

Ministry of Public Administration
Provincial Councils & Home Affairs,
Independence Square,
Colombo 07.

21st December 1992,

Secretaries to Ministries,
Chief Secretaries
Government Agents,
Heads of Departments
Secretaries to Governors,
Divisional Secretaries and
Secretaries to Provincial Public
Service Commissions.

**Expediting of Inquiries regarding Public Officers -
Amendments to the Establishments Code - Chapter XLVIII.**

Following provisions of this Circular will be effective in place of Public Administration Circulars No. 35/90 of 17.08.1990, No. 35/90 (i) of 18.03.1991 and No. 35/90 (ii) of 03.03.1992 issued on expediting of disciplinary inquiries regarding public officers. Accordingly sub-sections 12:1,12:7,13:2,14:4,14:5,18:1:1 and 21:6 of Chapter XLVIII of part II of the Establishments Code are amended. New sub-sections 5:2:1, 10:1:1, 12:1:1, 12:1:2, 12:2:1, 12:7:1, 12:7:2, 14:5:1, 18:3:1, 18:3:2, 18:3:3:, 18:6 and 21:7 are added.

02. 5:2:1 Where more than three months have passed since the date of which a charge sheet has been issued, the officers concerned should be appropriately reinstated, and the holding of the inquiry and submission of report should be completed within the time frame laid down in subsection 12:7. Even where such a charge sheet has not been issued, the officer should be similarly reinstated, a charge sheet issued within one month, and the inquiry should be completed and the report submitted within three months. Where however the officer has been interdicted for fraud.
- (1) The alleged fraud should be inquired in to, and the charge sheet issued within one month from the date of interdiction without reinstatement.
 - (2) The inquiry should be completed and the report submitted within three months thereafter.
03. 10:1:1 Charge sheet should be served within one month of the date of interdiction. An officer in-charge of stores should be served his charge sheet not more than three months after the date of interdiction, as it may be necessary to do a stock taking in the store of which he was in charge. A full counting of all varieties of goods relevant to the charges will be necessary.

10:1:2 After issuing a charge sheet, the disciplinary authority may amend the charge sheet if required, before resuming the disciplinary inquiry. In such a case however the accused officer must be afforded an adequate opportunity of defending himself against such amended charges of cross-examining such witnesses or examining such documents as the case may be, subject to the provisions of sub-sections 11:5 and 11:6

12:1 Deciding the fact to which category an inquiring officer should be assigned to, is the responsibility of the disciplinary authority. Where an accused officer intends to have an attorney-at-law as the inquiring officer, he has the right to inform the disciplinary authority stating adequate reasons.

12:1:1 The disciplinary authority may select an inquiring officer drawn from serving officers or from the panel of inquiring officers registered in the Ministry of Public Administration.

12:1:2 The following categories of inquiring officers are included in the panel of inquiring officers registered in the Ministry of Public Administration.

- (1) Retired public officers who held staff grade posts.
- (2) Attorneys-at-law with more than 10 years experience.

This panel will be revised from time to time and published through Public Administration Circulars. Where the Tribunal consists of more than one member, the disciplinary authority will designate one of them as chairman.

12:2:1 The following should be included in the letter appointing inquiring officers:

- (1) Where they are serving public officers, the following paragraph should be included in their letters of appointment.

“ You are hereby informed that the holding of an inquiry is a part of your duty in the public service, and that you should impartially and expeditiously hold the inquiry in accordance with the section 14:1 of chapter XLVIII of the Establishments Code and submit your report within three calendar months from the date of this letter. Failure to do so may result in disciplinary action being taken against you.”

- (2) Where they are from the panel registered with the Ministry of Public Administration the following paragraph should be included.

“ You should submit your report within three calendar months from the date of receipt of this letter and the failure to do so would result in the deduction of:

- (a) 10% of your allowance beyond a delay of one month.
- (b) 20% of your allowance beyond a delay of two months.
- (c) 35% of your allowance beyond a delay of three months.
- (d) Withdrawal of the appointment made in this letter and deletion of the name from the registered panel, beyond a delay of four months.”

06. 12:7 The inquiring officer should complete the inquiry and submit his report within three months of the inquiry being given over to him. If this is not done, or if the disciplinary authority has not been informed that the delay was due to reasonable and unavoidable causes, immediately after such instances occurred or immediately after it was known that such instances will occur, during the period of 3 months, and if the “inquiring officer is a public officer, he should be reported to his own disciplinary authority for disciplinary action. If the inquiring officer is one of the panel of inquiry in the Ministry of Public Administration, action should be taken in terms of the provisions of para (2) of sub-section 12:2:1.

12:7:1 Where the inquiring officer has not submitted his report within 3 months, accused officers other than these categories mentioned under sub-section 18:3:1, should be reinstated and proceed with inquiries.

12:7:2 The Secretary, Ministry of Public Administration will issue necessary instructions as and where necessary to secretaries, Heads of Departments, Tribunals and inquiring officers with regard to the expeditious disposal of inquiries.

07. 13:2 The disciplinary authority shall permit the accused officer to be represented only by one serving or retired officer. One officer can represent over several accused officers. The disciplinary authority may permit the government to be represented by state Counsel, in which event the accused officer will be entitled to be represented by a lawyer.

08. 14:4 No inquiring officer has the authority to amend a charge sheet. Once the inquiry is resumed, amendments to the charge sheet, should be done only by the prosecuting officer on having written instructions of the disciplinary authority. Once the inquiry is commenced partial amendments or introduction of new charges would be allowed only twice. Then only the Tribunal should allow, on the request of the defending officer to recall witnesses, summon new witnesses or entertain any further documents as considered necessary. In such a case however the accused officer must be afforded an adequate opportunity of defending him self against such amended charges, or cross examining such witnesses or examining such documents as the case may be, subject to the provisions of sections 11:5 and 11:6.

09. 14:5 The decision of the tribunal on any matter of procedure, or any objection taken on procedural ground shall be final. The principal by which Tribunals should be guided in such matters is that “ the objective of the inquiry is to arrive at the truth speedily, and technicalities whether procedural or otherwise should not be allowed to impede the progress of the inquiry.”

14:5:1 Where an accused officer is deliberately delaying or obstructing an inquiry, following action should be taken.

- (1) If he absents himself without acceptable reasons for two consecutive dates of inquiry, the inquiry should be proceeded with ex-parte.
- (2) If he otherwise obstructs in any manner whatsoever, and the inquiring officer is unable to complete his inquiry within the three months specified in sub-section 12:7 such obstruction should be reported to the disciplinary authority before the end of the period of three months specified for the completion of the inquiry. The inquiring officer should give full reason for his belief that there is deliberate obstruction of the inquiry by the accused officer.
- (3) If the disciplinary authority is satisfied that the complaint by the inquiring officer is correct, no action should be taken to reinstate an officer. He should be reinstated only when the inquiry is complete. If he has already been reinstated, he should be re-interdicted without even half-pay. Even if he is exonerated of charges, his salary should not be paid for this period.

10. 18:1:1 In cases where action is being taken to file a case or action is already filled in a Court of Law, it is not necessary to delay inquiries against an officer until the completion of such trail, Nor it is necessary to reinstate an accused merely because he is acquitted in courts. The following may be remembered in this connection.

- (1) The purpose of charging an accused in courts is to determine whether he has committed any offences against the law of the country.
- (2) An accused can be discharged by a Court of Law, not only on being proved his innocence, some such instances would be the improper way of filling the case, withdrawal of the case, dismissal, charges not framed properly, non-appearing of the complaint or the witnesses contradiction of evidence, settlement between two parties or any other reason by which the case cannot be proceeded.

- (3) The purpose of examining charges against an officer at an inquiry is to determine whether he has committed any anti-disciplinary action or caused loss or brought discredit to the Government and the public service. It is no part of the duty of an inquiring officer to determine whether the accused has committed a legal offence.
- (4) This does not however preclude the disciplinary authority from taking departmental action against the officer if he has not been taken into custody, disciplinary proceedings may be continued on his release. There is also no objection to a disciplinary authority simultaneously carrying out disciplinary inquiries while Court proceedings are about to commence or are already in progress.

18.3.1 Disciplinary authorities may keep in mind that under the law of Sri Lanka, all persons are presumed to be innocent until proved guilty. Therefore placing an officer under interdiction when he is charged in Courts with a criminal offence should not be done. In instances where the officer is charged with an offence of anti-government actions or engaging in terrorist actions, it is compulsory that he should be interdicted. Action for reinstatement of such an officer should be taken by the Secretary to the relevant Ministry in case of departmental officers, and the Secretary to the Ministry of Public Administration in case of combined services officers, after consulting and obtaining concurrence in writing of the Secretary to the Ministry of Defence.

18.3.2 The future practice will be, in regard to an officer being charged with a breach of law of an offence against society should be as follows;

- (1) Where an officer is taken into custody and remanded for such offences, he should be placed on compulsory leave.
- (2) If he is released on bail, and if the disciplinary authority feels that the nature of the alleged offence is such that his reinstatement is not detrimental to the interests of the Public Service he should be reinstated.
- (3) But if the disciplinary authority feels that reinstatement is detrimental to the Public Service, the officer should be placed under interdiction till the determination of the Court case. The salary payable to him should be determined under Chapter VII of the Establishments Code.

18:3:3 Where an accused officer expresses his innocence on his own, and if the disciplinary authority thinks it proper to hold a disciplinary inquiry, an inquiring officer may be appointed having considered the provisions of sub-section 12:1.

12. 18:6 In instances where it takes more than 6 months to give a decision on an officer interdicted on non-anti government actions charged by Police and or Bribery Commissioner's Department, on completion of 06 months from the date of interdiction, he should be paid half-pay without reinstatement and the disciplinary inquiry be continued. Action should also be taken to expedite the disciplinary inquiry.