

COMMITTEE ON SUBORDINATE LEGISLATION
(THIRTEENTH LOK SABHA)
(2002-2003)

SIXTH REPORT

LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2001-2002)

1. Shri P.H. Pandian - Chairman

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3. Shri Ramdas Rupala Gavit
4. Shri Paban Singh Ghatowar
5. Dr. M. Jagannath
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9. Shri Pravin Rashtrapal
10. Shri Anadicharan Sahu
11. Prof. I.G. Sanadi
12. Smt. Sushila Saroj
13. Shri Ramjiwan Singh
14. Dr. Ram Lakan Singh
15. Dr. N. Venkataswamy

SECRETARIAT

1. Shri John Joseph - Additional Secretary
2. Shri Ram Autar Ram - Joint Secretary
3. Shri A.K. Singh - PCPI
4. Shri P.D. Malvalia - Under Secretary

INTRODUCTION

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

The matters covered by this Report were considered by the Committee at their sitting held on 4.12.2001.

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

For facility of reference and convenience, recommendations/observation of the Committee have been printed in thick type@ in the body of the Report and have also been reproduced in consolidated form in Appendix I in the Report.

(P.H. PANDIAN)

NEW DELHI;

CHAIRMAN

COMMITTEE ON SUBORDINATE LEGISLATION

**CALCUTTA PORT EMPLOYEES' (HALDIA DOCK COMPLEX)
(RECRUITMENT, SENIORITY AND PROMOTION) AMENDMENT
REGULATIONS, 1997 (GSR 313-E OF 1997)**

The Calcutta Port Employees (Haldia Dock Complex) (Recruitment, Seniority and Promotion) Amendment Regulations, 1997 were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 5 June, 1997. It was observed therefrom that the wordings 'some experience in a responsible position' occurring under col. 8 of schedule-C were vague and liable to be interpreted differently by different persons. The matter was taken up with the Ministry of Surface Transport and their attention was also drawn to the following oft-repeated recommendations of the Committee:-

"In the opinion of the Committee, it is of utmost significance that the provisions of Legislation (including Subordinate Legislation) are spelt out with precision and as far as possible, the use of vague expressions, which are liable to be interpreted differently by different persons should be avoided."

1.2 The Ministry were, therefore, requested to state whether they have any objection in amending the regulations so as to spell out the aforesaid wordings to make them specific and precise.

1.3 The Ministry of Surface Transport in their reply dated 6 March, 1998 stated as under:-

"..... that the Ministry have no objection to spell the wording 'some experience in responsible position' occurring under col. 8 of the schedule C in the Calcutta Port Employees (Haldia Dock Complex) (Recruitment, Seniority and Promotion) Regulations to make the Regulation specific and precise. Matter has been taken up with the Calcutta Port Trust to amend the regulations accordingly and notify it in the Gazette."

1.4 The Ministry vide their subsequent reply dated 27 September, 2001 furnished a printed copy of the Gazette Notification carrying the desired amendment in the regulation issued by them vide GSR 597 dated 22 August, 2001.

1.5 The Committee note that in the Calcutta Port Employees' (Haldia Dock Complex) (Recruitment, Seniority and Promotion) Amendment Regulations, 1997 the wording 'some experience in a responsible position' occurring under col. 8 of Schedule-C as amended against the post of Traffic Officer were felt to be vague and liable to be interpreted differently by different persons. In this regard, the Committee note that on being drawn the attention of the Ministry to the oft-repeated recommendation of the Committee that use of vague expressions should be avoided, the Ministry of Surface Transport have amended the aforesaid regulations by deleting 'the requirement of experience itself' and finally notified the amendment regulations vide Gazette Notifications GSR No. 597-E dated 22 August, 2001. The Committee desire that the Ministry should devise suitable procedural safeguards so as to ensure that such type of vague expressions do not creep in the regulations in future. The Committee express their concern over the considerably long time taken by the Ministry in notifying the desired amendment in the extant regulations and desire that the Ministry should ensure that in future such instances of inordinate delays do not recur.

THE TUTICORIN PORT TRUST EMPLOYEES (RECRUITMENT, SENIORITY AND PROMOTION) AMENDMENT REGULATIONS-1997 (GSR 372-E OF 1997)

The Tuticorin Port Trust Employees (Recruitment, Seniority and Promotion) Amendment Regulations, 1997 were published in the Gazette of India, Extraordinary, Part II, Section 3(i) dated 8 July, 1997. It was observed from the schedule appended thereto that the wording 'good physique and able bodied' occurring under col. 11 against Sr. No. 58 for the post of Junior Masitery (Civil) was vague and liable to be interpreted differently by different persons. The matter was, therefore, taken up with the Ministry of Surface Transport and their attention was also drawn to the following oft-repeated recommendation of the Committee:-

"In the opinion of the Committee, it is of utmost significance that the provisions of Legislation (including Subordinate Legislation) are spelt out with precision and as far as possible, the use of vague expressions, which are liable to be interpreted differently by different persons should be avoided."

2.2 The Ministry was, therefore, requested to state whether they have any objection in amending the regulations so as to spell out the aforesaid wordings to make them specific and precise.

2.3 The Ministry of Surface Transport in their reply dated 26 May, 1998 stated as under:-

"..... that the matter has been examined and this Ministry have no objection to amend the regulations to make the regulation more precise and specific. The Port Trust has been asked to amend the regulations accordingly and submit them for approval of the Government."

2.4 The Committee note that in the above Regulation the wording "Good physique and able bodied" occurring under col.11 against Sr. No. 58 for the post of Junior Maistry (Civil) are vague and liable to be interpreted differently by different persons. The Committee are happy to note that on being drawn the attention of the Ministry to the oft-repeated recommendation of the Committee that use of vague expressions should be avoided, the Ministry of Surface Transport have amended the regulations to the desired effect by deleting the vague expressions in the aforesaid regulations and have notified the amendment vide Gazette Notification No. GSR No. 543-E of 2001 dated 18 July, 2001. The Committee however desire that the Ministry should devise suitable procedural safeguards so as to ensure that such type of vague expressions do not creep in the regulations in future.

III

RENT A MOTOR CYCLE SCHEME, 1997 (SO 375-E OF 1997)

The Rent a Motor Cycle Scheme, 1997 was published in the Gazette of India, Part II, Section 3(ii), dated 12 May, 1997. It was observed therefrom that para 12 of the Scheme imposed a time-limit of 30 days within which an aggrieved person may file an appeal against any order of the Licensing Authority under Para 6 or 11 of the Scheme. However, no time-limit was laid down for the disposal of such appeals. In this regard, it was felt that a time limit should be prescribed within which such appeals were to be disposed off in order to ensure that there was no unnecessary delays. The concerned Ministry of Surface Transport were therefore requested to state whether they had any objection in amending the Scheme to that effect.

3.2 The Ministry of Surface Transport in their reply dated 11 September, 1997 stated that the matter was being examined in consultation with the Department of Legal Affairs. Subsequently, on 1 April, 1998, the Ministry furnished a copy of the Gazette of India Notification No. SO 257-

E dated 26 March, 1998 carrying the desired amendment in the Scheme by inserting the following sub-para:-

"The State Transport Appellate Tribunal shall dispose off an appeal under Paragraph 12 with a period of ninety days from the date on which such appeal is filed."

3.3 The Committee observe that though there was a time-limit of 30 days for the aggrieved person to appeal against any order of the Licensing Authority made under Para 6 or 11 yet no time-limit was fixed for disposal of the same. The Committee however note with satisfaction that on being pointed out, the Ministry of Surface Transport have effected necessary amendments in the Rent a Motor Cycle Scheme, 1997 by prescribing a time limit of 90 days within which an appeal against any order of the Licensing Authority is to be disposed of by the State Transport Appellate Tribunal in order to ensure that there is no unnecessary delay in the disposal of such delays and by notifying the desired amendment vide Gazette of India Notification No. SO 257-E dated 26 March, 1998.

IV

THE MINISTRY OF DEFENCE, DEPARTMENT OF DEFENCE PRODUCTION AND SUPPLIES, DIRECTORATE OF QUALITY ASSURANCE (NAVAL), SENIOR STORE SUPERINTENDENT, STORE SUPERINTENDENT AND SENIOR STORE KEEPER GROUP 'C' POSTS RECRUITMENT RULES, 1996 (SRO 203 OF 1996)

The Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), Senior Superintendent, Store Superintendent and Senior Store Keeper Group "C" Posts Recruitment Rules, 1996 were published in the Gazette of India, Part-II, Section 4 dated 7 December, 1996. It was observed therefrom that as per the entry under column 8 of the Schedule appended thereto, against the post of Senior Store Superintendent, four years experience was prescribed for persons having 'Intermediate' qualification. However, same length of experience i.e. four year was also prescribed for persons holding 'Degree' qualification which was obviously higher than the Intermediate qualification. It was felt that the prescribed length of experience should be lesser for the persons having higher qualification. The matter was, therefore referred to the Ministry of Defence to ascertain the rationale behind prescribing same length of experience for persons holding intermediate and Degree qualification. The Ministry was also requested to state whether they had any objection in amending the recruitment rules to the desired effect.

4.2 In their reply dated 29 October, 1997 the Ministry stated as under:-

".....that the point brought out in the above mentioned O.M has been scrutinized critically and it has been decided that the qualification as applicable in the case of the DGQA for the same post be equally made applicable for the same post in DQA(N) which is one of the Directorates of the DGQA.

Qualification for the post of Senior Store superintendent in DGQA for appointment to this grade is degree or equivalent from the recognized University with four years experience in Store Keeping/Accountancy.

DQA(N) has been directed to send the necessary proposal on this account for amendment in the existing recruitment rules, deleting the clause wherein intermediate or equivalent with 4 years experience were also eligible.

This issues with the approval of Joint Secretary (Supplies)."

3. In their subsequent reply dated 20 May, 1998 the Ministry stated as under:-

"..... That in pursuance of the direction of Lok Sabha Secretariat relating to the anomaly pointed by the Committee on Subordinate Legislation, the proposal for amendment of Recruitment Rules for the post of Senior Store Superintendent was referred to DOP&T on 20.2.1998. They have opined as under:-

"Consequent upon acceptance of the recommendations of the Fifth Central Pay Commission several pay scales have been merged/revised. The Department is still in process of revising the eligibility criteria for promotion/transfer on deputation. As soon as that is finalised, this Department will issue revised guidelines as well as order regarding lifting of existing temporary ban on framing/amendment of RRs. The ban still continues."

In view of the above, it is brought to your kind notice that the matter will again be taken up on lifting of the existing temporary ban on framing/amendment of RRs, by the DOP&T."

4.4 The Committee observe that in the Ministry of Defence, Department of Defence Production and Supplies, Directorate of Quality Assurance (Naval), Senior Store Superintendent, Store Superintendent and Senior Store Keeper Group 'C' Posts Recruitment Rules, 1996, same length of experience was prescribed for persons holding Intermediate and Degree qualifications. The Committee, however, note that on being pointed out, the Ministry of Defence have agreed to suitably amend the above rules so as to do away with the anomalous provision which prescribed same length of experience for persons holding different qualifications, i.e. the Degree qualification and the Intermediate qualification by deleting the clause wherein the persons holding Intermediate or equivalent qualification with four years experience were also eligible and also to bring the qualification at par with the qualification required for the same post in the Directorate General of Quality Assurance. The Committee desire that the Ministry should carry out the desired amendments in the Recruitment Rules at the earliest.

V

THE SECURITY PAPER MILL (GROUP 'A' AND 'B' CADRE POSTS) RECRUITMENT RULES, 1997 (GSR 240 OF 1997)

The Security Paper Mill (Group 'A' and 'B' Cadre Posts) Recruitment Rules, 1997 (GSR 240 of 1997) were published in the Gazette of India, Part-II, Section 3(I) dated 31 May, 1997. It was observed therefrom that as per column 10 of the Schedule appended to the Recruitment Rules, for the posts mentioned against serial nos. 15,26 and 35, the probation period for direct recruits was only one year whereas it was two years for promotees. The Ministry of Finance were, therefore, requested to state the rationale behind prescribing a longer probation period for promotees as compared with that of the direct recruits and for treating them at two different footings in the matter of probation. The attention of the Ministry was also invited to the Department of Personnel and Training O.M. No. 21011/1/94.Estt© dated 20 April, 1995 regarding prescribing a uniform period of probation for both promotees as well as direct recruits.

5.2 In the reply dated 17 September, 1997 the Ministry of Finance (Department of Economic Affairs) stated as under:-

"..... that the Ministry has no objection in amending the Security Paper Mill (Group 'A' and 'B' Cadre Posts) Recruitment Rules for the purpose of prescribing uniform period of probation for both promotees as well as direct recruits. However, the formal orders in this regard, can be issued only in consultation with the UPSC. A formal proposal in this regard is being sent to UPSC."

5.3 The Ministry were, thereafter, requested to carry out the necessary amendment in the aforesaid recruitment rules at the earliest so as to prescribe a uniform probation period for promotees and direct recruits and to furnish a copy of the Gazette Notification so notified

containing the desired amendment in the Recruitment Rules, for information of the Committee on Subordinate Legislation.

4. In their subsequent reply dated 10 March, 1998 the Ministry stated as under :-

"..... the necessary amendments, as proposed by the Lok Sabha Secretariat have been carried out in the Security Paper Mill (Group 'A' and 'B' Cadre Posts) Recruitment Rules, 1997 vide this Ministry's Notification of even number dated 9.2.1998. A copy of the said Notification is enclosed herewith for ready reference."

5.5 The Committee observe that in the above rules longer probation period was prescribed for promotees as compared to that of direct recruits. However the Committee note with satisfaction that Ministry of Finance (Department of Economic Affairs), have suitably amended the Security Paper Mill (Group 'A' and 'B' Cadre Posts) Recruitment Rules, 1997 so as to provide for a uniform probation period for both promotees and direct recruits, in accordance with the guidelines on probation issued by the Department of Personnel and Training vide their O.M. No. 21011/1/94 Estt (C) dated 20 April, 1995 and have notified the desired amendment vide Gazette of India Notification No. GSR 45 dated 28 February, 1998.

5.6 The Committee further observe that the lacunae of similar nature continue to occur in the Recruitment Rules notified by various Ministries/Departments inspite of the clear cut guidelines on the subject issued by Department of Personnel and Training, and emphasise that the agencies concerned with the approval of Recruitment Rules viz. the Department of Personnel & Training, the Ministry of Law and Justice and the Union Public Service Commission should be more vigilant in future while vetting/approving recruitment rules so as to ensure that the period of probation is correctly prescribed in the recruitment rules in accordance with the existing guidelines so as to avoid delay in carrying out subsequent amendments in the Recruitment Rules.

VI

The Zoological Survey of India, Motor Driver (Grade-I, Grade-II and Ordinary Grade Recruitment Rules, 1995 (GSR 155 of 1996)

The Zoological Survey of India, Motor Driver (Grade-I, Grade-II and Ordinary Grade) Recruitment Rules, 1995 were published in the Gazette of India, Part II, Section 3 (i), dated 30 March, 1997. In accordance with certain deficiencies observed in these rules during their examination, the comments of the concerned Ministry of Environment and Forests were invited on the following points:-

(i) Rule 1(1) The year in the short title does not tally with that of the year of publication of the official gazette, whereas the committee have recommended that the year in the short title should be in conformity with the year of publication of gazette.

(ii) Schedule- Entries under Column 7 read with column 8 against the post of 'Motor Driver (Ordinary Grade) : As per the provisions contained therein, the lower age limit for the post of Motor Driver (ordinary Grade) has been prescribed as 18 years and at the same time the person should possess a valid Driving License with 3 years experience in driving motor vehicles. The position seems anomalous inasmuch as it is not possible for a person to have 3 years driving experience on or before the age of 18 years because the driving license can be issued to a person only after attaining the age of 18 years. Therefore to that extent the prescribed lower age limit of 18 years seems to be redundant.

2. The Ministry in their first reply dated 8th October, 1997 stated as under:-

(i) Rule 1 (1) The Zoological Survey of India Motor Driver (Grade-I, Grade-II and Ordinary Grade) Recruitment Rules, 1995 were sent for some correction to this Ministry and the same had been sent after correction on 4.3.96. The requirement pointed out has now been noted and an amendment of the short title to read "The Zoological Survey of India Motor Driver (Grade-I, Grade-II and Ordinary Grade) Recruitment Rules, 1996" will be got notified shortly."

(ii) Schedule – Entries under Column 7 read with column 8 against the post of 'Motor Driver (ordinary Grade): The redundancy of the lower age limit of 18 years prescribed in the entry in column 7 against the post of Motor Driver (Ordinary Grade) in the light of the requirement of Column 8 thereof has been noted as pointed out. Entries under Column 7 against the post of Motor Car Drivers (Ordinary Grade) will be got amended as under:-

"Not exceeding 25 years (relaxable for Government servants upto 40 years and 45 years for candidates belonging to SC/ST in accordance with the instructions or orders issued by the Central Government from time to time."

6.3 The Ministry was subsequently asked to furnish the printed copy of the Gazette Notification carrying the requisite amendment. The Ministry in their replies dated 4 July, 14 July, 14 October, 1997 and 10 March, 15 May, 24 June, 1998 repeatedly stated that the matter was under process and the copy of the desired Gazette Notification would be furnished immediately after its publication. In their final reply dated 24 September, 1998 the Ministry enclosed a copy of the Gazette Notification carrying the desired amendment in the Recruitment Rules issued vide GSR No. 199 dated 24.9.1998.

6.4 The Committee observe that the year in the short title was not in conformity with the year of the publication of the Gazette Notification. The Committee note that on being pointed out, the Ministry have issued the desired amendment in the extant recruitment rules by substituting the year "1996" in place of the year "1995" as year in the short title so as to make it in conformity with the year of publication of the notification in the official gazette and by substituting the provision "not exceeding 25 years" in place of between "18 and 25 years' under Col. 7 of the schedule regarding the minimum age limit prescribed for the direct recruits to the post of Motor Driver (Ordinary Grade) so as to do away with the redundancy in the age limit as pointed out.

6.5 The Committee note with concern that the Ministry have taken exceptionally long time of about 2 years and 6 months to issue the amendment in the Notification inspite of the repeated official communications dated 12.7.1996, 8.5.97; 11.8.97; 24.9.97, 28.5.98; 26.6.98 and 2.2.99 requesting the Ministry not to delay the matter any further but the Ministry did nothing except stating that the matter was under process and a copy of the desired amendment notification would be sent to the Committee on Subordinate Legislation as soon as it was published. The Committee express their displeasure over such apathetic and careless attitude on the part of the Executive as it consumes a lot of time besides hampering the work of the Committee and, therefore, desire that some specific instructions/guidelines should be issued by the Ministry of Parliamentary Affairs to all Ministries of the Government of India to desist from making protracted correspondence with the Committee without tangible results. The Committee further desire that Government be advised by the Ministry of Parliamentary Affairs to avoid such kind of unwarranted delays in carrying out modifications in the rules pointed out by the Committee on Subordinate Legislation.

New Delhi

CHAIRMAN

COMMITTEE ON SUBORDINATE LEGISLATION