COMMITTEE ON SUBORDINATE LEGISLATION

(THIRTEENTH LOK SABHA)

(2002-2003)

NINTH REPORT

(PRESENTED ON 21.11.2002)

LOK SABHA SECRETARIAT

NEW DELHI

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(2002-2003)

1. Shri P.H. Pandian - Chairman
2. Shri Bhim Dahal
3. Shri Ramdas Rupala Gavit
4. Shri Paban Singh Ghatowar
5. Dr. M. Jagannath
6. Shri Ram Singh Kaswan

7. Shri Suresh Kurup

8. Shri Ashok N. Mohol

9. Shri Pravin Rashtrapal

10. Shri Anadicharan Sahu

11. Prof. I.G. Sanadi

12. Smt. Sushila Saroj

13. Shri Ramjiwan Singh

14. Dr. Ram Lakhan 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 Ashok Balwani - Under Secretary

I N T R O D U C T I O N

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

The matters covered by this Report were considered by the Committee at their sitting held on 2.8.2002.

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)

CHAIRMAN, COMMITTEE ON SUBORDINATE LEGISLATION

NEW DELHI;

I The Railway Claims Tribunal (Group 'A' and 'B' Posts) Recruitment Rules, 1997 (GSR 134-E of 1998)

The Railway Claims Tribunal (Group `A' and `B' Posts) Recruitment Rules, 1997 were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 14 March, 1998. It was observed therefrom that the post of Assistant Registrar at Sl. No. 3 of the Schedule was carrying the scale of pay as Rs. 6500-200-10500. However, the feeder categories i.e. Senior Personal Assistant and Office Superintendent for promotion to the post of Assistant Registrar were also carrying the same scale of pay i.e. of Rs. 6500-200-10500. The whole matter therefore, seemed anomalous in asmuch as the promotion or even transfer on deputation coupled with some experience normally involve recruitment from a lower scale to a higher scale and not from same scale to same scale. The matter was, therefore, referred to the Ministry of Railways to ascertain the rationale behind this particular provision.

1.2 In their reply dated 6 July, 1998, the Ministry stated as under:-

> "….. that the process for framing the Recruitment Rules were initiated in the year, 1990 and the Recruitment Rules were published in the month of March, 1998. Prior to implementation of the recommendations of Fifth Central Pay Commission, the pay scale of feeder categories namely Superintendent Grade II and Senior P.A. to the post of Assistant Registrar were in Rs. 2000-3200. But the Fifth Central Pay Commission merged the scale of Rs. 2000-3200 and Rs. 2000-3500 to Rs. 6500-10500. Thus, an anomalous situation emerged.
>
> Assistant Registrars are actually working in the grade of Rs. 2375-3750 (pre-revised). Prima-facie, it appears that the scale of pay of Assistant Registrar has been shown inadvertently as Rs. 6500-10500 instead of Rs. 2375-3750 (pre-revised). However, the matter is being examined de-Novo and if required Recruitment Rules will be amended."

1.3 Thereafter, the Ministry were requested to state the current status of the proposed amendments in the extant rules. The Ministry vide their reply dated 9 July, 2002 stated as under:-

> "…….that the Recruitment Rules of Assistant Registrar have been examined in consultation with the Union Public Service Commission. In term of extant procedure, the sanctioned posts in RCT are manned by transfer/deputation of suitable staff fulfilling the job requirement because RCT does not have any regular cadre. Such Railway staff work for a specific period in RCT and go back to their parent cadre. In view of this it may not be possible to fill up the post of Assistant Registrar by way of promotion. Accordingly, the Commission has suggested that the post of Assistant Registrar may be filled on transfer/transfer on deputation basis and has furnished a draft schedule in this regard. The same is being examined in the Ministry of Railways."

1.4 The Committee observe from the above rules that for promotion to the post of Assistant Registrar carrying the scale of pay as Rs. 6500-200-10500, the feeder categories are Senior Personal Assistant and Office Superintendent which are also carrying the same scale of pay i.e. of Rs. 6500-200-10500. The Committee feel the provision to be anomalous inasmuch as the promotion or even transfer on deputation coupled with some experience normally involve recruitment from a lower scale to a higher scale and not from same scale to same scale. The Committee note from the reply of the Ministry of Railways that the Railway Claims Tribunals do not have any regular recruitment cadre and the posts are filled up on deputation/transfer basis and there is no system of promotions. The Committee recalled that the Ministry had earlier prescribed promotion as one of the methods of recruitment and are now stating that UPSC has suggested them to fill the post of Assistant Registrar on transfer/deputation basis. In view of the clarification so furnished by the Ministry, the Committee desire that the Ministry should amend the rules so as to reflect the correct position as stated by them and be more careful in future while drafting rules relating to service matters.

II The Bureau of Indian Standards (Certification) (Amendment) Regulations, 1997 (GSR 634-E of 1997)

(A)

The Bureau of Indian Standards (Certification) (Amendment) Regulations, 1997 were published in the Gazette of India, Part-II, Section 3(I) dated 4 November, 1997. The Ministry of Food and Consumer Affairs were requested to furnish their comments on the following points which arose out of the examination of the gazette notification and needed certain clarifications:-

Regulation 8A(f) as added stated as under:-

"An application may be rejected if the applicant does not comply with one or more of the following requirements:

(i) The application fee not accompanying the application.

(ii) Application form is incomplete.

(iii) Annexures to the application are not clear.

In addition, the Bureau may call for any supplementary information or documentary evidence from any applicant in support of or to substantiate any statement made by him in his application, within such time as may be directed by the Bureau".

2.2. It was felt that the wording "within such time as may be directed by the Bureau" occurring in the aforesaid regulation were giving unfettered powers to the Bureau in the matter of fixing time-limit in calling any information from the applicant. It was, therefore, felt that some time-limit for supplying of such information should be prescribed under the regulations. The matter was referred to the Bureau of Indian standards, Ministry of Food and Consumer Affairs, (Department of Consumer Affairs) for eliciting their comments thereon.

2.3. In their reply dated 22 July, 1998, the Ministry stated as under:-

" As the type of information required to fulfill the requirements for the grant of license cannot be assessed before hand, it may not be possible in every case to stipulate the minimum time limit for supplying supplementary information. However, the time limits for complying with the various requirements mentioned in Regulation 8 A (f) have been specified in the guidelines (copy enclosed) for the operation of this Scheme. The time limits may vary from 30 days to six months depending upon the type of inadequacy observed in the application.

2.4. The Committee observe that Regulation 8A(f) of the above Regulations are giving unfettered discretionary powers to the Bureau in the matter of fixing time-limits within which it may direct an applicant to furnish any supplementary information and note that as per the existing guidelines in the Ministry the time limit for complying with the various requirements mentioned in regulation 8A(f) could vary from 30 days to six months depending upon the type of inadequacy observed in the application.

2.5 The Committee desire that since the minimum and maximum time-limits have already been prescribed in the existing guidelines, the same should be incorporated in the regulations so as to make the regulations self contained. In this regard, Committee reiterate their recommendation made in para 22-24 of their 13th Report (Sixth Lok Sabha) namely that the administrative instructions are no substitute to statutory rules/regulations, since such instructions are not being published in the official gazette, and therefore escape the notice of the Committee. The Committee further desire that provisions should also be made for due consideration if the applicant fails to furnish information within the prescribed time due to some circumstances beyond his control.

(B)

2.6 Regulation 8A(g) as added reads as under:-

"The reason for the rejection of the application shall be communicated to the applicant by the Bureau."

The above regulation provided for communication of the reasons to the applicant for the rejection of his application. It was felt that the applicant should be given an opportunity of being heard before such rejection of his application. The matter was referred to the Ministry of Food and Consumer Affairs to elicit their comments.

2.7. In their reply dated 20 July, 1998, the Ministry stated as under:-

"The application is rejected only due to non-compliance with the requirements given in Regulation 8A(f) i.e. for non-furnishing of required information within the time limits prescribed in the guidelines for operating the scheme. Further, the guidelines stipulate that the applicant shall be given 15 days time to respond to the notice given by the Bureau."

2.8. The Committee observe that Regulation 8A(g) as added in the above regulations provide for communication of the reasons to the applicant for the rejection of his application and feel that the applicant should be given an opportunity of being heard before such rejection. The Committee note from the reply of the Ministry that the application is rejected only due to non-compliance with the requirements of regulation 8A(f) i.e. for non-furnishing of required information within the time limits prescribed in the guidelines for operating the scheme and that as per the guidelines a time of 15 days has been given by the Bureau to the applicant to respond to the notice. The Committee reiterate their earlier recommendation that the guidelines issued by the Government are no substitute to the properly framed statutory rules/regulations and therefore it should be clearly provided in the regulations that the applicant will be given a reasonable opportunity to present his case or of being heard before his application is rejected by the Bureau and desire that the Ministry should suitably amend the above Regulations.

(C)

2.9 Regulation 8 C(a) as added: stated as under:-

"Audit Fee shall depend upon the nature of the activities of the firm. The fee determined shall be intimated to the applicant prior to the visit."

2.10 It was stated that the Audit fee as determined should be intimated to the applicant prior to the visit. The Ministry was asked to state the precise statutory authority under the Act under which the Audit fee is being so levied. It was also felt that the limits of such fee may also be prescribed in the regulations so as to ensure that such fee is charged reasonably.

2.11 In their reply, the Ministry stated as under:-

"The authority to levy fee is derived from Sec.15(2) of the BIS Act, 1986.

The audit fee is to be charged at the fixed rate (Presently Rs. 5,000/- per auditor per day). The number depending on the size and nature of operation of the applicant. The audit fee may vary from time to time keeping in view the market trends and organisational expenses (Salary/TA/DA etc.) which are variable in nature. In view of these reasons it may not be practicable to prescribe the limits of such fee in the regulations."

2.12 The Committee observe that Regulation 8 C(a) as added in the above regulations provide that Audit Fee shall depend upon the nature of the activities of the firm and that the fee determined shall be intimated to the applicant prior to the visit. The Committee note from the reply of the Ministry that the authority to levy fee is derived from Sec. 15(2) of the BIS Act, 1986 and that the audit fee is charged at the fixed rate i.e. Rs. 5000/- per auditor per day depending on the man days involved in auditing and that the audit fee is also subject to such changes as per market trends and organisational expenses. The Committee feel that in the absence of any provision of a maximum limit of the audit fee in the regulations, the provisions could be misused and the audit fee may reach huge amounts and therefore desire that the Ministry should fix some upper limit or prescribe

some other suitable safeguards regarding the audit fee to be charged from the applicant and incorporate the same in the regulations themselves so as to do away with any misuse of such a provision.

(D)

2.13 Regulation 8 D (c) & (e) , 8D (c) & (d) as added stated as under:-

XX XX XX

"(c) The applicant shall produce evidence that corrective actions have been taken to meet all the relevant requirements within the time limits specified by the Bureau. The Bureau may undertake a full or partial audit or accept written declaration that corrective action has been taken, to be confirmed by the Bureau during a surveillance visit.

XX XX XX

(e) If the applicant is not able to produce evidence that corrective actions have been taken to meet all the relevant requirements within the time limit specified by the Bureau, the Bureau may refuse to grant the license. However, before refusing to grant the license, the Bureau shall give a reasonable opportunity to the applicant of being heard either in person or through a representative authorised by him in this behalf and may take into consideration any fact or explanation urged on behalf and may take into consideration any fact or explanation urged on behalf of the applicant before refusing to grant the licence.

XX XX XX

8.(c) the Bureau may revoke the suspension of licence after satisfying itself that the licensee has taken necessary actions to remove the deficiencies within time limits specified by the Bureau.

(d) When the license is under suspension and where the licensee is unable to rectify any deficiency, which make the licensee unable to comply with the requirements of this scheme, within time limits specified by the Bureau, the Bureau shall cancel the license. Cancellation of the license in such case shall require the licensee to make a fresh application followed by the procedure specified in these regulations for the grant of a new licence."

XX XX XX

2.14 It was felt that the wordings "within the time-limits specified by the Bureau" occurring in the aforesaid regulations gave discretionary powers to the Bureau in setting out such time-limits for the applicant to take corrective measures. It was felt that the time limits may be specified in the regulations themselves to prevent any misuse of such powers. The Ministry were referred to know their comments thereof. In their reply dated 20 July, 1998, the Ministry stated as under:-

> "The time limits to be specified by the Bureau will depend on the type of non-conformity observed and corresponding corrective action to be taken by the applicant which will vary according to the nature of operation of organisation and cannot be assessed before hand. Guidelines in this regard are enclosed."

2.15 Under Regulation 8D(c) & (e), 8O (c) & (d) the Committee observe that the applicant for license shall produce evidence that corrective actions have been taken to meet all the relevant requirements within the time limits specified by the Bureau, which may undertake a full or partial audit or accept written declaration to that effect and it is to be confirmed by the Bureau during a surveillance visit and that if corrective action have not been taken to meet all the relevant requirements within the specified time limit, the Bureau may refuse to grant the license.

2.16 Similarly the Bureau may revoke the suspension of license after satisfying itself that the licensee has taken necessary actions to remove the deficiencies. License is liable to be cancelled, if the Licensee is unable to rectify any deficiency, which makes the licensee unable to comply with the requirements of this Scheme, within time limits specified by the Bureau. The Committee feel that the wordings "within the time-limits specified by the Bureau" occurring in the aforesaid regulations is giving discretionary powers to the Bureau in setting out such time-limits for the applicant to take corrective measures and the same should be specified in the regulations themselves to prevent any misuse of such powers.

2.17 The Committee note that according to the Ministry the time limits to be specified by the Bureau would depend on the type of non-conformity observed and corresponding corrective action to be taken by the applicant which may vary according to the nature of operation of the organisation and therefore cannot be assessed before hand. The Committee feel that some criteria should be evolved by the Ministry in specifying the limits within which the applicant may be required to take corrective measures and while specifying the time-limits, due consideration should also be given for such cases where the applicant is not able to take corrective measures within the specified time limits because of some circumstances beyond his control and desire that the regulations be suitably amended to this effect.

III **i) The Central Reserve Police Force (Amendment) Rules, 1998(GSR 272-E of 1998); and**

ii) The Border Security Force (Seniority, Promotion and Superannuation of Officers) Amendment Rules, 1998 (GSR 273-E of 1998)

(A)

The Central Reserve Police Force (Amendment) Rules. 1998 (GSR 272-E of 1998) were published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 26 May, 1998. Rule 2 of the amendment rules reads as under:-

"2. In the Central Reserve Police Force Rules, 1955 in rule 43—

(i) in clause (a) for the words and figures "age of 55 years", the words and figures "age of 57 years" shall be substituted;"

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3.2 From the aforesaid amendment Rules, it was observed that the retirement age of members of the CRPF has been increased from 55 years to 57 years. In this connection, it was felt that it was only in view of the nature of duties being performed by the members of the CRPF that the age of retirement was kept as 55 years which has now been increased by 2 years i.e. upto 57 years in view of the increase in the age of retirement from 58 to 60 years of the employees of all Ministerial and other public undertakings on the basis of recommendations of the Fifth Central Pay Commission. The Ministry of Home Affairs were, therefore, requested to state the rationale behind increasing the age limit of the CRPF personnel keeping in view the nature of duties being performed by them.

3.3 The Ministry of Home Affairs in their reply dated 24 August, 1998 stated as under:-

> "….. member and officers upto the rank of Commandant in three Para-military Forces namely, BSF, CRPF & ITBP are required to be on active duty in the field while officers above the rank of Commandant are primarily doing supervisory job. It was in view of this the age of retirement for men and officers upto the rank of Commandant was kept at 55 years (now increased to 57 years) as compared to 58 years (now increased to 60 years) in case of senior officers above the rank of Commandant.
>
> The age of retirement for all ranks of Para-Military Forces has now been increased by 2 years, keeping in view the recommendations of the 5th Pay Commission for enhancing the age of retirement for civil employees by 2 years.

(B)

3.4 The Border Security Force (Seniority, Promotion and Superannuation of Officers) Amendment Rules, 1998 (GSR 273-E of 1998) were published in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 27 May, 1998. Rule 2 of the amendment rules reads as under:-

> "In the BSF (Seniority, Promotion & Superannuation of Officers) Rules, 1978, for rule 9, the following rules shall be substituted, namely:-
>
> "Superannuation:- (1) The age of supperannuation of the Officers holding:-
>
> (i) a post higher than that of a rank of Commandant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Provided that an officer whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years; and

(ii) Officers of the other ranks shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-seven years.

Provided that an officer whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty-seven years."

XX XX XX XX

3.5 The aforesaid amendment rules provided for retirement age of officers above the rank of commandant as 60 years (earlier 58 years) and that of other officers as 57 years (Earlier 55 years). Since the age of retirement of officers of the Force were prescribed keeping in view the nature of duties of the force, the Ministry of Home Affairs were requested to state the rationale behind increasing the retiring age limit of the aforesaid officers.

3.6 In their reply dated 24 August, 1998, the Ministry stated as under:-

"….. member and officers upto the rank of Commandant in three Para-military Forces namely, BSF, CRPF & ITBP are required to be on active duty in the field while officers above the rank of Commandant are primarily doing supervisory job. It was in view of this the age of retirement for men and officers upto the rank of Commandant was kept at 55 years (now increased to 57 years) as compared to 58 years (now increased to 60 years) in case of senior officers above the rank of Commandant.

The age of retirement for all ranks of Para-Military Forces has now been increased by 2 years, keeping in view the recommendations of the 5th Pay Commission for enhancing the age of retirement for civil employees by 2 years."

3.7 The Committee observe in the aforesaid amendment Rules that the retirement age of members of the CRPF has been increased from 55 years to 57 years. Similar provisions are there in the Border Security Force (Seniority, Promotion and Superannuation of Officers) Amendment Rules, 1998. In this connection, the Committee feel that it is only in view of the nature of duties being performed by the Members of the CRPF and BSF that the age of retirement has been kept as 55 years which has now been increased by 2 years i.e. upto 57 years in view of the increase in the age of retirement from 58 to 60 years of the employees of all Ministerial and other public undertakings on the basis of recommendations of the Fifth Central Pay Commission.

3.8 The Committee note that the retirement age of those Officers have been enhanced only keeping in view the recommendations of the 5th Pay Commission for enhancing the age of retirement for civil employees by 2 years. However the Committee do not find any justification regarding the enhancement of the age of superannuation vis-a-vis the nature of duties being performed by the personnel of the Para Military Forces and also it is not known whether such increase in the retirement age is going to adversely affect the field operations being performed by these Para-Military forces. While the Committee feel that the benefit of the increase in the retirement age should be extended to these Forces also and leave it to the decision of the government, they desire that the Govt. should ensure that the enhanced age limit does not affect the field/active duties which are required to be performed by the officers so deputed.

IV The Central Apprenticeship Council (Amendment) Rules, 1996 (GSR 187 of 1996)

The Central Apprenticeship Council (Amendment) Rules, 1996, were published in the Gazette of India, Part-II, Section 3 (i) dated April 27, 1996. Rule 14(2), as substituted of the Central Apprenticeship Rules, 1962 read as under:-

"Rule 14(2) as substituted

"The functions of the Standing or Special Committees shall be determined by the Council".

4.2 It was felt that the exercise of formation of Standing or Special Committees or determining their functions by the Council was a substantive provision which cannot be incorporated in the rules unless there was an express authorisation thereof in the main Act viz. the Apprentices Act, 1961. In this regard, it was observed from the preamble that the aforesaid rules were notified by the Central Government in exercise of general powers conferred by section 37(1) of the Apprentices Act 1961. On scrutiny of this section it was observed that said section 37 (1) did not confer any authorization to the Central Government to delegate such power to the Council. The matter was, therefore, taken up with the concerned Ministry of Labour to ascertain the specific authority in the parent statute which empowered the Central Government to delegate such powers to the Central Apprenticeship Council to appoint Standing or Special Committees or to determine their functions.

4.3 In their reply dated 8 October, 1996, the Ministry stated as under:-

"(1) The original Act (Apprentices Act, 1961), vide sub-section (1) of Section 37, empowers the Central Government to make rules for carrying out the purposes of the Act, after consulting the Central Apprenticeship Council (CAC). Accordingly, the Central Apprenticeship Council Rules were framed in 1962.

(2) In the Original CAC Rules, 1962, Clause 14 (1) empowers the CAC to appoint such standing or Special Committees for assisting it in the discharge of its functions.

(3) Clause 14(2) empowers the CAC to determine the composition as well as functions of the standing or Special Committees.

(4) The CAC Rules, 1962 have not been challenged and have stood the test of time.

(5) Delays and difficulties experienced in finalising the composition of the standing or Special Committees of the CAC made it necessary for CAC to separate the power to determine the composition of the Committees. Accordingly, after consulting the Ministry of Law, Sub-clause (2) of Rule 14 has been replaced and a new sub-clause (3) to Rule 14 has been added to the CAC Rules of 1962 to specify that whereas the functions of the Standing or Special Committee shall continue to be determined by the Central Apprenticeship Council, their composition shall be determined by the Chairman of the CAC.

(6) A comparative study of both the Original Rule 14 of the CAC Rules, 1962 and the amended Rule 14, notified vide GSR 187 dated 10.4.1996, would reveal that no substantive change has been made in the Original Rule 14 and the changes made by the said amendment of 1996 are only procedural in nature.

(7) The substantive power to form Standing or Special Committees are conferred on the Council by Rule 14 (1) of the principal Rule of 1962, which has not been affected by the amendment of 1996 which is under question.

(8) However, if the Committee would still feel that amendment of the principal Act / Rules would be necessary, further action will be taken in consultation with the Ministry of Law and Justice to comply with the directions of the August Committee".

4.4 After critical examination of the aforesaid reply of the Ministry, it was pointed out to the Ministry vide this Secretariat O.M. dated 15 October, 1996 that even though the provision to form Standing or Special Committees is contained in the Principal rules, it being a substantive provision, has to be authorised by the Main Act itself. The Ministry was accordingly asked to incorporate such provision in the parent statute itself.

4.5. In their reply dated 3 December, 1996, the Ministry stated that the matter has been referred to the Law Ministry for their comments.

4.6. The Ministry in an another communication dated 11.6.97, stated that the matter has been re-examined in consultation with the Legal Adviser to the Ministry of Labour and the necessary action to amend Apprentices Act was being initiated separately. Then on 29.8.97, the Ministry stated that the process to amend the Apprentices Act has already been initiated in consultation with the Ministry of Law and Justice. On 10.10.97, the Ministry stated that a draft Cabinet Note, duly approved by the Hon'ble Labour Minister, has been sent to the Ministry of Human Resource Development for their comments and after that the draft Cabinet Note would be sent to Legislative Department for vetting and further action would be taken up accordingly. The Ministry on 23.12.97 informed that the draft Cabinet Note was being sent to the Legislative Department for vetting.

4.7. In yet another communication dated 3 February, 1998, the Ministry had endorsed a copy of their correspondence with the Ministry of Human Resources Development, wherein they had sought the opinion of the Legal Adviser of that Ministry.

4.8. In their final communication dated 17 April, 1998, the Ministry of Labour stated as under:-

> "…..the Draft Cabinet Note on the above was referred to Ministry of Law & Justice, Department of Legal Affairs for vetting, who advised us to route the file through Legal Adviser, Ministry of Labour. Accordingly, the matter was referred to Legal adviser, Ministry of Labour. He has observed that provision pertaining to empowering the Central Government to delegate any of its functions to any other authority subordinate to it, is available in section 34 of the Apprentices Act 1961 ……..and this will meet the requirement of Lok Sabha Secretariat. He also observed that if Lok Sabha Secretariat is satisfied with this reply, the necessity of making amendment in the Act will stand obviated.
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> It is, therefore, requested to please re-examine the above referred matter keeping in view the observations of the legal adviser, Ministry of Labour."

4.9. On the basis of the aforesaid reply of the Ministry, a draft memorandum was prepared for consideration of the Committee. The said memorandum was considered by the Committee at their sitting held on 24 September, 1998 and the Committee desired to have further clarification as to how section 34 of the Apprentices Act, 1961 empowers the Central Government to delegate its powers to the Council in the matter of determining the functions and compositions of the Standing or Special Committee. Accordingly, the matter was again referred to the Ministry of Labour on 25 September, 1998 for seeking the said clarification.

4.10. The Ministry vide their O.M. dated 7 December, 1998 stated that the matter was referred to the Legal Adviser, Ministry of Labour and enclosed a copy of observations recorded by him and concurred by the Joint Secretary, Department of Legal Affairs, Ministry of Law and Justice. The opinion of the Legal Adviser reads as under:-

> "Section 37(1) of the Apprentices Act, 1961 empowers the Central Government after consulting the Central Apprenticeship Council, to make Rules for carrying out the purposes of the Act. The Rules so made are required to be notified in the official Gazette. Section 34 of the Act empowers the Government to delegate its powers to any authority subordinate to it, and reads as under:-
>
> > "The appropriate Government, may, by notification in the Official Gazette direct that any power exercisable by it under this Act or the rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also-

(a) Where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) Where the appropriate Government is the State Government, by such officer or authority subordinate to the State Government, as may be specified in notification.

(c) The Central Apprenticeship Council is constituted by the Central Government under Section 24 of the Act. It may please be appreciated that barring the constitution of the Council, the Act is silent with regard to functioning and functions of the Council. Therefore, while making rules for carrying out the purposes of the Act, as envisaged by Section 37(1) of the Act, the Central Government has to lay down the functions to be discharged by the Council and also the manner of functioning of the Council. While doing so, the Central Government has exercised its powers under section 34 also permitting the council to function through Special and Standing Committee. No doubt the Act does not expressly authorise the Council for formation of Special and Standing Committees of the Council, it is the Central Government which have been specifically empowered that the powers exercisable by it under the Act or the Rules made there under shall also be exercisable by an authority working under it. In view of the specific provisions of Section 34 of the Act such a procedure is not violative of the principles of delegated legislation. The Supreme Court in the case of Registrar, Cooperative Societies Vs. K. Kunjabmu (AIR 1980 SC 350) has emphasised that the Legislature cannot delegate its essential legislative function. "Legislate it must by laying down policy and principle and delegate it may to fill in detail and carrying out policy."

(d) The provision is also not hit by the maxim 'Delegates Non Protest Delegare (i.e. a delegate cannot further delegate) because section 34 specifically empowers the Central Government to do so. It is settled principle of law that sub delegation of power to delegated legislation is justified when the parent statute expressly or impliedly authorise the delegate himself to further sub-delegate that power to anyone else.

(e) Examining the provision of the Apprentices Act, 1961 and the Central Apprenticeship Council Rules, 1962 in the light of the above discussion, it will be seen that the Central Government while making Rules and while authorising the Council to have the power to appoint Standing or Spl. Committees and to decide composition and functions of such Committees has only supplemented the provision of the Act for the purposes of the Act. In addition, another important fact to be noted here is that the Labour Minister himself is the chairman of the Central Apprenticeship Council and all decisions taken by the Standing or Special Committees are ultimately approved by him and he is also the Central Government for the purposes of the Apprentices Act, 1961.

(f) We are, therefore, of the considered view that in view of the specific powers conferred on the Central Government to delegate any of the functions to an authority subordinate to it, the provisions of Rules 14(2) of the Central Apprenticeship Council Rules, 1962, as amended in 1996 do not suffer from any legal infirmity.

4.11 The Committee feel that the exercise of formation of Standing or Special Committees or determining their functions by the Council is a substantive provision which cannot be incorporated in the rules unless there is an express authorisation thereof in the main Act viz. the Apprentices Act, 1961. In this regard, the Committee observe from the preamble that the aforesaid rules have been notified by the Central Government in exercise of general powers conferred by section 37(1) of the Apprentices Act, 1961. On scrutiny of this section it has been observed that said section 37(1) does not confer any authorisation to the Central Government to delegate such power to the Council. The Committee note that as per the reply of the Ministry, Section 34 of the Act empowers the Central Government to delegate any of its functions to any other authority subordinate to

it and as such the Central Government is authorised to sub-delegate its powers to the Central Apprenticeship Council. The Committee desire that the Ministry should amend the Central Apprenticeship Council Rules, 1962 so as to reflect the correct statutory authority in the preamble viz. section 34 of the Apprenticeship Council Act, 1962 which empowers the Central Government to form Standing or Special Committee. The Committee further desire that they should ensure to quote the correct statutory authority while framing such rules in future.

V The Delhi Development Authority, Deputy Director Recruitment Regulations, 1998 (GSR 147-E of 1998)

(A)

The Delhi Development Authority, Deputy Director Recruitment Regulations, 1998 were published in the Gazette of India, Extraordinary Part-II, Section 3(i), dated 26 March, 1998. It was observed therefrom that the extant regulations were notified to regulate the method of recruitment to the post of Deputy Director in the Delhi Development Authority and were given effect from the date of their publication in the official gazette i.e. w.e.f. 26 March, 1998. In this regard, the Ministry of Urban Affairs and Employment were requested to state:-

> "Whether the post of Deputy Director in Delhi Development Authority has been newly created. If not, then how the matter sought to be governed by these regulations had actually been governed till now in the absence of these regulations and also the reasons for delay in framing of these regulations."

5.2 In their reply dated 20 August, 1998, the Ministry stated as under:-

"The Delhi Development Authority has reported that the post of Deputy Director is not newly created. Before April, 1978, there were Executive Officers working who were later on designated as Deputy Directors. The Recruitment Rules for the post of Executive Officers were approved by the Authority vide Resolution No. 272 dated 29.3.1967 read with resolution No. 152 dated 26.7.1971 and Resolution No. 169 (2) dated 30.8.1971. The method of recruitment was 25% by promotion and 75% by deputation of PCs Officers. However, in April, 1978 these Executive Officers were redesignated as Deputy Directors. Their Recruitment Rules were approved by the Authority vide Resolution No. 28/95 dated 17.4.1995, which were subsequently approved, by the Lt. Governor being the Chairman of DDA. These Recruitment Rules were published in the Gazette of India GSR 147-E of 1998. Till the Recruitment Rules for the post of Deputy Director were approved, the Recruitment Rules for the post of Executive Officers were followed regarding promotion to the post of Deputy Directors."

5.3 The Committee observe that the above regulations were notified to regulate the method of recruitment to the post of Deputy Director in the Delhi Development Authority and have been given effect from the date of their publication in the official gazette i.e. w.e.f. 26 March, 1998.

5.4 The Committee note from the reply of the Ministry that the post of Deputy Director in DDA has been created way back in April, 1978 by re-designating the post of Executive Officer. Further, the Recruitment Rules for this post have been notified only in 1998 i.e. after a gap of three years after their approval in 1995. According to the Ministry, for the intervening period between 1978 to 1995, the earlier Recruitment Rules of the Executive Officers were being followed to regulate the post of Deputy Director. In this connection, the Committee observe that the extant Regulations have been brought into force from the date of their publication in the official Gazette i.e. 26.3.1998 which was giving an impression that the post of Deputy Director has been newly created whereas the said post was in existence way back in 1978. The Committee feel this, a serious lacuna in the extant regulations as these do not reflect the correct position and further that the regulations should have been given retrospective effect from 1978 so as to regularise the services of those Deputy Directors who have served during the intervening period from

1978 when this post was created to 26.3.1998 when these Regulations have been brought into force. The Committee do not find any justification for the inordinate delay of 20 years in framing and notification of the regulations. The Committee desire that the Ministry should suitably amend the Regulations so as to do away with the above-mentioned anomalies and to devise suitable procedural safeguards to avoid recurring of such lapses in future.

(B)

5.5 In the aforesaid regulations, it was observed that the pay-scales indicated therein against the post of Deputy Director in the Delhi Development Authority were pre-revised although the recommendations of the Fifth Central Pay Commission had been implemented from 1.1.1996. The Ministry of Urban Affairs and Employment were, therefore, requested to state the reasons for indicating pre-revised pay-scale instead of the revised one for the post of Deputy Director.

5.7 The Ministry in their replay dated 20 August, 1998 stated as under:-

"DDA has reported that when the Recruitment Rules were approved by the Authority in April, 1995 the report of the Fifth Pay Commission was not implemented. Hence, the pay scale of Rs. 3000-4500 (pre-revised) was indicated in the Recruitment Rules.

5.8 The Committee observe from the above regulations that the pay-scales indicated against the post of Deputy Director in the Delhi Development Authority were pre-revised although the recommendation of the Fifth Central Pay Commission has been implemented from 1.1.1996. As to the reasons for indicating pre-revised pay-scale instead of the revised one for the post of Deputy Director, the Committee noted from the reply of the Ministry of Urban Affairs and Employment that the pre-revised pay scale was indicated because when the regulations were approved by the Delhi Development Authority in April, 1995 i.e. before implementation of the recommendations of the Fifth Pay Commission. The Committee do not find any justification for publishing a rule after a gap of 3 years, and desire the Ministry to amend the Regulations suitably so as to indicate the revised pay-scales in accordance with the recommendations of Fifth Pay Commission and to evolve suitable procedural safeguards to avoid recurrence of such lapses in the future.

VI The Ministry of Health and Family Welfare Staff Car/Field Car Drivers (Ordinary Grade,

Grade-II and Grade-I) Recruitment Rules, 1998 (GSR No. 119 of 1998)

(A)

The Ministry of Health and Family Welfare Staff Car/ Field Car Drivers (Ordinary Grade, Grade II and Grade I) Recruitment Rules, 1998, were published in the Gazette of India, Part-II, Section 3 (i) dated 4 July, 1998. It was observed therefrom that although the rules were published in the Gazette of India in 1998, the year in the short-title was indicated as 1994. As per the oft-repeated recommendation of the Committee on Subordinate Legislation, the year of the short-title should correspond to the year of publication of the Notification in the official gazette. The Ministry of Health and Family Welfare were, therefore, requested to state the reasons for deviation from normal practice followed in this respect.

6.2 The Ministry in their reply dated 16 October, 1998, stated as under:-

(i) Short title : The notification was sent to Government of India Press for publication in the Gazette of India on 24th October, 1994. Since it was not known whether the notification had already been notified, the Government of India Press was asked on 24.6.1998 to inform whether the said notification has been published in the Gazette and requested to get published, if it has not been published earlier. Though the notification was forwarded in October, 1994 to the Government of India Press for publication, it was got published on 4.7.1998 without making any correction in the year

in the short title corresponding to the year of publication at the time of publication as it could not be published in 1994".

6.3 The Committee observe from the above rules that they were published in the Gazette of India in 1998 and the year in the short title has been indicated as 1994 whereas as per the recommendation of the Committee on Subordinate Legislation the year in the short-title should conform to the year of their publication in the Official Gazette. According to the reply of the Ministry rules which were sent for publication in the year 1994, were actually got printed in the year 1998 i.e. after a gap of four years. The Committee express concern over the lackadaisical manner in which such an important piece of subordinate legislation is being dealt with by the Ministry who did not bother to check whether the rules have actually been published or not or whether the same have been published correctly and feel that the duty of the Ministry is not over merely by sending the notification to the Press. They are also suppose to keep a track of the final publication of the rules. The Committee desire that the Ministry should devise suitable procedural safeguards to avoid recurrence of such type of serious lapses in future.

(B)

6.4 It was noticed that the aforesaid rules were given effect retrospectively w.e.f. 1.8.1993. However, the usual explanatory memorandum certifying that interests of nobody would be affected adversely by such retrospective effect was absent. In this connection, the attention of the Ministry was invited to the following oft-repeated recommendation of the Committee made in Para 10 of their 2nd Report (4th 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".

6.5 The Ministry were requested to state the reasons for not complying with the aforesaid recommendation of the Committee.

6.6. The Ministry in their reply dated 16 October, 1998 stated as under:-

> "(ii) Retrospective effect: Amendment to the Recruitment Rules were made as per the instruction contained in DOPT's O.M. No. 22036/1/92-Estt. (D) dated 30 November, 1993 wherein it was specified in para 2.9 that those orders come into force w.e.f. 1.8.93. Hence, the commencement of the rules had been given effect from 1 August, 1993 and no one had been adversely affected by such retrospection."

6.7 The Committee observed that the above rules were given effect retrospectively w.e.f. 1.8.1993. However, the usual explanatory memorandum which is normally appended to certify that the interests of nobody would be affected adversely by such retrospective effect as recommended by the Committee was not appended to the rules. The Committee are surprised to note that the Ministry are not even aware of this recommendation and desire them to devise appropriate procedure so as to ensure that such important recommendations of the Committee do not escape their attention while framing the rules. The Committee also desire the Ministry to notify an amendment by incorporating the requisite explanatory memorandum certifying that interest of no person would be adversely affected by giving such retrospective effect to the rules.

(P.H. PANDIAN)

CHAIRMAN, COMMITTEE ON SUBORDINATE LEGISLATION

NEW DELHI;