



ABSTRACT

Public Services – Tamil Nadu Civil Services (Discipline and Appeal) Rules – Codification of penalties – Amendment – Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (N) DEPARTMENT

G.O.(Ms).No.105

Dated: 01.08.2019

விகாரி, ஆடி - 16

திருவள்ளூர், வர்ஆண்டு 2050

Read:

1. Government Letter No.72762 / Per.N / 1994-3, Personnel and Administrative Reforms (Per.N) Department, dated 11.01.1995.
2. Government Letter No.30292 / N / 2016-1, Personnel and Administrative Reforms (N) Department, dated 29.08.2016.
3. Direction of the Hon'ble High Court of Madras in W.P.No.9589 / 2015, dated 20.06.2018.
4. The Prevention of Corruption (Amendment) Act, 2018 (Central Act 16 of 2018), dated 26.07.2018.

ORDER:

In the Government Letter first read above, the disciplinary authorities were instructed to impose adequate punishment proportionate to the gravity of the substantiated allegations on the erring officials, in cases arising out of enquiry reports of the Directorate of Vigilance and Anti-Corruption.

2. In the Government Letter second read above, some of the rulings of the Hon'ble Supreme Court of India were enlightened to the disciplinary authorities for their use in filing counter affidavits to defend the imposition of penalty, if challenged before the Court of law. While doing so, the disciplinary authorities were also requested therein that the rulings made by the Hon'ble Supreme Court against corruption would be of guiding in nature for independently deciding the penalty of dismissal in corruption / misappropriation cases, in departmental disciplinary proceedings, based on its merits.

(p.t.o.)

3. The Hon'ble High Court of Madras, in its order third read above has made the following suggestion:-

"..... it is suggested to the Government of Tamil Nadu to bring in suitable amendment to the disciplinary rules with a similar provision as provided for in, in CCS CCA Rules under major penalty chapter incorporating only removal and dismissal from service in proved corruption cases subject to of course, in exceptional cases with strong reasons need to be recorded in writing by the disciplinary authority for imposing any other penalty. In case of disciplinary or criminal action initiated against the employee of the State under the provisions of the Prevention of Corruption Act, only imposition of stringent penalty as envisaged in the service rules, can there be any likelihood of reduction of any acts of misconduct, attracting the provisions of the Prevention of Corruption Act."

4. The provisos to Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, read as follows:-

"Provided that, in every case in which the charge of possession of assets disproportionate to known-sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii-Removal) or clause (ix-Dismissal) shall be imposed;

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed."

5. Among the various categories of complaints involving corruption, viz., accumulation of assets disproportionate to the known-sources of income, loss caused to the Government, acceptance of bribe, criminal misconduct, violation of tender procedures / rules, connivance, abetment, acted as middlemen, giving an undue advantage to a public servant, etc., the proviso under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 codifies the penalties of dismissal or removal from service in respect of two instances of established offences, viz., (i) charge of possession of assets disproportionate to known sources of income or (ii) the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act.

6. Further, as per sub-section (1) of section 8 of the Prevention of Corruption (Amendment) Act, 2018 (Central Act 16 of 2018), persons who give or promise to give an undue advantage to another person or persons, with intention to induce a public servant to perform improperly a public duty or to reward such public servant for the improper performance of public duty, have also been brought under the purview of the said Act. As an endeavour towards achieving zero corruption, it is considered to codify penalties for the said category of offence too.

(p.t.o.)

7. After detailed examination, in supersession of the instructions issued in Government Letter No.30292/N/2016-1, Personnel and Administrative Reforms (N) Department, dated 29.08.2016 and in compliance with the direction made by the Hon'ble High Court of Madras on 20.06.2018 in W.P. No.9589 of 2015, the Government have decided to codify the penalties of Removal or Dismissal from service in respect of the established charges of (i) possession of assets disproportionate to known sources of income or (ii) acceptance of any gratification, as a motive or reward for doing or forbearing to do any official act or (iii) giving an undue advantage to a public servant to perform or not to perform a public duty, and also to impose any other penalty in exceptional cases for special reasons recorded in writing.

8. It is also clarified that in respect of charges relating to corruption other than the instances referred to above, it is the bounden duty of the disciplinary authority to examine the case in the backdrop of its own facts and circumstances and to impose adequate penalty commensurate with the gravity of the proved corruption charges by exercising the discretionary powers, as instructed in the Government letter first read above.

9. Accordingly, it is decided to amend the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Necessary amendment to the Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules, 1955 will be issued by the Home Department, separately.

10. The following notification shall be published in the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Civil Services (Discipline and Appeal) Rules:-

AMENDMENTS

In the said Rules, in rule 8,-

(1) after clause (ix), the following provisos shall be added, namely:-

"Provided that in every case in which,

- (i) *the charge of possession of assets disproportionate to known sources of income; or*
- (ii) *the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act; or*
- (iii) *the charge of giving an undue advantage with an intention to induce a public servant to perform or not to perform a public duty or to reward the public servant for the performance or non-performance of a public duty;*

is proved, the penalty mentioned in clause (vii) or clause (viii) shall be imposed:

(p.t.o.)

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed";

(2) after Explanation-III, the following Explanation shall be added, namely:-

"Explanation-IV.- The term "public servant" in this rule, shall have the same meaning as defined in the Prevention of Corruption Act, 1988 (Central Act 49 of 1988)".

(BY ORDER OF THE GOVERNOR)

S.SWARNA
SECRETARY TO GOVERNMENT

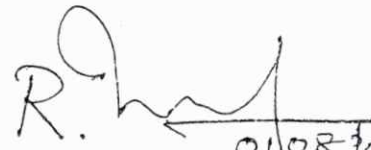
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Secretariat, Chennai - 09.
The Additional Chief Secretary / Vigilance Commissioner and Commissioner for
Administrative Reforms, Secretariat, Chennai - 09.
All Departments of Secretariat, Chennai - 09.
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All District Collectors.
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01/08/2019
SECTION OFFICER
