

GOVERNMENT OF TAMIL NADU

ABSTRACT

DISCIPLINARY CASES - Suspension pending enquiry into grave charges - Time limit for finalisation of disciplinary proceedings - Instructions - Issued.

PERSONNEL & ADMINISTRATIVE REFORMS(N) DEPARTMENT

G.O.MS.NO.40

DATED: 30.1.1996

READ:-

1. G.O.Ms.No.211, Personnel & Administrative Reforms(Per.N)Department, dated.27.2.80.
2. G.O.Ms.No.245, Personnel & Administrative Reforms(Per.N)Department, dated.17.3.82.
3. From Senior Standing Counsel, Tamil Nadu Administrative Tribunal, dated.18.4.91.
4. From Director of Vigilance and Anti-corruption No.1143/VAC.4/92, dated.29.1.92.

ORDER:

The provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in regard to suspension of State Government servants, embodied in Rule 17(e) of the said Rules are as follows:-

Rule 17(e):

- (1) A member of a service may be placed under suspension from service, where
 - (i) an enquiry into grave charges against him is contemplated, or is pending;
 - or
 - (ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.
- (2) A Government servant who is detained in custody whether on a criminal charge or otherwise for a period longer than forty eight hours, shall be deemed to have been suspended under this rule.
- (3) where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or an review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

- (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.
- (5) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise), and any other disciplinary proceedings is commenced against him during the continuance of suspension the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.
- (6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

2. In G.O. Ms. No. 1718, Public (Services), dated. 13.10.64 and G.O. Ms. No. 1145, Public (Services), dated. 15.6.65, the circumstances under which disciplinary authorities might consider it appropriate to place a Government servant under suspension were indicated for guidance. They were recapitulated in para 2 of G.O. Ms. No. 211, Personnel & Administrative Reforms Department, dated. 27.2.80.

3. In G.O. Ms. No. 1692, Public (Services), dated. 17.8.68, the Government further observed as follows:-

"A Government servant should be placed under suspension only if his continuance in office will be clearly detrimental to the public interest- eg. by giving him an opportunity to continue in his malpractices or to tamper with the investigation or conduct of the disciplinary proceedings. If it is possible to retain a person in unimportant posts, pending investigation, or inquiry, suspension should not be resorted to. If a transfer from one place to another is considered sufficient, suspension should be avoided."

In the same Order, the Competent Authorities were asked to conduct a review of cases of Government servants who are under suspension for more than a year, in order that complacency is avoided in processing the disciplinary case against the Government servant under suspension. Later, in G.O.Ms.No.3849, Public(Services), dated.12.12.74 It was ordered that the cases of Government servants who are under suspension for more than six months should be reviewed in order to examine whether the suspension could not be revoked for reinstatement in service pending disciplinary proceedings.

4. After examining the matter again in great detail, in 1980, the Government considered that a time limit should be prescribed for the disposal of the disciplinary proceedings in respect of Government servants under suspension. In para 5 of G.O.Ms.No.211, Personnel and Administrative Reforms Department, dated.27.2.80 (as amended in G.O.Ms.No.245, Personnel & Administrative Reforms Department, dated.17.3.82), the Government accordingly passed the following orders in continuation of the earlier orders on the subject:-

(i) Suspension should not be resorted to unless the concerned authority has considered fully all relevant factors and recorded his reasoned conclusion that it is in the public interest to place the Government servant under suspension.

(ii) Where a Government servant has been suspended pending disciplinary proceedings, such proceedings should be initiated and finalised normally within a period of three months and the total period of suspension should not exceed three months.

(iii) In cases where a Government servant has been suspended and the matter has been referred to the Directorate of Vigilance and Anti-corruption for enquiry, the latter should complete the enquiry and send the report to the Government within six months and in such cases the period of suspension should not exceed six months.

(iv) In respect of cases referred to under items (ii) and (iii) above, where the departmental proceedings/ the Directorate of Vigilance and Anti-corruption enquiries have not been finalised within 3/6 months, the concerned departmental officer/ Director of Vigilance and Anti-corruption should report the matter to the higher authority/ the Government with reasons for the delay and for the need for continuing the Government servant under

suspension beyond 3/6 months. If the disciplinary authority who had ordered the suspension is subordinate to the Head of the Department such report should be submitted to the Head of the Department concerned. If the disciplinary authority is the Head of the Department himself, such report should be submitted to the Government.

(v) If the Heads of Departments/ Government are satisfied on the report of the disciplinary authority, that there is need for continuing the Government servant under suspension the Heads of Departments/ Government should sanction the continued suspension beyond 3/6 months. The extended period of suspension should not be more than 3/ 6 months as applicable in items (ii) and (iii) above respectively.

(vi) For further extension of suspension of a Government servant, if necessary beyond 6/12 months ie. after the first extension referred to under item (iv) above, Government alone can issue orders extending the period of suspension further. The Heads of Departments should submit their reports to Government well in advance, before the expiry of the current period of suspension in case the second extension becomes absolutely necessary in public interest.

(vii) The disciplinary authorities should ensure that the delay in processing the case is not due to delaying tactics of the Government servant. They should ensure that all notices issued to the suspended Government servant should reach him without any loss of time and the Government servant under suspension should be allowed not more than three weeks to send his replied.

(viii) Where the Government are the disciplinary authority, the cases will be reviewed by the Government and orders issued well in advance, if necessary, extending the period of suspension beyond 3/6 months or 6/12 months, as the case may be.

(ix) The time limits ordered in the above paragraphs will not be applicable to cases of Government servants against whom criminal proceedings have been initiated.

5. In the Judgement dated 26.2.91, in O.A. Nos.3000-3002 of 1990, the Tamil Nadu Administrative Tribunal has gone into the issue in very great detail and expressed its views on the implications of the orders in G.O. Ms.No.211, Personnel and Administrative Reforms Department, dated.27.2.80. An extract of

paras 34 and 35 of the said judgment is given in the Annexure to this order. Especially, the following sub-paras (1) to (3) of para 34 of the said judgment elucidate the nature of the orders in G.O.Ms.No.211, Personnel and Administrative Reforms Department, dated.27.2.80.

(1) The orders in G.O.Ms.No.211, Personnel and Administrative Reforms Department, dated.27.2.80 are in the nature of general instructions for the guidance of the departmental staff and do not confer any enforceable right. In particular the provisions in para 5 that the period of suspension should not exceed 3/6 months and that extension should be ordered by Head of Department or Government thereafter are not mandatory and have no binding force.

(2) The suspension once ordered does not terminate unless revoked with reference to the provisions of Rule 17(e)(6) or in exercise of the power of review under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Order for extension need not be issued and communicated.

(3) While the review prescribed by the Government Order may take note of the progress in the investigation or enquiry for a decision whether suspension should continue, an order of revocation, with reference to the rules, would be necessary to terminate the suspension.

6. In the light of the legal position enunciated by the Tamil Nadu Administrative Tribunal in the said judgment and after examining in detail the question of revising the time limits, laid down earlier on 27.2.80 and looking into other related issues, the Government direct that items (ii) to (ix) of paragraphs 5 of G.O.Ms.No.211, Personnel and Administrative Reforms Department, dated.27.2.80 be substituted by the following:-

"(ii) Where a Government servant has been suspended pending disciplinary action, such proceedings should be initiated and finalised normally within a period of six months.

(iii) In cases where a Government servant has been suspended and the matter has been referred for investigation to the Director of Vigilance and Anti-corruption for enquiry, the latter should complete the enquiry and send his report to Government through the Vigilance Commission within one year.

(iv) In respect of cases referred to under items (ii) and (iii) above, the authority who ordered the suspension/ Director of Vigilance and Anti-corruption should, before the expiry of the periods mentioned, report the matter to the Head of the Department/ Government, indicating the progress of the disciplinary action/ investigation by the Director of Vigilance and Anti-corruption, the reasons for non-completion of the work and the further time required for completing the disciplinary action/ investigation and furnish reasons for continuing the suspension, if continued suspension is felt essential. If the authority which initiated action in the first instance is the Head of the Department, the report will be sent to Government.

(v) After the initial report referred to in item (iv) above, reports should be sent to Government at the end of every six months, indicating the further progress, so as to enable the Government to review the progress of the case, for such action as may be necessary to ensure expeditious disposal.

(vi) The Head of the Department or the Government, as the case may be, will examine the cases with reference to the subject matter of the disciplinary action/ investigation in progress and the reported stage of progress and permit the continued suspension beyond six months/ one year. Where the Government have themselves ordered suspension, they will examine the case on the same lines and accord similar permission.

(vii) The disciplinary authorities should ensure that the delay in processing the case is not due to delaying tactics of the Government servant. They should ensure that all notices issued to the suspended Government servant should reach him without any loss of time and the Government servant under suspension should be allowed not more than the time prescribed in the relevant Tamil Nadu Civil Services (Discipline and Appeal) Rules or if no time is prescribed, then, he should be allowed not more than three weeks to send his replies.

(viii) When the disciplinary authority comes to a conclusion suo motu or after conclusion of the investigation by the Director of Vigilance and Anti-corruption, the disciplinary authority shall, while initiating action by issue of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, or under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules,

as the case may be, examine with reference to the facts established, which form the basis for the charges, whether public interest or the needs of further proceedings will require continued suspension of the Government servant already under suspension.

(ix) The time limits mentioned above will not be applicable to cases of Government servants against whom criminal proceedings have been initiated. However, while sanctioning prosecution in such a criminal case, an examination similar to the one mentioned in item (viii) above shall be made by the competent authority.

(x) If, on examination of the case under items (vi), (viii) or (ix) above, continued suspension is considered not necessary, the suspension may be revoked; in exercise of the powers conferred under Rule 17(e)(6) of Tamil Nadu Civil Services (Discipline and Appeal) Rules or under Rule 3(b)(5) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, as the case may be.

(xi) Suspension will continue to be in force unless it is revoked as mentioned under item (x) above."

7. In Government Letter No. 107821/91-4, Personnel and Administrative Reforms (Per.N) Department, dated. 23.11.92 (communicating the revised format of suspension orders) the Government have already instructed that as far as possible the factual details and the reasons for suspension should be specified in the order of suspension, except in cases where such requirements are dispensed with expressly or by necessary implication or it is not desirable in the larger public interest to communicate the reasons for suspension. It should be borne in mind that while issuing orders of suspension, the period of suspension shall not be specified.


(BY ORDER OF THE GOVERNOR)

N. HARIBHASKAR
CHIEF SECRETARY TO GOVERNMENT

TO

All Departments of Secretariat.
All Heads of Departments

/forwarded - by order/

K. M. I. 
SECTION OFFICER 9-286

ANNEXURE

OBSERVATION OF TAMIL NADU ADMINISTRATIVE
TRIBUNAL IN T.A. NOS. 3000, 3001 AND
3002 OF 1990.

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To sum up, we conclude that:

(1) The orders in G.O.Ms.No.211, Personnel and Administrative Reforms Department, dated. 27.2.80 are in the nature of general instructions for the guidance of the departmental staff and do not confer any enforceable right. In particular the provisions in para 5 that the period of suspension should not exceed 3/6 months and that extension should be ordered by Head of department or Government thereafter are not mandatory, and have no binding force.

(2) The suspension once ordered does not terminate unless revoked with reference to the provisions of Rule 17(e)(6) or in exercise of the power of review under Rule 36 of the Tamil Nadu Civil Services (Control & Appeal) Rules, order for extension need not be issued and communicated.

(3) While the review prescribed by the Government Order may take note of the progress in the investigation or enquiry for a decision whether suspension should continue an order of revocation, with reference to the rules would be necessary to terminate the suspension.

(4) Such a review will be desirable when the investigation is completed and charges are formulated for further action under Rule 17(b) or a criminal case is filed, for departmental action or a trial as the case may be. This is to take note of the possibility that the investigation may not have established or may have disproved some of the allegations and therefore further action to be proceeded with may be much more limited in scope and therefore a fresh view on the need for suspension would be necessary.

(5) The word 'charge' referred to in Rule 17(e) does not have the same meaning as 'charge' in Rule 17(b). The reference to enquiry contemplated or pending in Rule 17(b) would be to the entire process commencing from the enquiry, investigation or fact finding enquiry into allegations, irregularities, defaults or misconduct or any other circumstances warranting further investigation and enquiry to decide whether departmental or criminal action is necessary, to the conclusion of the proceedings 'Enquiry' would cover preliminary investigation and fact finding enquiry as well as the proceedings under Rule 17(b) which includes the oral enquiry and hearing of the

delinquent. The rule specifies the contingencies in which suspension can be ordered and it is not severable into separate components relating to enquiry contemplated or enquiry pending. The same would apply to the second clause investigation trial of a criminal complaint. The entire rule has to be viewed as single composite scheme and not as constituting several abstract provisions covering different contingencies each requiring a separate order.

(6) The scheme of Rule 17(e) relating to suspension is that an employee can be placed under suspension, when an 'enquiry' meaning 'an investigation' 'fact finding enquiry' - as well as 'disciplinary action' or trial is called for involving his actions or defaults or conduct 17(e)(1) could be more appropriately worded as "an employee may be placed under suspension when an enquiry into grave charges is initiated." That should avoid the varying interpretations of the clause 'contemplated or pending' both in regard to their scope as well as in relation to the words enquiry or charge. The clause is quite clear in that these words qualify the word 'enquiry' and not 'charges'. Therefore, formulation or otherwise of charges under Rule 17(b) will have no relevance to the application of the Rule. The provision is an enabling one to suspend a person when anything adverse calling for investigation enquiry comes to notice and once ordered will continue as being as any further action by way of enquiry/investigation/proceedings- departmental or before Courts is pending. Rule 17(e)1(i) 2(ii) is in effect one composite provision.

(7) The jurisdiction of the Tribunal will be circumscribed in the case of suspension pending enquiry which is not a penalty by itself and which is primarily an administrative decision pending investigation into the allegations or misconduct or failures and disciplinary action in accordance with the rules thereon that the individual should not be authorised to discharge any official duties. This is a decision entirely within the purview of the administrative authority, the Tribunal does not function as an appellate authority and its jurisdiction will be limited to scrutiny to decide that there is basis for action and it will scrutinise exercise of the functions with reference to rules and law and will not substitute its own discretion for that of the authority in regard to the need for suspension.

(8) Suspension under Rule 17 is not a penalty, but with reference to Rule 8(ix) of the TNCS(CCA) Rules, it can get converted into a penalty when final orders are passed. It is an exercise of a statutory power and therefore should be supported by reasons to be recorded and communicated. While the record of the reasons should be complete and self-contained, communication in the order issued would be subject to the needs and interests of investigation and the confidentiality require at that stage. Subject to this, the order should contain sufficient details as would convey the substance or the nature of the allegations or the acts of commission and omission, or misconduct as are under investigation/ enquiry. In the case of a complaint of a criminal offence the F.I.R. give such details.

Issue of the order merely reproducing the relevant rule would not meet the requirements of the statutory order. It is necessary that the factual details and the reasons for suspension should be indicated in the order.

When the order is within the competence of the authority making, it cannot fail merely because it purports to be made under wrong provision of law, when the fact show that it within its powers under any other provision. A wrong application of law does not amount to violation of Fundamental Rules. A mistake in the recital of the relevant provision will not by itself vitiate the order, when it is clear that the order has been issued with reference to facts which would bring the order within the jurisdiction of the authority concerned. Application of mind is a question of fact to be decided with reference to all the facts and circumstances and cannot be inferred from instances or wrong wording the order.

35. In the light of the above conclusions the grounds on which the orders of suspension are sought to be questioned viz., the absence of extension with reference to G.O.Ms.No.211, P&AR, dated.27.2.80 that suspension pending investigation does not survive when the charge memo. has been issued and the matter has been referred to the Tribunal for Disciplinary Proceedings, or that the criminal

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proceedings have been dropped and charge memo. has been issued by the Tribunal for Disciplinary Proceedings would not be valid. The fact that the records are in the custody of the office of the Disciplinary Proceedings and therefore the applicant cannot tamper with the documents and therefore the interest of administration will not be in jeopardy necessitating suspension is also not valid for the reason that the suspension is not related only to the possibility of interfering with the investigation but also in public interest with reference to the conduct displayed by the allegations under investigation or enquiry. In this matter the Tribunal will not substitute its own discretion and judgment for that of the competent administrative/ executive authority.

The applications are therefore dismissed.

/ true copy /

K. H. Chamberlain

SECTION OFFICER

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