA-1/125/01/2016 dated 10th September, 2018)

Observations/Recommendations of the Committee

While the Committee are not averse to revision of benchmarks for promotion of IFS officers aimed at ensuring more transparent and objective appraisal system, greater efficiency and optimum performance, the Committee do not approve the methodology adopted by the Ministry of External Affairs in implementing the revised norms. The Committee also do not appreciate the stand taken by DoPT on the entire issue who instead of guiding the Ministry of External Affairs in bringing suitable amendments in the relevant Rules have tried to justify implementation of revised benchmark for promotion by means of executive instructions issued by a DO dated 24.07.2008 of the Ministry. The Committee expect the DoPT to play its large nodal role as the formulator of policy and the watch-dog of the Government in ensuring that accepted standards and norms as laid down by it, are scrupulously followed by all the Ministries/Departments in respect of processes like recruitment, regulation of service conditions, posting/transfers of the government personnel. More particularly, there is nothing in the statute which bars the Ministry to implement the revised benchmarks by bringing suitable amendments in relevant Rules. In the opinion of the Committee, bringing out necessary

amendments in the Rules/Regulations is an ongoing feature of good governance in ensuring executive accountability to the legislature.

(Para no. 7 of Part-II of the 28th Report)

Reply of the Government

The Ministry is extremely encouraged and motivated to learn that the Committee is not averse to revision of benchmarks for promotion of IFS Officers aimed at ensuring more transparent and objective appraisal system. The observation of the Hon'ble Committee to implement the revised benchmarks by bringing suitable amendments in relevant rules has been noted and Ministry is working towards implementing the same.

**(Ministry of External Affairs OM No. Q/PA-1/125/01/2016
dated 10th September, 2018)**

DoPT has issued guidelines regarding framing / amendment of Recruitment/Service Rules wherein it has been stipulated that the Recruitment/Service Rules should be reviewed once in 05 years with a view to effecting such change as are necessary to bring them in conformity with the changed position.

Ministry of External Affairs has informed that they have prepared a draft revising the existing IFS (RCSP) Rules 1961 in pursuance of the observations of the Parliamentary Committee on Subordinate Legislation to the effect that executive instructions cannot override the statutory rules framed in pursuance of Article 309 of the Constitution. The draft Service Rules provide the essential requirements for promotion, including successful completion of mandatory training and holding of charge in Missions/Headquarters in accordance with the 2008 guidelines. The Ministry has also informed that draft Service Rules are currently undergoing process of internal consultation with various stakeholders and that the draft rules do not have reference to APAR benchmarks for promotion at any grade.

**[Ministry of Personnel, Public Grievances and Pensions (Department
of Personnel and Training) OM. No.AB- 14017/20/2018—Estt.(RR) dated
19th December, 2018)]**

Observations/Recommendations of the Committee

In view of the foregoing, the Committee strongly recommend that the revised benchmark for promotion of Grade IV, III, and II to Grade III, II and I of IFS officers issued vide DO dated 24th July 2008 may be incorporated in the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, by urgently bringing and notifying the necessary amendments in the relevant Rules. Further, to take care of cases where some kind of

relaxation is required to be given to the IFS personnel for considering their promotion, the Committee recommend that the circumstances under which such kind of relaxation can be given alongwith the provision for recording of reasons in writing by the competent authority while granting such relaxation may also be incorporated in the Rules so as to provide a safeguard against arbitrary use of discretionary powers. The Committee would like to be apprised of action taken in the matter within three months after presentation of the Report in Lok Sabha.

(Para no. 8 of Part-II of the 28th Report)

Reply of the Government

The observations and instructions of the Hon'ble Committee have been noted. The Ministry is working to bring suitable amendments in the IFS (RCSP) Rules.

(Ministry of External Affairs OM No. Q/PA-1/125/01/2016 dated 10th September, 2018)

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES

-NIL-

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED

-NIL-

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

-NIL-

New Delhi;

**February, 2019
Magha, 1940 (Saka)**

DILIPKUMAR MANSUKHLAL GANDHI

**Chairperson,
Committee on Subordinate Legislation**

Appendix – I

(Vide Para 4 of the Introduction)

EXTRACTS FROM MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2018-2019)

The Fourth sitting of the Committee (2018-2019) was held on Thursday, the 7th February, 2019 from 1500 hours to 1600 hours in Committee Room No. 'C', Parliament House Annexe, New Delhi.

PRESENT

1. Shri Dilip Kumar Mansukhlal Gandhi Chairperson

MEMBERS

2. Shri Birendra Kumar Chaudhary
3. Shri Shyama Charan Gupta
4. Shri Janardan Mishra
5. Shri Alok Sanjar
6. Shri Ram Prasad Sarmah
7. Adv. Narendra Keshav Sawaikar

SECRETARIAT

1. Shri Ajay Kumar Garg - Director
2. Shri Nabin Kumar Jha - Additional Director
3. Smt. Jagriti Tewatia - Additional Director

XX XX XX

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. The Committee then considered the following draft reports:

(i) Draft Forty-third Report on the Rules/Regulations governing the implementation of Swachh Bharat Mission Programme in Urban and Rural Areas.+

(ii) Draft Forty-fourth Action Taken Report on recommendations/observations contained in the 28th Report (16th Lok Sabha) of the Committee on the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 framed under Article 309 of the Constitution.

3. After deliberations, the Committee adopted the above draft Reports without any modifications. The Committee also authorized the Chairperson to present the same to the House.

4. XX XX XX

5. XX XX XX

6. XX XX XX

7. XX XX XX

The Committee then adjourned.

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

APPENDIX II

(Vide para 5 of the Introduction)

Analysis of the Action Taken by Government on the recommendations/ observations contained in the Twenty-eighth Report of the Committee on Subordinate Legislation (Sixteenth Lok Sabha) on the Indian Foreign Service (Recruitment, Cadre, Seniority & Promotion) Rules, 1961 framed under Article 309 of the Constitution

I	Total number of recommendations	8
II	Recommendations that have been accepted by the Government [vide recommendations Nos. 1,2,3,4,5,6,7,8]	8
	Percentage of total	100%
III	Recommendation which the Committee do not desire to pursue in view of Government's replies	Nil
IV	Recommendations in respect of which replies of the Government have not been accepted by the Committee.	Nil
V	Recommendations in respect of which final replies of Government are still awaited	Nil

