

6. DISCIPLINARY PROCEEDINGS

6.27 Rules relating to Tamil Nadu Public Service Commission Regulations, 1954 - Matters not necessary for the Commission to be consulted

Rule 6. Full pension subject to approved service:-

(1) Except for contributory family pension admissible under rule 49, full pension admissible under these rules shall not be sanctioned to a Government servant unless the service rendered by such Government servant has been approved by the pension sanctioning authority as satisfactory.

(2) If such service has not been satisfactory, the pension sanctioning authority may make such reduction in the amount of pension or gratuity, or both, as it thinks proper;

Provided that no order regarding reduction in the amount of pension or gratuity or both shall be made unless the Government servant has been given a reasonable opportunity for making a representation in the matter:

Provided that further in a case where the pension sanctioning authority is subordinate to the Government, no order regarding reduction in the amount of pension shall be made without the approval of the Government:

Provided also that the amount of pension shall not be reduced below the limit specified in sub-rule (5) of rule 43.

Note:- The reduction in pension under the above rule shall be effected in whole rupees and shall not be expressed on percentage of pension.

(3) For the purposes of sub-rule (2), the expression 'Pension sanctioning authority' shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires.

(4) The pension sanctioned under these rules shall not be reduced although proof of the service having been not satisfactory may come to the notice of the pension sanctioning authority subsequent to the sanction of pension.

(5) Before passing an order reducing the amount of pension or gratuity or both under this rule, the Tamil Nadu Public Service Commission shall be consulted if the Government servant does not agree to such reduction. The Tamil Nadu Public Service Commission need not be consulted in cases where the Government Servant agrees to the reduction in the amount of pension or gratuity or both, but a copy of the order passed by the Government in such cases shall be sent to the said Commission.

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- (6) Nothing contained in this rule shall apply-
- (a) where a part of pension has been withheld or ordered to be recovered under rule 9 ; or
 - (b) where a part of pension has been reduced under rule 39.
 - (c) to effect any recovery which has the effect of punishment.

Rule 8. Pension subject to future good conduct –

(1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The pension sanctioning authority may be order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct ;

Provided that no such order shall be passed by an authority subordinate to the authority competent to make an appointment to the post held by the pensioner immediately before his retirement from service.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall be not be reduced below the limit specified in sub-rule (5) of rule 43.

(2) Where a pensioner is convicted of a serious crime by a court, action under sub-rule (1) shall be taken in the light of the judgement of the court relating to such conviction.

(3) In case not falling under sub-rule(2), if the authority referred to in sub-rule (1) considers that the pensioner is prima-facie guilty of grave misconduct, it shall, before passing an order under sub-rule (1),-

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order under sub-rule (1) is the Government, the Tamil Nadu Public Service Commission shall be consulted before the order is passed.

PART II

(5) An appeal against an order passed under sub-rule (1) by any authority other than the Government, shall lie to the Government and the Government shall, in consultation with the Tamil Nadu Public Service Commission pass such orders on the appeal as they deem fit.

Note:- In this Rule:-

(a) the expression "serious crime" includes a crime involving an offence under the Official Secrets Act, 1923 (*19 of 1923);

(b) the expression "grave-misconduct" includes the communication or disclosure of any secret official code or pass-word or any sketch, plan, model, article, note, document or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (*19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect, the interest of the general public or the security of the State.

Rule 8A. Prohibition of membership of any Communal Organisation, etc.:-

(1) No pensioner shall be a member of, or be otherwise associated with any organization,-

(a) Which promotes or attempts to promote on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity hatred or ill will between different religious, racial, language or regional groups or castes or communities; or

(b) whose activities are prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquility; or

(c) which organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence, or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community.

(2) If any question arises whether any organization falls under sub-rule (1), the decision of the Government thereon shall be final.

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(3) If a pensioner violates the sub-rule (1) the pension sanctioning authority may by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period;

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Provided that no such order shall be passed by an authority subordinate to the authority competent to make an appointment to the post held by the Pensioner immediately before his retirement from service:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of rule 43.

(4) The authority referred to in sub-rule (3) shall, before passing an order thereunder,-

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(5) Where the authority competent to pass an order under sub-rule (3) is the Government, the Tamil Nadu Public Service Commission shall be consulted before the order is passed.

(6) An appeal against an order passed under sub-rule (3) by any authority other than the Government shall lie to the Government and the Government shall, in consultation with the Tamil Nadu Public Service Commission, pass such orders on the appeal as they deem fit.

Rule 9. Right of Government to withhold or withdraw pension,-

(1) (a) The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any Co-operative Society comprising of Government Servants and registered under the Tamil Nadu Co-operative Societies Act,1961;

Provided that before passing an order under this sub-rule withholding or withdrawing the pension of a person the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension, but a copy of the order passed by the Government in such cases shall be sent to the said Commission;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 43.

(c) In case there is any pecuniary loss caused to the Government or to any local body to any co-operative society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act,1961; and if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, the Government shall also have the right of ordering recovery from the pension or Death-cum-Gratuity of the whole or part or part of the pecuniary loss caused by such grave misconduct or negligence;

Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause are passed.

Explanation,- “Judicial Proceedings” shall include proceeding before any Tribunal constituted by an Act of Parliament or the State Legislature or by a Rule.

(2) (a) The departmental proceeding referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service;

Provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report regarding its findings to the Government.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment –

(i) shall not be instituted save with the sanction of the Government :

(ii) shall not be clarify in respect of any event which took place more than four years before such institution : and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Omitted

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub-rule (2), or any enquiry is being conducted by Director of Vigilance and Anti-Corruption a provisional pension as provided in rule 60 and rule 69, as the case may be, shall be sanctioned.

(5) Where the Government decide not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule –

(a) departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for Disciplinary Proceedings,

(b) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioned or if the Government Servent has been placed under suspension from an earlier date, on such date : and

(c) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date of the complaint or report of a police officer, of which the Magistrate take cognizance, is made, and

(ii) in the case of civil proceedings, on the date on which plaint is presented in the court.

Note (1) – As soon as proceedings, of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay, intimate the fact to the Accountant-General concerned.

Note (2) –If an officer against, whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf, e.g., dependants, or pecuniary resources or property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him and the case will come within the purview of this rule. The position is that the term “grave misconduct” used in this rule is wide enough to include corrupt practices. In cases where the charge of corruption is proved only after pension has been sanctioned, and it is not therefore possible to invoke the provisions of rule 6, action to withhold or withdraw pension may be taken under this rule. In this connection the provisions of

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Rule 9(2) is to be noted carefully. In accordance with these provisions the property or pecuniary resources in respect of which the departmental proceedings are instituted under rule 9 should have been acquired by the person concerned or any other person on his behalf any time within the period of four years before the institution of such proceedings if not instituted while the officer was on duty either before retirement or during re-employment.

Rule 39. Compulsory retirement pension, -

(1) A Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

Note,- Omitted.

(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Tamil Nadu Public Service Commission shall be consulted before such order is passed.

Explanation, - In this sub-rule, the expression 'pension' includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or as the case may be, under sub-rule (2) shall not be less than the limit specified in sub-rule (5) of rule 43.

GAZETTED GOVERNMENT SERVANTS

Rule 60. Provisional pension where departmental or judicial proceedings or enquiry by the Director of Vigilance and Anti-Corruption may be pending.-

(1) (a) In respect of a Government servant, referred to in sub-rule (4) of rule 9, the Audit Officer shall authorize the payment of provisional pension not exceeding the maximum pension which would have been admissible on the basis of the qualifying service up to the date of retirement of the Government servant.

(b) The provisional pension shall be authorized by the Audit Officer during the period commencing from the date of retirement to the date on which, upon conclusion of the departmental or judicial proceedings, or enquiry by the Director of Vigilance and Anti-corruption, final orders are passed by the competent authority.

(c) No gratuity shall be authorized to the Government servant until the conclusion of such proceedings and issue of final orders thereon.

Provided that no such gratuity, shall be withheld in respect of a Government Servant, who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government.

Provided further that where a Government Servant, against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorized, after deducting the maximum computed financial loss to the Government for which the Government Servant is held liable, along with un-recovered Government dues if any, of such Government servant, with interest.

(2) payment of provisional pension made under sub-rule(1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

(3) Nothing contained in this rule shall prejudice the operation of rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings or enquiry by the Director of Vigilance and Anti-corruption.

NON-GAZETTED GOVERNMENT SERVANTS

Rule 69 : Provisional pension where departmental or judicial proceedings or enquiry by the Director of Vigilance and Anti-corruption may be pending:-

(1) (a) in respect of a Government servant referred to in sub-rule (4) of rule 9, the Head of office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant.

(b) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings or enquiry by the Director of Vigilance and Anti-corruption and issue of final orders thereon.

Provided that no such gratuity, shall be withheld in respect of a Government Servant, who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government.

Provided further that that where a Government Servant against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorized, after deducting the maximum computed financial loss to the Government for which the Government Servant is held liable, along with un-recovered Government dues if any, of such Government servant, with interest,.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specific period.

(3) Nothing contained in this rule shall prejudice the operation of rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings or enquiry by the Director of Vigilance and Anti-corruption.

RELEVANT PROVISIONS OF THE TAMIL NADU PUBLIC SERVICE COMMISSION REGULATIONS, 1954.

PART III

MATTERS IN RESPECT OF WHICH IT SHALL NOT BE NECESSARY FOR THE COMMISSION TO BE CONSULTED:

Regulation 16. It shall not be necessary for the Commission to be consulted:-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

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(g) (i) in any case falling under sub-clause(c) of clause(3) of Article 320 of the Constitution in which an enquiry has been held by a Judge of the High Court of Judicature at Madras ; or

(ii) in any case falling under sub-clause (i) above in which the State Government revise an order passed by them;

(iii) as respects any of the matters mentioned in sub-clauses (a) to (c) of clause (3) of Article 320 of the Constitution in the case of-

(a) all posts in the Tamil Nadu Police Subordinate Service and the Malabar Special Police Subordinate Service;

(b) the Comptroller, Governor's Household

(c) the Personal Assistant (Household Supervision), Governor's Household;

(d) the Private Secretary to the Governor;

(e) the Personal Assistant to the Governor;

(f) Under Secretary to the Governor of Tamil Nadu;

(g) Section Officer in the Governor's Secretariat.

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Regulation 18. (1) It shall not be necessary for the Commission to be consulted on any disciplinary matter affecting a person serving in connection with the affairs of the State, except –

(a) Where the State Government on admitting an appeal, review or revision, propose to pass an order on such appeal, review or revision; or

(b) Where the State Government propose to pass an original order imposing any of the following penalties, namely: -

(i) Reduction to a lower rank in the seniority list or to a lower post or time-scale whether in the same service or in another service, State or Subordinate or to a lower stage in a time – scale:

(ii) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or breach of orders.

(iii) Compulsory retirement otherwise than under rule 33 and rule 42 of the Tamil nadu Pension Rules 1978;

(iv) Removal from the Civil Service of the State Government; or

(v) Dismissal from the civil service of the State Government.

(c) Where the State Government propose to pass an order under rules 6 and 9 of the Tamil nadu Pension Rules 1978, in respect of a retired Government servant who does not agree to the punishment of reduction of pension or gratuity or both or withholding or withdrawing the pension.

(d) Where the State Government propose to pass an original order or an order on an appeal under rule 8 of the Tamil Nadu Pension Rules, 1978.

(2) Nothing contained in clause (1) shall be deemed to make it necessary for the State Government to consult the Commission in any case-

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(a) relating to the termination of probation of any person before the expiry of the prescribed or extended period of probation or to the discharge of a person after the expiry of such period of the ground that he is unsuitable for full membership of the service.

(b) Relating to the discharge or reversion of an officer otherwise than as a penalty:

(c) Relating to the termination of the employment of any person in accordance with the terms of his contract of employment.

(d) Relating to compulsory retirement under rule 33 and rule 42 of the Tamil nadu Pension Rules, 1978 of any person who has rendered 25 years of qualifying service or more;

(e) Relating to the imposition of any penalty laid down in any rule or order or failure to pass any test or examination within a specified time;

(f) In which the Commission has at any previous stage, given in regard to the order to be passed and no fresh question has thereafter arisen for determination;

(g) Where the State Government pass orders of dismissal or removal in cases dealt with under the proviso(c) to Article 311(2) of the Constitution of India.

Regulation 19. It shall not be necessary for the Commission to be consulted on any memorial or petition relating to any disciplinary matter affecting a person serving in connection with the affairs of the State where the State Government propose to pass orders rejecting such memorial or petition.

