

GOVERNMENT OF TAMIL NADU

Abstract

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

Personal & 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 Service (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 47 (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 on 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 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 inappropriate 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 (Service), 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 malpractice 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 restored 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 (Service), 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 consider 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, Personal & 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 i.e. 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 replies.

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

(i) 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 extensions should be ordered by Head of Departments or Government thereafter are not mandatory and have no binding force.

(ii) 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.

(iii) 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 judgement 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 item (ii) to (iv) 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 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 case 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 Service (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 requirement 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