

Judicial and Legal Service Commission Regulations, 1967

PART I

PRELIMINARY

1. These Regulations may be cited as the Judicial and Legal Service Commission Regulations, 1967.
2. In these regulations-

"Office" means any office to which section 86 of the Constitution applies.

PART II

APPOINTMENT OF STAFF AND PROCEDURE

3. The Commission shall appoint a Secretary to the Commission, who shall not be a Commissioner , and such other staff as may be authorised.
4. A record shall be kept of the Commissioners present and of the business transacted at every meeting of the Commission.
5. Any Commissioner shall be entitled to dissent from a decision the Commission and to have his dissent and his reasons therefor set out in the records of the Commission.
6. (1) The Commission may require any public officer to attend and give information before it concerning any matter which it is required to consider in exercise of its functions.
(2) The Commission may require the production of any official document relevant to any exercise of its functions and any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.
(3) Any public officer who without reasonable excuse fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach of discipline and the Commission shall report the matter to the appropriate authority exercising disciplinary control over him.

PART III

MAKING AND TERMINATION OF APPOINTMENT

7. For the purpose of making appointments to vacancies to any office or to the offices of Director of Public Prosecutions and Electoral Commissioner, in accordance with its powers under the Constitution, the Commission shall consider the eligibility of all officers for promotion, may interview candidates for such appointments and shall in respect of each candidate consider, amongst others, the following matters –

- (a) his qualifications;
 - (b) his general fitness;
 - (c) any previous employment of the candidate in the public service or in private practice.
- 8.(1) Where it appears to the Chief Justice or, as the case may be, to the Head of the Attorney-General's Office, that an officer who has attained the age at which he can, under any enactment lawfully be required to retire from the public service, ought to be called upon so to retire, the Chief Justice or the Head of the Attorney-General's office shall report the matter together with his reasons therefor to the Commission and the Commission shall decide whether such officer should be called upon to retire.
- (2) Any such officer shall be afforded an opportunity of submitting to the Commission any representation he may wish to make regarding his proposed retirement.
- 9.(1) Notwithstanding regulation 8, where it is represented to the Commission or the Commission considers it desirable in the public interest that an officer ought to be required to retire from the public service on grounds which cannot suitably be dealt with by the procedure prescribed by these regulations, it shall call for a full report from the Chief justice or, as the case may be, the Head of the Attorney-General's Office.
- (2) Where, after considering such report and giving the officer an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the public service, the usefulness of the officer thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall direct that the officer should retire.
- 10.(1) Where it appears to the Chief justice or, as the case may be, to the Head of the Attorney-General's Office, that an officer is incapable by reason of any infirmity of mind or body of discharging the functions of his office, the officer may be called upon to present himself before a medical board (which shall be appointed by the Permanent Secretary of the Ministry of Health) with a view to it being ascertained whether or not the officer is incapable.
- (2) After the officer has been examined, the Permanent Secretary of the Ministry of Health shall forward the medical board's proceedings, together with his comments thereon, to the Secretary to the Commission and the Commission shall decide, after such further inquiry, if any, as may be deemed necessary, whether the public officer should be retired on medical grounds.

PART IV

DISCIPLINE

11. Where an offence against any law appears, whether before or at any stage of a preliminary investigation or disciplinary enquiry, to have been committed by an officer, the Commission shall obtain the advice of the Director of Public Prosecutions as to whether criminal proceedings ought to be instituted against the officer concerned; and where the Director of Public Prosecutions advises that criminal proceedings ought to be so instituted the Commission shall not initiate disciplinary proceedings before the determination of the criminal proceedings so instituted.

- 12.(1) Any report of misconduct on the part of an officer shall be dealt with under regulations 11 to 24 as soon as possible.
- (2) In any case not covered by these regulations the Commission may issue instructions as to how the case is to be dealt with; and the case shall be dealt with accordingly.
- 13.(1) Where criminal proceedings have been instituted in any Court against an officer, proceedings for his dismissal upon any grounds arising out of the criminal charge shall not be taken until after the Court has given judgment and the time allowed for an appeal from the judgment has expired; and where an officer after conviction has appealed, proceedings for his dismissal shall not be taken until after the withdrawal or determination of the appeal.
- (2) Nothing in this regulation shall prevent the officer being interdicted from duty under regulation 14.
- 14.(1) Where there have been or are about to be instituted against an officer-
- (a) disciplinary proceedings for dismissal; or
- (b) criminal proceedings,
- and the Commission is of opinion that the public interest requires that that officer should forthwith cease to perform the functions of his office, the Commission may interdict him.
- (2) An officer who is under Interdiction from duty may not leave Mauritius without the permission of the Commission.
15. An officer acquitted of a criminal charge shall not be dismissed or otherwise punished in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.
16. Where an officer is convicted on a criminal charge, the Commission may consider the relevant proceedings of the Court and if it is of opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon impose such lesser punishment as is specified in regulation 17.
- 17.(1) The penalties which may be imposed on an officer against whom a disciplinary charge has been established are
- (a) dismissal ;
- (b) reduction in rank;
- (c) stoppage or deferment of increments;
- (d) a reprimand.
- (2) An officer who is absent from Mauritius without permission shall be liable to summary dismissal.

18. (1) An officer charged with any misconduct shall be entitled to know the whole case made against him and to have an adequate opportunity of making his defence.
- (2) He shall further be entitled without charge to him to receive copies of or to be allowed access to any documentary evidence which is produced in the course of a disciplinary enquiry and may obtain a copy of notes of the evidence heard at the enquiry on making an application in that behalf to the Secretary to the Commission.
19. Where –
- (a) it is represented to the Commission that an officer has been guilty of misconduct ; and
- (b) the Commission is of opinion that the misconduct alleged is not so serious as to warrant proceedings under regulation 20 with a view to dismissal; and
- (c) the Commission is of opinion that the allegation has been proved,
- the Commission may, subject to regulation 18, award such punishment other than dismissal as may seem just.
- 20.(1) An officer may be dismissed only in accordance with the procedure prescribed by this regulation.
- (2) The following procedure shall apply to an investigation with a view to the dismissal of an officer-
- (a) the Commission (after consultation with the Director of Public Prosecutions, if necessary) shall cause the officer to be notified in writing of the charges and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any ground upon which he relies to exculpate himself;
- (b) the Commission shall inform the officer charged that on a specified day the charges against him will be enquired into by the Commission and that upon such enquiry he will be permitted to appear and defend himself;
- (c) where-
- (i) the investigation of matters other than those forming the subject of charges is incomplete at the time of the making of the charges; and
- (ii) the Commission desires that the charges already made should be expeditiously disposed of,
- the notification of charges under subparagraph (a) above may include a notice that further matters then under investigation may form the subject of additional charges
- (d) where witnesses are examined by the Commission the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access to it;

- (e) the Commission may permit the officer charged or the person or authority preferring the charges to be represented by a public officer, or by a barrister or attorney;
- (f) where during the course of the enquiry further grounds which may justify dismissal are disclosed, and the Commission thinks fit to proceed against the officer upon such further grounds, the Commission shall cause the officer to be furnished with charges in writing and the same steps shall be taken as those prescribed by this regulation in respect of the original charges;
- (g) the Commission, after holding the enquiry, shall determine the punishment, if any, (including retirement from the public service under the provisions of regulation 9) which should be inflicted on the officer.

21. Where an officer charged under these regulations admits in writing the facts giving rise to the charges, it shall not be necessary to hold an enquiry or investigation under these regulations unless in the opinion of the Commission such enquiry or investigation is likely to find such circumstances as may modify the view taken of and the punishment to be imposed for the offence.
