ABSTRACT

Disciplinary cases – Review of suspension pending enquiry into grave charges – Time limit for finalization of disciplinary proceedings – Compendium of instructions – Issued.

Human Resources Management (N) Department

G.O.(Ms) No.81 **Dated 04.08.2022**

சுபகிருது, ஆடி - 19

திருவள்ளுவர் ஆண்டு - 2053

Read :

1. Letter (Ms.) No.1118, Personnel and Administrative Reforms (Per.N) Department, dated 22.12.1987.
2. G.O. (Ms.) No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996.
3. Letter No.13519/N/2015-1, Personnel and Administrative Reforms (N) Department, dated 23.07.2015.
4. Letter (Ms.) No.43/N/2015-3, Personnel and Administrative Reforms Department, dated 26.04.2016.
5. Orders of the Division Bench of the High Court of Madras, dated 15.09.2021 in W.A.No.646/2021.
6. Letter No.01/P&AR Dept/TN/HC/2022, dated 22.04.2022 from the Additional Advocate General-I of Tamil Nadu.
7. Letter Roc.No.700/AGRS/2022, dated 26.4.2022 from the Advocate General of Tamil Nadu.

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ORDER

In the Government letter first read above, time limits were prescribed for conducting inquiries by the appropriate investigating authorities / inquiries by the Tribunal for Disciplinary Proceedings and for finalizing the disciplinary cases from each and every stage of the disciplinary proceedings.

2. In the Government Order second read above, instructions were issued to follow the time limit prescribed for finalization of disciplinary cases and also to review the suspension cases periodically at the appropriate level in order to examine whether the suspension could be revoked for reinstatement into service pending disciplinary cases or it could be continued.

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3. In the Government letter third read above, based on the directions of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary Vs Union of India through its Secretary and Another in Civil Appeal No.1912 of 2015 (Arising out of SLP (C) No.31761 of 2013) dated 16.02.2015, the Departments of the Secretariat and the Heads of Department were requested to follow the directions ordered by the Hon'ble Supreme Court on the limitations in the period of suspension in letter and spirit as follows:-

i) The currency of a suspension order should not extend beyond three months, if within this period the Memorandum of Charges / Charge Sheet is not served on the delinquent officer / employee.

ii) If the Memorandum of Charges / Charge sheet is served, a reasoned order must be passed for the extension of the suspension.

4. Subsequently, in view of the admitted fact that the gravity of misconduct in a disciplinary proceeding arising out of vigilance case / criminal case is alarmingly more than that of the other disciplinary proceedings and considering the sensitiveness of corruption cases, orders were issued that the limitation of suspension specified in the letter third read above will be applicable only to the departmental disciplinary case / inquiries pertaining to non-vigilance cases and / or non-criminal cases vide Government letter fourth read above.

5. The full Bench of Madras High Court in its common order dated 15.3.2022 in W.P.Nos.2165 of 2015 and 21628 of 2018 in the case of P.Kannan and Another Vs. The Commissioner of Municipal Administration and others has held as follows:-

"(i) The judgement of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months, if the memorandum of charges / charge sheet has not been served within three months, or if memorandum of charges / charge sheet is served without reasoned order of extension.

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(iii) The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.

(iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges / charge sheet."

6. In the letter sixth read above, the Additional Advocate General-I of Tamil Nadu has stated that during the hearing in Writ Petition No.13760/2020, batch cases, praying to revoke the order of suspension, the Hon'ble Judge has suggested that the instructions / guidelines first and second read above have to be reiterated by issuing a compendium of Government Order enabling the concerned officials to act upon in a time frame in consideration of early disposal of suspension cases, so as to avoid prolonged suspension by incurring infructuous payment of subsistence allowance indefinitely to the delinquent suspended employees without doing any work.

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7. The Learned Advocate General of Tamil Nadu in the letter seventh read above has requested the Government to issue appropriate instructions as directed by the Hon'ble High Court in Writ Petition No.13760/2020.

8. The Government have examined the issue based on the order of the Hon'ble High Court of Madras along with the instructions in force. As per the existing instructions, pending suspension cases have to be reviewed periodically by the authorities concerned as to whether the suspension needs to be continued or revoked, taking into consideration of the facts and circumstances of the case. It is noticed that the authorities concerned have not made such review in time, resulting in passing of adverse comments by the High Court in various cases and issuance of directions to take appropriate action in this regard to curtail the payment of subsistence allowance indefinitely to the delinquent officer without extracting any work.

9. Besides, it is brought to the notice that the time limits prescribed in the letter first read above for the expeditious disposal of the disciplinary cases have not been followed by the authorities concerned. Though the Government have issued orders reiterating the said instructions periodically, it is found that there is slackness in adhering to the said instructions and enormous delay in processing and finalizing the disciplinary proceedings, in several cases. Such undue delay may cause unnecessary litigation and provide advantage / harassment to the charged officer. It is likely that unjustified delay may result in quashing of the disciplinary proceedings by the Court of Law and consequently the disciplinary authorities may not be in a position to impose any penalty on the erring officials, notwithstanding the fact that the charges stand proved.

10. Further, the inordinate delay in completion of departmental proceedings on the part of the Department concerned has attracted adverse comments from the Hon'ble High Court of Madras in Writ Appeal No.646 of 2021. In the said Writ Appeal, the Hon'ble High Court of Madras in its judgment dated 15.09.2021 fifth read above has directed the Government to take appropriate action in prescribing outer time limit within which each and every stage of the departmental proceeding has to be crossed.

11. The Government, after careful examination, reiterates the guidelines issued in the Government Order second read above with slight modification as follows:-

(i) The power of ordering suspension should be exercised carefully and with restraint. Before a suspension order is issued, the authority concerned must be clear in mind that it is necessary. Prolonged suspension means that Government pays a Government Servant without extracting any work from him. In view of the above position, the suspension should not be resorted to unless the concerned authority has considered all the 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 on disciplinary proceedings contemplated, such proceedings should be initiated immediately and finalized 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 the report to Government through the Vigilance Commission within one year

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(iv) In respect of cases referred to under items (ii) and (iii) above, the authority who ordered the suspension or the Director of Vigilance and Anti-Corruption, as the case may be, should, before the expiry of the period of three months, 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 has to 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 three months, indicating the further progress, so as to enable the Government to review the suspension and 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 three months / six months. Where the Government itself, have ordered suspension, it will examine the case on the same lines and pass similar order.

(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.

(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 Services (Discipline and Appeal) Rules,1955, 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 for 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 the Tamil Nadu Civil Services (Discipline and Appeal) Rules or under Rule 3(e)(5) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, as the case may be.

(xi) In cases where the charge in the criminal case involves complicated questions of law and fact and the disciplinary authority is not in a position to finalize the departmental disciplinary proceeding and if the criminal case is based on the

vigilance report and is pending before the court of law for which no reasons are explained explicitly, the authority competent may take a decision by taking up review of suspension and post the Government Servant in a non-sensitive place in consultation with the appropriate investigating authority / Vigilance Commission on case to case basis in view of the reason that prolonged suspension and paying subsistence allowance for a long period without extracting work is not at all acceptable. Such revocation of suspension can be made based on the facts of each case and after noticing the reason for the delay in serving the memorandam of charges / charge sheet. The decision of the Hon'ble High Court of Madras in P.Kannan case, given in para 5 above, shall be taken into account.

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

12. The Government also reiterate the time limit prescribed in the Government letter first read above for processing the disciplinary proceedings so as to ensure that there is no unwarranted delay in finalizing them, as follows:-

(i)	To complete the investigation by Directorate of Vigilance and Anti-Corruption and to send a report to Government through Vigilance Commission.	One year
(ii)	To complete the enquiry by the Tribunal and to send its findings to the Department of Secretariat.	One year
(iii)	To pass final orders by the Government / Heads of Department on receipt of the report of the Tribunal.	Four months

Time limits for crossing every stage of the departmental disciplinary proceedings:-

(i)	For calling for explanation under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or framing charges under Rule 17(b) of the said rules after the lapse comes to notice. For calling for explanation under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules,1955 or framing of charges under Rule 3(b) of the said rules after the lapse comes to the notice. (The choice of the rule under which the disciplinary proceedings should be initiated is very important and the Disciplinary Authorities are expected to take a decision by considering the nature of lapses committed.)	15 days
(ii)	For the delinquent officer to peruse the records and to submit his written explanation.	30 days
(iii)	For appointment of enquiry officer wherever necessary after the receipt of the explanation.	7 days
(iv)	For the enquiry officer to complete enquiry and submit the enquiry report.	30 days
(v)	For the Disciplinary Authority to take a decision, after the receipt of the inquiry officer's Report.	10 days

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(vi)	For obtaining the further representation of the delinquent officer on the report of the inquiry officer.	15 days
(vii)	For obtaining the views of Tamil Nadu Public Service Commission, whenever it is ccnsulted.	30 days
(viii)	For issue of final orders on the departmental disciplinary proceedings:-	
	(a) By Disciplinary Authority other than Government.	7 days
	(b) By Department of Secretariat which have to consult other Departments and obtain orders in circulation.	30 days

The following aspects should be taken into consideration while adhering to the time-limit prescribed above:-

(i) The above time limits should be followed and delay should be eliminated while processing disciplinary cases. The choice of the rule under which the disciplinary proceedings should be initiated is very important and the disciplinary authorities are expected to take decision regarding the rule under which disciplinary action should be initiated with due regard to the nature of lapses committed. Indiscriminate recourse to Rule 17(b) will only cause delay in finalising the disciplinary proceedings.

(ii) The disciplinary authorities, if for any valid reason, are not able to adhere to the above time limits, should obtain the specific orders of the next higher authority for grant of extension of time, explaining the circumstances under which it has not been possible to process the case within the time limit prescribed.

(iii) In cases, where the delay occurs due to non-cooperation on the part of the accused officers, it is not necessary to wait indefinitely either for their explanation or for their appearance before the inquiry officers. Reminder shall be served on the accused officers to submit their explanations and where the explanations are not received in spite of the reminder without valid reasons, the disciplinary authorities can proceed on the assumption that the accused officers have no explanation to offer. Similarly, where the accused officers are required to appear before the inquiry officers and where they fail to do so without valid reasons, even after serving reminder on them, the inquiry officers may proceed to conduct ex-parte inquiries, in accordance with rules and procedures and submit their reports.

(iv)The object behind the issue of these instructions is that all delays while processing disciplinary cases should be avoided. At the same time, it should be clearly remembered that while handling the disciplinary cases, all the procedures and formalities contemplated in the rules should be followed without fail.

(v) Deliberate and arbitrary delay in inquiring the cases on the part of the inquiry officer or on the part of the disciplinary authority, as the case may be, without valid reasons shall be treated as an abetment to shield the delinquent officer and severe disciplinary action should be taken against the concerned authorities / officials.

13. All the authorities who deal with the disciplinary matters should follow the guidelines/time limits prescribed in paras 11 and 12 above, strictly, without any deviation, failing which severe action will be pursued against the officials responsible for their lapses.

14. All the Departments of Secretariat and Heads of Department are directed to issue suitable instructions to all the authorities concerned under their control, in this regard.

(BY ORDER OF THE GOVERNOR)

V.IRAI ANBU
CHIEF SECRETARY TO GOVERNMENT

To

All the Additional Chief / Principal / Secretaries to Government,
Secretariat, Chennai – 600 009.
All Heads of Department, including District Judges and District Collectors.
The Secretary, Tamil Nadu Public Service Commission, Chennai – 600 003.
The Registrar, Hon'ble High Court, Chennai – 600 104.
The Director, Directorate of Vigilance and Anti-Corruption, Chennai – 600 016.
The Commissioner for Disciplinary Proceedings, (Chennai / Coimbatore / Madurai / Tiruchirappalli / Tirunelveli / Nagercoil)
The Human Resources Management (Inspection I, II and III) Department, Secretariat, Chennai – 600 009.

Copy to:-

The Personal Assistant to Office of the Minister (Finance and Human Resources Management), Chennai – 600 009.
The Principal Private Secretary to Chief Secretary to Government, Chennai – 600 009.
The Additional Chief Secretary / Vigilance Commissioner and Commissioner for Administrative Reforms, Secretariat, Chennai-600 009.
All the Departments of Secretariat, (O.P. Sections) with a request to communicate the copy of the order to all sections in their departments).
The Human Resources Management (L1/L2/L3) Department, Chennai – 600009. (5 copies each)
The Human Resources Management (AR-II) Department, Chennai – 600009.
The Vigilance Commission, Secretariat, Chennai – 600 009. (10 copies)
The Senior Principal Private Secretary to Secretary to Government, Human Resources Management Department, Chennai – 600 009.

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// Forwarded / By Order //

V. Balakrishnan 04/8/2022

SECTION OFFICER

04/08/22