

Tamil Nadu Municipal (Non-Centralised-Regular) Public Health Establishment Discipline and Appeal Regulations, 1977

TAMILNADU

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Rule

TAMIL-NADU-MUNICIPAL-NON-CENTRALISED-REGULAR-PUBLIC-HE of 1977

- Published on 1 January 1977
- Commenced on 1 January 1977
- [This is the version of this document from 1 January 1977.]
- [Note: The original publication document is not available and this content could not be verified.]

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1. Short title, application and commencement.

(1)These Regulations may be called the Tamil Nadu Municipal (Non-Centralised-Regular) Public Health Establishment Discipline and Appeal Regulations, 1977.(2)They shall come into force on and from the date of issue of the orders.(3)They shall apply to every member holding the posts in any of the categories governed by the Tamil Nadu Municipal (Non-Centralised-Regular) Public Health Establishment Regulations.(4)If any doubt arises as to the application of these regulations to any person, the matter shall be referred to the State Government whose decision thereon shall be final.

2. Definitions.

(1)In these regulations, unless there is anything repugnant in the context, the words or expressions shall have the same meaning assigned to them in the Tamil Nadu Municipal (Non-Centralised-Regular) Public Health Establishment Regulations;(2)"Appellate authority" means the authority competent to entertain and pass orders setting aside or confirming or modifying an original order of a disciplinary authority imposing any of the penalties specified in regulation 3 on any member of the establishment;(3)"Disciplinary authority" means the authority

who passes an original order imposing any of the penalties specified in regulation 3, he shall, in respect of that order, be deemed to be the disciplinary authority.

3. Penalties.

(1) The appointing authority may, subject to the conditions laid down in regulation 5, fine any member of the establishment excepting superior staff and for good and sufficient reasons impose on any member of the establishment all or any of the following penalties, namely:

-(i) Censure. (ii) Withholding of increment or promotion including stoppage of increment. (iii) reduction to a lower post or time-scale, or to a lower stage in a time scale. (iv) (a) Recovery from pay of the whole or part of any pecuniary loss caused to the local authority or to the State Government or to Central Government by negligence or breach of orders; or (b) 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. Explanation. - In case of stoppage of increment with cumulative effect, the monetary value equivalent to 3 times the amount of increments ordered to be withheld may be recovered. (c) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered, where such an order cannot be given effect to. (v) Compulsory retirement from the establishment. (vi) Removal from establishment (which does not disqualify from future employment). (vii) Dismissal from establishment (which ordinarily disqualifies from future employment). (viii) Suspension where a member of the establishment has already been suspended under regulation 4 to the extent considered necessary by the authority imposing the penalty. The penalties mentioned in items (i) (ii) (iv) and (viii) shall be deemed to be minor penalties and those in items (iii) and (v) to (vii) as major penalties. Explanation. - (1) The discharge or reversion to a lower post of a member of the establishment appointed to hold a temporary appointment on the expiry of the period of the appointment does not amount to removal or dismissal or to reduction within the meaning of this regulation. (2) The discharge or reversion to a lower post of any member of the establishment officiating in any post, if made in accordance with such regulations, rules or orders as the Government may issue in that behalf, does not amount to removal or dismissal or to reduction within the meaning of this regulation.

4. Suspension.

(1) A member - of the establishment may be placed under suspension from service by the appointing authority where -(i) an enquiry into grave charge against him is contemplated or is pending, or (ii) a complaint against him of any criminal offence is under investigations or trial and such suspension is necessary in the public interest. (2) A member of the establishment who is detained in custody, whether on a criminal charge or otherwise, for a period longer than 48 hours, shall be deemed to have been suspended under this regulation. (3) Where a penalty of dismissal, removal, or compulsory retirement from establishment imposed on a member of the establishment under suspension is set aside in appeal, or on review under these regulations, and the case is remitted for further enquiry 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 establishment imposed upon a member of the establishment is set aside or declared or rendered void in consequence of, or by a decision of Court of Law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such member of the establishment 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.(5)Where a member of the establishment 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 in writing, direct that such member 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 regulation may, at any time, be revoked by the authority which made the order or by the appellate authority or the State Government.(7)Suspension of a member of establishment pending enquiry referred to in sub-clause (i) of clause (1) shall not ordinarily be for a period exceeding 3 months and in exceptional cases where the enquiry cannot be completed within 3 months, the period of suspension may be extended for further periods with the consent of the Director of Public Health and Preventive Medicine, Chennai.(8)During the period of suspension, the member of the establishment shall be paid a subsistence allowance at such rates as are prescribed under the Fundamental Rules applicable to State Government servants.

5. Procedure for imposing penalties.

(1)In every case where it is proposed to impose fine on a member of establishment (in the case of persons for whom such penalty is permissible under these regulations) or to impose on a member of the establishment any of the penalties specified in items (i), (ii) and (iv) of regulation 3(1), 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 clause shall not apply where it is proposed to impose on a member of the establishment any of the penalties aforesaid on the basis of facts which have led to his conviction by a Court Martial or where the member 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 establishment any of the penalties specified in items (iii), (v), (vi) and (vii) of regulation 3(1), 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 charged together with a statement of the allegations on which each charge is based and on any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person or both. An oral enquiry shall be held if such an enquiry is desired by the member charged or is directed by the authority concerned. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted and the member charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that an officer conducting the enquiry may, for

special and sufficient reasons to be recorded in writing, refuse to call a witness. After the enquiry has been completed, the member charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no enquiry is held and if he desires to be heard in person a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of findings and grounds thereon.(3)After the enquiry referred to in clauses (2) has been completed and after the authority competent to impose the penalty mentioned in that clause has arrived at provisional conclusions in regard to the penalty to be imposed, the member charged shall be supplied with copy of the report of the enquiring authority and be called upon to show cause within a reasonable time not ordinarily exceeding one month against the particular penalty proposed to be inflicted.(4)Any representation in this behalf submitted by the member 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.(5)The requirements of clause (2) shall not apply where it is proposed to impose on a member of the establishment any such penalty as is referred to therein on the basis of facts which have led to his conviction in a Criminal Court (whether or not he has been sentenced by such Court to any punishment), but he shall be given a reasonable opportunity for 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 requirements of clause (2) shall not apply where it is proposed to impose on a member of the establishment any of the penalties mentioned in regulation 3 on the basis of facts which have led to his conviction by a Court Martial or where the member concerned has absconded or where it is for other reasons impracticable to communicate with him.(7)The provisions of clause (2) shall not apply where the State Government are satisfied that, in the interest of the security of the State, it is not expedient to follow the procedure prescribed in that clause.(8)All or any of the provisions of clauses (1), (2),and (3) 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 without injustice to the persons charged. If any question arises whether it is reasonably practicable to follow the procedure prescribed in clause (2), the decision thereon of the authority competent to dismiss or remove such person or reduce him in rank, as the case may be, shall be final.

6. Maintenance of records.

- The authority imposing any penalty under these regulation shall maintain a record showing -(1)the allegations upon which action was taken against the member punished;(2)the charges framed, if any;(3)the member's representation, if any, and the evidence taken, if any; and(4)the finding and the grounds thereof, if any.

7. Communication of orders of punishment.

(1)All orders of punishment shall state the grounds on which they are based and shall be communicated in writing to the member against whom they are passed.(2)Every order, notice or other process issued under these regulations shall be served on a member of the establishment concerned or sent to him by registered post with acknowledgements due, or if such person 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 on some

conspicuous part of his last known place of residence.

8. Appeal.

(1)An appeal shall lie to the Director of Public Health and Preventive Medicine, Chennai against any orders of the appointing authority imposing any of the penalties specified in regulation 3(1).(2)An appeal shall lie to the Government against an order passed under clause (1) by an officer empowered by the Government, if the order imposes a punishment where the appointing authority had not imposed a punishment or if the order enhanced the punishment imposed by the appointing authority.

9. Powers of appellate authority or Government when no appeal is preferred.

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

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

- Notwithstanding anything contained in these regulations, the State Government or such officer as they may empower in this behalf, shall have the powers to call for the records relating to a 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 no penalty has been imposed, or a penalty which has been imposed is enhanced, the person concerned should be given an opportunity to show cause why the penalty should not be imposed or enhanced, as the case may be.

11.

All orders passed under clauses (1) and (2) of regulation 8 and regulation 9 shall be given effect to forthwith by the appointing authority.

12. Mode of preferring an appeal.

(1)Every member of the Public Health Establishment of a local authority preferring an appeal shall do so separately and in his own name.(2)No appeal preferred under these regulations shall be entertained, unless it is preferred within a period of 2 months from the date on which the appellant received the order appealed against:Provided that the appellate authority may entertain an appeal after the expiry of such period if it is satisfied that there was reasonable cause for the delay.(3)Every appeal preferred under these regulations 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 it 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.

13. Matters to be considered in appeal.

(1) In the case of an appeal against an order imposing any of the penalties specified in regulation 3, the appellate authority shall consider the following: - (i) whether the facts on which the order was based have been established 5 (ii) whether the facts established afford sufficient grounds for taking action; and (iii) whether the penalty is excessive, adequate or inadequate; and after such consideration shall pass such order 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 person concerned nor affected the decision of the case.

14. Orders on appeal.

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

15. Withholding of appeals.

(a) An appeal may be withheld by an authority not lower in rank than the authority from whose order it is preferred, if - (i) it is an appeal in a case in which under these regulations no appeal lies, or (ii) it does not comply with the provisions of regulation 22, or (iii) it is not preferred within the time limit prescribed in regulation 12(2) and no reasonable cause is shown for the delay, or (iv) it is repetition of a previous appeal and is made to the same appellate authority by which such appeal has been decided, and no new facts or circumstances are adduced which afford grounds for a re-consideration of the case, or (v) it is addressed to an authority to which no appeal lies under these regulations: Provided that in every case in which an appeal is withheld the appellant shall be informed of the facts and the reasons for it: Provided further that an appeal withheld under clause (ii) or clause (v) may be re-submitted at any time within one month from the date on which the appellant has been informed of the withholding of the appeal and if re-submitted to the appropriate appellate authority in a form which complies with the provisions of regulation 12, it shall not be withheld.

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

- (i) No appeal shall lie against the withholding of an appeal by a competent authority. Forwarding of appeal and list of appeals withheld. - (ii) Every appeal which is not withheld under these regulations shall be forwarded to the appellate authority by the authority against whose order the appeal is preferred with an expression of opinion. (iii) A list of appeals withheld under regulation 14 (a) with the reasons for withholding them shall be forwarded half-yearly by the withholding authority to the appellate authority. Powers of appellate authority: (i) An appellate authority may call for any appeal

admissible under these regulations which has been withheld by a subordinate authority and may pass such orders thereon as it considers fit. The authority by whom an order imposing a penalty specified in regulation 3 may be reversed or altered in cases in which no appeal is preferred shall be the appellate authority prescribed in the regulations or any higher authority.

17. Treatment of period of absence.

- When a member of the establishment who has been dismissed, removed, compulsorily retired or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order regulating the period of absence from duty with reference to the provisions of Fundamental Rule 54 applicable to State Government servants.

18.

Nothing in these regulations shall operate to deprive any member of any right of appeal which he would have had if these regulations had not been made, in respect of any order passed before they came into force. An appeal pending at the time when, or preferred after these regulations came into force shall be deemed to be an appeal under these regulations, and regulation 13 shall apply as if the appeal were against an order appealable under these regulations.

19.

In matters in respect of which no provision has been made in these regulations, every member of the establishment shall be governed by the provisions applicable to Government servants of similar status and standing.