

The Madurai Corporation Services (Discipline and Appeal) Rules, 1975

TAMILNADU

India

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Rule

THE-MADURAI-CORPORATION-SERVICES-DISCIPLINE-AND-APPEAL of 1975

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The Madurai Corporation Services (Discipline and Appeal) Rules, 1975 Published vide Notification G.O. Ms. No. 1300, Rural Development and Local Administration Department, dated 30th July 1975 In exercise of the powers conferred by sub-section (1) of section 431, read with sub-section (1) of section 106 of the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971) the Governor of Tamil Nadu hereby makes the following rules:-

1. Short title and application.

- These rules may be called the Madurai Corporation Services (Discipline and Appeal) Rules, 1975. They shall apply to-(i) every member of the service holding posts in any of the categories in Classes I to IV. (ii) every member of the service appointed to any of the categories in classes I to IV under rule 8 of the General Rules in Part II of the Madurai Corporation Service Rules, (iii) every member of the service appointed to any of the categories in Class I to Class IV under rule 9 of the General Rules except to the extent otherwise expressly provided in the contract or agreement subsisting between such member and the Corporation. Explanation. - If any doubt arises as to the application of these rules to any member of the service, the matter shall be referred to the Government whose decision thereon shall be final.

2. Definitions.

(1) In these rules, unless there is anything repugnant in the context, the words and expressions, not defined in these rules shall have the same meaning assigned to them in Part I of the Madurai

Corporation Services Rules 1975.(2)"Appellate authority" means the authority competent to entertain and pass orders setting aside or confirming or modifying an original order of the disciplinary authority imposing any of the penalties specified in rule 3 of these rules on any member of the service.(3)"Disciplinary authority" means the authority competent to impose any of the penalties specified in rule 3 on any member of the service.Explanation. - Where an appellate authority passes an original order imposing any of the penalties specified in rules 3, he shall, in respect of that order, be deemed to be the disciplinary authority.

3. Penalties.

- The following penalties may, for good and sufficient reasons, be imposed on any, member of the service, namely:-(1)Censure;(2)Withholding of increments or promotion;(3)Reduction to a lower rank in the seniority list or to a lower post or time scale or to lower stage in a time-scale;(4)Recovery from pay of the whole or part of any pecuniary loss caused to the Corporation or to any other local body or the State Government, the Central Government by negligence or breach of order;(5)Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld where such an order cannot be given effect to;(6)Recovery from pay to the extent necessary of the monetary value equivalent to the amount of the reduction to a lower stage in a time scale ordered, where such an order cannot be given effect to.Explanation. - In case of stoppage of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered;(7)Compulsory retirement from the service;(8)Removal from the Service;(9)Dismissal from the Service;(10)Suspension, where a member of the service has already been suspended under rule 8, to the extent considered necessary by the authority imposing the penalty.The penalties mentioned in clauses 1, 2, 4 to 6 and 10 shall be deemed to be minor penalties and those in 3, 7 to 9 shall be deemed to be as major penalties.Explanation (1). - The discharge-(i)of a member of the service appointed on probation before the expiry or at the end of the prescribed or extended period of probation, or(ii)of a member of the service engaged under contract, in accordance with the terms of his contract, or(iii)of a member of the service appointed otherwise than under contract to hold a temporary appointment on the expiration of the period of the appointment does not amount to removal or dismissal within the meaning of this rule.Explanation (2). - The following shall not amount to a penalty within the meaning of this rule, namely:-(a)Withholding of increments of pay of a member of the service for his failure to pass any departmental examination in accordance with the rules or orders governing the post which he holds;(b)Non-promotion of a member of the service whether in a substantive or officiating capacity after consideration of his case to a class or category for promotion which he is eligible;(c)Reversion of a member of the service officiating in a higher class or category to a lower class or category on the ground that he is considered to be unsuitable for such higher class or category or on any administrative ground unconnected with his conducts;(d)Reversion of a member of the service appointed on probation to any other class or category to his permanent class or category during or at the end of the period of probation in accordance with the terms of his appointment or to the rules and orders governing such probation;(e)Replacement of services of a member of the service whose services had been borrowed from State Government or Central Government or an authority under the control of State Government or Central Government at the disposal of the State Government or the authority from which the services of such member of the

service had been borrowed; and(f)Compulsory retirement of a member of the service in accordance with the provisions relating to superannuation or retirement.

4. Disciplinary authority.

- The authority competent to impose the penalties specified in clauses (1), (2), (4), (5), (6) and (1) of rule 3, on the members holding Class I and Class II posts shall be the Commissioner. The authority competent to impose the penalties specified in clauses (3), (7) to (9) of rule 3 on the members holding Class I and Class II posts shall be the Government. The authority competent to impose any of the penalties mentioned in rule 3 on the members holding Class III and Class IV posts shall be the Commissioner.

5. Appellate authority.

(1)Notwithstanding anything contained in rule 4, the appellate authority may, in respect of any specific penalty, pass an order imposing penalty on a member of the service in any specified case.(2)Where in any case the appellate authority has imposed or declined to impose a penalty under this rule, the disciplinary authority shall have no jurisdiction to proceed under these rules in respect of the same case.(3)The fact that a disciplinary authority has imposed or declined to impose a penalty in any case shall not debar the appellate authority from exercising his powers under this rule in respect of the same case.(4)The order of the appellate authority imposing or declining to impose a penalty in any case under this rule shall supersede any order passed by the disciplinary authority in respect of the same case.(5)The fact that the disciplinary authority has dropped a charge against a member of the service as not proved, shall not debar the appellate authority from reviving it for reasons to be recorded in writing and taking suitable action on the charge so revised.

6. Disciplinary authority in respect of members of the service reduced.

- Where a member of the service has been reduced or reverted from Class II to Class III, no penalty shall be imposed upon him in respect of his work or conduct while he was a member of the Class from which he was reverted or reduced except by an authority competent to impose the penalty upon a member of Class II.

7. Disciplinary authority in respect of members of the service promoted.

- Whereas a member of the service has been promoted from Class III to Class II, no penalty shall be imposed on him in respect of his work or conduct while he was a member of the Class from which he was promoted, except by an authority competent to impose punishments upon the members of Class II to which he has been promoted.

8. Procedure for imposing penalties.

(1) In every case where it is proposed to impose on a member of the service any of the penalties specified in clauses (1), (2), (4), (5), (6) and (10) of rule 3, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed: Provided that the requirements of this sub-rule not apply where it is proposed to impose on a member of the service any of the penalties aforesaid on the basis of facts which have led to his conviction by a Court Martial or where the member of the service concerned has absconded or where it is for other reasons impracticable to communicate with him. (2) In every case where it is proposed to impose on a member of the service any of the penalties specified in clauses (3), (7), (8) and (9) of rule 3, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the member of service charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. The member of the service so charged shall be required, within a reasonable time, to put in written statement of defence and to state whether he desires an oral inquiry or to be heard in person. The member of the service so charged shall be entitled to cross examine the witnesses to girl-guidance in person and to have such intervals called as he may wish, provided that the authority conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call witness whether or not the member of the service charged desired or had an oral inquiry he shall be heard in person at any stage if he so desires before passing final orders. A report of the inquiry or personal hearing as the case may be, shall be prepared by the authority holding the enquiry or personal hearing, whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of evidence, if any, and a statement of the findings and the grounds thereof. (3) After the enquiry or personal hearing referred to in sub-rule (2) has been completed and after the authority competent to impose the penalty has arrived at a provisional conclusion in regard to the penalty to be imposed, the member of the service charged shall be supplied with a copy of the report of the enquiring authority referred to in that clause and be called upon to show cause, within a reasonable time not ordinarily exceeding one month, against the particular penalty proposed to be imposed. (4) Any representation in this behalf submitted by the member of the service charged shall be taken into consideration before final orders are passed provided that such representation shall be based only on the evidence adduced during the enquiry. Explanation. - An opportunity to show cause against the imposition of any of the penalties referred to in sub rule (2) shall be given, after the authority competent to impose the penalty arrives at a provisional conclusion in regard to the penalty to be imposed, whether by such authority himself or under his direction by a subordinate authority who is superior in rank to the member of the service on whom it is proposed to impose the penalty. (5) The requirements of sub-rule (2) shall apply where it is proposed to impose on a member of the service any such penalty as is referred therein on the basis of the facts which have led to his conviction in a Criminal Court (whether or not he has been sentenced by such Court to any imprisonment), but he shall be given reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed. (6) The requirement of sub-rule (2) shall not apply where; it is proposed to impose on a member of the service any of the penalties mentioned in rule 3 on the basis of the facts, which have

led to his conviction by a Court Martial or where the member of the service has absconded or where it is for other reasons impracticable to communicate with him.(7)The provision of sub-rule (2) shall not apply where the Government are satisfied that in the interest of the security of the State, it is not expedient to follow the procedure prescribed in the said sub-rule.(8)All or any of the provision of sub-rules (1) and (2) may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived where there is difficulty in observing exactly the requirements of the said sub-rules and these requirements can be waived without injustice to the member of the service charged. If any question arises whether it is reasonable or practicable to follow the procedure prescribed in sub-rule (2), the decision thereon of the authority competent to dismiss or remove such member of the service or reduce him in rank, as the case may be, shall be final.(9)A member of the service may be placed under suspension from service where-(i)an inquiry into grave charge 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.(10)A member of the service, 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.(11)Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the service 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 direction, the order of suspension shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further order.(12)Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the service 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, decide to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such member of a service shall be deemed to have been placed under suspension by the appointing authority from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.(13)Where a member of the service 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 that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that such a member shall continue to be under suspension until the termination of all or any of such proceedings.(14)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 the order or by the appellate authority or by the Government.

9. Maintenance of records.

- The competent authority imposing any penalty under these rules shall maintain a record showing-(i)the allegations upon which action was taken against the member of the service punished;(ii)the charges framed, if any;(iii)the representation of the member of the service, if any, and the evidence taken, if any; and(iv)the finding and the ground thereof, if any.

10. Order of punishment to state grounds and to be communicated.

(a) All orders of punishment shall state the grounds on which they are based and shall be communicated in writing to the member of the service against whom they are passed. (b) Every order, notice and other process made or issued under these rules shall be served in person on the member of the service concerned or sent to him by registered post acknowledgment due or if such member of the service is not found, by leaving it at his last known place of residence, or by giving or tendering it to an adult member of his family or if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of residence.

11. Appeals.

- Every member of the service shall have the right of appeal against an order passed by an authority within a period of two months from the date on which the order was communicated to him-(1) imposing on him any of the penalties specified in rule (3); (2) discharging him in accordance with the terms of his contract if he has been engaged on a contract for a period exceeding three years at the time when his services are terminated.

12. Appellate Authority.

(a) Where the penalties mentioned in clauses (1), (2), (4), (5), (6) and (10) of rule 3 have been imposed by the Commissioner on a member of the service holding Class I and Class II posts, the appeal shall be to the Government. Where the penalties mentioned in clauses (3), (7), (8) and (9) of rule 3 have been imposed by the Government on a member of the service holding Class I or II post, such member of the service may, within two months on the date on which the order is communicated to him, submit a revision petition to the Government against the order. In disposing of such petition, the Government shall be, as far as possible, follow the procedure prescribed for dealing with appeals. (b) Where any of the penalties mentioned in rule 3 has been imposed by the Commissioner on a member of the service holding Class III or Class IV post, the appeal shall lie to the Appeals Committee. (c) The Appointment Committee shall be the Appeals Committee.

13. Appeal to Government.

- Notwithstanding anything contained in rule 12, where an original order imposing a specific penalty on a member of the service has been passed by the appellate authority in exercise of the powers conferred by rule 5, an appeal against such orders shall lie only to the Government: Provided that when the appellate authority who has passed the original order imposing the penalty happens to be the Government, the member of the service aggrieved by the order may prefer a revision petition to the Government to re-consider the order. The Government shall, thereupon, review the records of the case and pass such orders thereon as it may appear to them to be just or expedient.

14. Procedure to be followed by the appellate authority.

(1) In the case of an appeal against an order imposing any of the penalties specified in rule 3, the appellate authority shall consider-(i) whether the facts on which the order was based have been established; (ii) whether the facts established afford sufficient ground for taking action; and (iii) whether the penalty is excessive, adequate or inadequate; and (iv) after such consideration shall pass such orders as it thinks proper. (2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that the error or defect was not material and has neither caused injustice to the member of the service concerned nor affected the decision of the case.

15. Appellate authority to decide appeals.

- In the case an appeal, the appellate authority shall pass such order as appears to it just and equitable, having regard to all the circumstances of the case.

16. Mode of preferring an appeal.

(a) Every member of the service preferring an appeal shall do so separately and in his own name. (b) Every appeal preferred under these rules shall contain all material statements and arguments relied on by the appellant, shall contain no disrespectful or improper language and shall be complete in itself. Every such appeal shall be addressed to the authority to whom the appeal is preferred and shall be submitted through the head of the office to which the appellant belongs or belonged and through the authority from whose order the appeal is preferred.

17. Withholding of appeal.

- An appeal may be withheld by an authority not lower than the authority from whose order it is preferred, if-(1) it is an appeal in a case in which under these rules no appeal lies, or (2) it does not comply with the provisions of rule 16 (b), or (3) it is not preferred within two months after the date on which the appellant was communicated of the order appealed against and no reasonable cause is shown for the delay, or (4) it is a repetition of a previous appeal and is made to the same appellate authority by which such appeal has been decided and no facts or circumstances are adduced which afford grounds for re-consideration of the case; or (5) it is addressed to an authority to which no appeal lies under these rules: Provided that in every case in which an appeal is withheld, the appellant shall be informed of the fact and the reasons for it: Provided further that an appeal withheld on account only of failure to comply with the provisions of rule 16(b) may be re-submitted at any time with him of the appeal and an appeal re-submitted in a form which complies with those provisions shall not be withheld.

18. No appeal to lie against withholding of any appeal.

- No appeal shall lie against the withholding of an appeal by a competent authority.

19. Powers of appellate authority or Government when no appeal is referred.

- The authority by whom an order imposing a penalty specified in rule 3 may be reversed or altered in cases in which no appeal is preferred shall be the appellate authority prescribed in the rules or the Government.

20. Forwarding of appeal and list of appeals withheld to appellate authority.

(1) Every appeal which is not withheld under these rules shall be forwarded to the appellate authority by the authority from whose order the appeal is preferred with an expression of opinion. (2) A list of appeals withheld under rule 17 with the reason for withholding them, shall be forwarded half yearly by the withholding authority to the appellate authority.

21. Powers of appellate authority to call for a withheld appeals.

- An appellate authority may call for any appeal admissible under these rules which has been withheld by subordinate authority and may pass such orders thereon as it considers fit.

22. Savings.

- Nothing in these rules shall operate to deprive any member of the service of any right of appeal which he would have had if these rules had not been made, in respect of any order passed before under these rules and rule 14 shall apply as if there appeal were against an order appealed under these rules.

23. Revision petition to Government.

- Where the original order imposing any of the penalties specified in rule 3 has been imposed on a member of the service by the Government, such member may, within three months of the date on which the order is communicated to him, submit a revision petition to the Government against the order. In disposing of such petition, the Government shall, as far as possible, follow the procedure prescribed for dealing with appeals.

24. Powers of Government to pass orders on completed disciplinary proceedings.

- Notwithstanding anything contained in these rules, the Government shall have the power to call for the records relating to any disciplinary proceedings Which has been completed either by the disciplinary authority or by the appellate authority and pass such orders on it as they may consider

just or expedient: Provided that before a penalty is imposed in a case where it has been imposed or a penalty which has been imposed is enhanced, the member of the service concerned shall be given an opportunity to show cause as to why the penalty should not be imposed or enhanced, as the case may be.