

## **THE CONSTITUTION**

### **THE DISCIPLINED FORCES SERVICE COMMISSION REGULATIONS, 1997**

#### **Regulations made by the Disciplined Forces Service Commission under section 118(1) of the Constitution**

#### **PART I**

#### **PRELIMINARY**

1. These regulations may be cited as the Disciplined Forces Service Commission Regulations 1997.

2. (1) In these regulations –

“appointment” means –

- (a) the conferment of an office of emolument in any Disciplined Force, whether or not subject to subsequent confirmation, upon a person not in such a Disciplined Force;
- (b) the grant of permanent and pensionable terms of service in any Disciplined Force to a person recruited and serving on contract terms of service or in an unestablished capacity in a pensionable or non-pensionable public office;
- (c) the engagement, in an office in any Disciplined Force, of a person on contract terms of service for a further period of service on the conclusion of his previous period of engagement on contract terms in the same or another office in such Disciplined Force;
- (d) the transfer of a member of any Disciplined Force to another office in another Disciplined Force carrying the same salary or salary scale;
- (e) the appointment of a member of any Disciplined Force to act in any office in such Disciplined Force other than the office to which he is substantively appointed;

“Chairman” means the Chairman of the Public Service Commission in his capacity of *ex officio* Chairman of the Disciplined Forces Service Commission and includes any other person appointed to act temporarily as Chairman of the Public Service Commission;

“Commission” means the Disciplined Forces Service Commission established by section 90 of the Constitution;

“commissioner” means any commissioner of the Commission and includes the Chairman and any person appointed to act as a commissioner under section 90(3) of the Constitution;

“disciplinary control” includes control in so far as it relates to dismissal;

“Disciplined Force” means the appropriate Disciplined Force specified and defined in section 111 of the Constitution;

“member of a Disciplined Force” -

(a) means a holder of an office of emoluments paid from the Estimates of any Disciplined Force;

(b) does not include an employee in the General Service;

“official document” means any document prepared by any public officer in the course of his employment or any document which comes into the custody of any public officer in the course of such employment;

“promotion” means the conferment upon a member of a Disciplined Force of an office in the Force of an office in the Force to which is attached a higher salary or salary scale than that attached to the office to which he was last substantively appointed or promoted;

“responsible officer” means -

(a) in relation to a member of the Police Force, the Commissioner of Police;

(b) in relation to the Commissioner of Prisons, the administrative Head of the Ministry to which the responsibility for the Mauritius Prison Service is assigned;

(c) in relation to any other member of the Prison Service, the Commissioner of Prisons;

(d) in relation to the Controller of Fire Services, the administrative Head of the Ministry to which the responsibility for the Mauritius Fire Services is assigned;

(e) in relation to any other member of the Mauritius Fire Services, the Controller of Fire Services;

(f) in relation to a member of the Mauritius Prison Service or of the Mauritius Fire Services appointed to serve in Rodrigues and to whom paragraph (c) or (e) does not apply, the Island Secretary;

“salary” means basic salary attached to a public office;

“Secretary” means the Secretary to the Commission;

“seniority” means the relative seniority of members of a Disciplined Force and, except as may otherwise be provided by the Commission or in these regulations, shall be determined and shall be regarded as having always been determined as between members of the Disciplined Force of the same rank as follows -

- (a) by reference to the dates on which they respectively were substantively appointed or promoted to that rank;  
or
- (b) in the case of members of any Disciplined Force who were substantively promoted to that rank on the same day, by reference to their seniority on the day immediately preceding that day;
- (c) in the case of members of any Disciplined Force who were substantively appointed to that rank on the same day, by reference to their respective ages,

provided that when assessing the seniority of pensionable member of any Disciplined Force, service by himself or any other person in a non-pensionable capacity shall not be taken into account;

(2) Nothing in these regulations empowering a responsible officer or any other person to perform any function or duty or exercise any power vested in the Commission shall preclude the Commission from itself performing that function in any particular case.

## **PART II**

### **GENERAL**

3. The Secretary of the Public Service Commission shall be the Secretary of the Disciplined Forces Service Commission and every member of the staff of the Public Service Commission shall also be a member of the staff of the Disciplined Forces Service Commission.
4. Every meeting of the Commission shall be presided over by the Chairman.
5. A record shall be kept of the commissioners present and of the business transacted at every meeting of the Commission.
6. Decisions may be made by the Commission without a meeting by circulation of the relevant papers among the commissioners and the expression of their views in writing, but any commissioner shall be entitled to require that any such decision shall be deferred until the subject-matter shall be considered at a meeting of the Commission.
7. Any commissioner shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons for it set out in the records of the Commission.
8. The Chairman and 2 commissioners will constitute a quorum for a meeting of the Commission and a like number of commissioners will be required for a decision of the Commission arrived at by the circulation of written papers.

9. (1) The Commission, in considering any matter, may consult with any public officer or other person as the Commission may consider proper and desirable and may require any public officer to attend and give information before it concerning any matter which it is required to consider in the exercise of its functions.

(2) The Commission may require the production of any official document relevant to any exercise of its functions and any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

(3) Any public officer who, without reasonable excuse, fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach and the Commission may direct the person responsible for initiating disciplinary proceedings against such public officer that disciplinary proceedings should be instituted against him.

10. The Commission shall, at the request of a responsible officer, hear him or his representative personally in connection with any matter he has referred to the Commission.

11. (1) In carrying out its duties under the Constitution and these regulations, the Commission shall not take into account any representations made to it otherwise than in accordance with the Constitution or with these regulations.

(2) Nothing in paragraph (1) shall be deemed to prohibit the Commission taking into account a *bona fide* reference or testimonial of service.

12. (1) Every Commissioner shall, on appointment, taken an oath in the form set out in the Schedule.

(2) The Secretary and such other member or members of the staff of the Commission as the Chairman may require so to do, shall on appointment, take an oath in the form set out in the Schedule.

(3) Every oath or affirmation taken by a commissioner shall be administered by a Judge and every oath or affirmation taken by the Secretary or any other member of the staff of the Commission shall be administered by the Chairman.

### **PART III**

#### **APPOINTMENTS, CONFIRMATION OF APPOINTMENTS, PROMOTIONS AND TERMINATION OF APPOINTMENTS (OTHERWISE THAN BY DISCIPLINARY PROCEEDINGS)**

13. This Part shall apply to the members of any Disciplined Force, except the Commissioner of Police.

14. (1) In selecting candidates for appointment or promotion within a Disciplined Force, the Commission shall have regard primarily to the efficiency of that Force.

(2) As between serving members of a Disciplined Force, professional or technical qualifications, experience, merit and suitability for the office in question shall be given greater weight than seniority.

(3) Where a post cannot be filled either –

- (a) by the appointment or promotion of a suitable person already in the Disciplined Force; or
- (b) by the appointment of a suitable person who has been specially trained for the Disciplined Force, wholly or partly at public expense.

the Commission shall call for applications for the post by advertisement unless –

- (i) for special reasons, in its discretion, it decides not to do so; and
- (ii) where it is satisfied that no suitable candidates with the requisite qualifications are available in Mauritius, it decides that the recruitment be undertaken by some agency outside Mauritius and arrange for such recruitment to be carried out.

**15.** (1) The Commission may appoint one or more than one selection board to assist in the selection of candidates for appointment to a Disciplined Force and the composition of any such board and the form in which its reports are to be submitted shall be decided by the Commission.

(2) On the consideration of any report of a selection board, the Commission may summon for interview any of the candidates recommended by the board.

**16.** The Commission shall determine the form of advertisement issued in accordance with regulation 14(3), and the qualifications specified in the advertisement shall be those specified by the Secretary to Cabinet and Head of the Civil Service, with the agreement of the Commission, for the vacancy under consideration.

**17.** The Commission shall determine –

- (a) the procedure to be followed in dealing with applications for appointment to any Disciplined Force including the proceedings of any selection board appointed by the Commission to interview candidates;
- (b) the forms to be used in connection with the discharge of its functions.

**18.** In order to discharge its duties under this Part, the Commission may issue such directions to a responsible officer as it may see fit for the maintenance of a system of annual confidential reports on members of a Disciplined Force and for their safe custody.

- 19.** (1) (a) Where a vacancy occurs, or it is known that a vacancy is likely to occur in an office to which this Part applies, the responsible officer shall, if he desires the vacancy to be filled, report the fact to the Secretary, certifying at the same time that there is no establishment or financial or other objection to the vacancy being filled.
- (b) The report under paragraph (a) shall include a recommendation as to the manner in which the vacancy should be filled and whether or not the vacancy should be advertised, and a copy of the report of vacancy shall be forwarded to the Secretary to Cabinet and Head of the Civil Service.
- (c) The responsible officer shall, as may be required by the special or general directions of the Commission, constitute a promotion board to advise him on the matter.

(2) Where the responsible officer recommends that such vacancy should be filled by the appointment or promotion of a member of any Disciplined Force, he shall, when reporting the vacancy to the Secretary, forward a list of all the members of that Force eligible for consideration who are senior to the recommended member of that Force, together with their records of service and that of the recommended member of that Force, and give his reasons for recommending their supersession.

(3) Where the responsible officer does not recommend that the vacancy should be filled, by the appointment or promotion of a member of any Disciplined Force he shall, when reporting the vacancy to the Secretary –

- (a) report to the Secretary the names of the most senior members of the Disciplined Force then serving in the rank from which the promotion would normally be made and state why he does not consider that the members of that Disciplined Force named are suitable for promotion to fill the vacancy; and
- (b) forward to the Secretary a draft advertisement setting out the details of the vacancy and the duties and qualifications attached to it.

(4) Where the Commission has decided that a person should be appointed or promoted to a vacancy in any Disciplined Force, the responsible officer, on being informed of the decision by the Secretary, shall issue the letter of appointment or promotion to the person concerned and shall make such further arrangements as may be necessary to complete the procedure for appointment or promotion.

**20.** (1) All first appointments to pensionable offices in any Disciplined Force on permanent terms shall be on 12 months' probation.

(2) Where a member of any Disciplined Force has been appointed on probation, the responsible officer shall, 6 months after the commencement of the probationary period, inform the Commission if he considers the work or conduct of that member to be unsatisfactory, and not less

than one month before the expiration of the probationary period, the responsible officer shall inform the Commission whether in his opinion –

- (a) that member should be confirmed in his office;
  - (b) the probationary period should be extended so as to afford that member further opportunity to pass any examination, the passing of which is a condition for confirmation, his service otherwise being satisfactory;
  - (c) the probationary period should be extended to afford that member the opportunity of improvement in any respect in which his work or conduct has been adversely reported on; or
  - (d) the appointment of that member should be terminated.
- (3) (a) The responsible officer shall not recommend the extension or termination of an appointment under paragraph (2)(c) or (d) unless he has first, by letter, informed the member of the relevant Disciplined Force of his intention and of the right of the member of that Force to make representations thereon within a period to be specified in such letter.
- (b) The responsible officer shall attach copies of all such correspondence to his recommendation.
- (4) Where a member of a Disciplined Force who is on probation has been granted –
- (a) sick leave in excess of 28 days;
  - (b) vacation leave taken overseas or locally;
  - (c) vacation leave taken as casual leave;
  - (d) leave without pay;
  - (e) study leave without pay;
  - (f) extension of study leave, while he is on study leave with pay, in case of failure at examination or awaiting results before resuming duty;
  - (g) maternity leave; or
  - (h) injury leave.

the probationary period shall be extended by an equivalent period.

**21.** (1) Where the holder of an office to which this Part applies is for any reason unable to perform the functions of his office and the responsible officer is of the opinion that some other member of a Disciplined Force should be appointed to act in that office, the responsible officer shall report the matter to the Secretary and shall submit, for the consideration of the Commission, the name of the member of the Force whom he recommends should be appointed to act in that office.

(2) Where any recommendation under paragraph(1) involves the supersession of any more senior member of the Disciplined Force eligible for consideration, the responsible officer shall inform the Secretary of his reasons for recommending the supersession of each such member of that Force.

(3) In considering recommendations for acting appointments, the Commission shall apply the standards prescribed in regulation 14, except that consideration may also be given to the interests of departmental efficiency.

**22.** (1) Where a responsible officer is of the opinion that a pensionable member of a Disciplined Force should be called upon to retire from that Force on the grounds that he has attained the age at which he can, under any enactment, lawfully be required to retire from that Force, he shall—

- (a) inform that member that he intends to recommend that he be compulsorily retired from that Force;
- (b) ask that member whether he wishes to make, within a period of time appointed by the responsible officer, any representations why he should not be so retired; and
- (c) after the expiration of the period, forward his recommendation to the Secretary together with a copy of any representations made by that member and his comments on them.

and the Commission shall decide whether that member should be called upon to retire.

**LEGAL SUPPLEMENT**

*To the Government Gazette of Mauritius No. 44 of 25 April 1998*

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*Government Notice No. 38 of 1998*

**THE CONSTITUTION****Regulations made by the Disciplined Forces Service Commission under section 118(1) of the Constitution**

1. These regulations may be cited as the Disciplined Forces Service Commission (Amendment) Regulations 1998.

2. In these regulations –

“principal regulations” means the Disciplined Forces Service Commission Regulations 1997.

3. Regulation 21 of the principal regulations is amended by adding after paragraph (3) the following new paragraph –

(4) Notwithstanding paragraph (3), a responsible officer may recommend that a member of a Disciplined Force be assigned the duties of another office in the same Disciplined Force and the Commission may so assign such duties where –

- (a) the member of the Force cannot be appointed to perform the functions of that other office in an acting capacity because that member -
  - (i) does not hold the official qualifications applicable to that office; or
  - (ii) is not the most senior member of the Disciplined Force serving in the particular rank from which an appointment in an acting capacity would normally be made; and
- (b) such assignment of duties is considered to be in the interests of departmental efficiency and desirable on the ground of administrative convenience

Made by the Disciplined Forces Service Commission on 15 April 1998.

(2) On being advised of the decision of the Commission, the responsible officer shall notify the member of the Disciplined Force concerned and, where that member is to be retired, the responsible officer shall make such further arrangements as may be necessary to complete the procedure for the retirement of that member.

(3) A member of a Disciplined Force whose compulsory retirement is under consideration under this regulation may, where possible, be given the option to retire voluntarily provided that the reasons for requiring his retirement do not involve disciplinary action.

**23.** (1) Where it appears to a responsible officer that a member of a Disciplined Force is incapable by reason of any infirmity of mind or body of discharging the functions of his office, he may call upon that member to present himself before a medical board (which shall be appointed by the Permanent Secretary of the Ministry of Health) with a view to it being ascertained whether or not that member is incapable as aforesaid.

- (2)
- (a) After the member of the Disciplined Force has been examined, the Permanent Secretary of the Ministry of Health shall forward the medical board's proceedings, together with his comments on it, to the responsible officer who in turn shall forward them together with his own observations on the case to the Secretary
  - (b) Unless the Commission considers that further enquiry is necessary, in which case it will issue directions to the responsible officer accordingly, it shall decide whether that member should be called upon to retire on medical grounds.

(3) On being advised of the decision of the Commission, the responsible officer shall notify the member of the Disciplined Force and, if the member is to be retired on medical grounds, he shall make such further arrangements as may be necessary to complete the procedure for the retirement of that member.

**24.** Where a member of a Disciplined Force is serving on a contract or agreement and is willing to engage for a further period of service, the responsible officer shall forward to the Secretary, 6 months before that member is due to proceed to leave on the expiration of his contract or agreement, a notification of the date of the expiration of the contract or agreement and his recommendation whether it should be renewed or not.

**25.** Any member of a Disciplined Force attempting to bring influence to bear on the Commission or on any of its commissioners or on his responsible officer for the purpose of obtaining an appointment or promotion may be qualified for the appointment or promotion and render himself liable to disciplinary action.

**PART IV****DISCIPLINE**

**26.** This Part shall apply to the disciplinary control of all members of the Disciplined Forces, except the Commissioner of Police.

**27.** The Commission shall not exercise its powers in connection with the dismissal, the disciplinary punishment or the termination of appointment otherwise than by way of dismissal of a member of a Disciplined Force except in accordance with these regulations or such other regulations as may be made by the Commission.

**28.** (1) Where a responsible officer considers that the public interest requires that a member of a Disciplined Force, should instantly cease to exercise the powers and functions of his office, he may interdict that member at once from the exercise of those powers and functions where proceedings for dismissal are being taken or where criminal proceedings are being instituted or where proceedings for retirement on grounds of public interest are being taken against that member, informing the Secretary that he has done so and applying for covering authority from the Commission.

(2) A member of a Disciplined Force who is under interdiction may not leave Mauritius without the permission of the responsible officer.

**29.** (1) Where a preliminary investigation or a disciplinary enquiry discloses that an offence against any law may have been committed by a member of a Disciplined Force other than a member of the Police Force, the responsible officer shall forthwith refer the case to the Commissioner of Police for enquiry and submission to the Director of Public Prosecutions for advice as to whether a prosecution should be instituted.

(2) Where it is apparent to the Commissioner of Police that an offence against any law may have been committed by a member of the Police Force, the Commissioner of Police shall seek the advice of the Director of Public Prosecutions as to whether a prosecution should be instituted.

(3) Where the Director of Public Prosecutions does not advise a prosecution under paragraph (1) or (2) but advises that disciplinary action should be taken under these regulations against the member of the Disciplined Force or the Police Force, as the case may be, the responsible officer shall institute disciplinary proceedings against the member in accordance with either regulation 35 or regulation 36.

**30.** Where criminal proceedings of a nature likely to warrant disciplinary proceedings are instituted against a member of a Disciplined Force in any court, the responsible officer of that member shall forthwith report the facts to the Secretary with a statement as to whether the member has or has not been interdicted from the exercise of his powers and duties, and thereafter the matter shall be dealt with under regulation 32 or 33 as the case may be.

**31.** (1) No disciplinary proceedings against a member of a Disciplined Force upon any grounds involved in a criminal charge shall be taken until the conclusion of the criminal proceedings and the determination of any appeal.

(2) Nothing in this regulation shall be construed as prohibiting or restricting the power of the responsible officer to interdict that member.

**32.** (1) A member of a Disciplined Force acquitted of a criminal charge in any court shall not be dismissed or otherwise punished on any charge upon which he has been acquitted, but nothing in this regulation shall prevent the institution of fresh proceedings with a view to his being dismissed or otherwise punished on any other charges arising out of his conduct in the matter provided that they do not raise substantially the same issue as that on which he has been acquitted.

(2) In all cases in which a member of a Disciplined Force is acquitted of a criminal charge in any court, the responsible officer of that member shall forward to the Secretary a copy of the judgment and of the proceedings of the court if they are available, provided that the charge is not in respect of minor offences which would not in any event warrant disciplinary proceedings.

(3) Where a member of a Disciplined Force who is under interdiction is acquitted of a criminal charge in any court, he shall be reinstated and, where further proceedings are instituted against him under paragraph (1), interdiction, if that course is decided upon, shall not have effect from any earlier date than that on which the new proceedings are instituted.

**33.** (1) Where a member of a Disciplined Force is convicted in any court of a criminal offence which, in the opinion of the responsible officer of that member, warrants disciplinary proceedings, he shall forward a copy of the charge and of the judgment and any judgment or order made on appeal or revision and his own recommendation to the Commission for consideration, and the Commission shall decide whether that member should be dismissed or subjected to any of the other punishments mentioned in regulation 38 or whether his service should be terminated in the public interest if the proceedings disclose grounds for doing so, without any of the proceedings prescribed in regulations 35, 36 or 37 of these regulations being instituted.

- (2) (a) Disciplinary proceedings subsequent to a conviction in a court of law should normally be confined to cases in which the conviction was in respect of an offence under any law where a prison sentence may be imposed other than in default of payment of a fine.
- (b) Disciplinary proceedings subsequent to a conviction should not normally be taken in respect of minor offences under the Road Traffic Act and of minor offences not entailing fraud or dishonesty and not related to the employment of a member of a Disciplined Force.

**34.** Where proceedings have been taken against a member of a Disciplined Force under this Part, that member shall be informed –

- (a) of the findings on each charge which has been preferred against him; and
- (b) of any punishment to be imposed.

35. (1) Where a responsible officer considers it necessary to institute disciplinary proceedings against any member of a Disciplined Force on the grounds of misconduct which, if proved, would justify his dismissal from the public service, he shall, after such preliminary investigation as he considers necessary and after seeking the advice of the Solicitor-General on the terms of the charge or charges, forward to the member concerned a statement of the charge or charges preferred against him together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based, and call upon such member to state in writing before a day to be specified by the responsible officer any grounds on which he relies to exculpate himself.

(2) Where the member does not furnish a reply to any charge forwarded under paragraph (1) within the period specified or where, in the opinion of the responsible officer, he fails to exculpate himself, the responsible officer shall forward to the Secretary copies of his report, the statement of the charge or charges, the reply, if any, of the accused member and his own comments on it.

- (3) (a) Where, on consideration of the report of the responsible officer, the Commission is of the opinion that proceedings for the dismissal of the member should be continued, it shall appoint a committee, which shall consist of not less than 3 members, who shall be public officers, to enquire into the matter.
- (b) One member of the committee shall be a Judge, Magistrate or a public officer who is or has been a barrister, and all members shall be selected with due regard to the standing of the accused member.
- (c) Neither the responsible officer nor any other officer serving in the accused member's Ministry or Department shall be a member of the committee.

(4) The committee shall inform the accused member that on a specified day the charges made against him will be investigated and that he will be allowed or, if the committee so determines, will be required to appear before it to defend himself.

(5) Where witnesses are examined by the committee, the accused member shall be given an opportunity of being present and of putting questions on his own behalf to the witnesses, and no documentary evidence shall be used against him unless he has previously been supplied with a copy of it or given access to it.

- (6) (a) The committee may permit the prosecuting party to the accused member to be represented by a public officer or a legal practitioner.
- (b) Where the committee permits the prosecuting party to be represented, it shall permit the accused member to be represented in a similar manner.

(7) Where during the course of the enquiry grounds for the preferment of additional charges are disclosed, the committee shall so inform the responsible officer who shall follow the same procedure as was adopted in preferring the original charges.

- (8) (a) The committee, having enquired into the matter, shall forward its report to the Commission together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the enquiry.
- (b) The report of the committee shall include -
- (i) a statement whether in the committee's opinion the accused member has or has not committed the offence or offences charged and a brief statement of the reasons for the opinion;
  - (ii) details of any matters which in the committee's opinion aggravate or alleviate the gravity of the case; and
  - (iii) a summing-up and such comments as will indicate clearly the opinion of the committee on the matter under enquiry.

(9) The committee shall not make any recommendation regarding the form of punishment.

(10) The Commission, after consideration of the report of the committee, may, if it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the committee for further investigation and report.

(11) The Commission, after consideration of the report of the committee or of any further report called for under paragraph (10), shall determine the punishment, if any (including retirement under regulation 37), which should be inflicted on the accused member.

**36.** (1) Where the responsible officer considers it necessary to institute disciplinary proceedings against a member of any Disciplined Force and is of the opinion that the misconduct alleged, if proved, would not be serious enough to warrant dismissal under regulation 35, he shall, after such preliminary investigation as he considers necessary, forward to the member concerned a statement of the charge or charges against him and shall call upon him to state in writing before a day to be specified any grounds on which he relies to exculpate himself.

(2) Where such member does not furnish a reply to the charge or charges against him within the period specified or does not, in the opinion of the responsible officer, exculpate himself, the responsible officer, shall forward to the Secretary a report on the case together with copies of the charge or charges preferred against the member, the member's reply, if any, and his own recommendations.

(3) Where the Commission on consideration of any report submitted to it by the responsible officer, is of the opinion that the matter warrants further disciplinary proceedings -

- (a) the Commission shall appoint a public officer to enquire into the matter;

- (b) the accused member shall be entitled to know the whole case against him and shall have an adequate opportunity of making his defence;
- (c) the public officer conducting such enquiry shall, within 14 days of the conclusion of the proceedings, submit his report to the Commission, together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the enquiry, and his report shall include -
  - (i) a statement whether in his opinion the accused member has or has not committed the offence or offences charged and a brief statement of the reasons for his opinion;
  - (ii) details of any matters which in his opinion aggravate or alleviate the gravity of the case; and
  - (iii) a summing up and such other comments as will indicate clearly his opinion on the matter under enquiry;
- (d) the public officer conducting the enquiry shall not make any recommendation regarding the form of punishment;
- (e) the Commission may, where it, considers that the results of the enquiry should be amplified in any way or that further investigation is desirable, refer the matter back to the person conducting the enquiry for further enquiry and report; and
- (f) the Commission, on consideration of the report submitted by the person conducting the enquiry, shall determine what punishment, if any (other than dismissal), should be inflicted on the member.

(4) Notwithstanding paragraphs (1), (2) and (3), where at any stage during proceedings taken under this regulation –

- (a) it appears to the Commission that the offence if proved would justify dismissal; or
- (b) the Commission considers that if the offence is proved, proceedings for the retirement of the member from the Disciplined Force concerned on grounds of public interest would be more appropriate, the proceedings so taken shall be discontinued and the procedure prescribed in regulations 35 and 37, as the case may be, shall be followed.

**37.** (1) Where a responsible officer, after having considered every report in his possession made with regard to a member of a Disciplined Force, is of the opinion that it is desirable in the public interest that the service of that member should be terminated on grounds which cannot be suitably dealt with under any other provisions of these regulations, he shall notify that member, in writing, specifying the complaints by reason of which his retirement is contemplated together with the substance of any report or part of it that is detrimental to the member.

(2) Where, after giving the member concerned an opportunity of showing cause why he should not be retired in the public interest, the responsible officer is satisfied that the member should be required to retire in the public interest, he shall forward to the Secretary the report on the case, the member's reply and his own recommendation, and the Commission shall decide whether the member should be required to retire in the public interest.

**38.** (1) The following punishments may be inflicted upon a member of a Disciplined Force as a result of proceedings under these regulations –

- (a) dismissal;
- (b) reduction in rank or seniority;
- (c) stoppage of increment;
- (d) withholding of increment;
- (e) deferment of increment;
- (f) suspension from work without pay for a period of not less than one day and not more than 14 days;
- (g) reprimand (including severe reprimand);
- (h) recovery of the cost or part of the cost of any loss or breakage or damage of any kind caused by default or negligence, provided that no such cost has been recovered by surcharge action under the appropriate financial instructions or regulations.

(2) Nothing in this regulation shall limit the powers conferred by these regulations to require a member of a Disciplined Force to retire from the Force on the grounds of public interest.

**39.** Where a member of a Disciplined Force is absent from duty without leave and does not return to duty when instructed to do so, his absence shall be reported by the responsible officer to the Commission which, on receiving a report from the responsible officer, may summarily dismiss that member.

**40.** All acts of misconduct by members of the Disciplined Forces shall be dealt with under this Part as soon as possible after their occurrence.

**41.** (1) Where the responsible officer considers that the conduct of a member of a Disciplined Force who is serving on contract or agreement (including agreement for temporary appointment), is unsatisfactory, he shall report the matter to the Secretary and the Commission shall determine what action, if any, should be taken regarding the member of the member of the Force in respect of whom the report has been made.

(2) Nothing in this regulation shall affect the power of the Commission to order the termination of any contract or agreement in accordance with a term or condition contained in it.

**42.** (1) Any member of a Disciplined Force, in respect of whom the Commission's power of discipline or removal from office have been delegated to a responsible officer or any other officer by

directions under section 91(2) of the Constitution, may appeal, to the Commission against the punishment awarded, and the decision of the Commission shall be final.

(2) A member of a Disciplined Force who wishes to appeal under paragraph (1) shall, within 7 days of the communication to him of the award of punishment by the responsible officer or other officer, as the case may be, submit a memorandum of appeal through the appropriate channels to the responsible officer who shall forward a copy of the proceedings, together with such comment as he may think relevant, to the Commission.

(3) On any appeal to the Commission under paragraph (1), the Commission may, without hearing the appellant, dismiss or allow the appeal or vary the punishment.

43. This Part shall not apply to any member of any Disciplined Force in respect of whom the Commission's powers of discipline or removal from office have been delegated to any responsible officer or any other officer by directions under section 91(2) of the Constitution, except in so far as may be required by such directions or as provided in regulation 42.

## **PART V**

### **MISCELLANEOUS AND TRANSITIONAL PROVISIONS**

44. Where under these regulations –

- (a) it is necessary either -
  - (i) to serve any notice, charge or other document upon a member of a Disciplined Force; or
  - (ii) to communicate any information to any such member who has absented himself from duty; and
- (b) it is not possible to effect such service upon or communicate the information to that member personally.

it shall be sufficient if the notice, charge or other document, or a letter containing the information, is sent by registered post addressed to his usual or last know address.

45. Subject to such instructions as the Commission may issue, matters within the function of the Commission which, at the date of coming into force of these regulations have been commenced under the provisions of the Police Service Commission Regulations 1967, but not finally determined, shall be concluded, so far as is practicable, by following these regulations as to procedure.

46. The Secretary shall advise the responsible officer concerned of the decision of the Commission on any particular matter and the responsible officer shall take the appropriate action.

47. All correspondence for the Commission from any responsible officer or from any other person shall be addressed to the Secretary.

48. Any case not covered by these regulations shall be dealt with in accordance with such instructions as the Commission may issue.

- 49.** The Police Service Commission Regulations 1967 are repealed.
- 50.** These regulations shall be deemed to have come into operation on 28 August 1997.

Made by the Disciplined Forces Service Commission on 26 November 1997.

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**SCHEDULE**

*(regulation 12)*

OATH OF COMMISSIONER

I ..... having been appointed as Chairman/Commissioner of the Disciplined Forces Service Commission do swear/solemnly and sincerely declare and affirm that I will without fear or favour, affection or ill-will, discharge the functions of the office of Chairman/Commissioner of the Disciplined Forces Service Commission and that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised persons or otherwise than in the course of duty.

Sworn/affirmed before me this .....  
day of ..... 19.....

.....  
*Judge of Supreme Court*

OATH OF SECRETARY AND OTHER STAFF OF COMMISSION

I ..... being called upon to exercise the functions of Secretary to/a member of the staff of the Disciplined Forces Service Commission, do swear/solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any documents, communication or information which may come to my knowledge in the course of my duties as such.

Sworn/affirmed before me this .....  
day of .....19.....

.....  
*Chairman of the Disciplined Forces Service Commission*